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**STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**FINAL DECISION AND ORDER
Case No. LS0707201MED**

**FRANK J. SALVI, M.D.,
RESPONDENT.**

[Division of Enforcement Case No. 04MED197]

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Frank J. Salvi, M.D.
4363 Damascus Trail
Cottage Grove, WI 53527

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

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint. The hearing held in this matter concluded with the filing of the closing arguments. Attorney Jeanette Lytle appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Attorney Lester A. Pines, Cullen Weston Pines & Bach LLP, appeared on behalf of Dr. Salvi.

Based upon the record herein, the Administrative Law Judge recommends that the Medical Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Frank J. Salvi, M.D., (dob 02/19/62) is duly licensed as a physician in the State of Wisconsin (license # 20-34667). This license was first granted on July 20, 1993.
2. Dr. Salvi's most recent address on file with the Wisconsin Medical Examining Board is 4363 Damascus Trail, Cottage Grove, Wisconsin. 53527

3. Dr. Salvi specializes in Physical Medicine and Rehabilitation. At all relevant times, Dr. Salvi worked at the University of Wisconsin Spine Clinic ("the Spine Clinic").

4. In 2004 and 2005, four female patients of Dr. Salvi, none of whom knew each other, independently complained that he had touched them in a sexual nature.

Patient AG

5. On or about April 13, 2004, patient AG came to the Spine Clinic complaining of mid-back, sternum and rib pains. AG was asked by the nurse to disrobe down to her undergarments and to put on a gown and shorts.

6. After the nurse left and AG had put on the gown and shorts, Dr. Salvi came into the room. Dr. Salvi conducted a physical examination of AG's back, sternum and ribs.

7. After his examination of AG's back, without warning, Dr. Salvi reached underneath her bra and touched her breasts. He moved his hands on her breasts in a massaging type motion. Dr. Salvi did not explain to AG what he was doing or make any comment. Dr. Salvi's hands touched AG's entire breast area, in the manner that a gynecologist would do a breast examination.

8. Dr. Salvi examined AG's lymph nodes and might have incidentally come in contact with the upper, outer area of her breasts. Dr. Salvi did not perform a medical examination of AG's breasts. There was no medical reason for Dr. Salvi to touch AG's entire breast area or to massage her breasts.

9. Subsequently, Dr. Salvi, who was sitting on a stool, rolled the stool close to AG, so that he sat between AG's legs. AG was sitting at the edge of the examination table. As he talked to her, he moved his hand up and down her thigh in a stroking, sexual manner, under her gown. He did not ask about sensation or make any comment about why his hand was on her thigh.

10. There was no medical reason for Dr. Salvi to move his hand up and down AG's thigh in a stroking, sexual manner, as described in Findings of Fact 9 above.

Patient SS

11. On or about February 10, 2004, patient SS came to the Spine Clinic with complaints of neck and back pain. She was not asked to change out of her clothes.

12. During the February 10, 2004 appointment, Dr. Salvi, who was sitting on a stool, rolled the stool close to SS, put his hand on hers, and rubbed her knee.

13. SS was uncomfortable with Respondent's touching of her hand and knee, but assumed that he was just an overly friendly person. Dr. Salvi sometimes touches patients on the knee to get their attention.

14. On or about June 1, 2004, patient SS returned to the Spine Clinic for a second appointment. She was asked to change into a gown and shorts.

15. After the nurse left the room, Dr. Salvi came in. He conducted an examination of SS's back. Then he had her bend forward, while he stood behind her. Without warning, he reached between her legs and underneath her shorts, and with his bare, ungloved hand, swiped along either side of her vagina with his index finger and thumb. He also ran his fingers between her vagina and anus. Dr. Salvi did not ask about sensation. He did not ask her about bladder or bowel function. He did not explain what he was doing. There was no medical reason for Dr. Salvi to swipe along side of SS's vagina with his index finger and thumb.

16 SS described Respondent's touch as feeling sexual in nature.

17. Dr. Salvi states that he did not touch SS in the saddle region at all. However his office notes state that the examination of the saddle region was normal, indicating that he did in fact examine this area.

18. Dr. Salvi did not dictate his office notes for the June 1, 2004 visit until 29 days after that visit.

Patient KF

19. On or about April 12, 2004, patient KF came to the Spine Clinic with a rotator cuff injury. The nurse did not ask her to change her clothes. However, after an initial conversation, Dr. Salvi asked her to change into a gown and shorts.

20. During this visit Dr. Salvi wheeled his stool forward so that he sat in between KF's legs. Then he rubbed her legs and knees.

21. KF felt that this touching was sexual in nature and it made her uncomfortable. However KF believed that she had no choice but to see Respondent due to worker's compensation insurance coverage.

22. On or about June 14, 2004, patient KF came back to the Spine Clinic. This time the nurse had her put on a gown and shorts.

23. Dr. Salvi came into the room, sat on his stool, and once again rolled it between her legs. While talking to her he again rubbed her legs, inside her thighs, in a manner that she interpreted as sexual. He did not ask about sensation or explain why he was touching her legs. There was no medical reason for Dr. Salvi to rub KF's thighs.

24. Dr. Salvi then asked KF if she was wearing a bra. She said that she was. He asked her to take it off. She responded that she was there for her shoulder and that should not be necessary.

25. Dr. Salvi once again asked KF to take off her bra, saying that he wanted to check her lymph nodes. She took off her bra. Dr. Salvi then asked her to lay back on the table. Dr. Salvi then put his hands on KF's breasts.

26. KF states that Dr. Salvi grabbed both of her breasts at the same time, with both hands. She states that he felt her entire breast area. She states that he did not touch her armpit, or any other location where lymph nodes can be felt. KF is a certified nursing assistant and states that she is familiar with the location of lymph nodes.

27. KF asked Dr. Salvi to stop and told him that she would have her other physician check her lymph nodes. Dr. Salvi stopped.

28. There was no medical reason for Dr. Salvi to touch KF's breasts, as described in Findings of Fact 25 and 26 above.

Patient DJ

29. On or about May 31, 2005, patient DJ came to the Spine Clinic with complaints of low back, right buttock and leg pains subsequent to a car accident.

30. During this visit Dr. Salvi caressed DJ's legs, massaged her neck, and touched her during the exam in what she felt was a sexual way. She felt uncomfortable but was unsure of Respondent's intentions. There was no medical reason for Dr. Salvi to touch DJ's legs or touch her in a sexual way.

31. On or about July 26, 2005, DJ returned to the Spine Clinic. The nurse did not ask her to change clothes. Dr. Salvi came in, talked to her, and then asked her to change into a gown and shorts.

32. Dr. Salvi asked DJ to stand in front of him, facing away. Then without warning, Dr. Salvi put his bare hand between her legs and grabbed her vagina. As he did so he asked, "Is everything okay here?" Dr. Salvi did not explain what he was doing. He did not ask anything about bladder or bowel function.

33. Dr. Salvi denies ever touching DJ in the saddle region. He does not document examining that area. He does not document any symptoms in that area, nor did DJ complain of bladder or bowel dysfunction. There was no medical reason for Dr. Salvi to touch DJ's vagina.

34. Dr. Salvi's conduct, as described in Findings of Fact 5-33 resulted in harm to Patients AG, SS, KF and DJ.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to Wis. Stat. § 448.02 (3).

2. Respondent's conduct as described in paragraphs 7-10 above constitutes a violation of Wisconsin Administrative Code § MED 10.02(2)(h), (z), and (zd), and is subject to discipline pursuant to Wis. Stat. § 448.02.

3. Respondent's conduct as described in paragraphs 14-17 above constitutes a violation of Wisconsin Administrative Code § MED 10.02(2)(h), (z), and (zd), and is subject to discipline pursuant to Wis. Stat. § 448.02.

4. Respondent's conduct as described in paragraphs 19-28 above constitutes a violation of Wisconsin Administrative Code § MED 10.02(2)(h), (z), and (zd), and is subject to discipline pursuant to Wis. Stat. § 448.02.

5. Respondent's conduct as described in paragraphs 29-33 above constitutes a violation of Wisconsin Administrative Code § MED 10.02(2)(h), (z), and (zd), and is subject to discipline pursuant to Wis. Stat. § 448.02.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#20-34667) of Frank J. Salvi to practice medicine and surgery in the State of Wisconsin be, and hereby is, **SUSPENDED** for a period of five (5) years, which shall be subject to a conditional **STAY**, commencing thirty (30) days after the date of this Order, provided that he is in full compliance with the terms and conditions specified in paragraphs (1) through (4) set forth below.

IT IS FURTHER ORDERED that the Respondent shall undergo a psychological evaluation by Dr. Gary Schoener, a nationally-renowned expert in the field of treatment of professional boundary maintenance. Based upon the outcome of the evaluation and any recommendations by Dr. Schoener regarding treatment, including but not limited to psychotherapy, counseling or patient interaction, work setting restrictions, or other any practice measures, necessary to ensure the safety and protection of female patients who are examined or treated by the Respondent, those requirements shall be a part of the limitations upon the Respondent's medical license. Respondent shall also provide Dr. Shoener and the Wisconsin Medical Examining Board with current releases complying with state and federal laws, authorizing release and access to the records of any health care providers who are providing treatment or have provided treatment to Respondent in regard to matters involved here.

IT IS FURTHER ORDERED that the suspension shall be initially STAYED no earlier than ninety (90) days after the effective date of this order and only upon a report by Dr. Schoener that Respondent has made sufficient progress in his evaluation and treatment and with respect to any areas deemed necessary for his ability to safely practice, which has been reviewed and approved by the Wisconsin Medical Examining Board. In addition, the Respondent shall comply with the following conditions at all times when he is practicing medicine under a stay of the suspension:

1. That when Respondent is examining or treating female patients, he shall have a female nurse or assistant, present in the examining room during the entire time of the physical examination and treatment. Prior to serving as a chaperone, the nurse or assistant shall have been provided with and read a copy of this order. At the conclusion of the evaluation or treatment of a female patient, the chaperone shall legibly sign and date, in either an electronic form or paper form, a notation confirming that she was in the room during the physical examination and treatment of the patient. This form shall be placed and kept in the patient's medical record.
2. That if the nurse or assistant chaperone is aware of any inappropriate touching or conduct by the Respondent during the examination and treatment of the patient, she is to immediately report these observations to the Medical Director of the facility and to the Wisconsin Medical Examining Board.
3. That in any medical practice location where the Respondent is examining or treating female patients, there shall be a written notice provided to the patients that advises of their right to file a report to the Medical Director of the facility or to the Wisconsin Medical Examining Board involving any inappropriate touching, sexual contact or conduct by the Respondent. This notice shall be available in a conspicuous location in the facility or provided directly to the patient.
4. The Respondent shall provide a copy of this order to the Medical Director or partner of any facility, clinic or private medical office, and chaperone where he practices medicine and that any suspected violation of this Order shall be reported to the Wisconsin Medical Examining Board.

IT IS FURTHER ORDERED that upon a showing by Respondent of satisfactory continuous compliance with the conditions and limitations set forth above, for a period of five (5) years and submission of documentation from his health care providers verifying that Respondent is fit to safely practice medicine, the Board may grant a petition by Respondent for removal of the limitations and reinstatement of full licensure.

This order is effective on the date on which it is signed on behalf of the Medical Examining Board.

The Division of Enforcement alleges in its Complaint that Dr. Salvi engaged in unprofessional conduct in violation of Wis. Admin. Code § MED 10.02 (2) (h), (z), (za), and (zd). Dr. Salvi denies that the violations occurred. Except for the allegations relating to the recordkeeping violations under Wis. Adm. Code § MED 10.02 (za), the evidence presented establishes that the violations occurred.

I. Applicable Law

448.02 Authority.

(3) Investigation; Hearing; Action. (a) The board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license, certificate or limited permit granted by the board.

(b) After an investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the board shall hold a hearing on such conduct.

(c) Subject to par. (cm), after a disciplinary hearing, the board may, when it ... finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person.

Med 10.02 Definitions. For the purposes of these rules:

(2) The term “unprofessional conduct” is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

(z) Violating or aiding and abetting the violation of any law or administrative rule or regulation the circumstances of which substantially relate to the circumstances of the practice of medicine.

(za) Failure by a physician or physician assistant to maintain patient health care records

consistent with the requirements of ch. Med 21.

(zd) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult receiving treatment shall continue to be a patient for 2 years after the termination of professional services. If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this subsection for 2 years after termination of services, or for 2 years after the patient reaches the age of majority, whichever is longer.

940.225 Sexual assault.

(2) Second Degree Sexual Assault. Whoever does any of the following is guilty of a Class C felony:

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c), and has sexual contact or sexual intercourse with a client of the entity.

(3m) Fourth Degree Sexual Assault. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(5) Definitions. In this section:

(b) "Sexual contact" means any of the following [cited, in part] :

1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1):

a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.

b. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

II. Background

Dr. Salvi has been licensed to practice medicine and surgery in the State of Wisconsin since July of 1993. Dr. Salvi provides medical care at Medical Rehabilitation Associates, Comprehensive Inpatient Care, Outpatient Musculoskeletal Clinics and EMG, in Milwaukee. From July 1996 to June 2007, Dr. Salvi worked as an Assistant Professor, with various responsibilities from teaching to research to clinical, at the University of Wisconsin Hospital and Clinics, Subspecialty Clinics in Spine, Sports Medicine, Pain Management, and EMG, in Madison. Dr. Salvi graduated from the University of Illinois College of Medicine, Chicago, Illinois, in May 1992. Transcript p. 377-379, 470-471; Exhibit 18.

III. Summary of Evidence

Patient AG

AG, who was 41 at the time of the hearing, has an educational background in early childhood development. She has worked as a teacher's aide for a school district in Wisconsin and she also worked in a couple of day-care centers.

In reference to her medical conditions, AG was born with a metabolic disorder; she has a seizure disorder, migraine headaches, a heart murmur and a hole in her heart. She also has a history of chronic pain from back pain as a result of a car accident, and she has had some difficulties walking due to her metabolic disorder.

In reference to treatment, AG said that she saw a chiropractor for her back pain but she was not getting any relief from those visits. Her chiropractor told her that she should see a specialist. She was referred by the university to Dr. Salvi's office. She saw Dr. Salvi on April 13, 2004 for her lower back pain. Her daughter, who was 10 years old at that time, went along with her to Dr. Salvi's office to assist her in walking. They sat in the waiting room until a nurse walked them into the examining room where they sat down. The nurse sat down at a desk or a table next to her and she proceeded to ask her questions about the form that she had received in the mail to fill out and some health questions relating to her health history. The nurse asked her to change into a gown, and gave her a gown and some athletic shorts to put on. The nurse told her to leave her undergarments on, and then the nurse left the room. Then, Dr. Salvi came into the room.

AG said that Dr. Salvi performed different tests. He asked her to walk across the room, bending over from side to side, front and backwards, "things like that". Then, he asked her to sit on one of those examining tables. He was sitting on one of those rolling stools. She said that he proceeded "to move in", come up to her "personal space". She said that she couldn't even move

if she wanted to. She said that he was in front of her and that she was "like sitting on the end of the examining table". She said that he was about a few inches maybe from her knees. According to AG, Dr. Salvi then reached under her gown and her bra and started touching her breasts. She said that she thought Dr. Salvi touched her breast for at least 3 minutes.

Patient AG further testified as follows:

Q Can you describe in detail how he touched them?

A Was like a very light, sensual type of touch, almost like a spouse would touch you.

Q What part of his hand was he using?

A He was using both hands.

Q Both hands at the same time?

A Yeah.

Q And what part of his hand came in contact with you?

A The whole hand.

Q So his whole hand was covering the full interior aspects of your breasts?

A Yes, and the nipple.

Q Did he move his hands?

A Yeah. It was almost like a massaging type of motion.

Q Now, at this point had he already done a lymph node exam?

A I don't remember if it was right before or after, but, yes, he did on my like armpit area.

Q And that was separate from the breast touching that you're talking about?

A Yes.

Q Had he already done an examination that you felt was related to your rib pain?

A Can you repeat the question, please?

Q I was wondering if he had already done an examination related to your rib pain as far as

you're aware.

A I don't think so, no.

Q And did he do that examination at another time?

A I don't remember. I don't think so.

Q Do you remember him doing an examination for your sternum pain?

A Yes.

Q And was that separate from what you're talking about in terms of breast touching?

A Yes.

Q You've in prior testimony estimated how long this breast touching took. As you sit here today, how long do you think it took?

A In just estimating to me it seemed like a very long time. It was probably -- I was estimating it to be about three to five minutes.

Q Do you think that's accurate as you sit here today?

A Possibly, yes.

Q But you're not sure?

A I'm not sure, no.

Q While he was touching your breasts, did Dr. Salvi ask you anything about sensation?

A No.

Q Did he ask you anything about pain?

A No, he didn't say anything.

Q He didn't say anything at all?

A No.

Q Do you know what the difference to be between clinical touch and a sensual touch?

A Yes.

Q So can you tell us the difference between a

clinical touch and sensual touch?

A Well, a clinical touch would be from my experience a gynecologist exam where when they're examining your breast to check for problems in that area, they would have me laying on the examining table not sitting up, and they would ask you to raise your arm above your head. And they would take like their fingertips and kind of press around your breast, you know, to check for problems in that area.

Q And how does that differ from a sensual touch?

A Well, to me a sensual touch is something that two people, like your spouse and you, would share, and it's just -- it just was like that same type of touch, like a gentle -- like a gentle like soft touch, not like he was looking for anything specific, just, you know, that kind of stuff.

Q That's how Dr. Salvi touched you?

A Pardon me?

Q You're saying that that's how Dr. Salvi touched you?

A Yes.

Q Has any other doctor that you've seen in the past touched you in a way that you consider to be sensual?

A No.

When asked how she felt about Dr. Salvi's examination at that point, AG said she was really nervous and that she remembered just wanting to have the appointment be done and over with. She said that she was looking at the door hoping that the nurse would come in or somebody would come in. She did not say anything to Dr. Salvi because she guessed she "felt kind of intimidated" and that she "was scared".

When asked if Dr. Salvi did anything else at that appointment that made her feel uncomfortable, she testified as follows:

A He was in front of me again, and for some reason

he pulled down my athletic shorts that I had on.
And he was like touching me like in my -- like by
my pelvic bone like where your hairline is.

Q Was he saying anything to you as he did this?

A Yeah. He was asking me strange questions like you
would be asked at your gynecologist appointment,
like things about my period and things like that,
which I didn't think had anything to do with my
back or the other complaints that I had.

Q Did he do anything else that made you feel
uncomfortable?

A Yeah. Towards the end of the exam I was like
sitting in a chair like this, and he was on his
stool again. And he started touching me on my
thighs.

Q Where was his stool in relation to you at this
time?

A Same spot as before but a couple inches, two or
three inches, away.

Q So that's where the stool was, right?

A Yeah.

Q Where were his legs?

A I don't remember.

Q So how was he touching you at this time?

A Just like stroking the top part of my legs here.
(Gesturing)

Q And you're gesturing to the top of your thighs; is
that correct?

A Yes.

Q He actually touched you on the thighs?

A Yes.

Q And can you describe his touch?

A He would just like run his fingers up and down my
thighs and --

Q And -- sorry, go ahead.

A And then I just remember him making like this

small-talk about something about his wife and his kids or -- I don't remember exactly. It was like -- I don't know. I wasn't there for that. I just didn't feel like that was important.

Q Had Dr. Salvi already touched your legs in connection with the examination?

A I don't -- I don't recall.

Q When he was touching your legs at this point, was he asking you anything about sensation?

A At that point, no, no.

Q When he was touching your legs?

A You mean my thighs?

Q Right.

A No, no.

Q And when he was touching your thighs, did he ask you anything about pain?

A No.

Q Did he explain in any way what he was doing when he touched your thighs?

A No.

In reference to her follow-up appointment with Dr. Salvi, AG said that Dr. Salvi told her he was going to contact her metabolic doctor; that he recommended maybe some therapy, and that he told her to come back for another visit with him. She said that there was no way she was going back to see him. She said she guessed that she felt like she was intimidated and just wanted to get out of there.

Finally, in reference to the complaint that she filed against Dr. Salvi and her knowledge of other women who had complained about his conduct, AG said that she complained to the University of Wisconsin Spine Clinic's Human Relations Department on June 7, 2004. She said she did not hear from the hospital for a year and a half after she filed the complaint. She eventually learned that she was not the only person who had complained about Dr. Salvi's

conduct. She said that she did not know anything about the other women; that she never spoke to them, and that she has never seen them. Exhibit 9.

Patient SS

Patient SS graduated from high school in 1995, and attended college at two different colleges. She has worked in sales and marketing and as a security guard.

In 1995, while working as a security guard, she attempted to break up a fight. Later on that night, she was attacked by several of the individuals who were involved in the fight. They hit her above her eye with a padlock, kicked her in her jaw with a boot, and pulled out her hair. She was also kicked in her back several times by someone who had boots on. She still suffers pain from the assault. Her doctor, Dr. Neil Waechter, told her that there would never be a time that she would not have any pain. She has been diagnosed with fibromyalgia.

SS said that Dr. Waechter referred her to Dr. Salvi for pain management and to find out what might have been wrong with her upper spine and lower back. She said Dr. Salvi twice. The first visit was on February 10, 2004. The second visit was on June 1, 2004.

In reference to the first appointment, her specific complaints related to the pain in her upper spine. She had developed a pain in her waist area that was "like a kind of pinched nerve". Whenever she turned a certain way it restricted her movement and "went into" her tailbone. She developed "pains into her hips, legs, feet and sometimes her neck and shoulders".

In reference to Dr. Salvi, SS said that everything went pretty smooth. She did not think anything was wrong with him. She felt pretty comfortable. He seemed friendly. He seemed touchy but not touchy in a bad way in the first appointment because she knows some people talk with their hands. She just thought that was a characteristic of his. She thought he was just a friendly person, and he talked with his hands. He talked with her for a while. They discussed her past and they talked about the current situation that she was in. She just remembers him being pretty friendly and okay, cool.

When asked if he got physically close to her during that visit, she said he touched her "back and stuff, and he might have gave me a -- he might have gave me a small examination or something. I don't know, but nothing abnormal. I mean, like I said, he'd pat my leg when he talked and went over my hand or whatever, nothing abnormal."

After the first appointment, Dr. Salvi gave SS a prescription for some pain medications and referred her to physical therapy. He also asked her to schedule another appointment to see him.

In reference to her second appointment on June 1, 2004, SS testified that the nurse called her into the room, greeted her and talked to her for a second. The nurse told her that the doctor would be in shortly. Dr. Salvi came in. Either Dr. Salvi or the nurse asked her to change from her street clothes to a gray T-shirt and some green shorts. She remembers that she and Dr. Salvi talked for a little while about how she was and how her body was responding to the medicine. He talked about some other things that he could possibly try. He wanted to test her range of motion. So he had her stand up, and had her reach out her arms. He had her turn her head, her arms and her body from left to right. Then, he told her to bend down and touch her toes. SS further testified as follows:

Q Where were you in relation to him at this point?

A He was standing behind me. I was -- should I stand up or not?

Q You can.

A I was standing like this, and he was probably like standing like this behind me. I was standing in front of him, and then he was here behind me. And then he had me bend down, and then that's when he touched me. He took his index finger and his thumb; and as I was bent down, he came up between my vagina and put his finger between both of my buttocks cheeks, and he rolled his hands up between my legs. And then he just went back into like the exam like as if nothing happened.

I was just -- all I remember is like, "Okay. Now, stand up" or, you know, like, "Okay. Now do this." I don't even remember what he asked me to do. It was just like another direction, though. You know, it was never addressed. It was just like another direction with the rest of the exam as if it was part of it.

And after that I really just didn't remember -- don't remember a whole lot because I just started having a lot of thoughts and a lot of things that were running through my mind because I was really shocked. I never been in this situation before, and I really didn't know how to respond. I was just really in shock, and I was -- at first I was very doubtful like, you know, did he just do what I think he did? And it just

didn't feel right, and I really -- it was -- some things I might remember, but a lot of things right after that I just don't remember a whole lot. I just had a lot of other things on my mind.

Q Did he say anything when he was swiping his fingers near your vagina?

A No. I mean, he just -- you know, he was like, "Bend over." He came up. He said, "Okay. Now turn this way" or some other direction to do another range of motion test.

Q He didn't ask you about pain in that area?

A No, not at all.

Q And he didn't ask you about sensation in that area?

A He didn't ask me about nothing. It was like it wasn't addressed. It was like as if it didn't happen. It just went for one motion to the next without any intervening. It was just -- it was just like so smooth.

Q Did he have gloves or did he use his bare hands?

A I believe he used his bare hands. It felt like bare hands. I don't remember. No, there wasn't any gloves. No, there wasn't any gloves.

Q Did he at any point touch you near your anus?

A He slid his index finger across from up under my vagina and brought his thumb and his index finger right between my cheeks up through my buttocks --

Q Do you recall him moving --

A -- my anus.

Q Do you recall him ever moving his finger kind of in a circle around your anus?

A No. It was more of a swipe across the vagina and just like an upward motion up through my anal area.

Q And as he did this --

A Sorry, it's hard.

Q As he did this, did he ask you anything about bowel issues?

A No. We never addressed anything about bowels

because, like I said, I have no stomach problems or I don't have any problems with my butt. I just was having a lot of back and neck problems and pain in my waist area near my tailbone.

Q And did he ask you anything as he was doing this about bladder issues?

A No, not at all.

Q Did he ask you anything about buttock pain as he's doing this?

A No.

Q Would you say that you know the difference between a clinical touch and a sensual touch?

A Yeah.

Q What was your impression of Dr. Salvi's touch?

A It was very uncomfortable. It was very invading, and it made me doubt myself because I just really didn't want to believe what happened. I really just couldn't believe that it happened because I really didn't -- it was very surprising, I should put it. I didn't expect for that to happen. I went there with the intentions of getting medical care, and it was sexual. It was sexual.

When asked what Dr. Salvi's recommendation was to her after the examination, Patient SS testified as follows:

A I do remember that because he said to reschedule another appointment with his receptionist.

Q Did you do that?

A No. I just remember -- that's why I remember that so much because after he said it, I just kept

thinking in my head, oh, the nerve of him telling me to come back here after he just did that, and I can't believe he did that.

And I just remember just walking out of the office, and I might have even cut my eyes at the receptionist as I was walking by. And I just got out of there, and I remember getting to my car, and I broke down and cried. And I cried all the way home, and I got home and I was crying. And I told my husband what was going on, and he was pretty upset. He was very upset. And I called, and I spoke with the rape crisis hotline after speaking with -- I spoke with my grandmother. I spoke with my mother and a really close cousin of mine, and I had told them, because I felt comfortable talking with them about it.

I was really -- I was so mixed up and confused about what had happened. I really didn't know who to talk to, what to do, and so I just talked to people that I normally talk to about problems. And, you know, they said, "You need to talk to somebody else." And so I did. I called the rape crisis hotline, and eventually I did contact the hospital.

Finally, at some point in time, SS filed a complaint against Dr. Salvi with the hospital. When asked what happened as a result of the complaint, SS said that she felt as if she was brushed off. She said that she eventually learned that there were other women who had complained about Dr. Salvi's conduct. She does not know anything about the women or any particulars about what happened to them; she has never spoken to them, and she had not seen them until the day of the hearing.

Patient KF

Patient KF is studying to be a surgical technician. Over the years she worked at the UW Hospital as a Certified Nursing Assistant.

In the spring and summer of 2004, KF had a work-related injury. She was lifting a patient up in bed and hurt her right arm at work. She could not lift her arm and could not extend her arm. She was having great pain. She has not been able to work with the injury. She was referred to Dr. Salvi by the Worker's Compensation Program. She saw Dr. Salvi twice. Her specific complaint was her right arm, shoulder.

During her first appointment, the medical assistant came in the room and took her vital signs and told her to get into a gown. The assistant left the room. Dr. Salvi came in and introduced himself. He was sitting at the doctor's stool, the little nursing table in the room. They talked about her injury and he examined her. She had to stand and bend and walk before him and see how long she could extend her arm. She said there was not anything unusual about the exam.

KF said that at some point during the first visit, Dr. Salvi made her uncomfortable. It was towards the end when he was sitting on the little roller chair and she was sitting at the end of the table. He came in between her legs on the stool and had both his hands open on her knees with his thumbs on the inside of her thighs. According to KF, Dr. Salvi "had pressure rubbing on" her knees. When asked if he actually spread her legs apart, she said yes. Patient KF further testified as follows:

A Yeah. My legs -- I was sitting like this, and he was actually in between my legs. (Demonstrating)

Q And what was he doing with his hands?

A He had his hands open on my knees like this, and he was rubbing on my knees. And his thumbs were on the inside of my thighs. (Demonstrating)

MR. PINES: I think the record should reflect where the witness has placed her hands, which is on her knees, on her thighs above her knees. She has her thumbs on the inside of her thighs and has moved her hands back and forth a few inches.

A Yeah. And it was like a massage-type gender, which made me feel very uncomfortable.

Q What did he say when he was doing this?

A Just talking about my arm, and then I just closed my legs and kind of, you know, pushed him out.

Q Did he ask you anything about sensation when he was touching your thighs?

A No.

Q Did he ask you anything about pain when he was touching there?

A No.

Q How did you feel after this visit?

A I felt uncomfortable.

Q What did he recommend that you do after this visit?

A I had to have a return visit with him.

Q And did you go to that return visit?

A Yes, I did.

Q Why did you do that if you were uncomfortable?

A Workmen's comp, part the UW system, so they wouldn't let me see my own doctor.

In reference to the second visit with Dr. Salvi on June 14, 2004, KF described how it started. She said the medical assistant called her back in the room and took her vital signs. The assistant told her that "Dr. Salvi will be in." So KF sat at the chair next to the desk. Dr. Salvi stuck his head in the door, and told KF she needed to take off her bra and put on a gown. She did that. KF further testified as follows:

Q And then what happened?

A He came in, and we were talking about my arm. Then he said, "I've seen that you have previously been to the doctor. Your lymph nodes were enlarged." And I told him yes, that I have, and that my doctor was treating me for that.

Q And then what did he do?

A So then he told me to get on the examination table and to lay on my back, so I laid on my back. Dr. Salvi came over, and he started running his fingers down my neck.

Q What was your impression when he did that?

A Well, previously my doctor had already done that

for my lymph nodes.

Q So it was lymph nodes in your neck that were enlarged?

A Yeah.

Q What happened after that?

A So then Dr. Salvi took both his hands, open hand, and he grabbed my breast, like covered my whole entire breast. (Demonstrating)

Q Was he doing anything with his hands while he did that?

A He was squeezing my breasts.

Q And you're indicating both hands at once. Did he touch you with both hands at once?

A Yes, both hands, full open hand.

Q And his hand was actually touching your skin?

A Well, the gown, yes.

Q How did you react?

A I sat up immediately, and he was talking about the lymph nodes. And I said I would see my own doctor for that. That wasn't the reason I was there. I was there for my arm pain.

Q Have you had breast exams before by other doctors?

A Yes, I have.

Q This was different from that?

A Yes, it was.

Q In what way?

A The previous physicians, they poke at you. They don't grab your breasts with their thumbs.

Q Did Dr. Salvi touch your armpits at any point?

A No.

Q Did you have any impression as to why Dr. Salvi had done what he did?

A No.

Q Did he touch your legs at this visit?

A I had sat up, and then he was on the stool. And

once again, he came in between my legs as at the previous visit and had both his hands open on my knees with his thumbs on the inside rubbing my knees and my thighs.

Q Did he ask you anything about sensation when he did that?

A No.

Q Did he ask you anything about pain when he did that?

A No.

Q What was he talking about when he was doing that?

A By this time I was so upset I closed my legs and told him the reason I was there was for my injury on my right arm. And Dr. Salvi left, and I left.

Q At any point did Dr. Salvi say anything to you that you consider sexual?

A No.

Q You didn't notice anything about him being in a state of arousal?

A No. I wasn't there for that. I was there for my arm pain.

Q What did Dr. Salvi recommend to you at the end of that visit?

A Nothing. I just left.

Q Did you come back to see him at any time?

A No, I went to my boss. But he did -- he did say that I needed to get my lymph nodes checked, which previously I had said for him that I would have my physician look at my lymph nodes.

When asked if she complained to anyone about Dr. Salvi's conduct, KF testified as follows:

Q Did you complain to anyone about Dr. Salvi's conduct?

A My supervisor.

Q And when did you do that?

A Right after I left his office I went straight to my supervisor at work.

Q Why did you complain to her?

A I felt very violated and very uncomfortable as a woman.

Q And why was she the person to complain to?

A She was the one that could help me get a different doctor through workmen's comp.

Q Were you at some point contacted by the hospital for more information?

A Yes.

Q When was that?

A The following year.

Q Did you eventually learn that you weren't the only person who was complaining about Dr. Salvi's conduct?

A Yes.

Q Where did you find that out from?

A That was the following year. My supervisor told me in Risk Management.

Q Do you know anything about the other women who complained about Dr. Salvi's conduct?

A No.

Q Have you ever spoken to them?

A No.

Q Have you ever seen them?

A No.

Q Do you know anything about them?

A No.

Patient DJ

Patient DJ graduated from high school in 1995. After that, she took some college courses. Over the years she worked in the consumer lending field. She started working at a financial institution around 1996 and worked there for a couple of years. In 1998 she went to work at another financial institution as a teller, and then as a consumer lender. She worked at that institution until 2005. Then, she decided to stay home with her children.

In reference to her general medical history, she said that for the most part she has been pretty healthy. When she was thirteen or fourteen she had e-coli, and had her appendix taken out. In 2003, she was in a car accident. After the accident, she had back and neck pain. She saw Dr. Rutherford for pain relief. He referred her to Dr. Garcia, who referred her to Dr. Salvi. In reference to Drs. Rutherford and Garcia, Patient DJ said that she believes their specialty is sports medicine. She said that Dr. Rutherford had her doing physical therapy, which included the use of a TENS unit. They massaged her back and buttocks area. She said she did not have any issues with the person who was massaging her buttocks. She said that Dr. Rutherford had her walk and he watched how she walked and then palpated her buttocks and back area. She moved side to side and front to back. She said she did not have any concerns about the treatment she received from Dr. Rutherford.

In reference to Dr. Garcia's treatment, he had her walk, checked her reflexes and palpated her buttocks and back. He also recommended physical therapy and he wanted to put her on pain medication. At that time, she was nursing so she chose not to take the pain medication. When asked what Dr. Garcia told her about the problem she had, she said it was her "piriformis muscle". Her understanding is "it's just a muscle that's deep into your buttocks, so it's hard to do much about because it's so deep in there". She said she did not have any concerns about the treatment she received from Dr. Garcia. Eventually, Dr. Garcia referred her to Dr. Salvi for her pain. She said that Dr. Garcia wanted a second opinion. He was out of ideas, so he wanted to have someone else check it out and see what they thought of it.

DJ saw Dr. Salvi twice. Her specific complaints involved pain in her lower back and buttocks. She said that she did not have any problems with her bowels and she did not have problems with her bladder.

DJ's first visit with Dr. Salvi was on May 31, 2005. When she went into the office, the nurse asked her some questions and had her change into a gown and shorts. The nurse left. Then, Dr. Salvi came in and talked to her a little bit. He had her perform "different exercises and like knee raises and just checking my reflexes and had me -- checked my -- palpated my back and my buttocks, the muscles". She said she did not have any concerns when he was palpating her buttocks muscles. He checked her reflexes.

When asked if she had any concerns about the way Dr. Salvi touched her during his first examination of her, DJ said that what made her feel uncomfortable with that exam is when "he would do stuff on my legs".

Patient DJ further testified as follows:

Q So it's your position that Dr. Salvi caressed your leg during this first appointment?

A That is correct.

Q Can you describe in more detail what he was doing?

A When he was done with the exam, he would just kind of slide his hand down my leg.

Q What made you feel that this was a caressing motion?

A Just because I believe -- I mean, just the way his hand went down my leg, I just didn't think that it was necessary after his exam to rub my leg down.

Q And his exam was not substantially different than Dr. Garcia's and Dr. Rutherford's, right?

A No. They were all very similar.

Q And Dr. Garcia and Dr. Rutherford have never done this kind of sliding on your leg before?

A No.

Q What did Dr. Salvi recommend you do after this first appointment?

A I believe that he wanted me to have an EMG test done and then come back, and he would go over the test.

Q And you had that test done?

A That is correct.

Q And what did that involve?

A I believe that was the test where they put -- I think it was electricity or -- I don't exactly -- I've had so many different tests done. I'm trying to remember which one was which, but I think they hook it up to a machine and --

Q And where in relation to your body did they --

A Oh, I'm sorry, I apologize. On my buttocks. And I decided, because Dr. Salvi made me feel uncomfortable, that I would go back to my doctor and have it done.

Q And why was that?

A Because I just felt that he was overly friendly, and I didn't feel comfortable bearing my buttocks in front of him.

DJ's second visit with Dr. Salvi occurred on July 26, 2005. The nurse asked her a few questions, and then the nurse left the room. DJ said that she was still in her street clothes when Dr. Salvi came in and decided that he needed to recheck, re-evaluate, her again. He had her change into a gown and shorts. He left the room, and she changed into the gown and shorts. And then he returned. Basically, he checked everything over again. He watched her walk and he palpated her back and her buttocks. DJ further testified as follows:

Q So at this point did you have any problem with anything that Dr. Salvi had done at this visit up until then?

A No.

Q And then what happened next?

A When he was checking my back and my buttocks, he was sitting down, and he reached up and grabbed my vagina and asked if everything was okay down here.

Q Where were you standing at the time?

A I was standing in front of him.

Q Which way were you facing?

A My back was faced towards him.

Q And how did you react?

A I was pretty much in shock. I said, "Yeah." I mean, I was -- I was shocked that he grabbed my vagina area.

Q And how long was his hand on your vagina, if you could estimate?

A Just enough time for him to say, "Is everything okay down here?"

Q And he used one hand?

A That is correct.

Q Through your shorts?

A What do you mean?

Q You were wearing shorts at the time, right?

A Yes, yes, I was wearing shorts.

Q Did he go underneath the shorts or through the shorts?

A He just went through the shorts.

Q And if you can recall, what specific parts of your genitalia did he touch?

A You know, at the time I was in such shock. I mean, he just reached up and grabbed my vagina area and --

Q And did he ask you anything about sensation when he did this?

A No.

Q Did he ask you anything about your bowels?

A No.

Q Did he ask you anything about your bladder?

A No.

Q Did you have any other concerns about what he did at that visit?

A Besides where he reached up and grabbed my vagina? Or what are -- I'm not sure what you're asking me.

Q Did he touch your legs again at this visit?

A Right, yes.

Q And where did he touch you at?

A It was the same thing. When he was done with his -- doing an exam on my leg, he would rub his hand down my leg.

Q At any point did Dr. Salvi say anything that you'd consider to be sexual in nature?

A No.

Q Anything suggestive?

A No.

Q Did you notice anything about his state of arousal?

A No. I wasn't looking.

Q Did you have any impression about what his intentions were when he put his hand on your vagina?

A Well, like I said, I was pretty much in shock when he did it, and, you know, I don't know why he grabbed my crotch.

Finally, in reference to Dr. Salvi's recommendations after the second visit, DJ testified that he wanted her to take an anti-inflammatory and to check back in a couple weeks. She said that she did not go back to see him because of what he did to her and how he made her feel.

When asked if she complained about his conduct to anyone, DJ said that she called the police. She spoke with her husband and told him what happened, and then she decided to call the police. At some point, someone from the hospital contacted her about her complaint. Eventually, she learned from the hospital representative that she was not the only person who was complaining about Dr. Salvi's conduct. She said that she did not know anything about the other women who complained; that she had never spoken to them, and that she first saw them when they walked into the hearing room the day of the hearing.

IV Analysis of Evidence

A. Arguments

Patient AG

Dr. Salvi argues that Patient AG is not a credible witness for several reasons. First, she said that he touched her breasts for three minutes or more. He argues that AG did not mention the three minutes in her initial complaint against him; therefore, she "made it up". Second, AG's 10-year-old daughter was in the room when he examined AG. It is presumed that AG's daughter "saw nothing of the sort" otherwise; the Division would have called her as a witness. Third, the psychological background of chronic pain or fibromyalgia patients can lead them to misperceive touch as sexual when it is not. He argues that AG apparently interpreted some aspects of his clinical evaluation (examining all around her chest, touching the anterior aspect of her shoulders with both hands at the same time and touching the sternum and the ribs around each breast, as well as examining her axillary lymph nodes) as a breast examination. Then, in the months and years following the appointment, AG created in her mind the notion that he had his hands on her breasts and kept them there for three to five minutes. Respondent's Post Hearing Brief, pages 15-18.

The Division argues that AG is a credible witness and that Dr. Salvi's arguments are not valid. State's Closing Arguments, pages 1-7.

Patient SS

Dr. Salvi argues that Patient SS is not a credible witness for several reasons. First, SS stated at the hearing that he touched her vagina with his finger. When she was questioned about her statement, she became combative. Second, SS supposedly told her husband and called the rape crisis line. Supposedly, she called the UW to complain. But, curiously, the Division did not present a single witness or document to corroborate that story. SS's husband did not testify. Nor did anyone from a rape crisis line testify. Third, Dr. Salvi argues that SS claims she was violated because she was turned down by Dr. Salvi when she wanted more Oxycontin. Also, by complaining about him to Dr. Waechter's office, SS got access to yet another pain management physician, Dr. Weigert. Fourth, Dr. Salvi argues that SS claims that she was violated because she had a desire for "secondary gain". Dr. Salvi said that secondary gain is common to chronic pain patients. By being a "victim", by having been "mistreated", SS was able to achieve a secondary gain: attention and sympathy. She has the sympathy of the Division of Enforcement, she got to be a star witness against a doctor and she has yet another reason that her chronic pain and psychosocial problems will not go away. Respondent's Post Hearing Brief, pages 19-25.

The Division argues that SS is a credible witness and that Dr. Salvi's arguments are not valid. State's Closing Arguments, pages 7-9.

Patient KF

Dr. Salvi argues that KF is not a credible witness for several reasons. First, she drastically exaggerated her experience with Dr. Salvi and is not being truthful. In reference to her exaggerations, she characterized questioning of her as "being screamed at" and she characterized being passed a document as having had it "thrown at her". Second, in reference to failing to report facts accurately, Dr. Salvi argues that KF claimed to have seen Dr. McBride about swollen lymph nodes before her appointment with him. In fact, KF saw Dr. McBride two days after she saw him. Dr. Salvi argues that KF wanted to justify her assertion that he did something improper so she conjured up facts to bolster that story including a statement that he read about her swollen lymph nodes in her chart. Third, KF was upset that he examined her lymph nodes because in her medical judgment a "rehab" doctor should not be doing such an exam. Respondent's Post Hearing Brief, pages 25-33.

The Division argues that KF is a credible witness and that Dr. Salvi's arguments are not valid. State's Closing Arguments, pages 4-7.

Patient DJ

Dr. Salvi argues that DJ is not a credible witness for several reasons. First, based upon his demonstration with the model, it was impossible from the rear, as described by DJ, for him to have grabbed her "vagina area". It was a physical impossibility. He showed that even with the model having her legs spread apart somewhat, it still would have required him to have put his hand vertically between the patient's thighs and then forced his hand upward, which is an action that was not described by DJ. Second, DJ was seeking money. Dr. Salvi argues that the likelihood is that phenomenon seen in chronic pain patients of seeking secondary gain, influenced her perceptions of his examination of her.
Respondent's Post Hearing Brief, pages 33-37.

The Division argues that DJ is a credible witness and that Dr. Salvi's arguments are not valid. State's Closing Arguments, pages 9-12.

B. Admissibility of Dr. Robert Gatchel's Testimony

In reference to the testimony of Dr. Robert Gatchel, the Division objected to the admission of Exhibits 28 and 29. Exhibit 28 is a transcript of Dr. Gatchel's deposition testimony. Exhibit is a recording (DVD) of the same deposition. Tr. p. 76-79.

The Division's objection was raised at the deposition and at the hearing. Based upon the arguments of the parties at the hearing, it was determined that the Exhibits would be admitted into evidence. After further objections by the Division, it was decided that ruling on the objection would be taken under advisement. Tr. p. 80, 750.

The Division's objection is that Dr. Gatchel's testimony will state that Patients AG, SS, KF and DJ had psychosocial stressors which affected their memory, could potentially have affected their memory and caused them to misperceive events. The Division argues that Dr. Gatchel admits that he never saw the patient and he admits that he would only be speculating or hazarding a guess as to whether the patients had psychosocial stressors or had memory or perception issues. Dr. Gatchel also did not review the psychological histories of the patients. Tr. p. 76-79; State's Closing Arguments, p. 22-26.

Dr. Salvi objected to the Division making the motion at the hearing without notice. Dr. Salvi argues that Dr. Gatchel's opinion is a well-founded opinion based on years of research about people who have chronic pain and fibromyalgia. Dr. Salvi also states that Dr. Gatchel does not comment specifically in his direct testimony on the credibility of the witnesses. He provides background testimony which will help to interpret the witnesses. Tr. p. 76-79; Respondent's Post Hearing Brief, p. 45-55.

In my opinion, Dr. Gatchel's testimony (Exhibit 28 and 29) should be excluded primarily because he new saw the patients and he did not review their medical records. He would only be

able to testify as to how an individual might behave or react under a given set of circumstances. Dr. Salvi argues that it is not necessary for an expert to examine a person to have an opinion relevant to the dispute, so long as the general testimony can be tied to the evidence in the case. In my opinion, Dr. Gatchel's opinion cannot be tied to the evidence in this case. Therefore, in my opinion, such testimony would be irrelevant and misleading.

C. Analysis

Patients AG, SS, KF and DJ testified that Dr. Salvi touched them in a sexual manner during their office visit with him. Dr. Salvi denies that he touched them in a sexual manner.

In his closing arguments, Dr. Salvi implies that he is more credible than his patients are because, according to him, he has an "impeccable reputation", and because his patients either misinterpreted the manner in which he touched them or they are seeking "secondary gains" or some personal benefits.

In my opinion, Patients AG, SS, KF and DJ are more credible than Dr. Salvi. In general, there was no indication in their demeanor or in their testimony that they misinterpreted or misrepresented the manner in which Dr. Salvi touched them; that they were not being truthful, or that they had some hidden motives. They are ordinary women who were seeking relief from their pain and who happen to receive a referral to Dr. Salvi for evaluation of their pain. Prior to the time that they filed their complaints with the hospital, they did not know of each other. They had never seen each other until they appeared at the hearing. Yet, their recollection of Dr. Salvi's conduct is strikingly similar, right down to the detail about Dr. Salvi rolling around on a stool. Both AG and KF described how Dr. Salvi rolled his stool close to them so that he sat between their legs when he touched them on their thighs.

In addition, all of the patients reported Dr. Salvi's misconduct to a relative or friend or to law enforcement officials within a short period of time after Dr. Salvi touched them. Except for Patient KF, they all refused to schedule follow-up visits with Dr. Salvi after his misconduct. Patient KF testified that she went back to see Dr. Salvi because, under the Worker's Compensation Program, she was not allowed to see her own doctor. After KF's second visit, when Dr. Salvi squeezed her breasts, she said that after she left his office she went straight to her supervisor at work to complain so that she could get a different doctor through the Worker's Compensation Program. Also, all of the patients had seen multiple health care providers, for various reasons, prior to seeing Dr. Salvi. They all had some idea what to expect during a medical examination and they all knew the difference between a clinical touch and a sensual or sexual touch.

Also, all of the patients said they felt violated as a result of Dr. Salvi's misconduct. Patient AG said she "felt kind of intimidated" and "scared". She said she just wanted to get out of his office. Patient SS testified that she could not believe what had happened; it was surprising and

she did not expect it to happen. When she left Dr. Salvi's office she cried all the way home. She told her husband and other relatives what had happened. Then, she called the rape crisis hotline. Patient KF said she felt violated and very uncomfortable as a woman. Patient DJ testified in reference to her first visit that Dr. Salvi made her feel uncomfortable. After her second visit with Dr. Salvi, when he "grabbed her vagina", she said that she "was in shock".

Finally, there was absolutely no medical reason for Dr. Salvi to touch Patients AG, SS, KF and DJ in the manner that he did. None of the reasons that he gave or the arguments that he made to rationale his behavior justify his misconduct. He has betrayed the trust of his patients and the public.

V. Discipline

Having found that Dr. Salvi violated laws relating to the practice of medicine, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Medical Examining Board is authorized under Wis. Stat. § 448.02 (3) (c), to warn or reprimand a person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to a person if it finds that the person is guilty of unprofessional conduct or negligence in treatment.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Dr. Salvi's license be revoked or at a minimum that his license be suspended for at least 2 years. Dr. Salvi recommends that this matter be dismissed.

Based upon the evidence presented, the Administrative Law Judge recommends that Dr. Salvi's license to practice medicine and surgery be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct. Dr. Salvi has been entrusted with a license to practice medicine and surgery in the State of Wisconsin. He has violated that trust by his taking advantage of his patients' pain and vulnerability. Dr. Salvi may at any time petition the Board for restoration of his license by providing evidence satisfactory to the Board that he is capable of practicing in a manner that safeguards the interest of the public.

VI. Costs of the Proceeding

Wis. Stat. § 440.22 (2) provides in relevant part:

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 Medical 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 Administrative Law Judge’s recommendation and the Medical Examining Board’s decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court’s decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, *see* Supreme Court Rule 22.24(1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) Any other relevant circumstances.

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to Dr. Salvi. First, the Division of Enforcement alleged in its Complaint that Dr. Salvi violated numerous laws relating to the practice of medicine and surgery. The evidence presented establishes that the violations occurred. Second, the recommendation that Dr. Salvi's license be revoked reflects the serious nature of the unprofessional conduct established by the evidence. He violated the trust placed in him when the Board granted him a license and he took advantage of his patients who were already suffering from pain.

EXPLANATION OF VARIANCE

Based upon a review of the record, the written Objections to the Proposed Decision and the Oral Argument of the parties, the Board is persuaded that the objectives of professional discipline can be adequately served by the imposition of disciplinary limitations upon the Respondent's medical license short of a revocation of licensure. Accordingly, the Board chooses to issuance a variance to the Proposed Decision of the Administrative Law Judge, Ruby Jefferson-Moore, only as to recommended level of discipline. The Board explains herein the reasons for the variance of the Proposed Decision and for the limitations which shall be placed upon the Respondent's privilege to practice medicine in this state.

The objectives of professional discipline are (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). The suspension of the Respondent's license achieves the goals of professional discipline in a manner that achieves the purpose of professional discipline without unduly sanctioning the Respondent beyond what is realistically necessary to protect the public.

There is evidence in the record of Respondent's potential for rehabilitation. The Respondent has practiced medicine for a total of 16 years, without prior allegations of unprofessional conduct or disciplinary action. The current complaints, which are the first and only complaints involving the Respondent, arose when the Respondent had apparently altered his routine and customary examination practices. Subsequent to the complaints and in effort to improve the safety of his practice, the Respondent has obtained continuing education to address the problems associated with patient interaction and with professional boundaries. The Respondent also changed the manner in which he performs physical examinations to reduce the possibility of adverse interactions in regard to his female patients. The Respondent has practiced medicine for several years since the alleged misconduct under altered and improved examination and treatment conditions and with the presence of a nurse chaperone. The Board is not aware of any new complaints involving misconduct by the Respondent since the apparent change in his examination techniques including the use of nurse chaperoning.

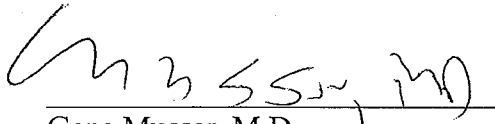
In addition, the Respondent has not been determined to have an underlying sexual impulse control disorder. Finally, because the Respondent has voluntarily and successfully completed continuing education in the area of professional boundaries, including the PACE Professional Boundaries Program at the University of California, San Diego, there is evidence showing that Respondent is a candidate for rehabilitation.

The initial limitations placed upon the Respondent's medical practice, including the chaperone and notice requirements, and monitoring by the Board are reasonably sufficient measures to ensure public safety. The additional requirement that Respondent must be evaluated, treated as appropriate by a recognized expert in the field of professional boundaries and must implement any practice setting recommendations made by this expert will add further assurance to the goal of public protection and patient safety.

The only remaining goal to be achieved in this case is deterrence; to discourage other licensees from engaging in similar misconduct. The length of the suspension, monitoring and requirements for treatment are significant and will serve as a meaningful deterrent to others. Additionally, should the Respondent fail to fulfill the requirements for a stay of suspension, the stay will be immediately removed and Respondent's license will be suspended until he comes into compliance with the limitations on his license.

Dated at Madison, Wisconsin this 16th day of September, 2009.

WISCONSIN MEDICAL EXAMINING BOARD



Gene Musser, M.D.
Chair of the Board

9/16/09
Date