

STATE OF IOWA  
BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS

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IN THE MATTER OF:	)	DIA No: 05DPHCB001
	)	Case Nos: CH 099-020,00-027,
	)	04-008, 04-011
WARREN SHOEMAKER, D.C.,	)	
License No. 022 04406	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>DECISION and ORDER</b>

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This matter concerns a statement of charges filed against respondent Warren Shoemaker, D.C., on February 24, 2005. Respondent was charged with three violations: 1) failure to comply with orders of the Board of Chiropractic Examiners (the board), 2) practicing while his license was lapsed, and 3) engaging in unethical conduct or practice that is harmful or detrimental to the public.

The case was set for hearing before the board on July 12, 2005, at the Lucas State Office Building in Des Moines. The following board members were present for the hearing: Valorie Prah, D.C., Steven Kraus, D.C., Kathleen Doohen, D.C., Michael Powell, D.C., Rodney Rebarcak, D.C., Karen Whalen, and Diane Puthoff. Jeffrey Farrell, an administrative law judge (ALJ) from the Iowa Department of Inspections and Appeals, assisted the board. Assistant Attorney General Theresa Weeg represented the public interest. Attorney Thomas Marion represented respondent.

**THE RECORD**

The State called Patient No. 1, Captain Kevin Church, and Darby Matteson as witnesses.<sup>1</sup> The State's exhibits 1-13 were admitted without objection. The State's exhibits 14-15 were admitted over respondent's objection.

Respondent testified on his own behalf. Respondent also called his wife (and office manager), Kathy Shoemaker, as a witness.

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<sup>1</sup> The parties agreed that the complaining witness should be referred to as "Patient No. 1" in this decision. The decision also refers to Patient No. 1 as "P1."

**FINDING OF FACTS**

**1999 statement of charges:** The board has filed three statements of charges against respondent over the past six years. The first statement of charges was filed on October 20, 1999. The State alleged that respondent committed the following three violations: 1) deviating from the standard of learning or skill ordinarily possessed and applied by chiropractic physicians, 2) failing to exercise the degree of care ordinarily exercised by the average chiropractor, and 3) engaging in harmful or detrimental practices by making suggestive, lewd, lascivious or improper remarks or advances to a patient. (Exhibit 2).

The 1999 statement of charges revolve around respondent's treatment of a female patient in April of 1999. The patient testified that she acknowledged breast pain during the course of a chiropractic treatment. The patient testified that respondent responded by telling her that her body was "full of poison." He then began to massage her breasts as a means to release the poison. She did not ask him to massage her breasts or treat her breast pain in any other way. The patient testified that respondent had an erection as he massaged her breasts. (Exhibit 2).

The patient also testified that respondent asked her if she had ever been raped. She acknowledged that she had. He then massaged her temples after directing her to think about the rape. He later touched the palm of her hand and asked her if she felt it "down there." He then touched her pelvic area lightly. He told her that she needed to get "past that" if she was going to have a good relationship with her boyfriend. (Exhibit 2).

Respondent denied the patient's characterization of the session. Respondent testified that he identified excessive toxins in the patients' breasts through the use of applied kinesiology. He testified that he discussed breast massage with the patient, but denied actually performing a massage. He testified that he told the patient to have her boyfriend massage her breasts after a hot shower to release the toxins from her body. He said that he demonstrated proper breast massage by moving his hands above her breasts without actually touching them. (Exhibit 2).

The board found that respondent committed violations of all three charges. The board was unable to conclude that respondent massaged the patient's breasts, or that he had any lewd or

lascivious intentions that motivated his treatment. However, the board found that respondent used techniques on which he was not adequately trained, that he failed to exercise a proper level of care, and his treatment and comments made during the session were harmful or detrimental to the public. (Exhibit 2).

The board placed respondent on probation for three years, ordered continuing education on professional boundaries, and ordered professional review through the term of probation. The board also prohibited respondent from engaging in "acupuncture, acupressure, applied kinesiology, or meridian therapy" unless he completed approved course work and provided documentation to the board that he passed proficiency exams for each treatment technique. (Exhibit 2).

**2001 statement of charges:** A second complaint was filed against respondent in 2000 after the board entered its decision on the first statement of charges. The complaint concerned allegations that took place in 1993. The board and respondent entered into a consent agreement regarding the second complaint. The consent order was filed on September 26, 2001. (Exhibit 3).

The 2001 statement of charges alleged the same three violations as the 1999 charges, but concerned a different patient. The patient sought treatment for numbness in her arm, chest pains, and dizziness. Respondent inappropriately and without chiropractic necessity touched the patient. Respondent made several statements of a sexual nature to the patient which were inappropriate and without chiropractic necessity. The conduct and statements are not described in detail in the order. Respondent admitted the allegations, and that his conduct constituted violations of the cited statutes and regulations. (Exhibit 3).

The board found violations of all three charges. The board extended respondent's probation for an additional two years to July 28, 2005. The order otherwise confirmed the order entered on the 1999 charges. (Exhibit 3).

**Patient No. 1's allegations and the resulting investigations:** P1 is an adult female who was not involved in the prior two statements of charges. P1 originally saw respondent to seek relief from chest pain. P1 learned about respondent through the recommendation of her pastor. The pastor and his wife had received treatment from respondent, and were satisfied with his care. P1's husband previously received treatment from

respondent. P1 attended her husband's visits. Her husband was satisfied with his care. P1 did not notice any thing unusual during his visits. (P1 testimony).

P1 saw respondent on May 9 and December 4, 2003. Her husband accompanied her on both visits and was present during treatment. She stated that nothing unusual occurred during either visit. (P1 testimony; Exhibits 8-9).

P1's third visit was on May 24, 2004. P1 felt chest pain and called respondent at approximately 5:00 p.m. to see if she could make a late appointment. Kathy Shoemaker told P1 they were making a house call, but could be back at the office around 5:30. P1's husband was working and did not accompany her to the appointment. P1's mother drove her to the appointment. Her mother stayed in the car with P1's three year old daughter. Respondent's wife was present in the office, but not in the treatment room. (P1 testimony; Exhibit 8).

Respondent first directed P1 to lie face down on his treatment table. They engaged in small talk as he got started. She told him she started nursing school. P1 testified that respondent then patted her on her rear end and commented that she should prepare to have "this chewed on." (P1 testimony).

Respondent performed an adjustment to her back, and then tilted the table to a nearly vertical position where she could stand. Respondent told P1 to turn around with her back to the table. He performed an adjustment on her neck. He remarked how she must be stressed. P1 testified that respondent was very close to her and that his crotch was touching her body. (P1 testimony).

P1 testified that respondent asked her what was stressing her. She replied that she might be stressed due to household money issues after she returned to school. P1 testified that respondent said, "that's not it," and again asked why she was stressed. P1 said she might be stressed because she just had a fight with her mother-in-law. Respondent again said "that's not it." (P1 testimony).

P1 testified that respondent then asked if she was cheating on her husband and if she had a boyfriend. She replied "no" and "no," and reminded him that she was married. Respondent then asked if she got wet enough while having sex with her husband. Respondent maintained physical contact with P1's legs throughout

the period he asked these questions. P1 testified that she was scared and wanted to leave. (P1 testimony).

Respondent told P1 he wanted to check her thyroid. Respondent initially touched the thyroid region on her neck. She testified that he then ran his fingers down her chest, between her breasts, and stopped at her groin area. She testified he held his finger for few seconds before removing it. The session was over shortly thereafter, and she immediately left to go home. (P1 testimony).

P1 testified that she got in the car and asked her mother to drive home. She testified that her mother could see she was upset, and got P1 to tell her what happened. P1 also talked to her husband, her pastor, and pastor's wife by cell phone. P1's mother drove to the Keokuk Police Department. P1 make a report. Captain Kevin Church later investigated the matter. No criminal charges were filed. (P1, Church testimony; Exhibit 6).

P1's pastor was interviewed by Captain Church and the board's investigator, Darby Matteson. The pastor stated that P1 was crying when he answered phone. The pastor reported that P1 told his wife that respondent patted her rear end while talking about her nursing classes. The pastor reported that P1 said that respondent asked her if she was moist after being intimate with her husband. (Exhibit 8; Church testimony).

The pastor later called respondent to ask what happened. Respondent denied patting P1's behind. Respondent said that he discussed whether P1 was moist during intimate relations with her husband. Respondent said he did this because P1 has a "hormonal imbalance," and that the question was medically necessary to his treatment. (Exhibit 8; Church testimony).

Ms. Matteson interviewed respondent on September 1, 2004. Ms. Shoemaker was present during the interview. Ms. Shoemaker confirmed that P1 called for an appointment late in the day on May 24. Ms. Shoemaker estimated that P1 arrived approximately 5:45 p.m. (Exhibit 8).

Respondent recalled that P1 was upset when she entered the treatment room. He said she told him that her best friend was in the hospital due to spousal abuse. She also told him she had been diagnosed with lupus since their last session. Respondent said that P1 mentioned she was attending nursing school, but he denied patting her on the rear end. (Exhibit 8).

Ms. Matteson reported that respondent denied asking P1 whether she got wet during sex with her husband. He stated that he felt she had a thyroid problem, and other patients with thyroid problems have told him they are dry during sexual relations. He told Ms. Matteson that he may have told P1 that a thyroid condition could affect sexual relations with her husband. Respondent said he recommended that P1 see her medical doctor to check her thyroid. (Exhibit 8; Matteson testimony).

Ms. Matteson stated that respondent denied running his finger from P1's throat between her breasts and down to her groin. He admitted to performing the Versendahl technique on P1. Respondent said he had P1 stand in front of him less than an arm's length away. He raised P1's arm parallel to the floor. He then asked her to raise and lower her arm while he applied resistance. Respondent told Ms. Matteson that this technique could help him diagnose a patient's current and future health issues. (Exhibit 8; Matteson testimony).

Respondent claimed P1 was calm when she left the appointment. He estimated the appointment lasted ten minutes. (Exhibit 8).

**Respondent's testimony:** Respondent began his testimony at hearing by claiming he did not have a fair opportunity to contest the allegations in the first two cases. He testified that the assistant attorney general in the first case told him to "shut his mouth unless spoken to."<sup>2</sup> He stated that, as a result, he did not testify during the first hearing. He repeated this claim on cross-examination, and again upon questioning by the ALJ.

Respondent's claim that he did not testify at the first hearing is directly rebutted by the board's decision, which references his testimony in several locations. (Exhibit 2). His claim is also rebutted by two of the current board members who were on the board during the first hearing. Both members vividly recall that respondent testified. Respondent later acknowledged on redirect examination that he responded to board questions during the first hearing. He said that he responded to board inquiries

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<sup>2</sup> The State neither confirmed nor denied the assistant attorney general's statement, but it should be noted that the assistant attorney general in the present case did not participate in the 2000 hearing. There is no reference to the statement in the first board decision, and no indication that respondent brought the issue to the board's attention.

because he could do so within the command of the assistant attorney general to only speak when directly spoken to.

Respondent testified that he consented to the board's second statement of charges after his negative experience during the first case. He stated that he did not want to return to Des Moines to get "railroaded" a second time.

Respondent agreed with some of P1's testimony about her visit on May 24, 2004, but sharply disputed other parts of her testimony. He stated that he specifically left the door to his treatment room open because P1 told him during his first two visits that a past chiropractor "patted her fanny." Respondent said he wanted his wife to be able to hear what happened in the room. However, respondent did not record P1's comments in his patient notes after those sessions. He did not mention the comments to Ms. Matteson when she interviewed him. Respondent's wife was not in the treatment room during his treatment.

Respondent testified that P1 began the session by telling him about her friend who had been physically abused by the friend's husband over the prior weekend. Respondent said he talked to P1 about her friend so she could calm down. He testified this took approximately five minutes.

Respondent agreed that he asked P1 about stress. She responded that her household was financially stressed because she had returned to school. He denied asking whether she had a boyfriend or was cheating on her husband.

Respondent agreed that P1 told him she was attending nursing school. He acknowledged telling P1 that doctors would give her a hard time. He denied patting her fanny.

Respondent testified that he performed the Versendahl technique on P1. He pushed against her arm as she attempted to lower it. He checked her thyroid, and then put his finger near her uterus. He denies running his finger down her body to her uterus.

Respondent testified he told P1 that he suspected she had a thyroid problem. He told her that women with thyroid problems sometimes have difficulty getting moist during sex.

Respondent testified that the session lasted approximately ten minutes. He said P1 appeared very calm when she left his office.

Respondent testified on direct examination that P1 did not tell him that she had been diagnosed with lupus - he said he learned that for the first time on the date of the hearing. He initially repeated his claim during cross-examination. However, his patient notes reflect that P1 told him about her diagnosis on May 24. (Exhibit 9). Respondent only changed his testimony after being confronted with his patient notes by the State's attorney.

Respondent denied performing applied kinesiology on patients after the board's order, although he admitted performing applied kinesiology on P1 during her first visit. He claimed he performed the procedure on P1 as an accident. Respondent last took a class on applied kinesiology in 1995. He claimed he only used the procedure in the past as a diagnostic tool.

Respondent testified that he began using the Versendahl technique after the board's order in the first case. He last studied the Versendahl technique in 1990 or 1991. He used the technique for the same reason he used applied kinesiology, that is, as a diagnostic tool.

Respondent testified that he believed the Versendahl technique was not applied kinesiology. He claimed that the procedures are different because applied kinesiology involves touching the body, while the Versendahl technique is limited to "pointing" at body parts or organs. Both procedures involve muscle testing, and both involve testing reflex points. Respondent agreed that the two procedures are "very similar." He performs the Versendahl technique on most of his patients.

Respondent testified that he starts the Versendahl technique by asking the patient to raise his or her arm so it is parallel to the floor. He asks a patient to raise or lower the arm while he applies resistance from the opposite direction. At the same time, he "points" to parts of the patient's body.

Respondent discussed his alleged use of acupressure. He defined acupressure as using fingers to put pressure on acupuncture points to treat a patient. He testified he uses pressure points in the pulse to diagnose a patient's condition. He denied using pressure point techniques for treatment purposes.

Respondent testified that he had not taken additional course work in acupuncture, acupressure, applied kinesiology, or

meridian therapy, and had not passed proficiency exams. He stated that he took boundary classes, as required by the board's 2000 order. He testified that the boundary classes did not help him because they did not teach a class how to avoid false allegations. Respondent continues to deny the allegations in the 1999 and 2001 statements of charges.

**Additional evidence regarding applied kinesiology:** The State submitted a letter from Ronald Evans, D.C., regarding whether the Versendahl technique is covered by the board's order prohibiting the use of applied kinesiology. Dr. Evans reported that Dr. Versendahl developed his techniques while working in the field of kinesiology, or muscle testing as it is more popularly called. Dr. Evans states that, by all standards, the Versendahl technique and procedures exist under the kinesiology canopy. He stated that the Versendahl technique represents a hybrid emulation of traditional kinesiology. (Exhibit 15).

**Practicing without a license:** Respondent's license to practice chiropractic expired on June 30, 2004, and lapsed 30 days later on July 30, 2004. There is no dispute that respondent practiced without a license after July 30. Respondent claims that his failure to renew the license was purely accidental.

The board sent a license renewal application to respondent approximately 60 days before his license expired. Ms. Shoemaker handles the license renewal process for respondent. Ms. Shoemaker acknowledged that she misplaced the application and forgot to return it to the board on a timely basis. (K. Shoemaker testimony).

Ms. Shoemaker learned of the mistake after the board sent a reminder letter with an application for reinstatement form. Ms. Shoemaker completed the form, had her husband sign it, wrote a check to cover the reinstatement fee, and mailed it back to the board. She testified she sent the renewal on or about August 2, 2004. She testified that she may have hurriedly reviewed and completed the form because it was late. (K. Shoemaker testimony; Exhibit 12).

The reinstatement form states, in bold capital letters, "**YOU MAY NOT PRACTICE IN THE STATE OF IOWA UNTIL YOUR LICENSE IS REINSTATED.**" Ms. Shoemaker testified that she did not see this portion of the application. She read portions of the application to her husband due to his poor eyesight. She does not recall reading that portion of the form to her husband due

to her haste to complete and mail the application. (K. Shoemaker testimony; Exhibit 12).

The board received the application on August 5, 2004, and began to process the information. Respondent was also licensed in Missouri, so he was notified that Missouri must provide verification that his Missouri license remained in good standing. Missouri did not officially verify that respondent remained licensed in Missouri until November 1. Respondent was officially reinstated in Iowa on the same date. (Exhibits 12, 14).

The board administrator, Ella Mae Baird, learned in October that respondent was practicing without a license. On October 22, 2004, Ms. Baird sent a letter to respondent directing him to immediately cease providing chiropractic services. Respondent stopped practicing after receiving the letter. He restarted his practice after learning the board reinstated his license. (Exhibits 13-14; respondent, K. Shoemaker testimony).

Respondent and Ms. Shoemaker attempted to place some blame on the board. Ms. Shoemaker testified that she called the board offices to check on the status of the reinstatement. She testified she talked to multiple individuals. She was finally told that the reinstatement was held up because the board had not received the required fee. During the conversation, the individual located the check in a desk drawer. Ms. Shoemaker could not identify the person with whom she talked. Ms. Shoemaker did not give the dates of the conversations, but there is no reliable evidence to show they preceded Ms. Baird's October 22 letter. (Respondent, K. Shoemaker testimony).

#### **CONCLUSIONS OF LAW**

The Board of Chiropractic Examiners was created by the legislature to regulate the practice of chiropractic.<sup>3</sup> "Chiropractic" is defined to include the treatment of ailments by the adjustment of the neuromusculoskeletal structure.<sup>4</sup> "Chiropractic" is also defined to include other procedures authorized by Iowa Code section 151.8, including the utilization of differential diagnosis and procedures related to chiropractic, performing physical examinations, and utilizing chiropractic physiotherapy procedures. The board may revoke or

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<sup>3</sup> Iowa Code sections 147.12, 147.13(5), 272C.1(6)(h); ch. 151.

<sup>4</sup> Iowa Code section 151.1.

suspend a license for violation of the enumerated standards in the statute or regulations.<sup>5</sup>

The statement of charges listed three violations. Each will be discussed separately.

**1. Failure to comply with a board order.** The board may revoke or suspend a chiropractic license for failure to comply with a decision imposing discipline.<sup>6</sup> The State alleges that respondent failed to comply with the board's July 25, 2000 decision prohibiting him from engaging in acupuncture, acupressure, applied kinesiology, or meridian therapy unless he completed course work and proficiency exams in those respective areas. Respondent did not complete the course work or exams. Respondent makes the following arguments: 1) the Versendahl technique does not fit within the ambit of applied kinesiology, 2) if the Versendahl technique is applied kinesiology, he did not know it was, and 3) he only used the Versendahl technique and other related procedures to diagnose, not to treat.

Taking respondent's third argument first, it is irrelevant whether he used a prohibited procedure for diagnosis or treatment purposes. Chiropractic practice is expressly defined to include diagnostic and treatment procedures. The board's order barred respondent from engaging in acupuncture, acupressure, applied kinesiology, or meridian therapy - period. There is no exception to perform these procedures for diagnostic purposes. The order gives respondent no basis for belief that he could perform one of the barred procedures to diagnose.

The more important question is whether the Versendahl technique is applied kinesiology. Dr. Evans wrote that Dr. Versendahl developed his technique within his study of kinesiology, which he otherwise refers to as muscle testing. Dr. Evans stated his opinion that "[by all standards, the Versendahl technique and procedures exist under the kinesiology canopy."

Respondent provided no persuasive evidence that the Versendahl technique is distinct from applied kinesiology. Respondent has no recent training in this area. He most recently received training on applied kinesiology in 1995 and the Versendahl technique in 1991. He admitted that the procedures were "very similar." The only difference he noted was that he would touch

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<sup>5</sup> Iowa Code sections 147.55, 151.9, 272C.3, 272C.10.

<sup>6</sup> Iowa Code section 272C.3(2)(a); 645 IAC 45.2(19).

the reflex point while using applied kinesiology, whereas he would point to the reflex point when using the Versendahl technique. He provided no authoritative evidence showing a difference between the two. Respondent's testimony does not outweigh the opinion evidence provided by Dr. Evans.

Respondent's claim that he subjectively believed that the Versendahl technique was different than applied kinesiology is not believable, and in any event, does not save his cause. The board's decision listed general practice areas that respondent could not perform. It was respondent's responsibility to ensure he did not practice within those areas. There is no evidence that respondent made any attempt to determine whether the Versendahl technique was applied kinesiology. There is no evidence he sought guidance from the board before performing the procedure.

Instead, the record shows that respondent attempted to sidestep the board's order. Respondent changed his applied kinesiology procedure to the Versendahl technique after the board's 2000 order. Practically speaking, he continued to use essentially the same procedure for the identical purpose and in nearly the same manner.

Further, respondent admitted that he slipped on at least one occasion and performed applied kinesiology on P1. That respondent could make a mistake and lapse back to the touching version of applied kinesiology tends to show one of two things: 1) the two procedures are so similar that he could mistakenly do applied kinesiology even four years after the board order, or 2) he regularly performed applied kinesiology.

The record similarly shows that respondent engaged in acupressure. Respondent testified that he has used acupuncture and acupressure techniques for diagnostic purposes. For example, he has applied pressure to acupuncture pressure points in a patient's wrist to assist his diagnosis of the patient. He believed he was in compliance with the board's order because he only did so for diagnosis rather than treatment. Again, the purpose for using the procedure is irrelevant. Respondent performed procedures in violation of the board's order.

**2. Practicing with a lapsed license.** The board may discipline a licensee who commits willful or repeated violations of

legislative acts.<sup>7</sup> The legislature has authorized the board to adopt rules to govern the practice of chiropractic, and to define acts or omissions that are grounds for revocation or suspension of a license.<sup>8</sup> The board has adopted such rules, including rules authorizing disciplinary action if a person has practiced chiropractic, or represented oneself as a chiropractic physician, after a license has lapsed.<sup>9</sup>

Respondent's license lapsed because he failed to timely file his license renewal application. Ms. Shoemaker testified that she failed to submit the application because she accidentally misfiled the form. The board does not question her explanation. The larger problem concerns respondent's conduct after his license lapsed.

The board mailed respondent an application for reinstatement shortly after his license lapsed on July 30, 2004. Respondent knew that his license lapsed when he received the board's correspondence. The application clearly stated that respondent could not practice until his license was reinstated. Respondent diligently completed the application for reinstatement and sent it to the board. However, he continued to practice. He made no attempt to contact the board to check on the progress of his application. He only stopped his practice after the board administrator sent a letter directing him to stop. He then spurred into action by contacting the board to check on the status of his application. The license was reinstated shortly thereafter.

Respondent's violation was repeated and willful. He practiced from August 1 until he received the administrator's letter in late October. He knew his license was lapsed during this period. The board had warned him, through the statement on the application for reinstatement, that he could not practice. The allegation in count II is supported by the evidence.

**3. Sexual misconduct.** The board may impose discipline on a licensee who engages in unethical conduct, or in practice that is harmful or detrimental to the public.<sup>10</sup> The board had defined unethical conduct to include "improper sexual contact with, or

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<sup>7</sup> Iowa Code sections 147.55(8), 151.9(8), and 272C.10(8).

<sup>8</sup> Iowa Code sections 151.11, 272C.4(6).

<sup>9</sup> 645 IAC 41.10(2), 45.2(25).

<sup>10</sup> Iowa Code sections 147.55(3), 151.9(3), 272C.10(3).

making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker."

If P1's testimony is accepted as true, respondent committed several actions that fall within the definition of unethical conduct. He patted P1 on the rear while making a joke about how doctors would treat her in nursing school. He asked her if she was cheating on her husband and whether she had a boyfriend. He asked her if she was wet when she had sex with her husband. He held his crotch against her body while he made these comments. He ran his finger from her neck, between her breasts, down to the area of her crotch. Each of these actions or statements, at a minimum, constitutes sexual contact or improper remarks to a patient.

The bigger question is whether P1 was more credible than respondent. Respondent denied each of the above comments or actions. No other person was present. Ms. Shoemaker was in the office, but she did not hear everything that was said. This claim must be decided by assessing the credibility of the two witnesses present.

There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other believable evidence.
2. Whether a witness has made inconsistent statements.
3. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

*State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996) (citing Uniform Jury Instructions).

P1 has no known biases. P1 was originally referred to respondent by her pastor, who is a major authority figure in her life. Both P1 and her husband had seen respondent in the past, each time with no incident. P1's only contact with respondent has been as a patient. In theory, P1 could have a financial motive for her claim, but there is no evidence that she has

sought money or damages from him, and there is no evidence she has plans to do so in the future.

P1 appeared very credible as a witness. She answered questions in a very straightforward manner. She was understandably emotional when discussing respondent's sexual contact and statements, but otherwise answered questions in a direct and rational manner.

There was only one notable inconsistency between P1's testimony and her prior statements. She told Ms. Matteson that respondent had ran his finger from her throat, between her breasts, and down to her crotch, but he removed it immediately. When she testified about the same incident, she stated that he kept his finger near her crotch for several seconds before removing it. The board discussed this inconsistency, but determined it did not materially detract from the credibility of her testimony as a whole.

P1's credibility is supported to some degree by the fact she immediately reported respondent's conduct. She told her mother about the conduct shortly after leaving his office. She then called her husband and her pastor by cell phone, before personally filing a complaint at the local police department. She was noticeably upset when she talked to each of these individuals. She filed her complaint at the police department within an hour after her office visit. Her actions and emotion are consistent with her description of what occurred in respondent's office.

Respondent made notable statements that were inconsistent with other evidence. The most significant example was his repeated testimony that he did not testify in the 2000 hearing. He repeated his claim on three separate occasions, before finally agreeing that he testified in response to board questions during the 2000 hearing.

Another example was respondent's statement that P1 did not tell him about her lupus diagnosis. He testified on two occasions during the hearing that he learned about her diagnosis for the first time during the hearing. He only changed his testimony after being presented with his own patient notes.

The lupus diagnosis was not central to the case, but it became more notable for credibility purposes for two reasons. First, respondent told Ms. Matteson that P1 discussed her lupus

diagnosis, so he had covered this question previously during the investigation phase of this case. Second, he twice testified about the lupus in a relatively dramatic fashion that he only heard about the diagnosis for the first time during the hearing. By testifying in the manner he did, he gave the impression that he was sure about the fact and that it was important to the case. That he was so wrong about a fact well-within his knowledge impacts the reliability of other testimony he gave.

Respondent's credibility is also negatively impacted because some portions of his testimony are inconsistent with or lack reason when compared with other testimony or conduct. For example, respondent testified that P1 was upset when she entered the session because her best friend had been the victim of domestic abuse the weekend before. He said he spent five minutes of the ten minute session calming her down. However, it is implausible that P1, who made a late appointment due to severe pain, would spend the first half of her session explaining her friend's domestic abuse problem to her chiropractor.

Additionally, respondent testified that P1 was completely calm when she left his office. This testimony is contradicted by considerable evidence that P1 was visibly upset when she drove home and talked to family and friends shortly after leaving. Moreover, it is difficult to believe that P1 could be so upset as to require comforting during the first five minutes of the session, yet be completely calm when she left five minutes later.

As another example, respondent testified that P1 told him during her first treatment session that she left her prior chiropractor because he patted her fanny. This would be a relatively significant statement for a chiropractor who had twice appeared before the board on sexually-related violations and remained on probation for those charges. Still, respondent did not report the statement in P1's patient notes, he did not ask his wife to be present in the treatment room (even though she was in the office), and he did not report the statement to Ms. Matteson during her investigation.

Respondent has shown nearly a complete lack of responsibility for any wrongdoing. He continues to deny any violations in the first two cases, even though he entered into a consent order on the second statement of charges. He testified that he was "railroaded" during the first hearing. He blamed the assistant

attorney general in the first hearing for preventing him from testifying, even though he did testify and there is no record supporting his claim. He testified that his boundary classes did not help him because they did not teach a segment on how to avoid false allegations. He blamed the board for failing to timely issue his license for reinstatement, even though he caused the problem by allowing the license to lapse. Respondent's proclivity to blame anyone other than himself negatively reflects on his candor.

The record shows several instances which respondent claims ignorance at times that are beneficial to him. He claimed that he did not know the Versendahl technique was applied kinesiology. He claimed that he did not know that his use of acupressure to diagnose, as opposed to treat, was prohibited by the board's order. He claimed that he did not know that he had to wait for the board to reinstate his license before resuming his practice after his license had lapsed. In none of these circumstances did respondent request clarification from the board to determine whether he was in compliance.

Respondent clearly has a large stake at the hearing. He has been before the board before and has been on probation for the past five years. His license is at stake. He has a significant interest to testify in a manner that is favorable to his own self-interest.

The board finds P1's testimony considerably more credible than respondent. Respondent engaged in improper and sexual contact with P1 by patting her rear end, by running his finger between her breasts, and by touching her crotch area. None of these actions had a chiropractic purpose. Respondent made suggestive, lewd, or improper remarks by asking P1 whether she was cheating on her husband, asking whether she had a boyfriend, and whether she got wet while having sex with her husband. None of these statements had a chiropractic purpose. Respondent committed unethical conduct, as defined by the regulation.

#### **SANCTION**

Some of the violations, in isolation, may not justify a serious penalty. For example, if the board had only found a violation concerning the butt-patting allegation, the board might have considered a lower range of discipline. However, the butt-patting incident was not done in isolation - it was part of a series of offensive sexual remarks and contact that was

offensive to the client and detrimental to the profession as a whole. Further, respondent's conduct on May 24, 2004, was part of a larger pattern of sexual misconduct and general misconduct spanning the course of several years and three separate licensing proceedings.

The board has placed respondent on probation on two separate occasions in the past. Probation has clearly not served the intended purpose. Respondent violated the board's rule regarding improper sexual conduct or statements despite being charged with similar conduct on two prior occasions. Respondent showed little regard for the board's prior orders. He has shown no insight into his conduct. The board has no hope or expectation that respondent will change his behavior. The only appropriate sanction under these circumstances is revocation. This is the only action in which the board will perform its charge to protect the public and uphold the integrity of the chiropractic profession.

#### **DECISION AND ORDER**

The Iowa Board of Chiropractic Examiners revokes the license held by Warren Shoemaker, D.C, license no. 022-04406. Respondent shall immediately return his wall hanging certificate and wallet card to the board's office at the Lucas State Office Building, Fifth Floor, Des Moines, Iowa 50319.

Respondent shall pay also \$75.00 in hearing fees and \$225 in costs for the court reporter. In addition, the executive secretary/director of the board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty days of receipt of the bill.

**Notice**

This is a final decision by the board. Respondent may file an application for rehearing.<sup>11</sup> An application for rehearing must state the specific grounds and the relief sought. The application must also state whether the applicant wants reconsideration of part or all of the decision, and whether the applicant wants to submit additional evidence. An application must be filed within 20 days after this decision is issued. An application shall be deemed denied unless the board grants the application within 20 days after it is filed.

Respondent may also appeal this decision to district court.<sup>12</sup> A petition for judicial review must be filed within 30 days of the date the decision is issued.

**This Findings of Fact, Conclusions of Law, Decision and Order is approved by the board on August 5, 2005.**

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<sup>11</sup> 645 IAC 11.25.

<sup>12</sup> Iowa Code section 17A.19; 645 IAC 11.29.