

BEFORE THE IOWA BOARD OF CHIROPRACTIC

IN THE MATTER OF)	CASE NO. 10-23
)	
DANIEL DUFFY, D.C.,)	EMERGENCY ADJUDICATIVE
)	ORDER
Respondent.)	

COMES NOW the Iowa Board of Chiropractic, on this 2nd day of September, 2010, and finds it was presented with evidence which establishes that Respondent's continued practice as a chiropractor constitutes an immediate danger to the public health, safety, and welfare. A summary of the evidence obtained by the Board is as follows:

FINDINGS OF FACT

1. The Board has jurisdiction of this matter pursuant to Iowa Code Chapters 147, 151, and 272C.
2. Respondent was issued license number A06101 to practice as a chiropractor in the State of Iowa on February 24, 1998. The license is current through June 30, 2012.
3. Respondent is a chiropractor practicing in Perry, Iowa.
4. On August 17, 2010, in Dallas County District Court for the State of Iowa, Respondent was charged with one count of Assault.
5. The charge relates to an adult female patient and alleges that Respondent masturbated while treating the patient, touched his penis to her lower back, and ejaculated on the patient's lower back. Buccal swabs were obtained from the patient's lower back. A DNA profile was obtained from the sperm present on the swab. A buccal swab was obtained from Respondent. The DNA profile obtained from the sperm from the patient's back matched the DNA profile of Respondent.
6. Respondent was released on bail and continues to practice chiropractic.
7. Respondent has not been convicted of the allegation.
8. The Board concludes that its investigation is sufficient to ensure the Board is proceeding on reliable information received from the criminal complaint and its own investigation. The information, if proven at hearing, would indicate that Respondent's conduct constitutes unethical conduct and practice harmful or detrimental to the public, in violation of Iowa Code section 151.9(3) and (8), 147.55(3) and (8), 272C.10(3) and (8), and 645 IAC 45.2(3) and (28)(b).

CONCLUSIONS OF LAW

9. In a contested case proceeding, if sufficient evidence is presented to prove an allegation and the Board finds the action constitutes a violation, the Board has the authority to impose disciplinary sanctions including civil penalty, additional education or training, probation, suspension, or revocation of a license. 645 Iowa Administrative Code 45.3.

10. However, in an emergency adjudicative order, “[an] agency may only take such action as is necessary to prevent or avoid the immediate danger to the public, health, safety, or welfare that justifies use of emergency adjudication.” Iowa Code § 17A.18A(2).

11. “Before issuing an emergency adjudicative order, the board shall consider ... whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information, whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing, whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare, whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare, and whether the specific action contemplated by the board is necessary to avoid the immediate danger.” 645 Iowa Administrative Code 11.28(2).

12. The facts set forth above establish that Respondent’s continued practice as a chiropractor poses an immediate danger to the public health, safety, or welfare.

13. The information gathered regarding Respondent’s conduct while purporting to perform chiropractic raise global concerns regarding his ability to safely and appropriately practice.

14. Respondent’s continued practice poses a serious and immediate danger to his female patients that cannot be addressed through any means other than the imposition of interim safeguards until such a time as the Board can reach a final decision in a contested case against him.

15. The Board finds the following monitoring requirements and other interim safeguards would be sufficient to protect the public health, safety, or welfare until this case is finally resolved or until such time the Board receives satisfactory evidence of Respondent’s fitness to practice:

- a. Respondent shall have a non-family member female chaperone present at all times he is providing chiropractic treatment to a female patient. The chaperone’s presence shall be documented in each patient record by the chaperone. Respondent shall not provide services to a female patient if the chaperone is unavailable. Within ten days from the date of this Order,

Respondent shall provide the Board with all relevant information regarding his chaperone, including name, contact information, position, and relationship.

- b. Respondent shall provide a copy of this Order to each employee and staff person working in his practice. Respondent shall provide a signed verification from each employee documenting receipt of the Order to the Board within ten days of the date of this order.
 - c. Respondent shall provide a copy of this Order to each female patient prior to providing chiropractic treatment. Respondent shall have each patient sign a verification of receipt and keep the verification as part of the patient's record. If the female patient is under 18 years of age, Respondent shall provide a copy of this Order to the patient's parent or legal guardian and have the parent or legal guardian sign a verification of receipt to be kept as part of the patient's record.
 - d. Within ten days of the date of this Order and weekly thereafter, Respondent shall provide the Board with a log, signed by the chaperone and each female patient, documenting notification and the chaperone's presence for each appointment with a female patient.
16. Respondent shall be notified immediately of this order pursuant to 645 Iowa Administrative Code 11.28(3).

ORDER

IT IS HEREBY ORDERED, in accordance with Iowa Code Section 17A.18A (2009) and 645 IAC 11.28, that Respondent's license be subject to the above-stated restrictions to practice as a chiropractor pending further order of the Board.

A hearing on this Emergency Adjudicative Order shall be held on September 29, 2010. The hearing will begin at 9:00 a.m. and will be held at the Board conference room, 5th Floor, Lucas State Office Building, Des Moines, IA 50319.

This Emergency Adjudicative Order was approved by the board September 2, 2010