

BEFORE THE IOWA BOARD OF CHIROPRACTIC

In the Matter of:)	DIA NO: 12ICB003
)	CASE NO: 12-005
)	
Stuart Hoven, D.C.)	
License No. 06439)	FINDINGS of FACT,
)	CONCLUSIONS of LAW,
Respondent.)	and ORDER

On January 9, 2013, the Iowa Board of Chiropractic (the Board) issued a decision and order suspending the license of respondent Stuart Hoven for violation of Board regulations concerning unethical conduct by engaging in sexual contact with two female patients. On March 1, 2013, respondent filed an application for reinstatement. The application was set for hearing and heard at the Board’s headquarters on July 10, 2013. The following board members were present for the hearing: John Calisesi, D.C., David Gehling, D.C., Aaron Martin, D.C., Jason Wall, D.C., Nancy Kahle, D.C., Joellen Jensen, and Julie Mueller. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the board. Meghan Gavin, an assistant attorney general, represented the public interest. Attorney Michael Sellers represented respondent. The hearing was closed to the public at the election of the licensee.¹

THE RECORD

The State’s exhibits 1-19 were admitted. Respondent’s exhibit A was admitted. Respondent testified on his own behalf.

FINDINGS OF FACT

First statement of charges: Respondent has practice chiropractic in Iowa since obtaining his license in 2001. He has practiced primarily in Winterset, Iowa. On October 29, 2004, the Board filed a statement of charges against respondent. The charges alleged that respondent made inappropriate sexual comments to, and engaged in inappropriate sexual contact with two female patients. (Exhibits 13-14).

Both patients testified at the hearing before the Board. The first testified that she engaged in some banter with respondent about her bra size and colors. When she told him she wore a 40F, respondent replied “an F? I’m used to a B.” Respondent continued to look at his patient’s breasts and told her that he was “obsessed” and “can’t stop looking at

¹ Iowa Code section 272C.6(1).

them.” At the end of the session, respondent asked his patient for a hug. She thought that unusual, but complied by offering an “arms length hug.” Respondent squeezed her against himself, put his hand underneath her bra, and said “whoa.” She pulled away from him. Respondent said that he better stop or he would be asking to see them. The patient said he had come “close enough,” and left the office. (Exhibit 14).

Respondent’s second patient testified that she arrived for her appointment and put on an examination smock. She told him about an incident at work in which she was rubbing her collarbone and a coworker told her it looked like she was giving herself a breast exam. Respondent asked her when she had her last breast exam. She replied that she had an appointment scheduled with her OB/GYN. As she was lying on the treatment table, respondent again asked her about her last breast exam. She again replied that she had one scheduled, but respondent started to do what purported to be a breast exam over the top of her examination smock. The patient asked respondent about a problem with her lower ribs and asked if she should wear a sports bra instead of an underwire bra. Respondent replied “or none at all.” The patient testified she was offended by this comment. (Exhibit 14).

After respondent completed the “breast examination,” his patient sat up, and respondent reached over and squeezed each of her breasts over the smock. She knew that something was wrong. Respondent then rubbed his hand across her breast nipple. The patient turned to leave, and respondent reached from behind her and cupped her breast, stating “more than a handful is a waste.” The patient said “we’re done here,” and respondent replied “for now.” The patient then got dressed and left the office. (Exhibit 14).

In a decision and order dated April 27, 2005, the Board determined that respondent committed the violations as charged. The Board assessed the credibility of each witness, finding both patients’ testimony to be more credible than respondent’s explanations and denials. The Board indefinitely suspended respondent’s license to practice. The Board held that the suspension would continue until respondent submitted to a comprehensive evaluation from a Board-approved provider, followed all treatment recommendations, and received a statement from an evaluator that he was safe to return to practice. (Exhibit 14).

Respondent immediately set up an evaluation with the Center for Marital and Sexual Health (the Center) in Beachwood, Ohio. The evaluation was conducted over two days from May 5-6, 2005. On May 16, 2005, the Center issued a report finding that respondent could safely return to practice with a number of conditions. The conditions included education on boundaries, requiring a female chaperone in the examination room, offering patient satisfaction cards, periodic meetings with a Board investigator, and mental health therapy. (Exhibit 15).

On July 15, 2005, the Board filed an order granting reinstatement, subject to five years of probation and a number of conditions (many of which were consistent with the recommendations from the Center). In or around April of 2006, Respondent filed a motion to amend the reinstatement order to eliminate the requirement of a female chaperone from the examination room. The Board refused to grant that request, and told him it would not consider granting a release of that condition until July of 2007. (Exhibits 16-17).

On July 11, 2007, respondent appeared before the Board to request termination of his probation or, in the alternative, to eliminate the chaperone requirement. The Board denied the request to terminate probation, but granted the request to eliminate the chaperone requirement. The Board noted that respondent had complied with all terms of the reinstatement order to date, but “it does not appear he has accepted full personal responsibility for the misconduct he engaged in, nor does it appear he is remorseful regarding the harm suffered by his patients in this case.” Respondent served the full term of his probation and was not finally released from all requirements until July 15, 2010. (Exhibits 18-19).

Second statement of charges: On April 26, 2012, the Board filed a second statement of charges and emergency adjudicative order regarding a patient that reported respondent grabbed her breasts during an examination. The State amended its charges to include a second patient who alleged respondent grabbed her breast during an examination. (Exhibits 1-5).

Both patients testified at the hearing before the Board, which was held on October 10-11, 2012.² The first patient and respondent were clients of each other: she saw him for chiropractic services, and he saw her for massage therapy services. She testified to several incidents in which respondent had engaged in inappropriate conduct, some involving her massage business and some during chiropractic services. At least four of the incidents included references to her breasts, or her taking off her shirt. She attempted to resolve his conduct by spacing out appointments, and later, by asking respondent to keep their relationship professional. At one point, the patient’s husband confronted respondent about whether he was engaged in an affair with his wife. Respondent assured him there was nothing inappropriate between the two. (Exhibit 5).

On February 14, 2012, the first patient attended an appointment with respondent after slipping on some ice. Respondent performed the adjustment with no incident. A second appointment was made for later in the day to take an x-ray. Respondent’s patient returned to the office, took off her shirt and bra, and put on an examination smock. Respondent was the only staff member in the x-ray room. He took the x-ray, and then

² Both patients referred to under the second statement of charges are different than the two patients referred to under the first statement of charges.

reached around her from behind and grabbed and squeezed her right breast. He did the same with her left breast, and lifted up both breasts. Respondent did not give any treatment reason for touching, grabbing, or lifting her breasts. She was shocked by the events and did not know what to do. She got dressed, paid her bill, and left the office. (Exhibit 5).

The first patient went back to her business and called her husband. The husband went to respondent's office to confront him. The husband testified at hearing that respondent admitted touching the patient's breasts and apologized. They met again later that evening. The husband testified that respondent again apologized, describing his conduct as a "five or ten second mistake." (Exhibit 5).

The second patient testified that she saw respondent in January and February of 2009 for headaches and hip pain. During her first visit, she had changed into a gown, but left on her bra and pants. Respondent entered the room and instructed her to remove her bra. She did, as respondent remained in the room. Respondent ran a machine up and down her back, and told her he was going to feel her back for alignment. He cupped her left breast over her gown for a matter of seconds. He did not tell her he was going to touch her breast. The patient was embarrassed and knew of no medical reason for him to touch her breast.

The second patient returned for another appointment so respondent could adjust her hip. During the session, respondent pressed against her from his chest to his mid-thigh and she felt he was rubbing against her. She discussed both incidents with her husband afterward. Her husband cautioned her that there may be a medical reason for the touching and she should be sure before she made a complaint. She cancelled further appointments with respondent after her third visit due to her discomfort, but did not make an official complaint. She later saw news coverage of the charges regarding the first patient, and reassessed her conduct toward her. She felt that respondent's conduct toward her was inappropriate, so she filed the complaint at that time. (Exhibit 5).

On January 9, 2013, the Board entered a decision finding respondent committed violations of Board rules regarding unethical conduct by engaging in sexual misconduct with two female patients. Like the decision on the first statement of charges, the Board found the testimony of the two patients to be more credible than respondent's explanations and denials. The Board ordered respondent's license to be suspended indefinitely, and directed him to submit to a comprehensive assessment regarding professional sexual misconduct at the Behavioral Medicine Institute (BMI). The Board also directed respondent to comply with any recommendations for treatment made by BMI. (Exhibit 5).

BMI assessment: Respondent appeared for his assessment at BMI on February 4-6, 2013. BMI found that respondent was not currently safe to practice chiropractic care due

to his professional sexual misconduct and two disciplinary actions. BMI found multiple contributing factors that led to his misconduct, including his need to be admired, his lack of empathy for others, his grandiose sense of self-importance, and his sense of entitlement. The BMI report stated that respondent had acknowledged how his self-centeredness and sense of entitlement negatively impacted the manner he approached his prior disciplinary action with the Board. (Exhibit 6).

BMI recommended that respondent complete a full course of professional sexual misconduct-specific treatment before being considered for re-licensure. BMI made clear that respondent would not benefit from a three day professional boundary course (emphasis by BMI). BMI recommended a full intensive course of professional sexual misconduct-specific treatment. The report listed four providers that offered such treatment. The report also recommended that respondent continue individual psychotherapy to address his chronic behavioral and characterologic traits that have impacted his occupational functioning and relational style with others. (Exhibit 6).

BMI found that, if the aforementioned recommendations are “successfully completed,” there is a “probability that [respondent] could be deemed safe to return to chiropractic practice.” The report then listed a number of conditions that should apply to reinstatement, if granted, including: a) staff surveillance forms, b) patient surveillance forms, c) female chaperones during examinations of female patients, d) extensive supervision by a professional mentor, e) polygraphing, and f) reports to the Board. (Exhibit 6).

Treatment and further proceedings: On March 1, 2013, respondent filed an application for reinstatement of license. The application stated that respondent completed the assessment at BMI, and complied with the treatment requirement through treatment at Acumen. The reference to Acumen is to Acumen Institute, one of the treatment providers listed in BMI report as providing a treatment program appropriate for respondent. The application stated that respondent had complied with all requirements of the Board’s January 9, 2013 order. (Exhibit 7).

Respondent had not complied with all requirements of the Board’s January 9, 2013 order, because he had not completed with all recommendations for treatment by BMI. Respondent entered the Acumen program on February 25, 2013, and was not released until March 15, 2013. At the time he filed his application for reinstatement, he was only four days into his treatment. Further, Acumen’s treatment plan requires him to return on a quarterly basis for two one-week sessions, before completing treatment after one year with a three-day group and individual follow-up. The final follow-up is scheduled for March 12-14, 2014. The follow-up process will include a review of the implementation of his “structured risk management practice plan” and maintenance polygraph examinations. (Exhibit 8; respondent testimony).

On March 22, 2013, Acumen issued a report summarizing the first three-week treatment session. Acumen reported that respondent successfully complete the first phase of its treatment program. The provider believes that, based on respondent's response to treatment, he is safe to return to practice, as long as he adheres to a number of recommendations. The recommendations include: a) successfully continue the quarterly treatment protocol set by Acumen, b) individual and couple's counseling, c) a monitored practice including surveillance forms, female chaperones, professional mentor, maintenance polygraphs, and quarterly reports. (Exhibit 8).

On April 9, 2013, after the State filed a resistance to the application for reinstatement, Dr. Peter Graham from Acumen issued a letter more specifically directed to the application for reinstatement. Dr. Graham stated that Acumen developed its recommendation and plan for respondent based on his "ability to resume practice right away absent some specific public safety objection." Acumen intends to use its follow-up sessions, in part, to monitor respondent's rehabilitation in the context of a practice setting. Dr. Graham reiterated his belief that respondent is safe to return to practice under the conditions previously referenced. However, the letter recognized that the Board has the sole authority to reinstate a license, and Acumen defers to the Board's decision on respondent's case. (Exhibit 9).

Appellant testimony: Respondent made some positive statements during his testimony, but the Board continues to have concerns about his reinstatement. For example, respondent was asked about filing for reinstatement prior to completing his first session with Acumen. He initially responded that he had been at Acumen for two weeks and knew by that point that Acumen would recommend he return to practice. However, after being presented with the actual dates showing he had only been in the program for four days, he acknowledged that he filed the application so he could get on the Board's March of 2013 agenda, and felt he was "doing what the Board wanted" him to do. (Respondent testimony).

Respondent admitted that he did not take the Board's requirements seriously after the order on the first statement of charges. He even characterized the evaluator (Dr. Stephen Levine) as telling him to just comply with the Board's order. His attitude reflected using a minimal effort to comply. He testified that he has more personal insight after taking the Acumen treatment program, and much better understands the harm he caused to others and the need to follow boundaries. (Respondent testimony).

Still, when asked about the two victims from the second statement of charges, respondent did not explicitly admit sexual contact; rather, he only admitted that he caused harm by failing to manage his relationship with the first patient. Respondent continues to deny sexual contact with the second patient. He maintains an appeal of the Board's decision on the statement of charges, including a challenge of the evidence supporting the Board's findings of sexual contact. (Respondent testimony).

Respondent offered to accept all conditions designated out by BMI and Acumen if the Board approves his application. This is not surprising because they are similar to the terms the Board imposed after granting his application for reinstatement in 2005, and the Board's January 9, 2013 decision states that reinstatement would not be considered absent compliance with all treatment recommendations. Respondent specifically discussed the chaperone requirement at hearing. He admitted that he had disdain for the requirement when imposed in 2005, but sees the benefit now. In doing so, he made concerning comments. Respondent testified how the chaperone can dictate notes in real time, and then referenced protecting his patients and himself. Respondent seeming wants to justify the chaperone for administrative purposes, rather than being willing to admit that the condition results from his repeated misconduct. (Respondent testimony).

Respondent expressed his intent to complete all treatment and continue therapy as needed. He would like to continue to work with Dr. Graham when his treatment with Acumen is complete, whether through follow-up or in a mentoring relationship. Respondent expressed an interest to return to practice because he enjoys helping people get better. He is considering serving as an instructor on boundary issues to help others avoid the mistakes he has made. (Respondent testimony).

CONCLUSIONS OF LAW

Regulatory framework: The Iowa Board of Chiropractic (the Board) was created by the legislature pursuant to Iowa Code section 147.13(5) and Iowa Code chapter 151. The Board has the responsibility to establish qualification to obtain licensure, and to enforce Board standards through disciplinary actions after a chiropractor is licensed.³ The Board has a range of disciplinary options, including revocation, suspension, probation, requiring additional education or training, civil penalties, and a citation and warning.⁴

After the Board suspends or revokes a license, it may consider an application for reinstatement.⁵ A person must meet all terms of the order that revoked or suspended the license. If the order did not set forth conditions, the person must wait at least one year before applying for reinstatement. The applicant has the burden of proving that the basis for the revocation or suspension no longer exists and that the public interest will be served by reinstatement.

Analysis: The troubling aspect of respondent's application is how closely it tracks his application for reinstatement after the Board suspended his license in 2005. Respondent had committed unethical conduct by touching or grabbing the breasts of two female

³ Iowa Code sections 147.34, 147.55, 151.3.

⁴ 645 IAC 45.3.

⁵ 645 Iowa Administrative Code 11.31.

patients. The Board suspended respondent's license on April 27, 2005. From that point, respondent started a race to reinstatement. He participated in a Board-required evaluation on May 5-6, 2005, and filed his application for license reinstatement very shortly thereafter. Respondent did and said all the right things during his evaluation and during his application to the Board. The Board approved the application on July 15, 2005, subject to a number of conditions. Respondent's license was reinstated less than three months after the Board imposed the suspension.

Notwithstanding the Board's disciplinary action and the resulting treatment and practice conditions, respondent again violated the Board's rules on unethical conduct through sexual contact with the breasts of two female patients. The conduct was very similar to the earlier violations. Respondent clearly did not take his treatment or the Board's disciplinary action seriously. Respondent himself admitted that he held the Board's action in disdain.

Respondent argued that he has taken his treatment seriously this time. He argued that he has learned from the treatment and now understands the harm he committed. He agreed to accept any conditions imposed by the Board.

Similar to the first case, respondent again followed a course set out by the Board in an attempt to quickly obtain re-licensure. The Board issued its order on January 9, 2013, and respondent attended the Board-ordered assessment with BMI on February 4-6, 2013. While BMI found respondent unsafe to practice, he followed up by attending treatment at Acumen, one of the providers recommended by BMI, from February 25, 2013 through March 15, 2013. He filed an application for reinstatement on March 1, 2013, less than two months following the Board's order finding he had victimized a third and fourth patient in his career.

Respondent's application for reinstatement appears to be a repeated attempt to get his license back as quickly as possible, rather than showing he can safely return to practice. Respondent was only four days into his treatment at Acumen when he filed his application for reinstatement. At that moment in time, respondent was subject to a BMI recommendation that he was not safe to practice, and had not completed even a week of his three-week session with Acumen. Respondent admitted during his testimony that he filed the application early so he could get on the Board's March agenda. The timing of the application shows a continuation of his characteristics of self-importance and sense of entitlement that BMI held contributed to his continuing course of sexual misconduct.

In support of its finding, BMI cited acts of sexual misconduct with two patients that followed prior Board action involving sexual misconduct with two other patients. BMI did not find that respondent would be safe to practice once he completed an intensive treatment program; it only found that respondent should attend such treatment before reinstatement is considered. Even then, BMI was cautious with its language. The report

stated that: “If the treatment recommendations are successfully completed there is a probability that [respondent] could be deemed safe to return to chiropractic practice.” (emphasis added). BMI offered no guarantees or assurance. The report emphasizes that the decision to reinstate ultimately lies with the Board.

Acumen has recommended that respondent return to practice so that it can monitor and assess compliance in future sessions. However, Acumen also recognized, as it must, that the Board ultimately decides whether to reinstate a license. Respondent has continued the treatment schedule originally set out by Acumen, even though he has not returned to practice. He committed to the Board that he will complete the program. The Board sees value in him finishing the entire program before considering returning to practice.

Respondent continues to exhibit signs of concern as outlined in the findings of fact, including filing his application prior to completing treatment, minimizing his misconduct, and misidentifying the primary purpose of chaperones to prevent him from engaging in further misconduct. His claim that he needs to return to practice to meet Acumen’s treatment plan gives the appearance that he is setting up an argument to blame the Board for future violations if he later fails treatment and victimizes a fifth patient. Respondent seems to forget that it is his burden to show that, through treatment and other evidence, that he is no longer a threat to sexually assault female chiropractic patients.

Respondent certainly has an interest and desire to return to practice. The Board has an interest and desire as well: To protect the public from future acts of sexual misconduct. That is the Board’s responsibility as commanded by the legislature. Respondent breached the public trust when he engaged in sexual contact with patients prior to 2005. The Board took action to protect the public at that time by suspending respondent’s license, requiring a comprehensive evaluation, and later reinstating his license subject to work conditions. Those significant and serious steps did not work – respondent breached the public trust again through his sexual misconduct with two additional patients. Respondent now wishes to follow a similar rush to return to practice. The Board is not willing to risk returning respondent to practice before he can prove to the Board that he is not a danger to the public welfare. He has yet to do that.

Based on the record before the Board, it finds that the following course shall be completed as a condition to filing any new application for reinstatement. Respondent shall complete his treatment at Acumen as scheduled. The schedule provides for a final follow-up on March 12-14, 2014. If Acumen issues a report stating that respondent is safe to return to practice after the March 12-14, 2014 session, respondent shall return to BMI for a comprehensive in-person evaluation. This will allow BMI to reevaluate its prior finding that respondent is not safe to practice, after considering the treatment he has received at Acumen. Respondent shall provide BMI a release to receive records from Acumen, and provide BMI a copy of this order. The Respondent shall sign a release allowing the Board to communicate with both BMI and Acumen and for BMI and

Acumen to communicate with the Board. Copies of the release shall be provided to the Board, BMI and Acumen. Respondent shall pay the costs of all treatment and the evaluation at BMI.

If BMI finds that respondent is safe to return to practice, respondent may file an application for reinstatement with the Board. Any such application shall be accompanied by a signed release for both providers, BMI and Acumen, and include all reports issued by Acumen and BMI. The Board will not consider an application that is filed prior to BMI issuing its written report on reevaluation and receipt of that written report by the Board directly from BMI. The Board may consider reinstatement at that time based on the legal standard and record made. The Board may also impose any practice conditions that the Board believes needed to protect the public interest.

DECISION AND ORDER

Respondent's application for reinstatement is denied. Respondent shall not file a new application for reinstatement until the above-referenced conditions are met.

Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing and \$ 68.75 for the court reporter. Respondent shall remit \$ 143.75 for these expenses within thirty days of receipt of the bill. In addition, the executive secretary of the board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing that shall be paid within thirty days of receipt of the bill.

Dated this 9th day of September, 2013.



John Calisesi, D.C., Chairperson
Iowa Board of Chiropractic

cc: Meghan Gavin, Assistant Attorney General
Respondent

Notice

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.