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BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS0305151CHI
GREGORY BIERL, D.C., :
RESPONDENT. :

FINAL DECISION AND ORDER

The parties to this action for the purposes of § 227.53, Stats., are:

Gregory Bierl, D.C.
309 N. Sawyer Street
Oshkosh, WI 54902

Wisconsin Chiropractic Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Chiropractic Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Gregory Bierl, D.C., Respondent, date of birth December 11, 1957, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the State of Wisconsin pursuant to license number 2163, which was first granted July 16, 1986.
2. Respondent's last address reported to the Department of Regulation and Licensing is 309 N. Sawyer Street, Oshkosh, WI 54902.
3. At the time of the events set out below, Respondent practiced chiropractic in Oshkosh, Wisconsin.

Ms. A

4. In May of 1999, Ms. A sought chiropractic services from Respondent. Ms. A told Respondent that she was having pain from her back, which came all the way through to her chest. Respondent provided Ms. A with chiropractic care while she was lying on her stomach. Respondent then had Ms. A lie on her back and he touched both of her breasts through her clothing.
5. Ms. A returned to Respondent for chiropractic services on February 10, 2000 complaining of pain in her knee. Respondent provided Ms. A with treatment for the knee condition. Respondent then had Ms. A lie on her back and while she was in that position, he reached under her shirt and touched her breasts through her bra.
6. Respondent's touching of Ms. A's breast area was not for any legitimate chiropractic purpose, on either occasion.

Ms. B

7. On April 7, 2000, Ms. B began receiving chiropractic services from Respondent for treatment of low back pain. Respondent provided chiropractic services to Ms. B on April 7, 10, 13 and 20 and May 11, 2000.
8. During Ms. B's initial visit, Respondent:
 - a. obtained a history of Ms. B's symptoms and general health, and performed a physical examination which involved testing of both the upper and lower spine and lower extremities.
 - b. diagnosed Ms. B with lumbar facet syndrome.
 - c. administered interferential therapy to Ms. B's lumbar spine, which involved attaching electrodes to her lower back to provide low voltage stimulation, and gave her a back massage.

d. prior to performing an adjustment on Ms. B's neck, had Ms. B lie on her back on the adjustment table and began to massage her left shoulder. Respondent then moved his hand and began to massage Ms. B's breasts. Respondent told Ms. B he was doing this to relax her muscles prior to performing the adjustment on her neck.

9. During her next visit on April 10, 2000, Respondent again administered interferential therapy to Ms. B's lumbar spine and massaged her back. After about 15 minutes, Respondent had Ms. B move to the exam room for her adjustments. Respondent again had Ms. B lie on her back and began to massage her left shoulder. When he moved his hand to Ms. B's breast area, Ms. B told Respondent not to massage her there because it made her feel very uncomfortable.

10. On all subsequent visits, Respondent did not ask Ms. B to lie down for a massage and all neck adjustments were done with Ms. B sitting in a chair.

11. Respondent did not make any note in Ms. B's treatment record that he had touched her in the breast area. Respondent's touching of Ms. B's breast area was not for any legitimate chiropractic purpose.

Ms. C

12. Prior to June 13, 2000, Ms. C had never sought professional services from a chiropractor. On June 13, 2000, Ms. C, who had turned 17 the previous month, presented to Respondent complaining of back pain, headaches and chest pain which began a few days earlier. Respondent provided chiropractic services to Ms. C on June 13, 15 and 20, 2000

13. Although Ms. C's symptoms did not require emergency treatment, Respondent did not attempt to obtain parental consent to examine or treat Ms. C, an un-emancipated minor.

14. During her initial visit, Ms. C completed a Patient Information Form and provided a history of her chief complaints and general health. Respondent then performed a physical examination and took x-rays. Respondent diagnosed Ms. C with cervicalgia, headaches and thoracic radiculitis. To treat these conditions, Respondent administered interferential therapy to Ms. C's thoracic vertebrae and performed chiropractic adjustments to Ms. A's neck and middle back.

15. During Ms. C's next visit on June 15, 2000, Respondent:

a. after performing an adjustment on Ms. C's back, instructed Ms. C to turn over on her back. While Ms. C was lying on her back, Respondent lifted Ms. C's shirt up above her breast area, exposing her bra, and massaged her stomach and upper chest area, above and around her breasts. When Ms. C asked Respondent why he was doing that, he said he needed to massage her muscles to relax them.

b. commented to Ms. C that her body was in good shape and that it looked like she took good care of it.

16. During Ms. C's third visit on June 20, 2000, the following occurred:

- a. When Ms. C walked into the office, Respondent dimmed the lights, which he had not done previously.
- b. Respondent told Ms. C to lie on her stomach and began to massage her lower back. Respondent commented to Ms. C that she felt very tense.
- c. Respondent moved his hands down and massaged Ms. C's buttocks and rubbed up and down her legs. Respondent's hands touched on Ms. C's upper thighs nearly to her genitalia and Ms. C, who was wearing shorts, felt that Respondent was intentionally trying to rub her inner thigh area. Respondent commented to Ms. C that her skin was very smooth and that she must take very good care of it.
- d. Respondent had Ms. C turn over onto her back and for about 10 minutes, massaged Ms. C's stomach and upper chest area. During approximately the last 5 minutes of the massage, Respondent lifted Ms. C's shirt above her breasts, exposing her bra. Using both hands, Respondent worked in a circular motion around Ms. C's breasts, touched Ms. C's breasts and then continued to massage on her upper chest.
- e. When Respondent was finished massaging Ms. C, Ms. C stood up and told Respondent she had to leave to go to a job interview. Respondent told Ms. C she could have a job working for him. After Ms. C said 'no,' Respondent told her he would always have a job available for her if she wanted one. He touched Ms. C's cheek and told her he was sure she would get the job because she had a great smile.

17. Respondent did not make any note in Ms. C's treatment record that he had touched her buttocks, breast area or inner thighs. Respondent's touching of Ms. C's buttocks, breast area and inner thighs was not for any legitimate chiropractic purpose.

Ms. D

18. Ms. A and Ms. B told members of the Oshkosh Police Department that Respondent had touched them inappropriately. As part of their investigation of the allegations, the police had Ms. D, a police officer, pretend to be a potential patient seeking treatment from Respondent.

19. Ms. D made an appointment to see Respondent and on August 21, 2000, went to Respondent's office complaining of low back pain. Respondent evaluated Ms. D's condition and provided chiropractic treatment for that condition. Respondent then had Ms. D lie on her back and he massaged her stomach and upper chest and touched her breasts with his palms through her shirt and with his fingertips under her shirt.

20. Ms. D returned for further treatment on August 25, 2000. Respondent treated her lower back condition with adjustments and electrical stimulation. Respondent then had Ms. D lie on her back and he massaged her stomach and upper chest and touched her breasts with his palms and fingertips under her shirt.

21. Ms. D returned for further treatment on August 31, 2000. Respondent treated her lower back condition with adjustments. Respondent then had Ms. D lie on her back and he massaged her stomach and upper chest. He touched her breasts with his palms and fingertips over and under her shirt.

22. Ms. D returned for further treatment on September 22, 2000. Respondent treated her lower back condition with adjustments. While Ms. D was lying on her stomach, Respondent massaged her lower back. Respondent then placed his hand under her shorts and underwear and massaged her buttocks.

23. Respondent did not make any note in Ms. D's treatment record that he had touched her in the breast or buttocks areas. Respondent's touching of Ms. D's breast area and buttocks was not for any legitimate chiropractic purpose.

Criminal Convictions

24. On August 30, 2001, Respondent was charged in Winnebago County Wisconsin Circuit Court case number 2001CM001609 with five counts of violating § 940.225(3m), Stats. [4th Degree Sexual Assault], a class A misdemeanor. An amended complaint was filed on September 7, 2001 which added five more counts of violating § 940.225(3m), Stats. [4th Degree Sexual Assault].

- a. Counts 1 and 2 related to Respondent's touching of Ms. B, set out above.
- b. Counts 3 and 4 related to Respondent's touching of Ms. C, set out above.
- c. Counts 5, 6, 7 and 8 related to Respondent's touching of Ms. D, set out above.
- d. Counts 9 and 10 related to Respondent's touching of Ms. A, set out above.

25. The criminal matter was set for jury trial on April 14, 2003, however, on that date pursuant to a plea agreement:

- a. Respondent pled no contest and was then found guilty and convicted of counts 1, 3, 4, 5 and 9.
- b. Counts 2, 6, 7, 8 and 10 were dismissed, but will be read into the record for purposes of consideration by the judge in determining the sentence to impose.

26. Respondent's sentencing on the convictions is scheduled to take place May 29, 2003.

27. § 940.225(3m), Stats., is a law substantially related to the practice of chiropractic.

CONCLUSIONS OF LAW

- 1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter pursuant to § 446.03, Stats.

2. The Wisconsin Chiropractic Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

3. Respondent, by engaging in sexual contact with Ms. A, Ms. B, Ms. C and Ms. D, while they were his patients, has committed unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(7) and is subject to discipline pursuant to § 446.03(5), Stats.

4. Respondent, by engaging in the conduct with Ms. A, Ms. B, Ms. C and Ms. D, as set out above, has engaged in a practice which constitutes a substantial danger to the health, welfare, or safety of a patient, and has committed unprofessional conduct as defined by Wis. Admin. Code § CHIR 6.02(1) and is subject to discipline pursuant to § 446.03(5), Stats.

5. Respondent, by having been convicted of crimes substantially related to the practice of chiropractic, has committed unprofessional conduct as defined by Wis. Admin. Code § CHI 6.02(24), is subject to discipline pursuant to § 446.03(3), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Gregory Bierl, D.C., to practice chiropractic in the state of Wisconsin is hereby SUSPENDED for a period of at least three years, effective immediately.

2. Pursuant to Wis. Adm. Code § CHIR 4.07, during the period in which Respondent is suspended, Respondent may not do any of the following:

- a. Perform any of the functions in Wis. Adm. Code § CHIR 4.03.
- b. Have any professional contact with patients.
- c. Be present in any chiropractic office, other than to receive care.

3. Respondent may petition the Chiropractic Examining Board for the termination of the suspension, after three years, under the following terms and conditions:

- a. Respondent shall, at Respondent's own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who have engaged in sexual misconduct with patients.

b. The practitioner performing the assessment must have been approved by the Board, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.

c. Respondent shall provide the Board with the practitioner's written report and provide the Board with the opportunity to discuss the evaluation and findings with the practitioner.

d. Respondent must provide proof sufficient to the Board that Respondent can practice with reasonable skill and safety of patients and public.

e. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address Respondent's conduct set out above and any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

f. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

4. If Respondent believes that the Board's refusal to end the suspension is inappropriate or that any limitation imposed or maintained by the Board under paragraph 3e is inappropriate, Respondent may seek a class 1 hearing pursuant to § 227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The suspension or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

5. Violation of any term or condition of this Order, or of any limitation imposed under paragraph 3e above, may constitute grounds for revocation of Respondent's license as a chiropractor in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under paragraph 3e above, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached “Notice of Appeal Information”.

Dated at Madison, Wisconsin this 15th day of May, 2003.

James A. Rosemeyer, D.C.

Chairperson

Chiropractic Examining Board