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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST

:
:
:
:

WARREN A. WITKOWSKI, D.C.,
RESPONDENT.

FINAL DECISION

AND ORDER

LS0207231CHI

The State of Wisconsin, Chiropractic Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Chiropractic Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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

Dated this 9th day of September, 2004.

James Rosemeyer
Chiropractic Examining Board

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS

: PROPOSED

WARREN A. WITKOWSKI, D.C.,

RESPONDENT.

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FINAL DECISION AND ORDER

LS0207231CHI

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

To: Warren A. Witkowski, D.C.

Attorney for respondent

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Chiropractic Examining Board
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Procedural History

A hearing in the above captioned matter was held on February 5, 6 and 7, 2003, and June 27, 2003, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by attorney John R. Zwieg. Attorney Gerald P. Boyle appeared on behalf of Warren A. Witkowski, D.C. Based on the entire record in this case, the undersigned administrative law judge recommends that the Chiropractic Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Warren A. Witkowski, D.C., Respondent, date of birth October 25, 1965, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the state of Wisconsin, pursuant to license number 2955, which was first granted December 17, 1992.

2. Respondent's last address reported to the Department of Regulation and Licensing is P.O. Box 143, New London, WI 54961.

Counts 1 and 2

3. Ms. Carol Haack (DOB 6/22/64), a married woman, received chiropractic treatment from Respondent on a regular basis from January 31, 1996, until March 10, 1999, when the therapeutic relationship was terminated. Ms. Haack first saw Respondent for examination and treatment for upper neck and shoulder pain as well as for low back pain with intermittent leg pain.

4. In approximately March 1996, Ms. Haack was experiencing emotional stresses in her personal life and was depressed. Ms. Haack told Respondent she was considering seeing a psychotherapist. Respondent told her that he had experience with depression and could help her through it. Respondent and Ms. Haack began talking and exchanging personal information. Respondent and Ms. Haack also began taking walks together one to two times per week and did other exercise together. Respondent began calling Ms. Haack often, during and after office hours to see how she was doing.

5. Beginning in approximately the summer of 1996, Ms. Haack and Respondent began sharing intimate details about their sexual relationships and thoughts.

6. Early in 1997, Ms. Haack and the Respondent began talking to each other on the telephone almost daily. The Respondent also sent sexually suggestive faxes to Ms. Haack. Ms. Haack also initiated suggestive conversations with the Respondent.

7. In approximately June, 1997, Ms. Haack came to the Respondent's office for a massage session. During the massage session, the Respondent also rubbed Ms. Haack's breasts, which was not part of the treatment. Ms. Haack told the Respondent she was uncomfortable with that.

8. In August 1997, Ms. Haack had surgery for thoracic outlet syndrome, which involved the removal of one of her

ribs. Prior to the surgery, the Respondent told Ms. Haack that he wished to make her dinner when she got out of the hospital.

9. Because Ms. Haack was wary of the Respondent after the session when he massaged her breasts, Ms. Haack would not allow the Respondent to make her dinner unless the Respondent would agree to abide by certain rules. The Respondent signed a piece of paper resembling a prescription order which stated:

- 1) Meds
- 2) No Hollering
- 3) No crabbiness
- 4) No taking liberties
- 5) No hitting

10. Beginning in approximately November, 1997, the Respondent and Ms. Haack would “play wrestle” when they were taking walks together. The wrestling included the Respondent laying on top of Ms. Haack and simulating intercourse, and his touching her breasts.

11. On an occasion when Ms. Haack was working at an art show, the Respondent took one of Ms. Haack’s business cards. On the card the Respondent wrote “Can I get your number?”, “Nice Dress” and “Nice fuck me pumps” and handed the card back to Ms. Haack.

12. After November, 1997, the Respondent engaged in additional acts of intentional sexual contact with Ms. Haack both during treatment sessions and on other occasions. Intentional sexual contact continued until early 1999, when Ms. Haack terminated that part of their relationship.

Count 3

13. Beginning no later than July 29, 1996, and continuing until the end of treatment on March 10, 1999, the Respondent forgave approximately \$347.24 in co-payment and deductible amounts Ms. Haack was to pay under the terms of her contract of insurance. The ledger of account indicated that the Respondent instructed the office staff not to bill Ms. Haack on August 6, 1997, November 10, 1997, November 18, 1997 and January 2, 1998.

14. No contract existed between the Respondent and Ms. Haack to exchange agreed services by Ms. Haack for credit against co-payments owed.

Count 4

15. The Respondent made and maintained records of the treatment he provided to Ms. Haack.

16. In June, 1999, three months after the practitioner/patient relationship ended, Ms. Haack obtained a copy of her treatment records from the Respondent’s office manager.

17. In June, 1999, Ms. Haack filed a complaint against the Respondent with Network Health Plan (NHP) and provided NHP with a copy of her records that she obtained from the Respondent’s office. Ms. Haack alleged in her complaint that the Respondent had provided treatment for her lower back that had harmed her.

18. NHP notified the Respondent of Ms. Haack’s complaint in July, 1999. In August, 1999, in response to a request from NHP, the Respondent sent NHP a set of what he purported were Ms. Haack’s treatment records. The respondent was aware that Ms. Haack’s complaint involved the allegation that he had provided treatment for Ms. Haack’s lower back that had harmed her.

19. A comparison of treatment records provided by the Respondent’s office to Ms. Haack in June, 1999, and subsequently forwarded to NHP; with those provided by the Respondent directly to NHP in August, 1999, showed numerous differences between the two whereby references to treatment of Ms. Haack’s lower back were obscured in the

treatment records provided by the Respondent to NHP, and not in the records provided to Ms. Haack by the Respondent.

20. Neither the records sent to NHP by the Respondent nor any accompanying documentation makes any indication in the records that any changes had been made to the records after the cessation of treatment.

21. The Respondent knowingly falsified the patient records of Ms. Haack.

Conclusions of Law

1. The Chiropractic Examining Board has jurisdiction in this matter pursuant to Wis. Stats. § 446.03(5).
2. The respondent, by engaging in the conduct described in Findings of Fact 3 through 12, has engaged in a practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public. Wis. Admin. Code § Chir 6.02 (1). (Count 1)
3. The respondent, by engaging in the conduct described in Findings of Fact 3 through 12, has engaged in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. Wis. Admin. Code § Chir 6.02 (7). (Count 2)
4. The respondent, by engaging in the conduct described in Findings of Fact 13 and 14, has negated the co-payment or deductible provisions of a contract of insurance by agreeing to forgive a patient's obligation for payment under the contract and failed to reduce his claim to the insurance carrier in regard to that patient by an equal proportion. Wis. Admin. Code § Chir 6.02 (29). (Count 3)
5. The respondent, by engaging in the conduct described in Findings of Fact 15 through 21, has knowingly falsifying patient records. Wis. Admin. Code § Chir 6.02 (12). (Count 4)

Order

1. The license of the respondent, Warren Witkowski, D.C., number 2995, to practice chiropractic in the state of Wisconsin is hereby SUSPENDED for a period of at least two years, effective immediately.
2. The respondent may petition the Chiropractic Examining Board for the termination of the suspension after two years, under the following terms and conditions:
 - a. The respondent shall take and complete a course or courses, equivalent to a one day program addressing the issue of health care provider-patient relationship boundaries, which shall first be approved by the Board or its designee. The respondent shall, within 30 days of completion of such course or courses, provide evidence of compliance with this paragraph to the Department Monitor.
 - b. The respondent shall, at the respondent's own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who have become involved sexually with patients. The health care provider 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. The respondent must provide proof sufficient to the Board that the respondent can practice with reasonable skill and safety of patients and the public.
 - d. If the Board determines to end the suspension, the respondent's license shall be limited in a manner to address the facts of this disciplinary matter and any recommendations resulting from the assessment, including, but not limited to:
 - i. Psychotherapy, at the 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.

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

3. Costs are assessed against the respondent.

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Applicable Law

Wis. Admin. Code § Chir 6.02 (1). (Count 1)

Chir 6.02 Unprofessional conduct. Unprofessional conduct by a chiropractor includes:

(1) Engaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public.

Wis. Admin. Code § Chir 6.02 (7). (Count 2)

Chir 6.02 Unprofessional conduct. Unprofessional conduct by a chiropractor includes:

(7) Engaging in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient.

Wis. Admin. Code § Chir 6.02 (29). (Count 3)

Chir 6.02 Unprofessional conduct. Unprofessional conduct by a chiropractor includes:

(29) Negating the co-payment or deductible provisions of a contract of insurance by agreeing to forgive any or all of the patient's obligation for payment under the contract unless the chiropractor reduces the chiropractor's claim to the insurance carrier in regard to that patient by an equal proportion. In this section, "co-payment or deductible provisions" means any terms in a contract of insurance with a third party whereby the patient remains financially obligated to the chiropractor for payment.

Wis. Admin. Code § Chir 6.02 (12). (Count 4)

Chir 6.02 Unprofessional conduct. Unprofessional conduct by a chiropractor includes:

(12) Knowingly falsifying patient records.

Opinion

Counts 1 and 2

Summary of evidence

Common evidence supports both counts one and two and they are discussed together in this opinion. I find the testimony of Ms. Haack to be more credible than Dr. Witkowski. Ms. Haack's testimony appeared to reasonably be a recounting of past events and generally non evasive and forthright. Her experiences with Dr. Witkowski as she recounted them appeared genuine and validated by her physical bearing and expressions as she testified. Dr. Witkowski demonstrated no obvious deficiencies in demeanor; however, he appeared more calculated in his testimony.

This type of case is typical of many boundary issue cases, the patient asserts that improper conduct occurred, the practitioner denies such conduct. Here, the state has presented corroborating testimony of two additional witnesses, Linda Lehman and Arryn Woodliff.

Ms. Lehman's and Ms. Woodliff's testimony recounts conversations that Ms. Haack had with them contemporaneously (for the most part) with incidents of sexual contact as they alleged occurred between Ms. Haack and Dr. Witkowski. I find both Ms. Lehman and Ms. Woodliff to be credible witnesses. The important testimonial aspect of these witnesses is that they recount independently the actions of Ms. Haack and Dr. Witkowski at or near the time they occurred, and more importantly, that most of the conversations with Ms. Haack occurred at a time when a reason to fabricate on the part of Ms. Haack did not exist.

At the time that Ms. Haack related the majority of the details of her relationship with Dr. Witkowski with these witnesses, Ms. Haack felt she was falling in, or was, in love with Dr. Witkowski. Therefore, Ms. Haack had no bias against Dr. Witkowski at that time so as to fabricate stories of sexual contact.

It is clear from the testimony that early on in the relationship beginning in 1996, Ms. Haack was troubled emotionally, and had marital problems. These emotional and marital troubles when combined with significant ongoing physical problems reasonably lead to the conclusion that Ms. Haack, Ms. Lehman and Ms. Woodliff are telling the truth as they recount the tale of the growing romantic relationship between Ms. Haack and Dr. Witkowski. The testimony reveals that the relationship grew precisely because Dr. Witkowski in some sense provided Ms. Haack with the care and support she could not find elsewhere, both physically and emotionally.

The practitioner/patient and romantic relationship ended in early 1999 for two apparent reasons, 1) Ms. Haack being informed that Dr. Witkowski's treatment was hurting her and, 2) that Dr. Witkowski was unresponsive to Ms. Haack's urgent telephone calls that he treat her daughter on a day when he was unavailable. Subsequently, Ms. Haack filed a complaint with her insurance provider, Network Insurance, in early 1999, alleging that Dr. Witkowski improperly treated Ms. Haack's lower back.

Conflicting or inconsistent testimony

The defense has raised the issue that there are some inconsistencies between the testimony of Ms. Haack, Ms. Lehman and Ms. Woodliff. This is a fair point that needs to be addressed. The defense is correct in the assertion that a certain level of inconsistency between witnesses, when reached, destroys all of their credibility such that the prosecution's case folds like a house of cards. The defense implies that exists in this case. I disagree.

The task for a fact finder is to determine what level of potential inconsistency is permissible among witnesses, given that a fact finder should also conversely suspect testimony that is so tidied up that it appears the witnesses have been in collusion as evidenced by their lockstep testimony.

In this opinion I have reproduced in detail the testimony in particular related to the recounting of sexual contact reported to Ms. Lehman by Ms. Haack, an incident of semen on a vest, and the reporting/timing of a purported AIDS test that Ms. Haack took.

As to the sexual contact reports, the vest and the AIDS test it is true that discrepancies exist between Ms. Lehman's testimony and Ms. Haack's. I view these discrepancies as reasonable given three factors: time passage, attorney questioning style, and witness testimonial style regarding embarrassing matters. As to time, the events testified to by all the witnesses occurred

approximately six years ago. In this context, I do not find it out of the ordinary or non credible that specifics will often blur to generalities when events are remembered, or that a witness may in fact simply forget something they heard or said previously.

This potential for generality results from the passage of time and when combined with the attorney questioning style and a witness' propensity to speak generally about embarrassing matters, it produces the real prospect that testimony may differ. Also, the memory of a witness that she thinks is specific, may actually change with the passage of time, even if she remains truthfully convinced that she is recalling specifically and correctly.

While the defense pointed out these testimonial differences, my review of the differences does not lead to the conclusion that the witnesses' testimony is fatally damaged. The differences appear to me to be within the range of acceptable variation. However, the testimony is nonetheless included in this opinion to provide the board the opportunity to review it and reach the opposite conclusion regarding the credibility of Ms. Haack and her supporting witnesses, should it decide to do so.

A fact finder will often, after the fact read the testimony and attorney questioning and frame additional questions that could have and should have been asked by the attorneys involved to clarify an apparent inconsistency, especially in this case where the timing of events or a more complete description of events could be an issue for credibility. However, it is a party's duty to demonstrate how an apparent inconsistency cannot be reconciled with the record of events as a whole, and then to demonstrate how such inconsistency proves fatal to credibility. Although the defense in this case raised certain testimonial inconsistencies as a basis to destroy credibility, the defense did not go this extra step to demonstrate irreconcilable inconsistency. As a fact finder, I must analyze the record as it exists, not as defense counsel might imply it to be.

Exhibits 1-20-Facsimile exchange between Ms. Haack and Dr. Witkowski

The exhibits of certain facsimiles sent between Ms. Haack and Dr. Witkowski further bolster the finding that the two were in a close relationship. (Exh. 1-20) It is true, as the defense asserts, that such faxes in and of themselves do not make out a supportable case for finding boundary issue violations in counts one and two. However, the faxes do not stand alone, and in combination with the other testimonial evidence do indicate a closeness and a relationship that progressed far beyond a professional patient/practitioner context. Certain of the faxes contain what could most charitably be termed "sexual banter", that is in many cases crude and vulgar. Out of deference to certain subject matters relating to Ms. Haack's minor children, a non relevant issue, I have not provided an explicit parsing of the content of certain of these faxes in this opinion. The department sought admission of these particular faxes only for the purpose of proving a friendship between Ms. Haack and Dr. Witkowski.

Collateral matters intended to show witness bias

As a related matter, certain witnesses testified to collateral or tangential matters arising after the practitioner/patient, and romantic relationship between Ms. Haack and Dr. Witkowski ended in early 1999. These matters deal with charges and counter charges of stalking, harassment, and events related to Ms. Haack's minor children. Linda Lehman, testifying for the state, addressed issues relating to Ms. Haack's minor children. Laura Betts was called as a defense witness and figured prominently in the defense theory that Ms. Haack was in essence unbalanced, creating a one sided love affair in her own mind, acting as a stalker and creating fanciful tales in a plan to destroy Dr. Witkowski.

What is clear is that these tangential matters have resulted in members of the community of New London taking sides with either Ms. Haack or Dr. Witkowski. The involvement of the civil court system has also occurred, as well as involvement of the police and the local district attorney. I have provided the salient portions of the testimony on these issues here for the board's review, so that if it decides to accept the defense's invitation, it may dismiss the testimony of Ms. Haack and her supporting witnesses as fanciful, vindictive and non credible.

I urge caution, however, that as collateral, tangential issues, these issues only have meaning if one can determine if the charges or counter charges are in fact true. However, this is not the forum to make that determination, and so, the charges and counter charges exist in a vacuum in a sense. They certainly indicate that the parties are deeply antagonistic, and that each has a camp of followers in the community. However, this type of tangential evidence is of limited use for demonstrating truthfulness. This is because before a fact finder can draw conclusions as to truthfulness in this case, it is necessary to determine whether the

collateral charges by Ms. Haack or others are true or false in the other matters. If proved false in other matters, then yes, an inference could properly be drawn that a witness is also making false charges related to Dr. Witkowski concerning improper sexual contact in this case. However, additional fact-finding on these tangential issues is outside the scope of this hearing so in the final analysis evidence of other charges or conduct presented by either party only amounts to unsupported allegations.

Testimony of Carol Haack

Direct examination by the department

Ms. Haack was married at the age of nineteen. Ms. Haack had never met Dr. Witkowski before going to see him for professional services. She first saw Dr. Witkowski in January of 1996. (Exh. 27) Her shoulder and neck were in pain and she couldn't turn her head very well. Linda Lehman, a patient of Dr. Witkowski, referred her to Dr. Witkowski.

Ms. Haack is an artist. She paints murals in people's houses as well as doing wildlife art, portraits and animal portraits. She has produced limited edition prints, carving and stained glass. She also teaches stain glass classes. Ms. Haack makes her income as an artist. She has sold prints to Ducks Unlimited.

In approximately May of 1996, she called Dr. Witkowski from her home. (RT p.31-32) She had tried to call her doctor, (nurse prescriber) and couldn't reach her. The nurse prescriber had been treating Ms. Haack for depression. Ms. Haack was feeling panicky and anxious. Her life was in upheaval at the time, her husband was offered a job in Minnesota and she didn't want to move. At that time she also didn't have a real close marriage and she stated, "[W]e were struggling. We were going to counseling. And we -- it just -- I didn't know what I should do with my life, if I wanted to -- I didn't know what to do." (RT p. 32-33) Additionally at that time she had health issues with one of her daughters and was "very, very sick". (RT p. 33)

Dr. Witkowski talked for about an hour on the telephone with Ms. Haack and told her that he treated people with depression. He called her later that night and they again talked for about an hour. She considered him understanding and very caring and was in awe of him. (RT p. 34)

She continued to see Dr. Witkowski for treatment approximately two times per week. He also continued to call her to inquire how she was handling "everything", (RT p. 35), and questioned her, "...about like my marriage and my life and what was really going wrong in my -- because he said, it appears like you're a happy family. What -- what really is wrong?". (RT p.35) Dr. Witkowski asked her questions about her relationship with her husband and their sex life. (RT p. 35)

She had many telephone conversations with Dr. Witkowski in which her sexual relationship with her husband was discussed during the whole time period she was treated by Dr. Witkowski. (RT p. 40) After the first series of telephone calls related to her depression, he asked about her sex life again about a week later and specifics were discussed. Dr. Witkowski also found fault with her husband. (RT p. 40-42)

After the first month, they had additional telephone conversations that she considered to be suggestive, "As our relationship developed, like it got to be -- he would call and ask what I was wearing, you know, and he would be real suggestive and, what are you doing right now? And then he -- and then I would ask him back, I said, well, what are you wearing? And he'd tell me he's wearing leopard skin underwear and -- and that he's touching himself right now and all this --" (RT p. 42) This occurred in 1997, "It became more of a close relation in. We were like best friends, like talking all the time, and we worked out together every single day." (RT p.43) The exhibits of facsimile transmissions between Dr. Witkowski and Ms. Haack admitted in this case containing sexual banter and innuendo lend credence to Ms. Haack's recounting of these telephone calls. (Exh. 1-20)

Beginning in May, 1996, she began to see Dr. Witkowski outside of his office in a non treatment context. Beginning in the spring of 1997, Ms. Haack and Dr. Witkowski began running at a track three to four times a week and worked out at a gym on alternate nights. (RT p. 43-48)

During either the Christmas season of 1996 or 1997 they both went Christmas shopping together. Dr. Witkowski bought her

a velour bra and underwear. (RT p. 50) She was “shocked”, and asked what the items were for. Dr. Witkowski responded that it might, “help your marriage”. Or wear it wear it to my office for my visit -- for a visit.” (RT p. 51-52)

Ms. Haack had a fax machine in the family house. Beginning in January, 1997, Dr. Witkowski and Ms. Haack entered into an exchange of faxes. These ranged from nutritional supplement advise for Ms. Haack’s daughter, (Exh. 1), to more personal subjects. He called her Ivana Trump and called himself, Uncle Bill. (Exh. 2) During this time Ivana Trump was going through a divorce from Donald Trump. Dr. Witkowski’s first name is Warren but he told her that he was like “Uncle Bill” to her children. (RT p. 55)

Ms. Haack testified that sexual contact with Dr. Witkowski first took place in June of 1997. “I had thoracic outlet in my shoulder, and he was massaging my shoulder and he asked me to take my shirt off, and he began to rub down lower, and he rubbed my breast.” She told him she was uncomfortable with that. (RT p. 78)

Dr. Witkowski attended an art show on opening night and gave Ms. Haack one of her business cards on which he had written suggestive language saying, “nice dress, nice fuck-me pumps”, (exh. 21):

Q. And it says, can I get your number? And it says, nice dress. And it says, nice fuck-me pumps?

A. Yes.

Q. All right. Were you wearing pumps that day?

A. Yes, I was.

Q. All right. Had you made any comments to him about your shoes or your dress before he handed you the card?

A. No. I was talking with customers when he handed me the card, and I was like -- kind of like -- it was like uncomfortable.

Q. Did you have any conversations with him about what he wrote on the card after you received the card?

A. It wasn't the place to talk. I mean there was all these people there and they were talking about my art work, and I just -- I just stuck it in a box in my thing so no one else would get it. (RT p. 88-89)

In August of 1997 Ms. Haack had a rib removed. After returning from her hospital stay she was at home alone, as her family went camping. Dr. Witkowski came over to her house and gave her a card, (Exh. 22) and a riding crop. She testified that, “He wanted me to use it on him. He said, you can-- I'll be your slave tonight. You can do anything you want with me. Just snap your whip. And he made me dinner that night.” She did not use the riding crop on him. (RT p. 92)

Dr. Witkowski also gave her a prescription order (Exh. 25) with five activity items on it. He offered to come to her house and take care of her while her husband went camping. She didn’t want him to come to her house, following an incident where he had touched her breast so he purportedly gave the prescription order to her as a guarantee of activities that he either would or would not do:

Q. All right. So after you told him he couldn't come to the house, what happened?

A. He said, I'll give you this as -- as your guarantee that I'm going to be a good boy.

Q. Okay. And -- and number one is meds. How did meds guarantee he was going to be a good boy?

A. I don't really like to take medicine, and he was always insisting that you take your medicine and you do your thing. So he was going to force that on me.

Q. All right. And number two, no hollering, what did that refer to?

A. I don't like it when people are telling me what I have to do all the time and like raising their voice. I like quiet. You know, talk to me nice or don't talk to me.

Q. And no crabbiness, what did that mean?

A. He gets really crabby. Dr. Witkowski can be very crabby, very irritable. And I didn't want him there if he was going to be that way.

Q. All right. And no taking liberties?

A. Yes. That meant I didn't want him touching me, touching my privates. Because when you just have surgery you're very down. And I knew I wasn't going to be able to really defend myself.

Q. All right. And the fifth one was no hitting?

A. Yes, no hitting.

Q. Well, had -- I mean why no hitting?

A. He asked me to spank him and stuff like that and I thought, I don't think that's appropriate, so I don't want him touching me like that.

Q. Okay. So Dr. Witkowski gave this to you?

A. Yes, he did.

Q. And you've already testified he came over after your surgery?

A. Yes, he did.

Q. And did he follow the guidelines?

A. He -- he -- I had this out, and I said, remember the rule, and he circled all the things that he did not do. Crabbiess he points to because he was crabby.

Q. All right. You say he points to. There's an arrow drawn on there?

A. Yes. He did not circle that as he, you know, had completed not being that way.

Q. Okay. So the circling of items one through five and the arrow pointing at -- the circling of one, two, four and five, and the arrow pointed at three were added by Dr. Witkowski --

A. Yes, yes, when -- (RT p. 103-105)

Dr. Witkoswki and Ms. Haack during 1998 engaged in a pattern of Ms. Haack returning sexual favors to Dr. Witkoswki in return for treatment. He provided her with a prescription order that contained the words, "you owe me big". (Exh. 24). This reference, according to Ms. Haack, referred to giving him a massage and manual stimulation:

Q. On June 8th, 1998, the date that's on Exhibit 24

A. Uh-huh.

Q. -- is that the day Dr. Witkowski gave you this document?

A. Yes.

Q. Where were you when he gave it to you?

A. In his office.

Q. What had just happened in his office?

A. A massage.

Q. Had you ever given him -- or had he ever given you a massage in his office before?

A. Yes.

Q. Had he ever -- well, tell us whether or not he had ever told you that you needed to do anything in return for having had a massage.

A. Yes.

Q. And what, if anything, had he ever told you you needed to do in return?

A. I needed to pleasure him.

MR. BOYLE: I need to what?

WITNESS: Pleasure him.

Q. All right. Now, pleasure him, would those be the exact words he would use?

A. He -- he would say, you need to come to my house and -- and then he'd say, well, I took care of you, it's only fair that you take care of me. I have needs, too. I'm a man.

Q. All right. Now --

A. And --

Q. -- based on what he said to you, what was your understanding?

A. That he wanted me to -- to give him a hand job or to massage him or to do something to make him feel good.

Q. All right. Now, those are very different things, a massage or a hand job. Were those occasions when you gave him a massage?

A. Yes.

Q. Were there --

A. But a hand job always came accompanied with it.

Q. I guess I didn't hear that because I was thinking, which every once in a while I do. And -- and so what did you just say?

A. When I gave him a massage, a hand job always came with it. I mean he always wanted -- he would undo his pants and he was like, well, you've got to finish the job.

Q. All right. So based on your history with Warren Witkowski, when he gave you Exhibit 24 that said, you owe me big, what was your understanding of what he was -- what this meant?

A. That he wanted me to either -- like to give him a massage back or to -- to pleasure him. He wanted something in return for what he had given me. (RT p. 100-103)

She testified that in 1997 she and Dr. Witkowski went walking together, and sometimes wrestled in the park at a local football field. The wrestling included Dr. Witkowski laying on top of her and simulating intercourse, along with him touching her breasts. (RT p. 108-111) In December, 1997, she and Dr. Witkowski made a bet whereby if Ms. Haack didn't read to her daughter every night, Ms. Haack would be required to perform a 'lap dance' of a sort on him, during which time she would straddle him on the chair in his office and, "...I like moved my hips, you know, on him, and he was grabbing my breasts and -- and we kissed, and that kind of stuff." (RT p. 111-112)

Ms. Haack incurred a back injury in January of 1998, resulting in the need for three surgeries in January, March and June, 1998.

Prior to the first surgery, Dr. Witkowski provided chiropractic treatment to her and would pick her up at her house and drive her to his office after hours. He would massage her back, and told her to take off her clothes. (RT p. 114) On one occasion he straddled her and was "rough". Her back then "got all wet". She turned her head and saw him zipping up his pants. She also claims to have felt something in her vagina, and she thinks it was his finger. (RT p. 144-116) On another occasion in early 1997, before her second back surgery, she claims that Dr. Witkowski came to her house and lay on her bed and touched her breasts and vagina, and put his finger in her. She also manually stimulated him to orgasm. (RT 118-119) A similar encounter occurred at his house. She estimates that she probably manually stimulated him to orgasm 20 times, perhaps more. (RT p. 120-121) She claims to have performed oral sex on one occasion as a birthday present. (RT p. 121-122)

Ms. Haack also had in her possession a vest which she claims had proof of her sexual contact with Dr. Witkowski. She claims to have thrown it away, and her husband took it out of the garbage and washed it. (RT p. 136) It was stipulated at the hearing that no DNA sample was obtained, although evidence of two apparent spermatozoan heads were detected. (Exh. 28)

Following the cessation of the doctor patient relationship in early 1999, Ms. Haack, Dr. Witkowski, and members of the New London community became embroiled in additional collateral issues related to Ms. Haack's children and a potential criminal investigation. Ms. Haack also filed court papers for a temporary restraining order against Dr. Witkowski involving allegations of stalking with a request for court intervention to issue a permanent injunction. (RT p. 132-136) As collateral matters, neither side at hearing presented proof of any substantive weight to adjudicate the truth or falsity of these collateral charges so as to be useful to impeach credibility of witness testimony at the hearing.

Cross examination of Ms. Haack by the respondent

Ms. Haack stated that she first had sexual contact with Dr. Witkowski in June 1997 when he touched her on the breast in his office. (RT p. 268) Prior to that time she and Dr. Witkowski shared a flirtatious relationship in conversation. (RT p. 270-272)

Ms. Haack was also suggestive toward Dr. Witkowski:

Q. No time did you ever initiate any conversation with him about anything of a sexual nature on the phone, is that your testimony? It was always in response to what he said to you?

A. I'm trying to remember. I can't say that. I may have been suggestive to him maybe or once or twice, but it was -- generally he started it. (RT p. 271-272)

Ms. Haack admitted to sending Dr. Witkowski faxes but didn't really think any of them were of a sexual nature. But "probably did" use the words "love Carol". (RT p. 350-351)

Ms. Haack reviewed the faxes introduced into evidence.

Ms. Haack did not think that anything in the fax marked exhibit 1 was sexually suggestive. In Exhibit 2 she considered that Dr. Witkowski was making fun of her. She didn't think exhibit 3 contained anything provocative. In exhibit 4 she stated that the last fax (not exhibit 3 but another fax referenced in exhibit 4) was pornographic. She denied sending the "pornographic"

fax to him, but rather that he sent it to her. The fax in exhibit 5 was a reference to Marla Maples. Regarding exhibit 8 she denied ever telling Dr. Witkowski that she didn't wear underwear when she went to see doctors. She claims not to have read exhibit 9 from beginning to end. She denies having back problems or discussing whether she could be harmed by engaging in sex with her husband at the time exhibit 9 was sent. (RT p. 399-405) The fax reference to fixing Dr. Witkowski's head, in exhibit 23 was in reference to a statute in Dr. Witkowski's office that needed repair. (RT p. 407)

Ms. Haack thought that when Dr. Witkowski called her a girl from Baywatch, (Exh. 14, 18); it was to make her mad because she didn't approve of the television program. (RT p. 406) The reference to "Evona", (Exh. 5) was, "Because we had discussed what was going on with the Trumps, and I said, yeah, think of all that money or whatever, and -- and he goes, well you're like Ivana or something, and I'm look, oh right." (RT p. 407)

She began talking to her friend Linda Lehman about her relationship with Dr. Witkowski in January, 1996. (RT p.291-292) She began talking to Linda Lehman about "inappropriate things" in her relationship with Dr. Witkowski in June, 1996. (RT p. 294)

Regarding the inappropriate touching incidents by Dr. Witkowski, Ms. Haack was very specific. The last touching was February, 1999. She was touched twice in 1999, once in his home and once at his office. (RT p. 304-305) Sexual touching started in June 1997 and went through the remainder of the year, and the entire year of 1998. (RT p. 307) One sexual touching incident occurred at her home in August, 1997, following surgery to remove a rib related to an accident.(RT p. 308)

The remainder of the touchings were at his office or on the football field or when they were exercising. (RT p. 308) Three instances occurred at Dr. Witkowski's office, over ten while they were in the city park or at the running track. (RT p. 309) In 1998, Ms. Haack estimated seven to ten sexual touchings occurred in Dr. Witkowski's home. (RT p. 309-310) These instances in her home totaled twenty to thirty. (RT p. 312) In 1998, Ms. Haack claims to have told her husband that she was having strong feelings for Dr. Witkowski. (RT p. 314-315) She told her husband about the sexual contacts with Dr. Witkowski in June or July of 1999.

In 1998, Ms. Haack claims only one instance of oral sex with Dr. Witkowski, which occurred prior to his birthday: (RT p. 317, 320)

Q. So he specifically said, give me oral sex because my birthday's coming in October?

A. No.

Q. He asked for oral sex as a birthday present?

A. Yes.

Q. When did it happen?

A. It happened in August or September.

Q. Well, that was the only time that year you had oral sex with him?

A. Yes. (RT p. 317-318)

Previous to this time, Ms. Haack claims that they had both seen each other naked, she had touched, oiled and massaged his genitals and had been in his bed, all the while refusing intercourse with him. She had touched his penis over twenty times, and brought him to orgasm over twenty times. (RT p. 318)

Ms. Haack didn't recall who she told of the one act of oral sex with Dr. Witkowski:. (RT p. 328)

Q. Who did you tell the fact of this one and only act of sexual -- of fellatio to, or of the oral sex?

A. I don't recall.

Q. You don't know who you told?

A. I don't know if I told Linda. I was very ashamed.

Q. Why would you volunteer you don't know if you told Linda? Do you remember telling Linda?

A. That would have been the only person I would have told. I don't recall. (RT p. 328-329)

Ms. Haack then stated that she didn't know if she would have told Linda Lehman's daughter, Arryn Woodliff because she

claimed to be very upset. (RT p. 333)

Ms. Haack was then confronted with her deposition testimony that she told no one about the oral sex:

Q. And then when I asked you in the next question, who did you ever tell that to before today, that is, the oral sex, you said, I think I told Dr. Heil.

A. Uh-huh.

Q. And then I said, who else, and you said, no one.

A. Right.

Q. You didn't say, I'm not sure if I told Linda or not, did you?

A. I did not say that, no.

Q. You said no one, is that correct?

A. I don't know why I said that. (RT p. 333-335)

Ms. Haack stated that if Linda Lehman testified that Ms. Haack had told her about having oral sex on a number of occasions, Linda Lehman would be wrong. (RT p. 336-337)

In Ms. Haack's deposition she stated that she told her husband she had oral sex with Dr. Witkowski, but at the hearing stated that she didn't know if she did. She tried to explain her deposition testimony by stating that she "told him the things that had happened.":

Q. Okay. Do you recall the same deposition, Page 165, question, did you ever tell John Zwieg that before today? This is John Zwieg. Yeah, I know. I'm trying to remember. I worked mostly with Dan. Dan is the investigator. Question, did you tell that gentleman? Yes, I did. When? Probably in our first meeting. Probably the first time? Yeah. We met once at my house. Question, you only talked to him one time? No, no, no, no. But I'm thinking that's the time when I -- that I told him. Question, did you tell that to the chief? You say Wilkinson. Question, did you ever tell the chief that you had given Dr. Witkowski oral sex? Answer, there was no reason to, no. Question, did you ever say that -- did you ever tell your husband that? Answer, yes.

A. Uh-huh.

Q. Remember being asked those questions and given that answers -- that answers (sic)?

A. I don't remember even that answer, but yes, I must have.

Q. Did you tell your husband --

A. I don't know if I did.

Q. Well --

A. My husband divorced me because of it. I don't know.

Q. You were under oath.

A. Yes.

Q. And the question was, did you ever say -- did you ever tell your husband that, and you said yes. Was that a truthful answer or not?

A. I don't really know if I did or not.

Q. But you answered yes.

A. He made me have an AIDS test. He was so angry when I told him the things that had happened. I don't know what I all told Dean.

Q. Do you recall being then asked, when you told him everything that went on, and you said yes? Was that a truthful answer?

A. In -- to the best of my knowledge, yes.

Q. But as you sit here today, even so, you said you told your husband, in the preliminary -- I mean at the transcript of the deposition you said it, you're not sure whether you did or not?

A. I was afraid to tell him, and I don't know if I told him every single last detail. I told him that I was involved with him.

Q. When I asked you a few moments ago did you tell your husband, you said no. In the --

A. That particular --

Q. -- deposition you said yes.

A. Uh-huh.

Q. Did you or did you not tell your husband?

A. I don't know. (RT p. 337-339)

Ms. Haack also claimed on cross examination that she didn't know if she ever told Arryn Woodliff, (another witness) that she had sexual contact with Dr. Witkowski. The stated reason is that she was not as close of a friend with Arryn as with Arryn's mother Ms. Lehman. When pressed further, Ms. Haack then stated that she might have. (RT p. 340)

Ms. Haack does not consider that Dr. Witkowski inappropriately touched her when she and Dr. Witkowski worked out together, yet she adds to this statement the qualifier, that he did do "inappropriate gestures". (RT p. 345) The "inappropriate gestures" were not further explained.

In 1996 or 1997, Dr. Witkowski bought her a velour bra and underpants for a Christmas present. She claims he wanted her to wear them to appointments. (RT p. 399) He bought her a present every year. He also bought her a pin for valentines day, and "a whole box of stuff." (RT p.345-347)

At Ms. Haack's deposition she stated that she sat down with Dr. Witkowski after November of 1998 and discussed that they could no longer have sexual contact, but he didn't agree to it. She also claimed in her deposition that they didn't have sexual contact between November 1998 and April 1999. This deposition testimony is at odds with what she testified to at the hearing, but she stated that the Dr. Witkowski's attorney confused her at the deposition. (RT p.352-353)

Upon further questioning, Ms. Haack provided further explanation of how she claims Dr. Witkowski's semen came to be on her vest, Ms. Haack claims it occurred in 1998 when she was at Dr. Witkowski's office painting. (RT p. 355-356) She described the incident in detail:

A. I was just remembering how it happened. It was in his office area. And I had black dress pants on and I had this black pants on and it was a white shirt. And I was kneeling on the floor. I was there touching up paint. And I went in there and he just -- he started touching me and stuff. And then we were -- we were laying on the floor and we were touching each other and talking. And I was kind of on my knees, and he mentioned something about doing it doggie style. Well, he put his penis between my legs while I'm like on my fours and he came, and it -- it went on the carpeting and it went on my vest because my vest was laying on the floor.

Q. So it went on the front of your vest?

A. It went on the vest, yeah. (RT p. 358-359)

She claims she thereafter went home and threw the vest away. She also claims that she never called Linda Lehman and asked her how to get semen stains off a vest:

Q. And did you talk to anybody about perhaps a way of getting it off of the vest or did you just throw it away?

A. I threw it away.

Q. You never called Linda Lehman and asked her how you get semen stains off a vest, did you?

A. No.

Q. And if you had done that, you would have remembered that? Calling anybody and asking them such a difficult question, how do you get semen stains off a vest, would have been a pretty sensitive question to raise with anybody, correct?

A. Right. (RT p. 360)

Ms. Haack then stated that her husband found the vest in a garbage can in the laundry area, and asked her why she was throwing it away. She told him that she got a stain on it. Her husband said, "well, just wash it, and he threw it in the washing machine and washed it." (RT p. 361)

However, at her deposition, Ms. Haack's testimony was significantly different:

Q. You remember being at the deposition last September, on Page 51, Page -- Paragraph -- Line 1, you turned that over to the authorities, did you not? Talking about the vest. And you said yes. And you told them this was kept. Was it kept by you purposefully? You said no. Answer (sic), well, how was it that November of -- prior to November 1998, that you kept a vest that had some male semen spillage on it and turned it over to the authorities how many months later? **Answer, see that vest was like a very expensive vest. It was like a \$50 vest and I had a hard time throwing it away. I washed it and I thought it would be fine.** It's a leather vest though so when you wash it, it doesn't work anymore. It

doesn't look good, so I had it in a closet. A. Uh-huh.

Q. And I'm a collector. I still have clothes from high school.

A. It's true.

Q. Well, **you said you washed it.**

A. **Me or him. It was my husband that washed it.**

Q. Well, how come when that question was asked of you in September --

A. **Our family washed it.** We all take turns doing lawn -- laundry. Somehow or another it was pulled out of the garbage. It was put in a thing, and then it was washed.

Q. You did not say --

A. We all take turns washing.

Q. **You did not say in that answer that you threw anything away.** Here's what you said. You see -- see, that vest was **like a very expensive best.** It was like a \$50 vest.

A. Uh-huh.

Q. And I had a hard time throwing it away. **I washed it. You didn't say that you threw it away and your husband got it out of the garbage and he washed it. You said you didn't want to throw it away so you washed it.**

A. I didn't want to throw it away. It was a very expensive vest and it had embroidery from the place that I

Q. All right.

A. -- work on. But I did throw it away. (RT 362-363) **(emphasis added)**

Ms. Haack also testified further as to the incident where she claims something was inserted into her vagina. This occurred in January or February of 1998 and Ms. Haack believes she did tell Ms. Lehman about the incident. Ms. Haack also claims that she told Ms. Lehman that she went and got an AIDS test, but added that her husband made her get the test. (RT p. 363)

Q. I want to talk to you about the time when you had suggested that -- suggested that something was in your vagina. When was it that the doctor and you were together where you were lying on your stomach and he was on top of you and you felt something in your vaginal area and then you

turned around, saw him zipping up his pants and felt some wetness on your back? When was that?

A. That was right after my back was injured, so it was in January or the beginning of February.

Q. Of what year?

A. Of '98.

Q. You tell Linda Lehman about that?

A. I believe I did, yes.

Q. Did you tell her you went and got an AIDS test?

A. Yes.

Q. Did you tell her when you got the AIDS test?

A. No.

Q. Did you tell her you got the AIDS test within about four to six weeks after that happened?

A. I didn't have it four to six weeks after.

Q. I said did you tell Linda Lehman that, that you went and got an AIDS test?

A. I didn't give her a time frame.

Q. When did you get the AIDS test?

A. When I had told my -- my husband about the incident he demanded I had (sic) an AIDS test.

Q. Oh. You told --

A. So it would have been '99.

Q. You told -- you told Linda Lehman that you wanted to get an AIDS test because you were concerned that it might have been his penis. That's what you told Linda Lehman, isn't it?

A. I don't know.

Q. And the reason you got an AIDS test, not because you told your husband, but because you wanted to have everybody believe that there was intercourse and that's why you got an AIDS test?

A. That's not correct.

Q. You got an AIDS test a year and a half later, did you not?

A. My husband would not sleep with me until I had an AIDS test. Yes. It was '99. (RT pp. 363-364)

In 2001, Ms. Haack attempted to have a temporary restraining order issued against Dr. Witkowski. At a hearing the court denied to issue a permanent restraining order, and apparently dissolved the temporary restraining order. (RT p. 385-387) The restraining order was related to Ms. Haack's claims that Dr. Witkowski had threatened her daughters, and improperly touched them and harassed her, making her fear for her safety. (RT p. 386)

The reasons that the temporary restraining order was dissolved and no permanent restraining order was issued are clouded in the record. Ms. Haack and the respondent's attorney engaged in a rolling discussion about the record of events in that matter. I draw no evidentiary conclusions from Ms. Haack's testimony on the underlying facts of the civil dispute. The only reason that I briefly address the issue here is that the respondent's attorney raises the issue that Ms. Haack is motivated to destroy Dr. Witkowski.

Ms. Haack spoke by telephone one time in 2000 with a Laura Betts in an attempt to procure an attorney for legal representation. Ms. Haack does not recall speaking with her previously about any grievances against Dr. Witkowski. (RT p. 389-391) Ms. Haack denied saying that for the previous two years she was obsessed with Dr. Witkowski. (RT p. 392) She denied telling Ms. Betts that she did nothing but talk about him to everyone and anyone who would listen. (RT p. 392)

She did believe that she said Dr. Witkowski in her opinion was a pedophile or a sociopath, although perhaps not in those exact words. She did tell Ms. Betts that Dr. Witkowski touched her children inappropriately. (RT p. 392) Ms. Haack denied that Ms. Betts let her know that Ms. Betts thought Ms. Haack was stalking Dr. Witkowski or was full of vengeance to "get him". (RT p. 393) Ms. Haack claims she said that she did love Dr. Witkowski, but did not say that he didn't love her in return, rather that he said he did love her. (RT p. 393)

Ms. Haack denied telling Ms. Betts that she never had sex with Dr. Witkowski but said that she did tell Ms. Betts that she and Dr. Witkowski did a lot of things that they should not have. She doesn't think she used the word "sex". (RT p. 393-394) She told Ms. Betts that the police wanted her children to call Dr. Witkowski on the phone or confront him in his office as a result of the allegations about sexual contact. (RT p. 394)

Ms. Haack also stated to Ms. Betts that Ms. Haack had been violated by him and in a situation where she could not move. (RT p. 395) There was also a discussion about Ms. Haack's problems and that she needed an attorney, "And if it's his fault, then I think he should pay for some of it, yes." (RT p. 395) In summary about the discussion, Ms. Haack stated that she told Ms. Betts generally:

Q. Well, tell us what you did say about that.

A. I said, Laura, look at this, the rest of my life I'm going to have to deal with these things, and if it's his fault he should -- he should be held responsible. We all have to take responsibility for what we do.

Q. Did you say to her, Dean, that being your husband, wanted ten to 20,000 to make him move?

A. No. (RT p. 397)

Testimony of Arryn Woodliff

Arryn M. Woodliff, is a real estate broker living in New London, Wisconsin, right. She knows Ms. Haack who was a friend of her mother, Linda Lehman. They painted together. Ms. Woodliff is also a friend of Ms. Haack. Ms. Woodliff saw Dr. Witkowski for chiropractic care. She recommended Dr. Witkowski to her husband and mother.

Ms. Woodliff also worked at an indoor pool, and Ms. Haack was one of her employees in 1997 through 1998. Ms. Haack worked from 5:30 a.m. to 1:30 p.m. On occasion Dr. Witkowski would come to the indoor pool during the lunch hour and speak with Ms. Haack. The conversation would just be banter. (RT p. 142-143) Ms. Haack would sometimes come back later to work out frequently, and was she never with anyone else other than Dr. Witkowski.

Ms. Woodliff was at the pool during the evening hours usually until 6:30 p.m. She saw Ms. Haack and Dr. Witkowski working out approximately fifty times over a three to four month period. She claims the two were "touchy-feely", in a way "more than friends", "They were very close. That was just -- very close." (RT p. 147) Ms. Woodliff did recall that she saw

Ms. Haack put her arm on Dr. Witkowski's arm, or he would put his arm around her. She could not recall him touching her in any other manner. (RT p. 148) On one occasion, Ms. Woodliff also saw Ms. Haack and Dr. Witkowski at Ms. Woodliff's parent's cottage and a craft show. (RT p. 150)

Ms. Woodliff recalled one occasion where Dr. Witkowski called for Ms. Haack at the pool and initially spoke with Ms. Woodliff, "And he said that I needed to get a message to Carol Haack because this -- he was a pimp and she had a job at the Paper Valley Hotel and she had to be there. And I'm like, who is this? And then I figured out that it was him, but I wrote the message down for Carol and I said, I think Warren called, you know, and she just -- she started crying and she called her husband and she called Dr. Witkowski and yelled at him. And it was -- he said it was a joke, but she didn't think it was funny at all." (RT p. 152-153)

Ms. Woodliff also stated that Ms. Haack told her of her involvement with Dr. Witkowski and, "...She had feelings for him and it was going places." (RT p. 157)

During cross examination regarding Ms. Haack telling Ms. Woodliff about sexual contact, Ms. Woodliff was not sure regarding the time frame of when this occurred; being either before Ms. Haack complained to Network Insurance, (while the doctor/patient relationship still existed) or after.

Ms. Woodliff's testimony falls into two key issue areas, 1) what she was told by Ms. Haack, and 2) when she was told by Ms. Haack.

When first questioned, Ms. Woodliff couldn't recall if she was told about sexual contact "prior to the Network issue" but it was, according to her recollection, late 1998 or early 1999. (RT p. 158-161) Regarding the specifics of what was told to her by Ms. Haack, Ms. Woodliff was, however, specific:

Q. What did she tell you was the sexual content?

A. Well, just what they did.

Q. What did she tell you?

A. That when she was in his office she **gave him blow jobs**, hand jobs.

Q. Did she tell you how many times?

A. No. I didn't ask. I didn't want to know.

Q. She said blow jobs?

A. Yes.

Q. And what did you take that to mean?

A. Oral sex.

Q. And did she ever say that it wasn't consensual?

A. No.

Q. You said that she said that this **happened in his office**?

A. That's correct.

Q. Did she say that it happened anywhere else?

A. I never asked.

Q. Did she volunteer anywhere else?

A. No, not to my knowledge.

Q. Now, did she tell you any instances of sexual intercourse?

A. She said that one time when she was on -- laying on the table he was behind her and she believed -- she had like nerve damage and stuff -- and she believed that he entered her but she didn't know with what.

Q. When did that conversation take place?

A. I -- I don't -- I can't give you an exact date.

Q. Now, were there several conversations like this with you, or was it one longer conversation?

A. No. She -- she talked to me on several occasions about this, but then, you know, I just didn't want to --

Q. Now, were they happenstance conversations or --

A. Were they -- excuse me?

Q. How did these conversations initiate?

A. Well, she'd be talking about what her and Warren worked out or whatever, blah, blah, blah, and, you know. Things were

getting serious. **She was giving him blow jobs in the office** and --
(RT p. 158-161) **(emphasis added)**

Interestingly, at the end of the above quoted testimony, it appears that Ms. Woodliff may be recounting a contemporaneous conversation with Ms. Haack, which occurred prior to Ms. Haack's complaint to Network Insurance. It is clear however, that Ms. Woodliff contends that she was told oral sex occurred on more than one occasion in Dr. Witkowski's office. Ms. Haack previously testified that oral sex only occurred one time.

On further cross examination to clarify the timing of the conversations, Ms. Woodliff seemed to be stating it was after the Network Insurance complaint was filed by Ms. Haack and stated:

Q. Now, you said that Mrs. Haack told you some instances of sexual contact with Dr. Witkowski. You believe it was after you found out that he was no longer affiliated with the Network Health Plan.

MR. ZWIEG: I'll object to that. I think that mischaracterizes her testimony. I think she said she wasn't sure --

WITNESS: Right.

MR. ZWIEG: -- before or after.

WITNESS: Right.

MS. KARLS: Well, I'm just trying to figure out a time frame here. I -- I think that it's important to know whether or not -- if we can have the witness --

A. Well, if I can tell you what -- I was aware there were sexual contact through Carol through the -- I mean I think after it happened because, you know, she told me about it, but whether or not if I knew the -- the graphic details of it, **I don't know if that was prior to the -- him losing his Network license or after. That I don't know. Because I guess after he lost his -- if I can clarify for you, after he lost his license then, you know, I wondered why, what happened, and maybe asked a little bit more, because I -- generally I would stay out of that. I didn't care -- didn't want to know.**

Q. So you might have questioned Mrs. Haack more about Dr. Witkowski's being dropped from Network after you found out about that fact?

A. That's true. I might have asked her if she knew why, because she was with him --

Q. And before --

A. -- all the time.

Q. -- that point in time, she would have volunteered information to you?

A. She did, yes. But I don't know if -- if -- like I said, if it was graphic details. I can't tell you that for sure.

17 LAW JUDGE: Let -- let me interject as to this

18 question. What do you mean by graphic details?

19 WITNESS: Like if -- she said she gave him a blow
20 job.

21 LAW JUDGE: Okay. So that would be graphic --

22 WITNESS: Yeah, yeah.

23 LAW JUDGE: -- versus --

24 WITNESS: Messing around.

25 LAW JUDGE: All right. (RT p. 169-170) **(emphasis added)**

When questioned further by the presiding official as to specifically what she was told by Ms. Haack, Ms. Woodliff then stated that

Q. Was she saying, and we were together today, or was she saying, I gave someone a blow job today?

A. Well, she tell me that. Like I said, she did say, I gave him a blow job or a hand job or -- but I guess because I don't know for sure I'm going to -- I mean that's in, you know, my mind that -- in my conversations with her, but she doesn't come right out and, you know -- in talking with friends, you know, you don't always say that kind of thing. You know, you're not -- don't say, this is what I did. It's just we had a good time. **But then that would be my I guess inferring that that's what she did. But I'm -- I know on several occasions she did tell me that she did give Dr. Witkowski a blow job.**

Q. Okay.

A. In the office.

Q. So that's more than one occasion she told you --

A. Yes.

Q. -- that she gave a blow job to Dr. Witkowski?

A. Yes.

Q. Okay.

A. Uh-huh.

Q. And it was in the office where this occurred?

A. Yes. (RT p. 173-174)) **[emphasis added]**

I take the above response to indicate that Ms. Woodliff was directly informed by Ms. Haack of oral sex having occurred on more than one occasion, and additionally, at times it appeared in conversations between the two that Ms. Woodliff, 'read between the lines'. However, it seems that this reporting by Ms. Haack to Ms. Woodliff occurred after the disintegration of the doctor/patient relationship between Ms. Haack and Dr. Witkowski.

Ms. Woodliff also testified that Ms. Haack on several occasions manually performed a sex act with Dr. Witkowski, and that these occurred in the office. (RT. 174) Ms. Woodliff claims that the remembrance of what Ms. Haack told her was specific, and rebuffed the state attorney's implied invitation to back off from her certainty:

BY MR. ZWIEG:

Q. These events that we're talking about took place, gee, four years ago?

A. Uh-huh. Yes.

Q. And your memory of what Carol told you at that time, is -- is that a real good specific memory?

A. The dates to me are cloudy --

Q. Yeah.

A. -- but the specifics, because she told me -- I mean she was married and she's, you know, having an affair with him, that's very specific to me because, you know.

Q. Okay. That's -- thank you.

A. Uh-huh. (RT 176-177)

Taken as a whole, I found Ms. Woodliff to be attempting to forthrightly account her recollection of conversations that she had with Ms. Haack regarding sexual contact. This type of testimony, some years after the fact, appears truthful, because it doesn't appear rehearsed or tidied up to be in lock step with Ms. Haack's testimony.

Testimony of Linda Lehman

Direct examination by the department

Linda Lehman is the mother of Arryn Woodliff. Dr. Witkowski also provided Ms. Leman with chiropractic care. Ms. Lehman referred Ms. Haack to Dr. Witkowski. (RT p. 180) Ms. Lehman spends time painting with Ms. Haack. (RT p. 181)

Ms. Lehman discussed with Ms. Haack the relationship with Dr. Witkowski. A "matter of months" after Ms. Haack was first treated by Dr. Witkowski, Ms. Lehman spoke with Ms. Haack out of Ms. Lehman's concern that based on the two's actions it, "was getting to be a very friendly relationship". Ms. Lehman told Ms. Haack to be, "very very careful with your friendship" based on the concern that it would go beyond that. (RT p. 186-187) Approximately several months later, Ms. Haack told Ms. Lehman that Ms. Haack felt Dr. Witkowski was being closer than he had to be, in reference to Ms. Haack's body. Ms. Haack further indicated that Dr. Witkowski had lain on her body. (RT p. 187-188)

Ms. Lehman and Ms. Haack had telephone conversations "probably every day except on the weekend", after Ms. Haack became "involved" with Dr. Witkowski. (RT p. 190) Ms. Haack told Ms. Lehman that the relationship began, "with each of them with kissing each other and fondling, hands under the shirt. Then there was a time there that they felt that okay, this has gone far enough, we should be very careful. 'We have a three-foot rule', that they stayed three feet away from each other. That's when I got very upset because I felt this is just a childish thing and they were both going to get very hurt." (RT p. 189-190)

Ms. Lehman did not have exact dates for these conversations, rather they occurred, “from when the relationship began to when it was over”, and Ms. Haack relayed events contemporaneously with them happening. (RT p. 190) At one point the three foot rule was broken, and Ms. Haack said that she put her hands in his pants and Dr. Witkowski touched her breasts. Ms. Lehman also stated that Ms. Haack told her she had at least one adjustment session with Dr. Witkowski where Ms. Haack was unclothed. (RT p. 191)

Ms. Lehman also described the incident when Ms. Haack’s back became wet and there was an intrusion into her vagina:

Q. -- adjustment? Okay. Did she describe -- and -- and -- okay. What else did she tell you about her relationship with Dr. --

A. Well, she said then -- one time that he was doing an adjustment on her that she was on her tummy and he was doing an adjustment from behind, and when they were done -- or during she felt something in her vagina and when she got up her back was wet.

Q. Okay. Now, is this again one of those things that-- that appeared to have just happened?

A. Yes.

Q. How did she seem when she related this to you?

A. She said to me that she was on -- she was very nervous. She was very -- Carol is a religious girl, and she knew what she was doing and she knew that it was wrong, and she knew she loved him and she knew she loved her husband, and she was between a rock and a hard spot. And I felt, and as she told me, she couldn't help herself. And she enjoyed it, I think, as much as Dr. Witkowski did. And she just didn't know what to do. She says -- she told me, I don't know what happened there. I -- she said, I don't know if I had intercourse. I don't know if something was put in me. But she felt something and told me that she was on several kinds of pain medicine and really couldn't feel that much. (RT p. 191-192)

Ms. Lehman also stated that on one occasion Ms. Haack telephoned her to ask if Ms. Lehman knew how to get stains out of leather. This occurred, according to Ms. Lehman in the beginning of the relationship. Ms. Haack told her that she had gotten Dr. Witkowski’s semen on a leather vest. Ms. Haack also told Ms. Lehman that she then threw the vest away. (RT 192-193) This testimony would be credible to corroborate a contemporaneous statement by Ms. Haack regarding sexual contact with Dr. Witkowski, that the contact occurred, and that semen was deposited on the vest by Dr. Witkowski. Ms. Haack earlier testified at the hearing that she did not tell Linda Lehman about the semen on the vest incident or requested information from Ms. Lehman on how to remove stains from leather. (RT p. 360) This is an inconsistency between the testimony of the two witnesses.

I do not feel that this amounts to an irreconcilable inconsistency between the two witnesses’ testimony. Clearly, if Ms. Haack and Ms. Lehman were in collusion in creating the story, the story of the incident would have appeared to be more rehearsed and consistent. But the fact the stories diverge therefore actually points to non collusion to me, because the witnesses would be foolish not to get their stories straight on such a significant event if they were colluding. Therefore, I find it more likely that Ms. Haack simply forgot that she discussed this incident with Ms. Lehman, and if she had remembered it, Ms. Haack’s version would be expected to be substantially similar to what Ms. Lehman recounted.

Ms. Haack also told Ms. Lehman of one specific instance where Ms. Haack performed oral sex on Dr. Witkowski for his birthday. This testimony corroborates Ms. Haack’s testimony even though Ms. Lehman was unsure if Ms. Haack said that the oral sex occurred in Dr. Witkowski’s office. (RT p. 193-194)

Cross examination by the respondent

On cross examination Ms. Lehman, when pressed, couldn’t give exact dates or time frames for the conversations she had with Ms. Haack regarding sexual involvement but indicated they occurred during 1997 and 1998. (RT p. 197-203) According to Ms. Lehman it was clear that Ms. Haack fell in love with Dr. Witkowski and Ms. Lehman felt Dr. Witkowski loved her back. (RT p. 206)

When discussing the incident with the intrusion into Ms. Haack’s vagina, Ms. Lehman stated that Ms. Haack told her that as a result Ms. Haack got an AIDS test a couple weeks later:

Q. Well, how long after then?

A. Couple weeks. As soon as she could get it.

Q. Okay. And did you ask her why she did that?

A. Yes.

Q. And what did she tell you?

A. Because she didn't know if he penetrated her with the penis or with his fingers.

Q. Oh, so then she brought up the finger –

A. Yes. She was not --

Q. -- because she thought --

A. -- sure.

Q. -- maybe it was the finger?

A. No. She said she did not know which it was. That's why she wanted to be certain --

Q. Okay.

A. -- that if it was the penis that she would be safe. (RT p. 211-212)

The above testimony is important because it indicates a contemporaneous conversation, and Ms. Lehman specifically gives impetus to an urgent desire of Ms. Haack to get tested. However, this testimony is inconsistent with Ms. Haack's earlier testimony where Ms. Haack claimed she received an AIDS test a year and a half later, which is hardly urgent, and Ms. Haack testified that the reason she got the test was because her husband demanded it. However, Ms. Lehman recalls the reason for the test was Ms. Haack's concern for her health. (RT pp. 363-364)

Ms. Lehman further stated that she recalled that Ms. Haack told her she performed oral sex on Dr. Witkowski, once or twice, and Ms. Haack used the words, "blow job" in recounting the incidents. The first time Ms. Lehman heard the term, "blow job" from Ms. Haack was related to an oral sex episode on Dr. Witkowski's birthday in 1999, and that one episode occurred prior:

Q. Well, when did she tell you about the first time she gave him a blow job?

A. Oh, well on his birthday. **And she said that was his birthday present. And then she also told me that she had done it before, because I was really shocked.**

Q. Okay. So she's telling you that I gave him a blow job on his birthday and I also had given him once -- one before?

A. Yes.

Q. When did she tell you the first one took place?

A. I don't think she ever told me.

Q. Okay.

A. She -- she told me just that when she did the one on his birthday. (RT p. 214-215) **[emphasis added]**

Ms. Lehman therefore specifically recalls two instances of oral sex, Ms. Haack in her testimony claimed only one instance occurred, and specifically only one, because of a specific reason, that Dr. Witkowski didn't like it. Ms. Lehman believed that there were at least twelve instances of oral sex, gleaned from her conversations with Ms. Haack. (RT p. 243-244)

Ms. Lehman was of the impression that all the sexual contact occurred at Dr. Witkowski's office. (RT p. 218) Dr. Witkowski also bought Ms. Haack a medium priced necklace, approximately worth one hundred dollars. (RT p. 219-220)

Ms. Lehman also recounted that Ms. Haack told her that Dr. Witkowski had sexually assaulted one of Ms. Haack's daughters. (RT p. 225-226) Ms. Lehman later talked to two of Ms. Haack's daughters about it after the daughters came to her, and Ms. Lehman went to the Waupaca County district attorney with Ms. Haack and the two daughters. No charges were brought. (RT p. 227-228) The allegations were brought to the attention of the New London Police Department and Ms. Lehman attempted to tell the police the facts that she received from talking to the two girls, but, "They wouldn't accept what anybody else had to say." (RT p. 229)

Ms. Lehman admitted that Ms. Haack reported the purported incidence of sexual abuse after Ms. Haack filed a complaint against Dr. Witkowski and he lost his contract with the insurance company, Network Insurance. (RT p. 231-232)

As to the sexual contact between Ms. Haack and Dr. Witkowski, Ms. Lehman stated that she did discuss these matters with

her daughter Arryn Woodliff before March of 1999:

Q. Was it -- I'll ask you again. Were you discussing matters Carol Haack was telling you --

A. With --

Q. -- did you discuss those with your daughter?

A. Oh. Some of them I did.

Q. How about telling your daughter that there was some sexual contact going on between them?

A. Yes, I did tell her that later in the relationship.

Q. When is later? Before March of 1999?

A. Yes.

Q. So you're telling your daughter that they're having oral sex and there's touching and all that?

A. I did not tell her that they had oral sex. I said -- I told -- the reason I told my daughter, and this is the truth, is because I was so shocked that this relationship had gone so far. (RT p. 235-236)

Regarding the vest with the semen stain, Ms. Lehman claimed she saw the vest and saw the purported semen stain on the breast part of it. (RT p. 241) Ms. Lehman was told by Ms. Haack that after Ms. Haack threw the vest away, her husband took it out of the garbage and he washed it. (RT p. 242) On further questioning Ms. Lehman indicated that she didn't really know if the stain was on the front of the vest, but reiterated that she did see it. (RT p. 244-245)

Testimony of Laura Betts

Ms. Betts has known Dr. Witkowski for three or four years. (RT p. 441) He lives five or six houses down the block from Ms. Betts. She does not consider him a close personal friend, rather, a very nice neighbor. She was called on the telephone in March, 2000, by Ms. Haack. She took notes during the conversation. As a result, she sent a letter to a circuit court judge regarding information that she wanted brought to his attention in an injunction proceeding brought by Ms. Haack against Dr. Witkowski for harassment. (RT p. 441-442)

Ms. Haack called her approximately 10:00 p.m. Ms. Betts considered Ms. Haack at that time to be very close to Ms. Betts' stepmother, Marie Graff, who worked in Dr. Witkowski's office. Ms. Haack was calling for an attorney referral. (RT p. 445)

According to Ms. Betts, Ms. Haack described Dr. Witkowski many times as a pedophile and sociopath. (RT p. 446-447) During the telephone conversation, she could hear children in the background on Ms. Haack's end of the line and Ms. Haack talked to them once. (RT p. 448) Ms. Haack stated to Ms. Betts that she loved Dr. Witkowski and that he did not love her back. Ms. Haack also stated that she never had sex with Dr. Witkowski. (RT p. 449)

Ms. Betts also thought that Ms. Haack stated that Dr. Witkowski was intentionally hurting her with his treatments so that he could see her more. (RT p. 449-450) Ms. Betts also claims that Ms. Haack told her that Dr. Witkowski was molested as a child and had sex with animals. (RT p. 450-451)

Ms. Betts did ask Ms. Haack what she wanted from Dr. Witkowski, and the answer was 'money':

Q. Did she -- did you ask her -- I mean did she say anything -- did she volunteer at any time about he husband Dean wanting something from her doctor or --

A. Oh, yes. I asked her three times, what more do you want from him, because, you know, and the first two times she said, Dean wants him to move. Dean -- or Dean -- and Dean wants ten to 20,000. Wants him to move. And the third time she said -- and that's where I wrote it down, and I have to look because I don't want to misquote her.

Q. Go ahead.

A. But I -- that is exactly word for word she said. It's all about money. It's about -- the third time I asked her. What is my ultimate goal? She said that. (RT p. 452-453)

A. It's about money, it's about only having to stand for two hours a day, it's about never being able to hold a full-time job,

and it's about getting enemas every two weeks for the rest of my life. Because she was saying she was disabled because of his treatment. And that's what she said exactly. (RT p. 453) Ms. Haack denied that she said this to Ms. Betts. (RT p. 397)

Despite Ms. Haack claiming to be disabled, Ms. Betts stated that she has seen Ms. Haack playing tennis since that time:

Q. Did you observe her engaging in any sports after this conversation --

A. Yes.

Q. -- you had? What?

A. The -- since then, the past two years, I have to drive past a park on my way home. It's the only way home. And I've seen her play tennis on three occasions. She's out there playing tennis. And we -- my husband and I will comment to each other, she looks good today. (RT p. 454)

Ms. Haack in her testimony claimed to the contrary as follows:

Q. Now, in the summer of 2000, were you playing golf on many occasions? Did you play golf?

A. Golf?

Q. Golf. I mean tennis.

A. I played tennis. I tried to play tennis, yes. With my daughter. She's on the tennis team. I was like her person to get the ball and then hit it back, and she didn't make me move or anything. And needless to say, I can't do that anymore either. (RT p. 397)

Ms. Betts claims that she wrote the letter to the circuit court judge because it was "bizarre" owing to the fact that Ms. Betts felt that Ms. Haack was actually stalking Dr. Witkowski. (RT p. 454-455) (Ms. Betts' notes are admitted as exhibit 30)

Ms. Betts went to the police department the next day after the telephone conversation with Ms. Haack because it was something that Ms. Betts felt the police should "keep an eye on". (RT p. 457-458) Ms. Haack, according to Ms. Betts, also said that the police had information about other women. (Written on the note, exhibit 30, as "four to six"). According to Ms. Betts, the next day Ms. Betts talked to the police who told her that what Ms. Haack said was false. (RT p. 459)

On cross examination Ms. Betts admitted that she never had occasion to see Ms. Haack and Dr. Witkowski together when they were friends because she didn't live in the area. (RT p. 465-466) Ms. Haack lives within a half mile of Dr. Witkowski.

Ms. Betts calls Dr. Witkowski "Doc" because her stepmother and husband do, as well as the whole community. (RT p. 471)

Ms. Betts stated that Ms. Haack said things that were "wild" such as Dr. Witkowski making a reference to crotchless underwear, yet Ms. Betts was apparently unaware that Dr. Witkowski in fact did make such a reference. (RT p. 472) (Exh. 4, fax- Reference to crotchless underwear made by Dr. Witkowski.)

Ms. Betts does not believe that Ms. Haack is hurt, and that, "the whole town knows". (RT p. 476)

Ms. Betts wrote notes of the conversation in blue ink, however, the words psychotic, evil and bug were written in red. The red words may have been written prior to the conversation, she didn't know. She claims to have picked up papers where she could find them to write on. (RT p. 490-491) Ms. Betts used her notes, (Exh. 31) to write a redacted letter of the conversation with Ms. Haack for submission to the circuit court judge. (exhibit 32) Paragraph 2 of the letter to the judge is not from the conversation with Ms. Haack, rather, Ms. Betts' own observations. (RT p. 498)

Examination of Warren Witkowski, D.C. (note- due to scheduling concerns, Dr. Witkowski was questioned first by the state in cross examination)

Dr. Witkowski received his degree in chiropractic in 1992 from the National College of Chiropractic. He opened his practice in the City of New London in 1993. He treated Carol Haack from January of 1996 to March 10th of 1999. (RT p. 537) Early in the time he was treating Ms. Haack, he received a call from her in which she told him she was depressed and was having suicidal ideation. (RT p. 538) When he talked with Ms. Haack about her depression, he shared with her that he had

also been treated for depression at one time.

Dr. Witkowski and Carol Haack became friends and began to do things outside the office. (RT p. 540) Ms. Haack befriended his office manager and also came to know Dr. Witkowski's sister.

During 1997 his friendship with Ms. Haack developed and he was seeing her and talking to her more frequently outside of the office in the non treatment context. (RT p. 549) Dr. Witkowski and Ms. Haack worked out many times at the New London pool. (RT p. 550-551)

Dr. Witkowski admitted that he had a telephone conversation with Ms. Haack in which he asked her to describe her sexual relationship with her husband, but she volunteered the information, which did not include details of the relationship. (RT p. 551)

Dr. Witkowski also went to Ms. Haack's house and was involved in the Haack's life, including purchasing a house from Ms. Haack's husband (about a half mile from the Haack's residence) and babysitting for the Haacks overnight on two occasions. Dr. Witkowski and Ms. Haack's husband also shared a common interest in stocks and bonds. (RT p. 552-553)

Dr. Witkowski addressed instances of touching Ms. Haack by testifying that on one instance prior to her second back surgery, at her request he kissed her non passionately on the lips. Otherwise he denied any other touching of Ms. Haack for non therapeutic purposes, including any sexual contact. (RT p. 554-556)

Direct Examination

Dr. Witkowski reviewed his appointment book, with Ms. Haack's appointments marked. (Exh. 38) He estimated that 95 to 98 percent of the appointments in his office were during the morning and afternoon hours rather than any time after 5:00 p.m. and that other patients came into his office after his appointment with Ms. Haack. The average appointment for Ms. Haack was similar to other patients, in that he scheduled two patients every ten minutes or two patients every fifteen minutes, depending on the year. The appointment book didn't show any length of time where he didn't have another patient scheduled after Ms. Haack. (RT p.729)

Dr. Witkowski did move beyond a doctor-patient relationship with Ms. Haack, he met her husband who was coaching a women's softball team and was invited to their house for dinners, and Ms. Haack's husband ended up being his real estate agent. He became friends with both Ms. Haack and her husband. (RT p. 733-734) During this time he became friends with other neighbors and went to their houses for dinner as well as having people come to his house. Some of these other people were also patients of his, approximately fifty percent of them. (RT p. 735) He claims to have had friendly relationships with other women patients, some of whom invited him to their homes. (RT p. 736)

He denied having talks with Ms. Haack about her sexual relationship. He was not sexually active and never had a romantic sexual relationship with a woman prior to moving to New London. He was very lonely and wanted to have relationships with women but couldn't find one. (RT p. 736-737)

Dr. Witkowski claimed that the faxes in evidence between Ms. Haack and himself were "fun bantering" between them, also her husband. (Exh. 1-20) (RT p. 737) Dr. Witkowski never felt he was crossing the boundry between a doctor and patient in the sending of the faxes. (RT p. 738)

Dr. Witkowski claimed that when he and Ms. Haack and her husband were together there were jokes of a sexual nature told between them that no one at the time felt was offensive. (RT p. 739)

Dr. Witkowski claims that the only gifts he ever received from Ms. Haack was a book of poetry, a garden stone housewarming present and a Christmas iris. (RT p. 739)

He never felt he was at risk of a sexual nature when becoming involved with Ms. Haack or her family and at no time did she indicate to him that she wanted to have a sexual relationship with him. The walks the two shared were because he was training for a 10 K run and the early part of training involved walking and combination running. He didn't ask her to join him

but her company was welcomed. (RT p. 740) Witkowski denied talking to Ms. Haack daily in early 1997. Of the calls that were made, he claims that she initiated the vast majority of them. (RT p. 741) Dr. Witkowski called many of his patients, "I would call. I make frequent calls post-surgically even if I'm not on the case any longer, just as a status check." (RT p. 750) His office was usually staffed by one or two people, depending on the day. There was never a time when Ms. Haack came in for an appointment that they were alone together with no staff person present. There was never a time when other patients were not in the office as well except for when he received an emergency page from her. (RT p. 743)

Dr. Witkowski denied ever massaging Ms. Haack's breast that was not part of a treatment. Typically the door to the treatment room is closed during a treatment, but on the other side of a wall is the front reception desk. Dr. Witkowski claimed that the doors were "pretty thin" and telephones ringing and staff conversation could be heard. (RT p. 745)

Dr. Witkowski denied ever telling Ms. Haack that prior to her surgery that he wanted to make her dinner when she got out of the hospital. He claimed that in any event, he couldn't cook. (RT p. 747)

Dr. Witkowski also had the direct opposite testimony to Ms. Haack as to the meaning of the "prescription" following her surgery, (Exh. 25):

Q. The allegation is made that you -- she was concerned with you -- about you after the session where you massaged her breast and you would not allow her to make her dinner unless you would agree to abide by certain rules and that you signed a piece of paper resembling a medical prescription which stated one, meds, two, no hollering, three, no crabbiness, four, no taking liberties, five, no hitting. What is that all about?

A. When she was recovering from the surgery her doctor gave her specific orders on what she was to do and was not to do at home and she asked me to put it in writing, so I put it in writing, and the children were to -- and it was kind of in jest. It was so the children wouldn't be crabby, nobody would be hitting each other in the house, and she showed that to her husband.

Q. So her explanation of how that came about you dispute?

A. It's a complete lie.

Q. Pardon?

A. It's a lie. (RT p. 747-748)

Dr. Witkowski also denied play wrestling with Ms. Haack during their walks or grabbing her breasts and placing his head near her genital area. He denied ever play wrestling with her at all. (RT p. 749)

He also denied touching her inappropriately at any other time. Dr. Witkowski claims to never have had the idea at any time in the years '96, '98, '99 that Carol Haack was having a "thing" for him or that she was in love with him and wanted to be with him and not her husband. (RT p. 749-750)

Dr. Witkowski admitted that he had written "nice fuck-me pumps" on her business card but claimed it was in response to her writing the question to him first in a note. (Exh. 21) (RT p. 750-751)

Dr. Witkowski further denied that in January 1998 in response to a back injury she sustained that he would sometimes pick her up at her home and take her to his office to massage her back. (RT p. 751)

He willingly provided a specimen for DNA testing for the stain on the vest. (RT p. 752)

Dr. Witkowski first noticed a problem with Ms. Haack and their relationship on the Friday before Memorial Day in 1999, when she called and said that he was jeopardizing her daughter's life. (RT p. 762) She left a threatening call at his office answering machine as well because he didn't return her calls. (RT p. 763)

Dr. Witkowski stated that when he talked to Ms. Haack on the telephone that Ms. Haack said that, "...I ruined her daughter's life and I was threatening the life of her daughter and that I should be more conscientious about how I work and be more responsible..." (RT p. 765) Dr. Witkowski estimated that Ms. Haack called him about twenty times, and toward the end of this time she demanded money, otherwise she would report him to Network Health Plan. (RT p. 767-768)

Dr. Witkowski claims he thereafter reported the threatening phone calls to the police. He spoke with the police officer four days after her demand. She also continued to call him at his home and office, by his estimate five to seven times per day but he didn't return her calls. (RT p. 768-769) He was then contacted by a Dr. Schroeder at Network Health Plan concerning a

complaint that she had filed. His contract with Network ended at the end of calendar year in 1999. The complaint he received from Network was from Ms. Haack, and it was for performing unprofessional conduct. (RT p. 772) Dr. Witkowski didn't challenge the Network claim because his contract was expiring and he was informed by them that Network would not renew it. (RT p. 785)

Ms. Haack thereafter came to Dr. Witkowski's office and demanded her file. He informed her that he would need time to copy the file for her. She thereafter "grabbed" and took her imaging studies, her MRI reports and vascular studies for her thoracic outlet syndrome. (RT p. 773)

Dr. Witkowski also testified that he talked to Chief Wilkinson of the New London Police who told him that Ms. Haack had accused him of rape and sexual assault. (RT p. 777) He has no documents to support his conversation with the police officer regarding her charges other than his day planner. (RT p. 789-790) Dr. Witkowski was never charged with any criminal offense. (RT p. 779) Dr. Witkowski then recounted that Ms. Haack made allegations that he had inappropriate behavior with her children to both the police and the district attorney. (RT p. 779-780)

In April of 2000, he appeared in civil court where Ms. Haack's temporary injunction was reviewed and a petition for a permanent injunction was considered. The permanent injunction was denied and the temporary injunction was set aside. He had approximately 12 supporters at the hearing. (RT p. 781-782)

After she reported him to Network Insurance, Dr. Witkowski claims he saw Ms. Haack in the vicinity of his house seventy to seventy five times. (RT p. 783) On cross examination Dr. Witkowski disputed the state's contention that it would be normal for Ms. Haack to spend time in his neighborhood but admitted that Ms. Haack had a friend, Marie Graf that lived on the other side of his house, and that Ms. Haack and Marie Graf would go for walks. (RT p. 777-778) He stated prior to his troubles with Ms. Haack in June, 1999, he had never seen her walking past his house unless she came with her husband to visit him. (RT p. 792)

Count 3

Summary of the evidence

The evidence demonstrates a lack of the meeting of the minds to establish a contract existed for Ms. Haack to in essence "work off" her co-pays.

For work that was done for which Ms. Haack was paid, such work couldn't apply to offsetting co-pays, because it constituted an economic transaction similar to any other marketplace transaction between two parties. There was no evidence of additional consideration given to account for working off the co-pays in such transactions.

As to any work performed for free or at a reduced charge, it doesn't appear that such activities were directed toward satisfying co-pays, lacking evidence of accountability for how much free work would offset how much co-pay. Therefore, even were it proper to offset co-pays in this manner, no agreement, even informally, is evidenced to conclude that co-pays were to be written off in exchange for Ms. Haack's working in Dr. Witkowski's office, or providing professional artist services.

Testimony of Carol Haack

Ms. Haack testified that she had a ten dollar co-pay for treatment sessions. When she started treatment the issue of co-pays was raised and Ms. Haack claims that Dr. Witkowski told her not to worry about them. She claims to have paid co-pays for the first few months but after that never did. (RT p. 127)

Ms. Haack also did some work for Dr. Witkowski because she stated she didn't feel comfortable with charity. The work that she did she claims she was paid for. Therefore, the work did not apply to the co-pays:

Q. You did some work for Dr. Witkowski, didn't you?

A. Yes, I did.

Q. All right. I -- I want to be sure I don't -- I don't mischaracterize your testimony here. Did you say he told you not -- that you wouldn't have to pay co-pays?

A. He said do not worry about them, he would take care of it.

Q. All right. And how -- what did you respond to that?

A. I said, I don't feel comfortable with that. I don't take charity.

Q. And did your conversation continue?

A. He said I could come and clean his office. I did that maybe three times. He wanted his floors washed. That he paid me for. The painting on the walls he paid for. Any art stuff he paid for. And I got -- I was -- he just said, don't worry about it, and he had his sister come in and clean.

Q. Okay. When he said that you could come in and clean floors, was there any arrangement made as to how many co-pays a cleaning would pay for or how many cleanings would pay for a co-pay?

A. When I washed the floors, he gave me \$150. But when I came in and vacuumed, he just said it didn't matter to him. He said, it doesn't matter. It's not about money. It doesn't matter. You don't even have to do this, he said.

Q. All right.

A. And I never knew like what anything was worth, or there's nothing ever documented.

Q. All right. So you actually cleaned the floors how many times?

A. Well, I cleaned, like vacuumed, probably three times. But then I -- I washed the floors with my Kirby washer thing --

Q. But you --

A. -- but I was paid.

Q. You were paid --

A. Yeah.

Q. -- for that?

A. Yeah.

Q. All right.

LAW JUDGE: How many times?

Q. How many times did you wash the floors?

A. Twice.

Q. You were paid each time?

A. Yes. I was paid 150 each time.

Q. You also did some artwork in his windows?

A. Yeah. And I was paid for that.

Q. And you provided him with --

LAW JUDGE: Let me stop you. How much and for what.

MR. ZWIEG: Okay.

A. I painted Christmas cardinals on his windows where you come in, and he paid me a hundred and some dollars for all that. And then I did a door topper that says welcome on it, and he paid 45 for that. A children's cow chair for his office. He paid 45 for that. I designed a toy box for his office, and I believe he paid a hundred and -- I'm not exactly sure about the total on that, but it was over a hundred dollars. He also had me do portraits of him adjusting his staff, and he paid \$35 a piece for those. And then he bought some artwork for his house. He bought a cardinal picture for in his bathroom. He bought a lighthouse for in his bedroom.

Q. Do you recall he paid for those two art --

A. Twenty-seven and twenty-seven, because those are just -- those are not limited edition prints. I did some artwork for him to give to his sister -- sister-in-law for Christmas, and that was a cardinal. And I don't remember what I charged him for that.

Q. Okay.

A. But he did pay me. (RT p. 128-130)

Ms. Haack stated that she did some cleaning in Dr. Witkowski's office. She also did some painting on his windows for which she was paid. She also cleaned carpets. (RT p. 420) She also washed his floors and vacuumed a few times as well as touched up painting on the walls. She also did a children's chair he purchased for his office, a toy box that was purchased for his office, a

welcome sign that's in his office, two portraits of him that were of him adjusting patients that are in his office and two other

paintings for his home. And he paid her for that work. (RT p. 421-422)

Q. Did he pay you for that work?

A. He paid me for everything.

Q. Did he pay you what you thought was fair?

A. Yes.

Q. Did you charge him exactly what you charged anybody else?

A. On some items, yes.

Q. And some items no. What does that mean then?

A. Like on the -- the cow chair, I charged him \$20 less because he had a conipition when I told him what the price was.

Q. Did he in any way indicate to you that he was not going to charge you co-pays because you were doing some things for him?

A. No. He said that he would not -- he said, don't worry about the money. Do not worry about it. I have this under control. I do this for a lot of patients. And Marie Graf reassured me that he does it for a lot of patients and I was not to worry.

Q. Well, what were you worried about? You didn't have to pay it. It was being paid to who, him?

A. But still, I'm not a charity case. (RT p. 421-422)

Testimony of Dr. Witkowski

Dr. Witkowski reviewed the ledger for the billings for Ms. Haack up to March 10, 1999. (Exh. 34)

An entry in the ledger on April 16, 1997, in the amount of \$347.24 was an adjustment to the amount owed by Ms. Haack, with the notation, "write off per doctor", handwritten by Dr. Witkowski's office manger, Marie Graf. (RT p. 576-577)

Witkowski stated that writing off a patient receivable was based on written office policy based upon either a decision to cancel or adjust or forgive an amount owed, or in the instance that an insurance carrier deemed a service non covered. (RT p. 579)

As of April 2, 1996, Ms. Haack owed Dr. Witkowski a zero balance for treatments rendered. On June 10, 1996, Ms.

Haack paid \$87.16 for services, and another payment for \$5.60 was made some time purportedly in 1998. No other co-pay payments were made by Ms. Haack. (RT p. 597) The ledger indicated that he instructed not to bill Ms. Haack on August 6, 1997, November 10, 1997, November 18, 1997, and January 2, 1998. (RT p. 595-597)

Dr. Witkowski considered that Ms. Haack provided services to his business in lieu of money payment for the co-pays, however, there was no written agreement. No specific values were given for specified work to offset specific co-pay dollar amounts. (RT p. 597) After meeting with his office manager, according to Dr. Witkowski, the office manager by office policy could arrange for alternative means of paying debts owed. (RT p. 600-601)

The work allegedly performed in return for the co-payments was entered into evidence from both Dr. Witkowski's hearing testimony and deposition testimony. According to Dr. Witkowski, Ms. Haack performed the following; a toy box and chair in his office which he either paid for or received a reduced rate for them, two carpet cleanings that would have cost Dr. Witkowski between \$200 to \$250 for each cleaning, painting on his office window a Santa sliding down the chimney, a caricature of a Santa, a drawing of a bird on a branch, more of a fall setting on the window. (RT p. 602-603)

Dr. Witkowski testified that there was no meeting of the minds as to how much work would counteract how much co-pay and disagreed with Ms. Haack's assertion that she was in fact paid for some of her work (RT p. 605)

Dr. Witkowski believed that there was a \$10 co-pay for the Network HMO plan, and that the Network contract allowed him to decide whether or how to collect the co-pay. (RT p. 655)

Dr. Witkowski also might have made billings for Ms. Haack under Network's preferred provider plan, (PPO) but he didn't know if Ms. Haack was covered under that plan. (RT p. 656)

Count 4

Summary of evidence

I find that the state has met its burden of proof to establish that Dr. Witkowski knowingly falsified patient treatment records of Ms. Haack. Ms. Haack testified that Dr. Witkowski worked on her lower back. Dr. Witkowski testified that he took several months of Ms. Haack's records and changed them to remove evidence of his working on her lower back. To do this he blocked out portions of those records to show that he had not worked on her lower back. At the time he made these alterations to the records, he was aware that treatment of Ms. Haack's lower back was the specific issue that Network Insurance was investigating in response to a complaint by Ms. Haack. The difference in the treatment records was revealed upon examination of Ms. Haack's treatment records that she sent to Network Insurance, (Exhibit 27) versus the redacted records of Ms. Haack's treatment that Dr. Witkowski sent to Network Insurance. (Exhibit 35)

Dr. Witkowski claims that his deletion of these treatment portions of the records was done to correct errant entries. However, these claimed errant entries kept recurring numerous times, specifically dealing with treatment provided for Ms. Haack's lower back. I find Dr. Witkowski's explanation too convenient, and reject the non credible coincidence that he invites me to accept as the reason for the deletions. Rather, I find it more probable than not that Dr. Witkowski deleted portions of Ms. Haack's records in order to mislead Network Insurance.

Testimony of Carol Haack

Ms. Haack claims that she stopped seeing Dr. Witkowski for professional services when her bowel "started to shut down" and she went to see a neurosurgeon who indicated that Dr. Witkowski's treatment were the cause of her problems. (RT p. 122) Ms. Haack went to Dr. Witkowski's office and requested her records, approximately in March of 1999. (RT p. 124)

Ms. Haack requested her medical records more than once from Dr. Witkowski, and did receive them. (Exh. 27) They were brought to her house by Marie Graf, Dr. Witkowski's office manager. (RT p. 124-125) Initially, Ms. Haack had gone to Dr. Witkowski's office to demand her records and spoke with Dr. Witkowski. Dr. Witkowski informed her that he would have to prepare them. (RT p. 125) Ms. Haack testified that she asked for the records that were hers from her neurosurgeon, such as faxes, CAT scans and her x-rays, essentially records of treatment by other providers. Those records were given to her that day. She also had to sign a release for Dr. Witkowski's records and that Ms. Graf later brought Dr. Witkowski's treatment records to Ms. Haack at her house and did not grab them from anybody. (RT p. 126)

In approximately August of 1999, Dr. Witkowski sent his treatment records for Ms. Haack to Network Insurance resulting from Ms. Haack's complaint to Network that Dr. Witkowski performed work on Ms. Haack's lower back (lumbar region), when he should not have. (RT p. 607) (Exh 35)

Testimony of Dr. Witkowski

Dr. Witkowski was asked to compare exhibit 35, (the records he provided to network), with exhibit 27, (the records he provided to Ms. Haack), specifically page 29. Exhibit 35 contained a black bar obscuring a notation that indicated a lumbar adjustment, pelvic adjustment. That same notation was not found on exhibit 27. Remaining on exhibit 27, however, is an "X" in the half box for lumbar adjustment and an "X" in the half box for pelvic adjustment. (RT p. 609)

Dr. Witkowski explained the difference as resulting from the fact exhibit 27 were travel cards, not permanent records and he checked the boxes in error:

Q. Exhibit 27 notes for March 10, 1999, there is an X in the half box for lumbar adjustment and an X in the half box for pelvic adjustment, correct?

A. Right.

Q. Do you have an explanation for the difference between these two records?

A. Exhibit 35 is how a records request should leave my office with a paginated form, a notice to the reviewer suggesting that this is our -- our copy of our interoffice things, and if they have any other concerns that they can request a narrative.

Q. Okay.

A. Yeah.

Q. But how does that account for the difference between these two, from what I've just pointed out about lumbar adjustment on Page 29 of Exhibit 35 and the corresponding page in Exhibit 27?

A. There's a black line along lumbar and pelvic adjustment on -- on Exhibit 35.

Q. Right. Why?

A. Because before it was sent out -- the girls before they send out a record request, they want to make sure that I have everything completed, and oftentimes I will review that and make sure that the I's are dotted and the T's are crossed.

Q. Okay. I can understand how in some circumstances there might be a need to add information that had not yet been added. However, in this case it looks like the bar is intended to delete information which was on Exhibit 27.

A. Yes.

Q. And is that accurate?

A. It does obscure it.

Q. Was that purpose for putting it?

A. Yes.

Q. All right. And in fact, there's also on Exhibit 35 an X over the words lumbar adjustment and over the word pelvic adjustment, and on Exhibit 27, the corresponding page to 29, there is no X, is that correct?

A. Yes.

Q. All right. Why did you cross out what you had indicated you'd given as treatment?

A. Exhibit 27 is the travel cards that flow back and forth in the room. I just did that on the fly. I just checked it off quickly and gave it up to the front desk to allow them to record what the services were. So in a sense, this works as a route slip. I -- I checked that in error. Item Number -- Number -- on Exhibit 27 I should not have checked lumbar and pelvic adjustment, and that's probably why I X'd it out and -- no, that is why. I mean that is why I X'd it out because that was -- that shouldn't have been there. (RT p. 610-611)

Dr. Witkowski explained at hearing that a "travel card" is a card that summarizes the patient's treatment that's a quick view of what goes on. It travels with the patient from treatment room to treatment room to therapy suite and back up to the front desk as the patient checks out. There can be more than one travel card created for the same visit. (RT p. 611) The travel cards are the records that Ms. Haack took to Network, and Dr. Witkowski denied having anything to do with the preparation of those cards for Ms. Haack. (RT p. 614)

Exhibit 35 and 27 were compared by Dr. Witkowski:

Q. All right. Let's look at Page 27 in Exhibit 35 and the corresponding page in Exhibit 27. There you have sessions December 17, 1998 to January 11, 1999, is that correct?

A. Yes.

Q. Exhibit 35 again has the same bar across the middle of the page in the row which is for lumbar adjustments and pelvic adjustments, correct?

A. Yes.

Q. And again, that exhibit on Page 27 has X's through lumbar adjustment and pelvic adjustment, correct?

A. Yes. No, just lumbar adjustment.

Q. Isn't there also an X through pelvic adjustment? We're on Page 27, correct?

A. My copy of Exhibit 27 shows no pelvic adjustments.

Q. Oh, I'm sorry. I was still looking -- perhaps it's because we're on Page 27 -- looking at Exhibit 35, Page 27. The -- the printed word, pelvic adjustment, has an X through it, correct?

A. Yes.

Q. Okay. Now, the black bar is to cover up the X's that had appeared in several of the sessions for lumbar adjustments, is that correct?

A. Yes.

Q. And that's because you made a mistake on December 17th and -- and put an X in for something you didn't do?

A. I did it on the fly.

Q. Okay.

A. I did it on the fly.

Q. Okay. And you did -- you did the same thing on the fly for December 19th?

A. Yes.

Q. And December 21st?

A. Yes.

Q. And December 24th?

A. Yes.

Q. And December 31st?

A. Yes.

Q. And January 2nd?

A. Yes.

Q. And January 5th?

A. Uh-huh.

Q. Well, Doctor, you say you complete these as you -- on the day of the session, correct?

A. Item Number 27 I do.

Q. Yeah.

A. Or Exhibit 27.

Q. And on all of these different days you made the same mistake?

A. Because I started off making the same mistake and I checked all the way across. I did it very quickly. And then when this was completed the staff photocopied it and then I went and I -- oh, I wasn't adjusting her lumbar region. And the billing code isn't any different. The only reason why they had this was to signify that there was an adjustment that was rendered.

Q. Well, sure. That's what the purpose of the -- the record. I mean we're not talking about billing here. We're talking about what procedure did you perform on her, right?

A. Right.

Q. And you made that mistake repeatedly on that sheet?

A. Yeah. I really -- I did -- I made a lot of mistakes on that one.

Q. And you made the same mistake on March 10th, correct? March 10, 1999? Page 5.

LAW JUDGE: Twenty-nine.

Q. Twenty-nine. Excuse me. I'm sorry. This one goes that direction. Exhibit 35, Page 29, Doctor.

A. Yeah, I did that -- I carried that over wrong, yeah.

Q. Okay. And then in the same dark marker that you crossed out that line on Page 27 of Exhibit 35, you wrote up there no lumbar CMT, correct?

A. Correct. (RT p. 616-619)

The same black bar across the lumbar adjustments and pelvic adjustments sections of exhibit 35 existed for the entries October 13, 1998, to November 19, 1998. Dr. Witkowski indicated that marking the lumbar adjustments on the travel card was a mistake. (RT p. 634)

This mistake occurred with regularity, treatment was blacked out on pages 25, 24 and 23 of exhibit 35 as well.

Dr. Witkowski's then addressed his review of the records before sending them to Network Insurance:

Q. Now, Doctor, you said that you'd go back and review these after each side was completed. How is it that we have several cards here where the issue -- well, where lumbar adjustments were all struck out? Doesn't it seem logical that if you're going each time you would have caught this mistake much quicker?

A. Yes. But since this -- the cards are two-sided so when I flip them over I don't -- I mean I'm more concerned with the procedure while I'm doing it and -- and I did -- I checked the wrong box.

Q. Time after time, right?

A. Yeah. (RT p. 635)

Dr. Witkowski explained that the reason Ms. Haack's copies of his records that she sent to Network have different information than what he sent to Network Insurance is because she received incomplete copies without all the information transferred from the travel cards. (RT p. 775-776)

Discipline

The final issue here is the appropriate discipline for the respondent, keeping in mind the nature of the violations. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis.

2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969). It has been requested that a suspension be ordered with recommended conditions to be met prior to the resumption of practice.

In this case, a suspension and the conditions recommended by the division of enforcement are reasonable and will adequately protect the public, promote the rehabilitation of the licensee and deter other licensees from engaging in similar conduct. The violations in counts one and two involve the violation of important practitioner/patient boundaries and the public must be able to trust that such conduct is not to be tolerated or implicitly condoned and that practitioners will understand and follow these important boundaries established in Wisconsin law. The discipline in this case will also act to deter other licensees from engaging in similar conduct. The rehabilitation of the respondent is also fostered by the discipline imposed because he is provided an opportunity to educate himself and rehabilitate himself so as to earn back a position of trust sufficient to resume practice at the appropriate time.

No additional discipline is imposed for counts three and four due to the fact that any additional discipline for these counts would be moot, being subsumed into the two year suspension imposed for counts one and two.

Costs

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Chiropractic Examining Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated July 26th, 2004

William Anderson Black
Administrative Law Judge