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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
SHAWN GIESE, D.C., :
RESPONDENT. :

FINAL DECISION
AND ORDER
Case No. LS0509013CHI

[Division of Enforcement Case No. 04 CHI 051]

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

Shawn Giese, D.C.
339 N. Grandview Boulevard
Waukesha, WI 53188

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

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on March 9, 2006, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Jeanette Lytle. Mr. Giese appeared *pro se*.

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. Shawn Giese, D.C., (DOB 7/22/70) is duly licensed as a chiropractor in the State of Wisconsin (License # 12-3857). His license was granted on July 3, 2002.
2. Dr. Giese resides at 339 N. Grandview Boulevard in Waukesha, Wisconsin.
3. At all times relevant to this action, Dr. Giese was working as a chiropractor in Wisconsin.
4. On or about September 25, 2004, Dr. Giese appeared, uninvited, at the home of his former girlfriend, Mozelle Stoiber. The two had ended their relationship a few months earlier.
5. Dr. Giese brought a shotgun with him to Dr. Stoiber's residence. While there, he loaded the gun in the presence of Dr. Stoiber and her sister, and pointed it at them.
6. During this incident, Dr. Giese struck Dr. Stoiber's sister on the arm with the barrel of the gun.
7. When a male guest came out of the house, Dr. Giese ran away.
8. As a result of the incident at Dr. Stoiber's residence, Dr. Giese was charged with first degree reckless endangering safety as a domestic abuse incident. He later pled guilty/no contest to two counts of pointing a firearm at a person, a Class A

misdemeanor, and disorderly conduct, a Class B misdemeanor.

CONCLUSIONS OF LAW

1. Dr. Giese, by having brandished a loaded shotgun at another person, engaged in unprofessional conduct and behavior that constitutes a substantial danger to the health, welfare, and safety of the public, in violation of s. Chir 6.02 (1), Wis. Admin. Code and s. 446.03 (5), Wis. Stats.
2. Dr. Giese, by having been convicted of pointing a firearm at a person and disorderly conduct, committed unprofessional conduct in violation of s. 446.03 (5), Wis. Stats.
3. Dr. Giese, by refusing to cooperate with the Board's investigation by not completing a mental health assessment to which he had agreed, violated s. Chir 6.02 (19), Wis. Admin. Code and s. 446.03 (5), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Shawn Giese to practice chiropractic in the State of Wisconsin shall be suspended for not less than thirty (30) days. Dr. Giese may at any time following thirty days from the effective date of this Order petition for a termination of the suspension. A petition pursuant to this paragraph shall include a copy of a current mental health assessment from a pre-approved mental health care provider acceptable to the Board attesting to Dr. Giese's ability to safely and competently return to the practice of chiropractic. In addition, Dr. Giese shall in conjunction with any petition appear in person before the Board to answer any questions that the Board may have on his rehabilitation and practice plans. Dr. Giese shall contact the Department Monitor for approval of an assessment provider.

Upon the issuance of a Board order terminating the suspension, Dr. Giese's license to practice chiropractic shall be **LIMITED** for a period of not less than two years as follows:

- (1) Dr. Giese shall not engage in the practice of chiropractic unless and until he has a Board approved supervisor. The Board approved supervisor shall file written quarterly reports in which he or she assesses Dr. Giese's chiropractic practices, including, but not limited to, his interactions with patients and staff. The reports shall be filed with the Department of Regulation and Licensing Monitor at P.O. Box 8935, Madison, Wisconsin 53708-8935.
- (2) Dr. Giese shall undergo counseling with a Board approved therapist, not less than once a month. The therapist shall file written quarterly reports with the Board through the Department of Regulation and Licensing Monitor, and shall be provided with a copy of Dr. Galli's written report.
- (3) Dr. Giese shall not engage in any direct patient billing for his chiropractic services.
- (4) Upon a showing by Dr. Giese of complete, successful, and continuous compliance with the terms of this Order for a period of at least two years, he may petition the Board for the return of his full license provided the Board determines that he may safely and competently engage in the practice of chiropractic. A petition under this subparagraph shall include statements from Dr. Giese's Board approved supervisor and therapist.

IT IS FURTHER ORDERED that Dr. Giese shall pay the assessable costs of this proceeding pursuant to sec. 440.22, Wis. Stats.

THIS ORDER shall take effect on the date on which it is signed.

OPINION AND EXPLANATION OF VARIANCE

Opinion

Shawn Giese was licensed in Wisconsin as a chiropractor on July 3, 2002, and has practiced since that time. On or about September 25, 2004, Dr. Giese appeared, uninvited, at the home of his former girlfriend, Mozelle Stoiber. The two had

ended their relationship a few months earlier. When he appeared at Dr. Stoiber's residence, Dr. Giese brought a shotgun with him. While standing in the backyard of the home, he loaded the gun in the presence of Dr. Stoiber and her sister, and pointed it at them. During this incident, Dr. Giese struck Dr. Stoiber's sister on the arm with the barrel of the gun. However, when a male guest came out of Dr. Stoiber's house, Dr. Giese ran away and did not return.

As a result of his actions, Dr. Giese was charged with first degree reckless endangering safety as a domestic abuse incident. He later pled guilty/no contest to two counts of pointing a firearm at a person, a Class A misdemeanor, and disorderly conduct, a Class B misdemeanor.

In connection with the investigation of this matter, Dr. Giese agreed in writing on July 5, 2005, to a mental health assessment by Rick Hurlbut, Ph.D. On July 25, 2005, Dr. Giese failed to appear for his appointment with Dr. Hurlbut. Thereafter, Dr. Giese refused to be evaluated by Dr. Hurlbut, citing financial concerns. He did, however, later undergo a psychological evaluation with Michael Galli, Ph.D., on September 7, 2005. Dr. Galli concluded that Dr. Giese did not present any risk of harm to his clients. (Tr. at 113.) Indeed, Dr. Galli noted that Dr. Giese did not have a persistent psychological condition that would negatively impact his work as a chiropractor. *Id.* And in his written report, Dr. Galli opined that Dr. Giese did not present a likely danger to the public at large or to his chiropractic patients. *See Ex. 19.*

Nevertheless, Dr. Galli determined that Dr. Giese did have some substantial psychological problems, namely a narcissistic personality which results in a tendency to over-focus on his own concerns to the exclusion of others, particularly in his personal relationships. *Id.* Yet Dr. Galli's report also stressed that Dr. Giese's chiropractic clients are not likely to be the objects of his disappointment and therefore not at risk of harm from him. Moreover, Dr. Galli indicated that he did not think that Dr. Giese's psychological problems posed any ongoing danger to the public or that Dr. Giese was impaired by either an emotional or mental disorder such that it would seriously impair his ability to practice chiropractic. *Id.*

While Dr. Giese does not pose an apparent threat to patients, the question remains as to what the appropriate form of discipline is in light of his actions. 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).

Although the incident in question did not occur while Dr. Giese was engaged in his chiropractic practice, a strong message must nevertheless be conveyed that behavior of this type will not be tolerated and does not reflect professional conduct. A suspension of his license will clearly convey that and will also serve as a deterrent to others. The additional limitations on his license will further serve to safeguard the public and are designed to ensure that he handles the stresses of a professional practice in an appropriate manner. By utilizing the services of a supervisor and a therapist, both Dr. Giese and the Board can be assured that he is adequately managing both his professional and personal life. In addition, by eliminating his responsibility for direct patient billing, another measure will be in place to ensure patient safety.

The imposition of costs against Dr. Giese has also been recommended. 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 a 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 recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

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.

Explanation of Variance

The Board accepts the Findings of Fact and Conclusions of Law of the Proposed Decision in this matter. The Board, however, has modified the discipline imposed in the following respects:

The termination of the initial suspension is conditioned upon receipt by the Chiropractic Examining Board of an acceptable mental health evaluation attesting to Dr. Giese's ability to safely practice chiropractic and an appearance before the Board by Dr. Giese;

The Board extended the minimum period of license limitation from the one year recommendation to a period of two years; and

A petition for return to unrestricted licensure status must be accompanied by reports from Dr. Giese's practice supervisor and therapist.

By brandishing a loaded shotgun at another person and striking another person with the barrel of the shotgun, Dr. Giese has demonstrated behavior that represents a significant danger to public safety and welfare. The Board has modified the order to better protect the citizens of the state of Wisconsin who may be consumers of his chiropractic care. By requiring a mental health assessment prior to the termination of the period of license suspension, the Order will provide additional assurances that Dr. Giese is able to safely return to practice. The Board extended the period of limitation from one year to two years, again to further assure public safety. Finally and for similar reasons, the Board added a requirement to receive reports from Dr. Giese's therapist and supervisor in conjunction with any petition for a return to full and unrestricted licensure.

The Board has considered the need to protect the public and the seriousness of his violations in structuring this discipline. The Wisconsin Supreme Court has recognized that reviewing agencies such as this Board may review the acts to determine "whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based upon the traits revealed." See *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). The record here reveals that the respondent has engaged in dangerous and life-threatening behavior.

The Board concludes that the character traits revealed by the unprofessional acts committed by the respondent require additional safeguards than those contained in the proposed decision. The Board further believes that the additional structure provided by its variance will facilitate Dr. Giese's rehabilitation as well as put the Board in a better position to determine whether his rehabilitation is complete.

Dated at Madison, Wisconsin, this 28th day of September, 2006.

CHIROPRACTIC EXAMINING BOARD

Steven Silverman DC
On behalf of the Board