

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2014-07325

KENNETH ZANE FINGER, D.C.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Chiropractic Medicine against the Respondent, Kenneth Zane Finger, D.C., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of chiropractic medicine pursuant to Chapters 20, 456 and 460, Florida Statutes (2013).
2. At all times material to this Complaint, Respondent was licensed to practice as a chiropractic physician in the State of Florida, pursuant to Chapter 460, Florida Statutes, having been issued license number CH 8208.

3. At all times material to this Complaint, Respondent owned, operated, and practiced chiropractic medicine at, First Coast Chiropractic, Inc. (First Coast), in Jacksonville Beach, Florida.

4. Respondent's address of record is 1482 South Third Street, Jacksonville, Florida 32250.

5. On or about May 5, 2014, Patient K.W., a 28-year-old-female presented to First Coast for treatment of lower back, mid back, left buttock, and posterior left thigh pain by Respondent.

6. During the treatment session on or about May 5, 2014, Respondent performed a massage on Patient K.W. to alleviate her pain.

7. When Respondent began the massage, Patient K.W. was wearing only underwear.

8. Respondent suggested that Patient K.W. remove her underwear because they were in the way of the location where he was performing the massage.

9. Patient K.W. removed her underwear while Respondent was outside the treatment room.

10. When Respondent returned to the treatment room and began to massage Patient K.W., the Patient was face-up under sheets on the treatment table.

11. During the massage session, the sheets came off Patient K.W. and exposed her open legs.

12. Respondent bent down over Patient K.W., placed his finger in her vagina, and performed oral sex on her for approximately one minute.

13. Patient K.W. grabbed Respondent's wrist and told Respondent to stop what he was doing.

14. Respondent apologized and told Patient K.W. that she had an amazing body.

15. Respondent kissed Patient K.W. and told her to get dressed.

16. Patient K.W. got dressed, left First Coast, and did not return for any additional treatment sessions with Respondent.

COUNT I

17. Petitioner realleges and incorporates Paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. Section 460.413(1)(i), Florida Statutes (2013), subjects a chiropractor to discipline for failing to perform any statutory or legal obligation placed upon a licensed chiropractic physician.

19. Section 460.412, Florida Statutes (2013), provides that sexual misconduct in the practice of chiropractic medicine is a violation of the chiropractic physician-patient relationship through which the chiropractic

physician uses the relationship to induce or attempt to induce the patient to engage, or to engage or to attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient. Pursuant to Section 460.412, Florida Statutes (2013), sexual misconduct in the practice of chiropractic medicine is prohibited.

20. Respondent engaged in sexual misconduct with Patient K.W., in violation of Section 460.412, Florida Statutes (2013), by using the chiropractic physician-patient relationship induce or attempt to induce Patient K.W. to engage, or to engage or to attempt to engage Patient K.W., in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of Patient K.W.

21. Based upon the foregoing, Respondent violated Section 460.413(1)(i), Florida Statutes (2012), by failing to perform a statutory or legal obligation, by violating Section 460.412, Florida Statutes (2013).

COUNT II

22. Petitioner realleges and incorporates Paragraphs 1 through 16 of this Complaint as if fully set forth herein.

23. Section 460.413(1)(ff), Florida Statutes (2013), subjects a chiropractor to discipline for violating any provision of Chapter 460, Florida Statutes (2013), or any rules adopted pursuant thereto.

24. Rule 64B2-17.0021, Florida Administrative Code, provides in pertinent part:

The chiropractic physician/patient relationship is founded on the trust and confidence that a patient places in the chiropractic physician, and this rule is intended to prevent a chiropractic physician from taking advantage of that trust for the chiropractic physician's own pleasure, satisfaction or benefit....

(1) No chiropractic physician may engage in sexual misconduct with a patient of the chiropractic physician.

(2) Sexual misconduct is any direct or indirect physical contact by any person or between persons which is intended or which is likely to cause to either person stimulation of a sexual nature. Sexual misconduct includes sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse. Sexual misconduct also includes the activities described in subsections (3) through (8) of this rule....

(4) A licensee who makes suggestive, lewd, or lascivious remarks to a patient or who performs suggestive, lewd, or lascivious acts in the presence of a patient is guilty of sexual misconduct.

(5) A licensee who intentionally touches a patient's breasts or sexual organs for non-diagnostic or non-therapeutic purposes is guilty of sexual misconduct, regardless of whether the patient is clothed.

(6) A licensee who makes intentional contact with or who penetrates a patient's oral, anal, or vaginal orifice with the licensee's own sexual organ is guilty of sexual misconduct.

(7) A licensee who makes intentional contact with or who penetrates a patient's oral, anal, or vaginal orifice with any object for any purpose other than a professionally recognized diagnostic or therapeutic purpose is guilty of sexual misconduct.

(8) Definition of patient. A patient is any person who was being

examined or who was under the care or treatment of the chiropractic physician when the incident or incidents of sexual misconduct allegedly occurred, regardless of whether the person was billed by or was paying for chiropractic services from the licensee who is accused of sexual misconduct. A person shall be considered a patient until after one year has elapsed since the last date on which the chiropractic physician examined or treated the person.

(9) Consent as a defense. Because of the control that a chiropractic physician exercises in the physician/patient relationship, a patient's consent may not be used by the chiropractic physician in the defense of an allegation of sexual misconduct on the part of the chiropractic physician.

25. Respondent engaged in sexual misconduct with Patient K.W., in violation of Rule 64B2-17.0021, in one or more of the following ways:

- a. By performing oral sex on Patient K.W.;
- b. By making suggestive, lewd, or lascivious remarks to Patient K.W.;
- and/or
- c. By intentionally touching or penetrating Patient K.W.'s sexual organs for non-diagnostic or non-therapeutic purposes.

26. Based upon the foregoing, Respondent violated Section 460.413(1)(ff), Florida Statutes (2013), by violating Rule 64B2-17.0021, Florida Administrative Code.

WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license,

restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board of Chiropractic Medicine deems appropriate.

SIGNED this 19th day of May, 2015.

John H. Armstrong, MD, FACS
State Surgeon General and
Secretary of Health



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FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Angel Sauter

DATE: MAY 19 2015

PCP Date: May 19, 2015
PCP Members: Larsson, D.C.; Fox, D.C.

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.