

**BEFORE THE BOARD OF CHIROPRACTIC
OF THE STATE OF IOWA**

IN THE MATTER OF:

CASE NO. 12-005

DIA NO. 12DPHCB003

STUART HOVEN, D.C.

License No. 06439

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, DECISION AND ORDER**

RESPONDENT.

On April 26, 2012, the Iowa Board of Chiropractic (Board) filed a Notice of Hearing and Statement of Charges against Stuart Hoven, D.C., (Respondent) alleging that Respondent violated Iowa Code sections 147.55(3) and 645 Iowa Administrative Code (IAC) 45.2(3) by engaging in unethical conduct or practice harmful or detrimental to the public. Additionally, it was alleged that Respondent violated Iowa Code section 147.55(9) and 645 IAC 45.2(28)(b) by having improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient. The allegations arose out of a complaint by a female patient that Respondent had touched her breasts during a chiropractic visit on February 14, 2012. Also on that date the Board issued an Emergency Adjudicative Order finding that Respondent's continued practice as a chiropractor constituted an immediate danger to the public health, safety and welfare. As a result, the Board ordered certain monitoring requirements while the matter was pending. Hearing was originally scheduled for May 30, 2012 but was continued on several occasions with the monitoring requirements and interim safeguards remaining in place for the protection of the public health, safety and welfare.

On June 5, 2012 the State filed a motion to amend the Statement of Charges to include new factual allegations arising from a complaint received from a second individual alleging that Respondent had touched her breast during a chiropractic visit in 2009. The State alleged these actions constituted a violation of the same statutes and rules previously cited in the Statement of Charges. The motion was eventually granted over Respondent's objection.

The hearing was conducted on October 10 and 11, 2012 at the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent appeared and was represented by attorney Michael Sellers. Assistant Attorneys General Meghan Gavin and Theresa O'Connell Weeg represented the state of Iowa.

The following Board members presided at the hearing:

- John Calisesi, D.C., Chairperson
- Bradley J. Brown, D.C.

- Aaron Martin, D.C.
- Nancy Kahle, D.C.
- David Gehling, D.C.
- Joellen Jenson, Public Member
- Julie Mueller, Public Member

The hearing was recorded by a certified court reporter. Administrative Law Judge Kerry Anderson assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of the witnesses; State Exhibits 1-27 (see exhibit index for description); and Respondent's Exhibits A-D, G, I-K, M-R (see exhibit index for description).

FINDINGS OF FACT

1. On August 24, 2001, Respondent was issued license number 022-06439 to practice chiropractic in the state of Iowa. After a preceptorship, Respondent opened Winterset Family Chiropractic in Winterset, Iowa in December 2001. Subsequently, in 2008, he opened a satellite office, Clarke County Chiropractic in Osceola, Iowa.
2. The Respondent's chiropractic license was indefinitely suspended in April 2005 after the Board found he had improperly touched the breasts of two female patients and made improper and/or suggestive remarks to them. In addition to suspending Respondent's license, the Board ordered Respondent to submit to a comprehensive evaluation by a facility or license provider with experience in evaluating licensed professionals with professional boundary issues. (State's Exh. 2; Respondent testimony)
3. Beginning on May 5, 2005, Respondent underwent the comprehensive evaluation ordered by the Board which resulted in the recommendation that he be returned to practice with certain limitations once he demonstrated an effort to learn more about boundaries. (State's Exh. 3)
4. On July 15, 2005, the Board issued an order reinstating Respondent to the practice of chiropractic while placing his license to practice on probation for a period of five years and requiring continued sexual misconduct counseling on his part. Additionally, the Board restricted Respondent's practice by requiring the presence of a female chaperone in the examination room at all times when Respondent was seeing female patients; the posting in every patient dressing room of a statement regarding why patients are asked to remove clothing; and, the implementation of a patient

satisfaction survey. Respondent was also ordered to complete a minimum of ten hours each year of Board-approved continuing education on boundaries and ethics in addition to those hours required for renewal of his chiropractic license, including a professional boundaries program at the Walk In Counseling Center in Minneapolis, Minnesota. (State's Exh. 4)

5. On April 12, 2006, the Board amended its reinstatement order to discontinue the requirement of a patient satisfaction survey. (State's Exh. 5) Thereafter, on July 11, 2007, the Board further amended the reinstatement order to discontinue the need for a female chaperone and to complete ten hours of continuing education in professional boundaries each year. However, Respondent's license remained on probation. (State's Exh. 6) On July 15, 2010, the Board issued a Termination Order noting that Respondent had satisfied the terms and conditions of its July 15, 2005 order and restoring Respondent's license to its full privileges free of all restrictions. (State's Exh. 7)

Patient #1

6. On February 17, 2012, Patient #1 filed a complaint with the Board alleging that Respondent grabbed her breast during an appointment for x-rays on February 14, 2012. Patient #1 enclosed a written statement of her recollection of her interactions with Respondent. (State's Exh. 13) Subsequently, on February 23, 2012, Dr. Julia Jenkins, D.O. filed a complaint with the Board alleging that a patient of hers had reported that Respondent had grabbed the patient's breast on February 14, 2012. (State's Exh. 14) At the Board's request, an investigator with the Department of Inspections and Appeals (DIA) conducted interviews of:

- Patient #1,
- Patient #1's husband,
- An employee of Patient #1's business,
- Dr. Julia Jenkins, D.O.,
- Deputy Brian Nissen of the Clarke County Sheriff's Office,
- Respondent's receptionist from his Osceola office,
- Respondent's public relations director, and
- Vaughn Reents, D.C., who is employed at Respondent's Osceola office.

The investigator also reviewed an Iowa Incident Report filed by Deputy Nissen and subpoenaed Patient #1's records. The investigator was not able to arrange an interview with Respondent. (State's Exh. 12, 15-17)

7. Patient #1 is a massage therapist and esthetician. She operates a spa. Patient #1 was a patient of Respondent's from February 2010 through February 14, 2012. Respondent and his wife have been clients of Patient #1's spa since April 2010.

Respondent and Patient #1 referred clients to each other during the course of their relationship. (State's Exh. 12, 13; Patient #1 testimony)

8. Patient #1 testified that Respondent began making inappropriate comments to her after she had given a massage to Respondent's father. During the massage, Patient #1 accidentally bumped her breasts against the top of Respondent's father's head. She did not acknowledge the incident as she had been instructed in school, and went on to finish the session; however, afterwards Respondent sent Patient #1 a text message telling her he wanted a massage like the one his father received. Patient #1 testified that she laughed the incident off but that several other incidents occurred thereafter both in his office and at her spa, including:

- During a massage, Respondent reached back and grabbed Patient #1 by the ribcage and tried to pull her closer to the table. Patient #1 braced her legs against the table and leaned away from Respondent;
- During a massage, Patient #1 commented that she was getting warm and Respondent stated that she could take her shirt off if she was too warm;
- During a massage, Respondent and Patient #1 were discussing a new plastic surgeon who was beginning a practice in town. Respondent asked what Patient #1 would have done and she replied a "mommy makeover". Respondent asked what a mommy makeover was and Patient #1 replied that it consisted of a tummy tuck and breast augmentation. During a subsequent massage visit Respondent came toward Patient #1 with his hands held out in the air and offered to give her a second opinion on a "boob job";
- On an occasion when Patient #1 was receiving chiropractic services from Respondent, Respondent was working on her pectoral muscles and stated, "I wonder what you would do if I went further."
- During a massage, Respondent told Patient #1 she had looked nice at an event they both had attended the previous evening and that he had had a difficult time keeping his eyes off her breasts.

(State's Exh. 12, 13, Patient #1 testimony)

9. Both Patient #1 and Respondent testified that at different points during their acquaintance, each felt uncomfortable with the way their relationship was evolving. Respondent testified that he discussed his concerns with his wife and they began making their massage appointments further and further apart to put distance between Respondent and Patient #1. Patient #1 testified that what began as a simple doctor/patient relationship began to evolve into something beyond that. She initially believed she and Respondent were simply building rapport and a professional relationship. In April or May 2011, an employee of the spa called Patient #1's husband and, along with other things, told him there was either a flirtation or an affair going on between the two. Patient #1 informed Respondent of the discussion and Respondent

assured Patient #1's husband that there was nothing inappropriate occurring between the two. In June 2011, Patient #1 had a conversation with her husband where she reassured him there was nothing inappropriate in text messages she was receiving from Respondent. However, at some point, Patient #1 became uncomfortable enough that she sent a text message in response to one from Respondent about his father's massage telling him they needed to keep their relationship professional. Respondent replied, "Okay." After that, Patient #1 stated that Respondent's inappropriate comments stopped for a while but eventually started back up again. Patient #1 testified she was hesitant to take action even though she felt her relationship with Respondent was getting out of hand because she did not want to hurt her business. (Respondent testimony; Patient #1 testimony)

10. On February 13, 2012, Patient #1 slipped on the ice and fell. The following morning, February 14, 2012, Patient #1 telephoned Respondent's Osceola office and arranged for an adjustment that morning. She attended the appointment and Respondent performed the adjustment. The adjustment room had a window to the reception area and Respondent's colleague, Dr. Vaughn Reents, D.C., was present. At the end of the appointment it was determined that a new set of x-rays should be done.¹ Arrangements were made for Patient #1 to return for the x-rays later that afternoon. (State's Exh. 13; Respondent's Exh. C, G; Patient #1 testimony; Respondent testimony)

11. When Patient #1 returned for her x-rays, Respondent's wife and receptionist were in the office. Respondent's wife instructed Patient #1 to remove her bra and all metal from her person. She removed her bra and put on a smock which opened in the back. Patient #1 was shown to the x-ray room which had no window. Respondent entered the room and he and Patient #1 were the only persons present; the door was shut. The x-rays were taken and, afterwards, Respondent touched Patient #1's breasts. The evidence as to how that occurred is in dispute. (Patient #1 testimony; Respondent testimony)

12. Patient #1 testified that after the x-rays were taken, Respondent reached around her from behind, grabbed and squeezed her right breast over the smock she was wearing and lifted her breast up. He then did the same thing with her left breast. According to Patient #1, Respondent then left the room without any words passing

¹ Patient #1 testified that Respondent mentioned the need for a new set of x-rays as she was paying her bill for the adjustment. According to her, Respondent requested the new x-rays because of the fall and the length of time since the previous x-rays were taken. Respondent testified, however, that Patient #1 requested new x-rays because the old ones "made her boobs look saggy". According to Respondent, Patient #1 stated she had lost weight since the old x-rays and thought her breasts would look better in new x-rays. Dr. Reents provided written testimony that he was present during the adjustment. While he stated that Patient #1 previously complained to him that her x-rays made her breasts look saggy, he did not say that she made that comment during her adjustment on the morning of February 14, 2012. Additionally, Dr. Reents' affidavit confirms that he was not present during Patient #1's x-rays taken later that afternoon. (State's Exh. 13; Patient #1 testimony; Respondent testimony; Respondent's Exh. C)

between the two. Patient #1 stated there was no medical reason for Respondent to have touched her breast; that her pain was in her lower back and that Respondent did not indicate there was any reason her breasts were contributing to her pain. Patient #1 testified that she was so shocked by the event that she did not know what to do. She got dressed, walked out to the front desk, paid her bill and left without making another appointment. Patient #1 never returned to Respondent for treatment. Patient #1 testified that a friend had told her earlier that there had been an "issue" with Respondent in the past, but did not elaborate. Patient #1 stated that only after telling a different friend about the events of February 14, 2012 did she discover that Respondent had been previously disciplined for inappropriately touching female patients. (Exh. 13; Patient #1 testimony)

13. Respondent testified that when Patient #1 returned for her x-rays on the afternoon of February 14, 2012, his wife instructed her to remove her bra and all jewelry. According to Respondent, Patient #1 told Respondent's wife she wished she could leave her bra on. Subsequently, when Respondent tried to position Patient #1 for her x-rays, she began holding her breasts up with her hands, stating the x-rays would look better if she did this. Respondent testified that he asked Patient #1 to lower her arms and then repositioned her for the x-rays. According to Respondent, Patient #1 again lifted her breasts and said, "Wouldn't it look better if they were up here?" Respondent then put his hands on hers and responded to the effect that maybe they could move her hands so they would not be seen in the x-ray. Respondent stated that Patient #1 then discussed relatives who had undergone breast lifts or augmentations, a conversation they had had previously. Eventually, the x-rays were taken and Patient #1 went back to a chair. Respondent then reached around her from behind and lifted one breast, asking if that was how high Patient #1 wanted her breasts lifted. Respondent denied touching Patient #1's other breast. He testified at one point that he lifted Patient #1's breast to determine if the weight affected her pain. He later testified he did it to get her to quit talking about her breasts. Respondent admitted he did not ask Patient #1 whether he could touch her breast or tell her he was going to prior to doing so. Respondent stated he did not immediately document the visit because of subsequent verbal and later physical confrontations with Patient #1's husband. Respondent testified he never did finish his documentation of the x-ray appointment. Respondent stated that he has touched other women's breasts before during an examination without complaint. He noted that he has tried to help other women obtain breast surgery when he felt their breasts were contributing to their pain. Respondent stated he thought he could touch Patient #1's breast because of the closeness of their relationship. Respondent testified that Patient #1 knew of his prior discipline because they had discussed it previously during a massage session and she was trying to "cash in". (Respondent's testimony)

14. After Patient #1 left Respondent's office, she went back to her business and called her husband in distress. Patient #1 told her husband she needed him to come to

the business immediately because Respondent had "felt her up". Patient #1's husband went to Respondent's office. Respondent's receptionist, his wife and Dr. Reents were there. Respondent came around the corner and asked if he would like to come in and talk but Patient #1's husband took Respondent outside. According to the testimony of Patient #1's husband, Respondent admitted touching Patient #1's breasts and apologized. (Testimony of Patient #1's husband; Exh. 16)

15. Respondent testified that Patient #1's husband came into the office 45 minutes after she left on the afternoon of February 14, 2012. Respondent testified he believed Patient #1's husband had come in for an adjustment, however, he stated he wanted to talk outside. They went outside at which time Patient #1's husband told Respondent he was going to "take everything" Respondent had and he would "own" him. According to Respondent, Patient #1's husband poked him in the chest and then left. (Respondent testimony)

16. Respondent telephoned Patient #1's husband later that evening. According to Patient #1's husband, Respondent's wife wanted Respondent to "fix this". The two men arranged a meeting at 8:00 or 8:30 p.m. Patient #1's husband testified that when they met, Respondent again apologized for his actions and stated it was a "five or ten second mistake". Patient #1's husband then asked if Respondent intended to blame the incident on Patient #1 to which the Respondent replied he did not. Then Patient #1's husband kicked and hit Respondent. (Respondent testimony; Testimony of Patient #1's husband)

Patient #2

17. Patient #2 filed a complaint with the Board on May 11, 2012. She reported that in 2009 she went to Respondent for chiropractic treatment and he cupped her breast during one session and rubbed against her during a second. (State's Exh. 21). At the Board's request, a second investigation was conducted by the Department of Investigations and Appeals. During this investigation Patient #2 and her husband were interviewed and Patient #2's medical records were obtained. Again, the investigator was unable to arrange an interview with Respondent. (State's Exh. 20)

18. Patient #2 first visited Respondent in January 2009 due to headaches and left hip pain. She had seen a chiropractor previously for a few months after being involved in a motor vehicle accident in the 1990's. She testified she saw Respondent on three occasions during January and February 2009.

- During her first visit Patient #2 changed into a gown that fastened in the back. She left her bra and pants on underneath. She had her four year-old son with her in the examination room. Respondent entered and instructed her to remove her bra. Patient #2 complied while Respondent remained in the room. After

Respondent ran a machine up and down her back he told her he was going to feel her back for alignment. Respondent then cupped Patient #2's left breast over her gown for a matter of seconds. Patient #2 stated she knew of no medical reason for Respondent to touch her breast and Respondent did not tell her he was going to touch her breast before he did so. Patient #2, her son and Respondent were the only people in the room. Respondent did tell Patient #2 she needed three or four treatments per week. She noted that she was embarrassed about the situation and did not mention it to anyone;

- Because her migraines were worsening, Patient #2 returned to Respondent for treatment twice in February 2009. On the first occasion she laid on her right side on the table so Respondent could adjust her hip. Patient #2 stated that Respondent pressed against her from his chest to his mid-thigh area and she felt he was rubbing against her. After the visit, Patient #2 discussed both incidents with her husband, who is a paramedic, and told him she would not be returning to Respondent for treatment. Patient #2's husband then cautioned her that there might be medical reasons for touching and that she should be certain before making any accusations against Respondent;
- Patient #2 returned for a third visit with Respondent even though she felt uncomfortable with him because she had a treatment plan in place and did not want to wait for an appointment with a new provider. Nothing occurred during the final appointment that made Patient #2 feel uncomfortable. She did not return for further appointments because she was uncomfortable and did not feel relief from Respondent's treatments.

(State's Exh. 20, 21; Patient #2 testimony)

19. Patient #2 testified credibly that she did not make a complaint in 2009 because she was embarrassed and was suffering from depression after multiple miscarriages. However, in May 2012, Patient #2's husband was at work and saw a television newscast about Respondent and the complaint filed against him by Patient #1. Patient #2's husband telephoned her and asked her if that was the chiropractor she had seen in 2009. When she realized she was not the only one who had been touched inappropriately by Respondent, she knew she had to file a complaint. (Patient #2 testimony)

20. Respondent testified that Patient #2 visited his office on four occasions rather than the three she testified to. Although Respondent stated he did not remember Patient #2 or her appointments, his review of her records showed there would have been no medical reason to touch her breast. Respondent noted that he was very busy during this time and that the first day Patient #2 came in he was scheduled to see 52 patients. He stated that Derriek Hollon was working for him as a chiropractic technician at the time and would have been in the room with them. Respondent testified he would not have adjusted Patient #2 on her first visit and never would have stayed in the

room while she removed her bra. He admitted his documentation from Patient #2's visits did not reflect Mr. Hollon's presence in the room during Patient #2's exam.

21. Derrijk Hollen provided testimony by way of affidavit. He is currently enrolled as a student at the Palmer College of Chiropractic in Davenport, Iowa. He stated he was working for Respondent as a chiropractic technician at the time of Patient #2's first visit on January 29, 2009. Because Respondent was so busy at the time, Mr. Hollen was assigned to take posture photographs, make detailed notes of Respondent's findings as to each patient and each of the procedures performed in diagnosing the patient. Mr. Hollen's time sheets show he was working on January 29, 2009 and based on that, along with his review of her patient records, Mr. Hollen stated he was

... absolutely positive that [he] was in the same room for the entire time involved in conducting and recording the findings of that initial examination and [he] assisted in the preparation of and completion of the x-rays because that is what is required to make sure that the documentation is complete. ...Furthermore, [he] was within only a few feet of [Patient #2] because [he] was responsible for taking the posture photos and [he] was also responsible for assisting in the measurements that Dr. Hoven did with every new patient as he makes the record of the plan of care.

Mr. Hollen stated there was no possibility that any improper touching occurred or that any inadvertent or accidental touching occurred with his presence. (Respondent Exh. B)

22. Patient #2's treatment records do not indicate that Mr. Hollen was present during her exam on January 29, 2009 or that he was the individual making notes of findings during the exam. (State's Exh. 22)

23. Additional facts will be set out within the Conclusions of Law as necessary.

CONCLUSIONS OF LAW

Iowa Code section 151.9(3) and (8)(2011) provide, in relevant part:

151.9 Revocation or suspension of license.

A (sic) entry to practice as a chiropractor may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

3. ...engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

...

8. Willful or repeated violations of the provisions of this Act.

Accord, Iowa Code sections 147.55(3),(8) and 272C.10(3),(8)(2011).

Pursuant to its authority under Iowa Code chapter 272C, the Board has promulgated the following relevant rules:

645-45.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 45.3 (147,272C) when the board determines that the licensee is guilty of the following acts or offenses:

...

45.2(3) ... engaging in unethical conduct or practice harmful or detrimental to the public. ... Proof of actual injury need not be established.

...

45.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client, or coworker.

The testimony of the Patients #1 and #2 and Respondent was diametrically opposed and the Board must conclude that someone was not telling the truth. Because of this, the Board carefully weighed the credibility of the witnesses. Some of the standards relied on by the Board in making its credibility decisions are as follows:

1. Whether the testimony was reasonable and consistent with other evidence the Board believed.
2. Whether a witness made inconsistent statements.
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts.
4. The witnesses' interest in the trial, his or her motive, candor, bias and prejudice.

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

Both Patients #1 and #2 have remained generally consistent in the telling of their interactions with Respondent. Further, the scenarios they have testified to are strikingly similar to those testified to by the patients involved in Respondent's prior disciplinary

proceeding before this Board. Further, neither Patient #1 nor #2 has any evident motive to falsely accuse Respondent of inappropriate behavior.

Respondent implies that Patient #1 has several motives for being untruthful. She has multiple outstanding supplemental insurance claims that Respondent's office has not processed and she openly stated she was considering suing Respondent if her claims are not processed by his office. However, it is unclear how falsely accusing Respondent of inappropriate behavior would result in Patient #1 receiving reimbursement from her supplemental carrier any more quickly or efficiently than the litigation she admitted she was considering. In fact, as was evident at hearing, Respondent's office has done nothing to process Patient #1's insurance claims since the complaint was filed. Respondent testified he did not even know where the claims were. (Respondent testimony)

Respondent also argues that Patient #1 was overly familiar and flirtatious with him, initiating inappropriate conversations and discussing her breasts at length. Patient #1, however, was frank in acknowledging a degree of culpability with regard to the incident at issue because she believed she allowed her relationship with Respondent to stray past the usual physician/patient relationship. Patient #1 credibly testified she failed to grasp how inappropriate Respondent's actions toward her were until she sat down to commit her recollections to paper when she filed the complaint that led to this hearing. Patient #1 appeared honest when she testified she struggled to maintain a good relationship with Respondent and minimized his behaviors towards her because she did not want her business to be hurt and she did not want Respondent to cease referring clients to her. (Patient #1 testimony; Respondent testimony)

Respondent also argues that Patient #1's business has not been successful and that she is seeking some type of monetary award based on her complaint. However, it was clear from the testimony of both Patient #1 and her husband that both expected it would take a while for a new business to get off the ground and neither was particularly troubled by the performance of the spa. The family has other, established business interests, the profitability of which was not questioned. (Patient #1 testimony; testimony of Patient #1's husband)

Much was made at hearing of the fact that Patient #1 contacted the media on more than one occasion about her complaint. However, Patient #1 testified openly and honestly that she sought media exposure in the hopes that other women who may have been victimized by Respondent would come forward. And, in fact, it was the news coverage of Patient #1's complaint that prompted Patient #2 to file her complaint. (Patient #1 testimony; Patient #2 testimony)

Patient #2 also testified credibly. While she did not file her complaint until after becoming aware of Patient #1's complaint, Patient #2 admitted she was depressed and

embarrassed in January 2009 when the incident occurred and questioned whether she could have been mistaken about Respondent's actions. Her husband's cautionary advice contributed to her doubt. However, when she became aware of Patient #1's complaint, she realized she had not been mistaken that Respondent's actions in touching her breast were inappropriate and she decided she needed to come forward.

Respondent was less credible. He maintained that the Board's previous suspension of his license was not a disciplinary action. He further continued to maintain that, although the Board previously found he had inappropriately touched a patient in December 2003, the woman involved suffered from transference issues and only imagined that he touched her inappropriately. Respondent failed to take responsibility for and minimized the prior disciplinary proceeding. (Respondent testimony)

Further, Respondent made inconsistent statements in his testimony about touching Patient #1's breast. He stated in the first instance that he lifted her breast to determine whether the weight was affecting her back pain. However, he later testified he did so to make her stop talking about her breasts. Additionally, although Respondent testified at length that Patient #1 mischaracterized the touching incident, he did not deny her husband's testimony that he admitted having touched her and that it was a "five or ten second mistake". (Respondent testimony)

Respondent has a very obvious and strong interest in the outcome of this proceeding. He has been disciplined for like behavior in the past. Clearly he wants to protect his career, his marriage and family and his reputation from further disciplinary action by the Board.

Finally, Respondent's testimony with regard to Patient #1 is simply not reasonable. Respondent was previously disciplined by the Board for inappropriately touching two female clients' breasts. The defense he offered in response to one of the complaints was that the patient was overly-familiar and constantly referred to her breasts. Respondent's license was suspended for a period of time then reinstated subject to probation. He was required to pay a fine and undergo education on boundaries. Respondent was required to have a female chaperone present when examining female patients. Additionally, Respondent faced criminal charges arising out of the circumstances of one of the complaints. While those charges were eventually dismissed, Respondent was sued in a civil action by one complainant and his malpractice carrier paid out on the claim. Respondent testified at length about the stress this caused him and his family. Yet, given these facts, Respondent testified that, even though he felt Patient #1 was flirtatious with him and was obsessed with her breasts, he did not ask any of the people who were present in his office to come into the room when Patient #1 came for x-rays on February 14, 2012. This was a room that did not have a window to the reception area and Patient #1 would be disrobed from the waist up. Respondent's wife, receptionist and Dr. Reents were all present at the office. In

fact, Dr. Reents had been in the adjustment room during Patient #1's appointment earlier that day. Even so and even considering Respondent's testimony regarding Patient #1's overly familiar behavior, Respondent did not ask for a chaperone in the room and did not document the appointment, his interaction with Patient #1, or any chiropractic necessity for touching her breast. It is beyond belief that, Respondent would have failed to take any steps to protect himself unless he intended to behave inappropriately with Patient #1.

The Board finds, however, that with regard to Patient #1, regardless of which person's testimony is true, Respondent engaged in unethical conduct. If Patient #1's testimony is to be believed, Respondent clearly engaged in unethical conduct consisting of improper sexual contact when he touched her breasts and made lewd, lascivious and improper remarks to her throughout their association in violation of 645 IAC 45.2(28)(b).

However, even if Patient #1's testimony is dismissed and Respondent's testimony is accepted by the Board as the complete truth, the Board finds Respondent engaged in unethical conduct or practice harmful or detrimental to the public in violation of 645 IAC 45.2(3). Respondent initially testified that he lifted Patient #1's breast to determine whether its weight affected her pain. However, he admitted that he did not tell her he was going to do so or seek her informed consent. Respondent's explanation that he thought he could touch Patient #1's breast without prior explanation or her consent because of the closeness of their relationship is without merit. Further, Respondent later testified that he lifted Patient #1's breast in an attempt to get her to quit talking about her breasts. If that is the case, he had no legitimate chiropractic purpose for doing so. Touching the breast of a female patient without a legitimate chiropractic purpose or without the informed consent of the patient is a practice which is clearly unethical.

The principles of chiropractic ethics are found at 645 IAC 43.2 and include, among others, the following admonitions:

- the "principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of the person";
- a chiropractor "should practice a method of healing founded on a scientific basis";
- chiropractors "should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines"; and,
- a chiropractor "should not dispose of services under terms or conditions which tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care".

645 IAC 43.2(2), (4), (5), (7).

Respondent's actions in touching Patient #1's breast without a legitimate chiropractic reason or without her informed consent was in clear disregard for the patient's dignity, was not based in science and did not uphold the dignity of the chiropractic profession. Further, Respondent's belief he could act in this way because of his relationship with the patient demonstrates that the relationship interfered with Respondent's ability to exercise professional judgment.

Respondent's actions were also clearly detrimental to the public in violation of 645 IAC 45.2(3). There simply can be no argument that touching a patient's breast without a legitimate chiropractic purpose or without informed consent is not harmful to the public.

With regard to Patient #2, Respondent admits that he does not remember her or her appointments. Instead, he argues—inconsistently—that the records show Patient #2 had four appointments rather than the three she testified to, that he would not have adjusted Patient #2 on her first visit as she testified and, finally, that Derrijk Hollon would have been present during Patient #2's first appointment on January 29, 2009. Mr. Hollon's affidavit and time sheets confirm that he was working on that date and was generally present and assisting during examinations, and he states he is certain he would have been in the room during Patient #2's exam. However Respondent's documentation fails to mention Hollon as being present. Additionally, Hollon testified in his affidavit that his time sheets show he was not working on the date of one of Respondent's appointments. (Respondent's Exh. A, B, I, J). All Respondent has done is cast doubt on whether Respondent accurately recalls during which of her appointments the incident occurred; not whether the incident occurred.

The Board finds that the preponderance of the evidence establishes that Respondent engaged in unethical conduct in violation of 645 IAC 45.2(3) and (28) with regard to Patient #2 when he touched her breast.

DECISION AND ORDER

1. **IT IS THEREFORE ORDERED** that the license to practice chiropractic in the state of Iowa issued to Stuart Hoven, D.C., license no. 022-06439 is hereby **SUSPENDED INDEFINITELY**. No application for reinstatement of license no. 922-06439 will be considered by the Board before Respondent complies with the remaining provisions of this Decision and Order.

2. **IT IS FURTHER ORDERED** that Respondent submit to a comprehensive assessment regarding professional sexual misconduct at the Behavioral Medicine Institute of Atlanta (BMI), Dr. Gene G. Abel, Medical Director, 1401 Peachtree Street, NE, Suite 140, Atlanta, GA 30309.

a. The Respondent shall notify the Board no less than ten days prior to the date

the assessment is scheduled to begin and advise the Board of the date and time of the assessment as well as assessment contact information where information is to be forwarded from the Board to the assessment facility.

b. The Board shall provide the Behavioral Medicine Institute of Atlanta (BMI), Dr. Gene G. Abel, Medical Director, a copy of the Board's Order and hearing exhibits for assessment consideration. Respondent shall ensure that the assessment does not begin until BMI facility staff responsible for the assessment has received a copy of the Board's Order and hearing exhibits.

c. Respondent shall sign all necessary releases to permit the evaluating facility to communicate with the Board and the Board with the evaluating facility.

d. Respondent shall ensure that any and all reports from the assessment are provided directly to the Board from BMI. Respondent shall comply with any recommendations for treatment made by BMI following completion of the assessment and shall ensure the Board is provided with all records associated with said treatment. Respondent is responsible for all costs of the assessment and any recommended treatment.

3. **IT IS FURTHER ORDERED** that the Respondent shall pay a \$75.00 hearing fee and \$1,003.75 for the court reporter costs. The fees and costs shall be paid within thirty (30) days of receipt of this decision. The cost of a transcript will be charged to the party requesting it. Iowa Code section 272C.6; 645 IAC 11.23.

4. **IT IS FURTHER ORDERED** that not until Respondent has completed the provisions of this Decision and Order and provided the Board with all information required will the Board consider any application for reinstatement. The Board reserves the right to implement all additional conditions it deems necessary to ensure the public health, welfare and safety upon any reinstatement of Respondent's license.

Dated: 11/9/13

Signed: 

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

Judicial review of the Board's action may be sought in accordance with terms of the Iowa Administrative Procedure act. 645 IAC 11.29.

cc: Meghan Gavin, Office of the Attorney General
Michael Sellers, Attorney at Law