

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : FINAL DECISION AND ORDER
NICHOLAS J. SCHULTZ, D.C., : LS0712064CHI
RESPONDENT. :
 :

[Division of Enforcement Case # 03 CHI 056]

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

Nicholas J. Schultz, D.C.
16622 Avenue of the Fountains, Suite 102
Fountain Hills, AZ 85268

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Chiropractic Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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

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

FINDINGS OF FACT

1. Nicholas J. Schultz, D.C., Respondent, date of birth February 4, 1968, was licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the state of Wisconsin, pursuant to license number 2866, which was first granted March 19, 1992.

2. Respondent, who was also licensed in Arizona, moved to that state in early 2003 and did not renew his license to practice in Wisconsin when it expired on December 31, 2004. Respondent could renew it pursuant to Wis. Stat. § 440.08(3)(a) and Wis. Adm. Code § Chir 3.02(2) by payment of fees and proof of completion of continuing education requirements.

3. Respondent's last address reported to the Department of Regulation and Licensing is 411 E. Garfield Street, Mount Horeb, WI 53572. The Division of Enforcement has received information that Respondent's current address is 16622 Avenue of the Fountains, Suite 102, Fountain Hills, AZ 85268.

4. On April 4, 2005, the Arizona State Board of Chiropractic Examiners filed and served a Complaint and Notice of Hearing which charged Respondent with violating that Board's rules based on Respondent's conduct while practicing as a chiropractor in Wisconsin.

5. On May 16, 2005, the Arizona State Board of Chiropractic Examiners resolved that matter by issuing a Consent Agreement and Order for Letter of Concern and Probation.

a. Findings of Fact were made, which included the following:

- 1) Respondent provided chiropractic treatment for neck pain to a female patient from November 2001 to December 2002.
- 2) During the time Respondent was providing care, the following occurred:

- a) He and the patient exchanged several inappropriate (flirtatious) e-mails.
 - b) He at times appeared unannounced at the patient's home.
 - c) Later the patient visited his home.
 - d) On one occasion, he and the patient shared an evening of socializing and drinking at a tavern.
 - e) On July 10, 2002, the patient had an argument with her husband and went out driving. Respondent called her on her cell phone and invited her to his home. She visited him there.
 - f) In approximately July 2002, the patient's husband sent a letter to Respondent complaining of Respondent's inappropriate e-mails to his wife, Respondent's sexual relationship with her and Respondent's overall unprofessional conduct and demanded that he cease all contact with the patient.
 - g) In approximately August 2002, Respondent sent a letter of response to the patient's husband, in which Respondent apologized for his mistakes, said he never slept with the patient, said he would never contact her again and that he planned to move from Wisconsin.
 - h) Respondent did see the patient again, even after he promised her husband he would not do so.
 - i) On August 19, 2004, Respondent was psychologically evaluated by Steven R. Gray, Ed.D., a Board-approved psychological examiner, who recommended that Respondent, at a minimum, participate in therapy, counseling, or education related to boundary violations.
- b. Conclusions of Law were made that Respondent's conduct constituted violations of:
- 1) A.R.S. § 32-924(A)(5), unprofessional or dishonorable conduct of a character likely to deceive or defraud the public or tending to discredit the profession.
 - 2) A.A.C. R4-7-902(13), violating any federal or state law or rule or regulation applicable to the practice of chiropractic.
 - 3) A.R.S. § 32-924(A)(15), conduct or practice contrary to recognized standards in chiropractic or any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public or any conduct, practice or condition that impairs the ability of the licensee to safely and skillfully practice chiropractic.
- c. Based on the Findings of Fact and Conclusions of Law, it was ordered:
- 1) Respondent's license to practice chiropractic in the State of Arizona was issued a Letter of Concern and issued Probation for one year.
 - 2) Within three months, Respondent was to complete six hours of pre-approved continuing education in chiropractic ethics and provide Board staff with satisfactory proof of attendance within 15 days after completing the course(s). The six hours of chiropractic ethics was to be in addition to mandatory hours of continuing education.
 - 3) Within one year, Respondent was to take the National Board of Chiropractic Examiners Ethics and Boundaries Examination and obtain a score of seventy-five percent (75%) or better to pass the examination. If Respondent were to fail the examination, he could take it one additional time, also within one year of the effective date of the Order.

6. In a response to an inquiry by the Wisconsin Division of Enforcement, Respondent admitted to kissing with the patient on two occasions. The first occasion was following the evening of socializing and drinking at a tavern, referred to in Finding of Fact 5.a.2d, above. The second was when she visited him at his home on July 10, 2002, referred to in Finding of Fact 5.a.2e, above. Respondent contended that the patient initiated the kissing. Respondent further contends that neither incident involved a romantic kiss.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 446.03 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
2. Respondent, by having been subject to disciplinary action by the Arizona State Board of Chiropractic Examiners, has committed unprofessional conduct as defined by Wis. Admin. Code § CHIR 6.02(22) and is subject to discipline pursuant to Wis. Stat. § 446.03(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. If Respondent ever applies to the Board for licensure or relicensure:
 - a. Respondent shall meet all requirements which are then required by statute and administrative rule for the

license.

b. Respondent shall provide evidence that he has complied with the terms of his Arizona probation and that he has a full unrestricted license in that state.

c. The Board may consider Respondent's kissing the patient on the two occasions and the assertion of the patient that Respondent and the patient engaged in non-intercourse sexual contact on July 10, 2002.

d. It shall be in the sole discretion of the Board whether to grant Respondent any license, with or without limitations.

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

2. Within 90 days of the date of this Order, Respondent shall pay the costs of this proceeding in the amount of \$2,057.00 to the Department of Regulation and Licensing, pursuant to Wis. Stat. § 441.22(2).

3. All requests, notices and payments required by this Order shall be mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

4. This Order is effective on the date of its signing.

Wisconsin Chiropractic Examining Board

By: Steven Silverman
A Member of the Board

12/6/07
Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
NICHOLAS J. SCHULTZ, D.C., : STIPULATION
RESPONDENT. : LS _____ CHI

[Division of Enforcement Case # 03 CHI 056]

It is hereby stipulated and agreed, by and between Nicholas J. Schultz, D.C., Respondent; Terrence P. Woods o Broening, Oberg, Woods & Wilson, attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department o Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division o Enforcement (file 03 CHI 056). Respondent consents to the resolution of this investigation by stipulation and without the issuanc of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including: th right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on hi behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decisio and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and a other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, th Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent o the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of thi Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that thi Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's most recent wall and wallet registration certificates. If the Board doe not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision no to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any membe of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without th presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that an member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Boar advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a publi record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue th attached Final Decision and Order.

Nicholas J. Schultz, D.C.

Date

Respondent
16622 Avenue of the Fountains, Suite 102
Fountain Hills, AZ 85268

Terrence P. Woods
Broening, Oberg, Woods & Wilson
Attorneys for Respondent
P.O. Box 20527
Phoenix, AZ 85036-0527

Date

John R. Zwiag
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date

[03 CHI 056: Costs \$2,057.00]

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