

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

IN THE MATTER OF:) CASE NO. 04-005
) DIA NO. 04DPHCB001
STUART J. HOVEN, D.C.)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
RESPONDENT) DECISION AND ORDER

On October 29, 2004, the Iowa Board of Chiropractic Examiners (Board) filed a Statement of Charges against Stuart J. Hoven, D.C., (Respondent) alleging that:

Count I: The Respondent violated Iowa Code sections 151.9(2) and (8); 147.55(5)¹ and (8); 272C.3(2); 272C.4(6); 272C.10(2) (2003) and 645 IAC 45.2(2)"b", "c", and "d" for his acts of professional incompetence, including substantial deviation from the standard of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances; failure to exercise in a substantial respect that degree of care which is ordinarily exercised by the average chiropractic physician; and/or willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of chiropractic in the state of Iowa.

Count II: The Respondent violated Iowa Code sections 151.9(3) and (8); 147.55(3) and (8); 272C.10(3) and (8)(2003) and 645 IAC 45.2(3) and 45.2(28)"b" by engaging in unethical conduct or in practice that is harmful or detrimental to the public.

A Notice of Hearing was issued setting the hearing for January 12, 2005. The initial hearing date was continued at the Respondent's request. The hearing was held on March 7, 2005 at 9:00 a.m. at the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. The Respondent appeared and was represented by attorney Connie

¹ This subsection refers to convictions and is an apparent typographical error; it appears that the citation should have been to 147.55(2), the provision that parallels 151.9(2) and 272C.10(2).

Diekema. Assistant Attorney General Theresa O'Connell Weeg represented the state of Iowa.

The following Board members presided at the hearing: Valorie J. Prahm, D.C., Chairperson; Kathleen Doohen, D.C.; Michael Powell, D.C.; Rodney Rebarcak, D.C.; and Diane Puthoff, public member. The hearing was closed to the public, at the Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche 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 Statement of Charges; Notice of Hearing; Order Continuing Hearing; Respondent's Motion in Limine, filed 3/7/05; the testimony of the witnesses; State Exhibits 1-12, 14-21 (see exhibit index for descriptions; exhibit 13 was excluded), and Respondent Exhibit A (diagram of Respondent's office).

MOTION IN LIMINE

The Respondent filed a Motion in Limine the day of hearing, seeking exclusion of any evidence relating to the criminal charges against the Respondent, any statements made by the Respondent to the arresting officer which were suppressed by the district court in the criminal case, hearsay testimony from the arresting officer, and deposition testimony from the criminal proceeding. The Respondent attached an Order from the district court that suppressed any statements made by the Respondent to the police on January 23, 2005, after he requested questioning to stop. The state resisted the Motion in Limine.

The Motion in Limine was denied. While the exclusionary rule applies in the forfeiture cases cited by the Respondent, it does not automatically apply to administrative proceedings. See Diehl v. Beer & Liquor Control Dept., 422 N.W.2d 480 (Iowa 1988) (applying a balancing test and holding that it is inappropriate and unwise to apply the exclusionary rule in a liquor license suspension proceeding because the burdens resulting from the exclusionary sanction's application exceed the

potential benefits.) The same rationale applies in this license disciplinary proceeding. The Board does not control the actions of the Winterset police, and its exclusion of evidence would have little deterrent effect.

The rules of evidence cited by the Respondent are also inapplicable to administrative hearings. Iowa Code section 17A.14 governs the admissibility of evidence in administrative proceedings and provides that a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is generally admissible in administrative hearings. Schmitz v. Iowa Department of Human Services, 461 N.W.2d 603, 605-606 (Iowa App. 1990); McConnell v. Iowa Department of Job Service, 327 N.W.2d 234, 237 (Iowa 1982). The objections raised by the Respondent in the Motion in Limine were considered in determining the weight to be given to the evidence that was in fact offered, but did not justify excluding the evidence from the record.

FINDINGS OF FACT

1. The Respondent was issued license number 022-06439 to practice chiropractic in the state of Iowa on August 24, 2001. The Respondent's license is current through June 30, 2006. Following a preceptorship, the Respondent opened his own chiropractic practice in Winterset, Iowa in December 2001. The Respondent has a large practice of approximately 1800 patients. He estimates that 65-75% of his patients are female. (Testimony of Respondent; State Exhibits 1, 3)

2. The Respondent's chiropractic office has front desk area that is open to the waiting room due to a partial wall. The front desk area is adjacent to an insurance room. There are two changing rooms with doors opening into the single examination and adjusting room. There is a frosted two foot square sliding glass window located between the front desk area and the examination room that allows the office assistant and the Respondent to communicate with each other when necessary. There is also a door that leads from the examination room into the insurance room. This door is usually always open, unless there are small children in the examination room. The open door does not compromise visual or auditory privacy in the

examination room. The Respondent has a computer in the examination room for recording notes of the patient's treatment. (Testimony of Respondent; Julie Page; CV; SH; Respondent Exhibit A)

3. There is a storage closet near the changing rooms that contains smocks of various sizes. Female patients are asked to remove all of their clothes from the waist up and to wear a smock, which has Velcro closures in the back. Patients can signal the Respondent that they are changed and ready by pulling out a knob on the changing room door that leads to the examination room. Male patients are also asked to disrobe from the waist up but do not wear smocks. The Respondent practices the Gonstead method of chiropractic and needs access to the patient's spine because he uses a digital paraspinal scanner. (Testimony of Respondent; Julie Page; JP; TH; CV; SH)

Patient #1-JP

4. In July 2003, JP injured her back and neck while she was moving merchandise into her new place of business. JP sought chiropractic treatment from the Respondent after a friend recommended him. The Respondent treated JP on four occasions from July 10, 2003 through July 18, 2003 for her upper back and neck pain that radiated to the left shoulder and upper arm. On each occasion, JP removed all clothing from the waist up and wore a smock. JP always selected the largest smock available because she wears a size 40F bra and wanted the extra coverage. (Testimony of JP; Respondent; State Exhibit 15)

5. JP's symptoms were beginning to improve after her first three appointments with the Respondent. At her appointment on July 17, 2003, JP told the Respondent that she was 30 years old when she had her second son, who is eleven years younger than his brother. The Respondent commented that she probably decided that if she "was going to do it again, now is the time." JP agreed and told the Respondent that she "went out and bought a pink bra and got pregnant." She also told him that it was hard to find pretty bras in size 40F. The Respondent replied "an F? I'm used to a B." JP told him that a "B" is ok. After this conversation, JP felt that the Respondent kept looking at her breasts. The Respondent commented to JP "now, I'm obsessed, I can't stop looking at them." JP replied,

"yeah, my husband says he married me for my family inheritance. My mother was big busted."

JP has an outgoing personality and a frank and forthright demeanor. She told the Board that men frequently stare at her chest and as a defense mechanism, she often makes a joke about her physical appearance. It makes her feel more in control if she can make the other person laugh. She estimated that she had told the story about the pink bra a thousand times before.

Toward the end of JP's appointment on July 17, 2003, the Respondent put his arms out and asked her for a hug. She hesitated, thinking it was an unusual request, and he said "oh, come on." JP knew that the Respondent was a Christian and knew that hugging was a common practice at some of the modern Christian churches, including the one that JP attended. She held out her arms for an arms length hug and patted the Respondent on the back, commenting "you're a good kid." (JP is approximately 25 years older than the Respondent.) The Respondent put his arms around JP's back and squeezed JP against himself. The Respondent then put his hand under JP's breast, as if checking its weight, and said "whoa." JP replied "yeah, they're pretty impressive, aren't they?" and pulled away from him. The Respondent told JP that he better stop or he would be asking to see them, and she told him that he had come "close enough." JP left the examination room, changed into her clothes, and left the office. (Testimony of JP; State Exhibits 3, 6, 10, 12, 15)

6. All the way home, JP kept asking herself if she had done anything to cause the Respondent's behavior. She had another appointment scheduled with the Respondent for the following day. JP decided to keep the appointment and thought that she would confront the Respondent and tell him that it wouldn't happen again. JP took the Respondent a package of tea from her tea shop. During the appointment on July 18, 2003 neither JP nor the Respondent said anything about the previous office visit. After performing the usual adjustments, the Respondent massaged JP's neck while she was sitting in an upright chair. While the Respondent was massaging JP's neck, he reached one hand and then the other toward her breasts but did not actually touch them. At the end of the appointment, JP asked "so what's the verdict?" The Respondent told her that he would be gone the following week on vacation and she could make

an appointment in ten days. JP agreed but knew that she would not return to the Respondent for further treatment. This was JP's last appointment with the Respondent. (Testimony of JP; State Exhibits 3, 6, 10, 12, 15)

7. JP called the friend who had recommended the Respondent and told her what happened and not to send anyone else to him. She decided not to report the Respondent to the authorities. She thought about his wife and knew that he had several children and also felt that it was possible that she would not be believed. She did not tell her husband until one and a half months later. Initially she was afraid that her husband and sons might kill the Respondent if she told them. (Testimony of JP; State Exhibits 6, 10, 12)

Patient #2-TH

8. TH sought treatment from the Respondent on September 9, 2003 for severe back pain. Her usual chiropractor was not available, and she knew the Respondent because they attended the same church. TH had also attended Bible study with the Respondent's wife. She was satisfied with the Respondent's care and decided to continue as his patient.

TH also took her four children to the Respondent, and they were usually treated at the same time as TH. According to her patient records, the Respondent treated TH a total of ten times in September 2003, five times in October 2003, and four times in December 2003. (Testimony of TH; State Exhibits 4, 5, 7, 12, 14)

9. TH was having marital problems in the fall of 2003 and has since filed for divorce. On September 11, 2003, TH told the Respondent that she had been sleeping on the couch, and he advised her that she should not sleep on the couch because it was bad for her back. The Respondent made a note of this in his patient record.

TH's children qualified for Title XIX, but she was having difficulty paying the Respondent's bill for her own visits, even though he agreed to a payment plan and sometimes waived the charges. TH was finally able to pay off the balance in early November 2003, and she did not schedule any appointments with the Respondent for that entire month. In December, the Respondent sends gift certificates for one free visit to each of his patients. The Respondent sent TH

and her children five gift certificates, and she asked if she could use all five gift certificates for her appointments. The Respondent agreed. (Testimony of TH; Respondent; State Exhibits 12; 14)

10. TH scheduled appointments with the Respondent for December 5, December 12, December 19, and December 22, 2003. While she was at her job as a teacher's aide on December 22, 2003, TH felt the rib in her upper left chest pop out of place. This had happened to her once before during an appointment, and the Respondent was able to adjust the rib back into place. Although she was in a lot of pain, TH decided to wait until the appointment she had already scheduled after work.

TH's children also had appointments on December 22nd but had walked to the Respondent's office right after school and were done and waiting for her by the time she arrived. TH put on a smock and went into the Respondent's examination room. She told the Respondent that while she was at work, she was rubbing the spot on her upper chest (near her collarbone), and a co-worker teased her about giving herself a breast exam. This apparently prompted the Respondent to ask TH when she last had a breast exam.² She told him "I don't even want to tell you" but assured him that she had an appointment scheduled with her OB/GYN that would include a breast exam. When TH was lying on the treatment table, the Respondent again asked her about her last breast exam. She repeated that she had an appointment scheduled, but the Respondent replied that he could do one for her and then started performing what appeared to her to be a routine breast exam over the top of her smock. TH was embarrassed. She asked the Respondent about a problem she had experienced with her lower ribs under her breasts and asked whether she should be wearing a sports bra instead of an underwire bra. The Respondent told her, "or none at all." TH was offended by this comment.

When the breast examination was over and TH sat up, the Respondent reached over and squeezed each breast through the smock. She had never had a health care provider squeeze her breasts after an exam and immediately felt that something was wrong. The Respondent then rubbed his hand across her breast nipple. TH stood up and turned to leave. The Respondent reached from behind her and cupped her

² Chiropractors are trained to perform breast examinations.

breast, stating, "more than a handful is a waste." TH told him "we're done here" and the Respondent replied, "for now." TH left feeling violated, embarrassed and humiliated. She got dressed, collected her children, and left the office. TH denies that she stopped at the front desk to make further appointments for herself or her children and states that any later appointments on the books had been scheduled prior to December 22nd.

On her way home, TH stopped to visit her aunt and briefly told her what happened at the Respondent's office. TH's aunt told her that she had to tell her husband, but TH was reluctant to do so because she did not know how her husband would react. (Testimony of TH; State Exhibits 4, 5, 7, 12, 14)

11. On December 23rd, TH confided in a friend at work, who told her she had been molested and should speak to the school's counselor. TH spoke to the school counselor and his wife, who was employed as the school's court liaison. They advised her to write down everything that she remembered about the appointment and to contact the police. Although she was upset and crying, TH tried to write down everything she could remember. TH's handwritten statement is found at State's Exhibit 7, pp. 1-3. She dated the statement December 22, 2003, the day of the incident, although it was written on December 23rd. (Testimony of TH; State Exhibit 12, p. 10; pp. 22-23)

After work, TH spoke to another friend, who belonged to her church. The friend told TH that she should speak to their pastor before going to the police. TH stopped at her church but was embarrassed to tell the pastor what happened, so she just gave him her written statement. After reading the statement, the pastor suggested a meeting between TH, the church elders, and the Respondent, but she refused. When her children came into the office, they changed the subject, and TH left with her children, leaving her handwritten statement behind.

Later that evening, TH contacted her pastor at home and asked him to return her written statement. While TH was driving the pastor to his office to retrieve the statement, he told her that he had already given a copy of her statement to the Respondent so he could check it against his records. TH was very upset and told her pastor to get the copy of her statement back from the Respondent. TH is

upset with the church's handling of her complaint and no longer attends the same church.³ (Testimony of TH; State Exhibits 7; 12, pp. 14-17)

12. TH told her husband that evening, and he asked her to show him what the Respondent did to her. While she was showing her husband what happened, TH recalled additional details about the appointment. She typed a four page written statement, which includes the additional details. TH also told others about the Respondent's actions, including several friends and relatives. (Testimony of TH, State Exhibit 7, pp. 4-7; State Exhibit 12, p. 11)

Criminal Investigation/Charges

13. TH reported the incident to the Winterset Police Department on December 23, 2003 at 5:06 p.m. Assistant Police Chief Terry Miller was on vacation at the time of the report, but he interviewed TH by telephone on December 26, 2003. TH later went to the police station and brought her handwritten and typed statements. Officer Miller witnessed and notarized her signature on both statements. Officer Miller also tape-recorded an interview with TH. (Testimony of TH; Terry Miller; State Exhibits 5, 6, 7 and 12, p. 11)

14. Officer Miller interviewed the Respondent on January 5, 2004. The Respondent brought a typed written statement with him without being asked to do so. In his written statement, the Respondent denies doing anything wrong or outside the scope of his practice during his treatment of TH. (State Exhibits 6, 8; Testimony of Terry Miller)

a. In his written statement, the Respondent describes his last appointment with TH in far greater detail than he did in her patient record. He recalls TH coming into the office on December 22, 2003 and reporting that she had felt a "pop" on her left anterior chest cavity while stretching at work. She

³ The pastor was later interviewed by the Board's investigator and confirmed these facts, which are relevant to the Board's decision because they establish that the Respondent had detailed knowledge of TH's complaint before the police interviewed him. The pastor disputed several other statements made by TH concerning their conversations and his reaction to her complaint, which are not directly relevant to the Board's decision. The pastor did not testify at the hearing, and the Board did not attempt to resolve these inconsistencies.

commented that the teacher in the room asked her if she was "giving herself a breast examination" and she laughed, stating no, that she had pain at the front of her ribs and that she "considers that area to be neck region, as her breasts are saggy at her age and after having four kids." According to the Respondent, TH told him that her breasts hang down to her belly button, and he assured her that they do not and that she was not that old.

b. According to Respondent, after he adjusted TH's left rib, she sat up and asked him if he thought the rib was back in place. He palpated the soft tissue of her chest, checking for tenderness. As he got lower on her chest, he asked her if "she wanted me to check the breast tissue." The Respondent palpated the intercostal spaces and checked the breast tissue for tenderness. He denies checking the axilla or the nipple and denies checking the right breast. He palpated the left rib heads for tenderness, which was lessened.

c. The Respondent states that TH had a habit of leaning forward and rounding her shoulders, and he reminded her to "sit up." He also told her that her breasts did not sag and "were not hanging down to her belly button." He pressed her umbilicus to show her the distance between her breast and stomach. She said "OK we're done then?" He said yes and went to record his notes of the visit at his computer. The Respondent felt a strange tension in the room as TH got up to leave. The Respondent stated it was like an awareness came over her that he had just examined her breast. She left quickly and the Respondent thought she was somewhat embarrassed. She changed, and the Respondent watched her schedule her next appointments for herself and her children and nothing seemed wrong.

Officer Miller read the Respondent his rights, and the Respondent signed a voluntary waiver and agreed to a taped interview. In his interview, the Respondent reiterated most of his written statement. When asked what ramifications he could face as a chiropractor if charged with simple assault, the Respondent acknowledged that the chiropractic board could suspend his license, take some disciplinary action, or shut him down altogether. He told Officer Miller that he has five children and a great

relationship with his wife, who is his best friend. (Testimony of Officer Terry Miller; State Exhibits 9, 6)

15. On January 10, 2004, a friend told TH that she had heard that the Respondent might have touched another woman, JP, inappropriately. TH had never met JP and did not know her. TH contacted Officer Miller, who told her that she could call JP and ask her if she was willing to speak to the police. He warned TH that she and JP should not discuss the details of their complaints before JP was interviewed. TH called JP, and JP agreed to call Chief Miller. (Testimony of TH; JP; Terry Miller; State Exhibit 6)

16. JP called Officer Miller later on January 10, 2004 and told him about her last appointment with the Respondent. JP told Officer Miller that she did not report it to the police because she knew it would be a "he said/she said" type case and that the Respondent would be able to explain his actions through medical means. Officer Miller asked JP to prepare a written statement and to bring it to her interview at the police station on January 12, 2004. (Testimony of Officer Terry Miller; State Exhibits 6, 10)

17. On January 23, 2004, the Respondent returned to the police station at Officer Miller's request. Officer Miller explained that he had additional questions and again read the Respondent his rights. The Respondent signed a voluntary waiver and agreed to an additional taped interview. (State Exhibit 11)

Officer Miller told the Respondent that a second female, JP, had come forward. The Respondent told Miller that he remembered JP and recalled that she was opening a store in Lorimor. Miller told the Respondent about JP's complaint, and the Respondent denied touching JP's breast or hugging her. He told Miller that he has hugged "little old ladies" before but not JP. Miller asked the Respondent if more women would be coming to him, and the Respondent replied "I don't know." Miller told the Respondent that he knew something happened in that room with JP and TH. The Respondent told him "I'm through talking at this time." Officer Miller told the Respondent that he could stop talking if he wanted to and turned off his tape recorder.

The Respondent remained in his chair and did not leave, although he was free to do so. He then told Officer Miller

that he did not do anything "in a sexual manner" to TH. Miller explained the incident would constitute a simple misdemeanor assault and that a speeding ticket is a simple misdemeanor. The Respondent asked to see the officer's code book and JP's written statement. After reading JP's statement and the sex abuse code section, the Respondent told Officer Miller that he felt like the victim of a "witch hunt" and asked Miller "where he was at with all of this." Officer Miller told the Respondent that he did not know because he could not "see inside" the Respondent but that he had two women who did not know each other before coming forward with these reports and there was no reason for them to be mad at him before the incidents happened because both had spoken highly of him. Officer Miller told the Respondent that either he was lying or the two women were lying.

The Respondent asked to speak off the record, Christian to Christian. (Officer Miller was a former member of the Respondent's church, but left that church in August 2002.) Miller told the Respondent that he could not speak off the record. The Respondent then pointed to Officer Miller's case file and said that he "did do one of these" but did not want to say which one because it would affect his licensing. The Respondent felt he should have an attorney present before he confessed before the licensing board, and he did not want to lose his license. Officer Miller asked the Respondent if he wanted his opinion, and the Respondent said that he did. Miller told the Respondent that he would be living in and hiding behind a lie that would affect him, his family, TH, JP, and his church and that healing could not come to him or TH or JP unless he was truthful. The Respondent then stated that he did not do anything in a sexual manner to TH, but he admitted holding JP's breast because "they looked heavy" and "she was kind of showing them off." He denied hugging JP.

The Respondent denied ever stepping behind TH and grabbing her breast and denied telling her "more than a handful is a waste." He only admitted palpating her breast to check for pain. The Respondent told Officer Miller that chiropractors are trained to do breast examinations and prostrate examinations but rarely do them. Officer Miller told the Respondent that either he or TH was lying. The Respondent told him, "I held JP's breast. I didn't do that to TH." He also said he wasn't going to say he did

something if he didn't do it. (Testimony of Terry Miller; State Exhibit 6)

18. Officer Miller completed his investigation on January 24, 2004 and submitted the case to the county attorney. The county attorney initially filed a simple misdemeanor charge against the Respondent but later upgraded the charge to "sexual exploitation of a counselor." The criminal charges were later dismissed. (Testimony of Terry Miller)

Complaints to Board/ Board Investigation

19. On February 10, 2004, JP filed a complaint with the Board of Chiropractic Examiners. On March 11, 2004, TH filed a complaint with the Board. (State Exhibits 3, 4) The complaints were referred to the Department of Inspections and Appeals (DIA) for investigation in April 2004. The DIA investigator subpoenaed the Respondent's records for JP and TH, interviewed both complainants, and prepared an investigative report concerning the interviews. The DIA investigator also interviewed the pastors at TH's former church, several of TH's friends and co-workers, and one of the Respondent's office assistants. The DIA investigator made several attempts to interview the Respondent, but his attorneys did not agree to an interview due to the pending criminal charges. (Testimony of Darby Matteson; State Exhibit 12)

Credibility Findings

20. JP, TH, Terry Miller, and the Respondent all testified at the hearing before the Board. The differences between the Respondent's testimony and the complainants' testimony are too great to be explained as a misunderstanding or difference in perception. Either the Respondent or the complaining witnesses have not been truthful. The Board considered the witnesses' testimony and demeanor at hearing, their consistent and inconsistent prior statements, and their self-interest and motivation to lie about what happened. The Board determined that the testimony of JP and TH was more credible than the Respondent's testimony.

a. Based on the testimony of the Respondent's witnesses (a chiropractor, two patients, and an employee) and the overall success of his practice, it appears that the Respondent has provided many patients

with very effective and ethical chiropractic treatment. However, none of these witnesses were present when the Respondent provided treatment to JP and TH, so this testimony only had limited relevance. JP and TH were both satisfied with the Respondent's chiropractic treatment and received relief from their symptoms prior to the office visits during which they claim that he touched their breasts inappropriately and made inappropriate comments about their breasts. JP and TH abruptly stopped their treatments with the Respondent, which is consistent with their claims that the Respondent behaved inappropriately toward them.

b. The Board reviewed the diagram and testimony concerning the layout of the Respondent's office, but does not believe that the layout prevented the Respondent from behaving inappropriately without detection by office staff. Even assuming that the door between the treatment room and the insurance area was left open nearly all the time, this did not compromise the visual and auditory privacy within the treatment room. The Board does not believe that the Respondent's office assistant would walk in during a treatment without first announcing herself.

c. JP and TH provided detailed statements to the police and the Board's investigator that allege similar types of inappropriate behavior and comments by the Respondent. The complainants did not know each other and did not discuss the details of their complaints with each other before their police interviews. The similarity of their complaints bolsters their credibility.

d. JP and TH had different immediate responses to the Respondent's inappropriate behavior, which seemed consistent with their different personalities.

JP's reasons for not immediately coming forward with her complaint were credible. JP told few people about what happened to her and would not have filed a complaint if she continued to think that hers was an isolated incident. She appeared better able to cope emotionally with what happened to her and had concerns about the Respondent's family. She admitted that she was afraid that the Respondent would be believed over her because he was a medical professional.

TH immediately began telling friends, family, her pastor, and co-workers about the Respondent's conduct. She made a police report the day after her last appointment with the Respondent.

e. There were no significant discrepancies in JP's written statement, her prior interviews, or her testimony. She was frank and forthright in her testimony. JP readily admitted that she raised the subject of her breasts with the Respondent and volunteered personal information to him, even though this information was potentially embarrassing to her. Although JP contacted the newspaper and was interviewed and photographed for an editorial page article, the Board does not believe that JP has lied about the Respondent in order to obtain attention for herself or to advertise her business.

f. TH prepared detailed written statements in the days following her last appointment. The inconsistencies between TH's written statements, her interviews, and her testimony were either adequately explained or concerned details that were insignificant to the primary issue. Although TH confided in many people after the incident and has filed a civil lawsuit against the Respondent seeking monetary damages, the Board does not believe that she was lying about the Respondent's actions in order to get attention or for financial gain.

g. The Respondent has been consistent in his testimony and previous written and oral statements concerning TH. The Respondent has consistently denied any inappropriate contact with or comments to TH. However, the Respondent had the benefit of reviewing TH's handwritten statement almost two weeks before the police first interviewed him. He then provided a written statement to the police that included far more clinical detail than he recorded in TH's patient record.

The Respondent was confronted with JP's complaint without prior warning or preparation. Right away, the Respondent told Officer Miller that he remembered JP and that she had a store in Lorimor, but he denied hugging her or touching her breast. However, later in

that same interview, the Respondent made an admission regarding JP, stating "I did this one but not the other." The Respondent admitted touching JP's breast because they "looked heavy" and she was "showing them off." However, he provided no further detail to Officer Miller. While these admissions were suppressed in the criminal proceeding, they are generally consistent with the testimony that the Respondent gave before the Board.

At the hearing, the Respondent gave a far more detailed description of JP's last appointment. He recalled that he was distracted because he and his wife were scheduled to leave on a cruise to celebrate their wedding anniversary, and he had been on the phone with his wife and doctors throughout the day because some of his children were ill. He claimed that JP *asked him* for a hug, so he hugged her. This was the first time that the Respondent ever admitted hugging JP, and he had repeatedly denied hugging JP when asked by Officer Miller. On cross examination, the Respondent claimed that he was honest with Miller but that he did not remember who JP was at the time and did not remember hugging her. His claim that he did not remember who JP was when he was interviewed by Officer Miller was not credible; when first asked about JP he told Miller that he remembered treating her and that she was opening a store in Lorimor.

The Respondent also claimed that in addition to mentioning her pink bra and that she wore a size F bra, JP asked him if her large breasts could be the cause of her back pain, and he told her that they were not the cause but that they could contribute to her slow healing. The Respondent claimed that JP then repeatedly asked him if he wanted to see how heavy her breasts were. According to the Respondent, he eventually cupped his hands under JP's breasts and agreed that they were heavy, even though he realized it was not clinically necessary for him to touch her breasts. The Board did not believe the Respondent's testimony concerning JP. JP denies ever asking the Respondent to touch her breasts or asking him if they were the cause of her back problems. The Respondent did not document that JP asked him whether her heavy breasts could be the cause of her back problem.

(Testimony of Respondent; JP; State Exhibit 6, pp. 8-10; Exhibit 15)

h. The Respondent has strong self-interests, including protection of his license, his practice, his reputation, and his family, that provide motivation for him to lie about his treatment of JP and TH.

CONCLUSIONS OF LAW

Count I

Iowa Code section 151.9(2) and (3)(2003) provide, in relevant part:

151.9 Revocation or suspension of license.

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

...

2. Professional incompetency.

...

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

Accord, Iowa Code sections 147.55(2),(8); 272C.10(2), (8)(2003).

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 provided in rule 645 IAC 45.3 (147,272C) when the board determines that the licensee is guilty of the following acts or offenses:

...

45.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

...

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average

chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

The preponderance of the evidence established that the Respondent violated Iowa Code sections 151.9(2) and (8), 147.55(2) and (8), 272C.10(2) and (8) and 645 IAC 45.2(2)"d" when he willfully and repeatedly departed from the minimal standard of acceptable and prevailing practice of chiropractic in the state of Iowa. The Respondent willfully and repeatedly touched the breasts of two female patients without a valid clinical reason for doing so. The Respondent willfully made inappropriate comments to two patients concerning their breasts. Unnecessary and inappropriate touching of patients' breasts and inappropriate sexual comments to patients is conduct that constitutes a willful departure from or failure to conform to the minimal standard of acceptable and prevailing practice of chiropractic in this state.

Count II

Iowa Code section 151.9(3) and (8)(2003) provide, in relevant part:

151.9 Revocation or suspension of license.

A 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)(2003).

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)...or 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 preponderance of the evidence established that the Respondent engaged in unethical conduct and a practice harmful or detrimental to the public, in violation of Iowa Code sections 151.9(3) and (8), 147.55(3) and (8), 272C.10(3) and (8) and 645 IAC 45.2(3) and (28), when he improperly touched the breasts of two female patients and when he made improper and/or suggestive remarks to the two patients.

DECISION AND ORDER

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 **INDEFINITELY SUSPENDED**, effective on the date of service of this order.

IT IS FURTHER ORDERED that the indefinite suspension shall continue until the Respondent submits to a comprehensive evaluation from a facility or licensed provider with experience in evaluating licensed professionals with professional boundary issues. The facility or licensed provider performing the evaluation must be pre-approved by the Board. The Respondent must sign all necessary releases for the evaluating facility or provider to share information with the Board and provide the Board with a written evaluation report and recommendations for treatment. Following the evaluation, the Respondent must fully comply with any treatment recommendations made by the Board-approved evaluator. The Respondent may not file an

application for reinstatement of his license until he has obtained a written recommendation from the Board-approved evaluator or the Board-approved treatment facility stating that he is safe to return to the practice of chiropractic. Any application for reinstatement will be subject to 645 IAC 11.31.

IT IS FURTHER ORDERED that the Respondent shall pay a \$75.00 hearing fee and \$90.00 in costs for the court reporter. The \$165.00 in hearing 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.

Dated this 27 day of April, 2005

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

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the board on April 27, 2005.