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F9160

FILED DATE - DEC 08 2015

Department of Health

By: Angel Sanders
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2014-07325

License No.: CH8208

KENNETH ZANE FINGER, D.C.,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Chiropractic Medicine (Board) at a duly-noticed public meeting on November 13, 2015, in Kissimmee, Florida. Petitioner filed an Administrative Complaint seeking disciplinary action against Respondent's license to practice as a chiropractic physician. A copy of the Administrative Complaint is attached to and incorporated as part of this Final Order. Petitioner was represented by Christopher Dierlam, Assistant General Counsel. Respondent was present with his counsel, Kevin Mercer, Attorney at Law.

Petitioner and Respondent have stipulated to a disposition of this case. After considering the presentation of the parties and reviewing the record of the case, the Board voted to adopt the Settlement Agreement as an appropriate resolution of this matter. A copy of the Settlement Agreement is attached to and made a part of this Final Order. The parties shall be governed accordingly.

Pursuant to Section 456.072(4), Florida Statutes, the Department is authorized to collect costs for investigation and prosecution. The evidence presented to the Board was that the costs associated with this matter are **two thousand eight hundred forty-seven**

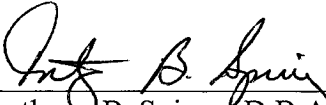
dollars and seventy-four cents (\$2,847.74). Payment shall be made by certified or cashier's check or money order to the Department of Health, Compliance Management Unit, Board of Chiropractic Medicine Compliance Officer, P.O. Box 6320, Tallahassee, FL 32324-6320, in the manner set forth in the incorporated Settlement Agreement.

IT IS THEREFORE ORDERED that the Settlement Agreement is adopted and Respondent is hereby ordered to reimburse the Department costs in the amount of **\$2,847.74.**

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 8th day of December, 2015.

BOARD OF CHIROPRACTIC MEDICINE



Anthony B. Spivey, D.B.A., Executive Director
on behalf of Kevin Fogarty, D.C., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US mail to: **Kenneth Finger, D.C.**, 1482 South 3rd Street, Jacksonville Beach, Florida 32250 and to his counsel of record, **Kevin Mercer**, Wicker, Smith, O'Hara, McCoy, & Ford, P.A., Bank of America Tower, Suite 2700, 50 North Laura Street, Jacksonville, Florida 32202; and to: **Christopher Dierlam**, Assistant General Counsel, Department of Health, Christopher.Dierlam@flhealth.gov; and **Deborah B. Loucks**, Assistant Attorney General, deborah.loucks@myfloridalegal.com, on

Dec. 8, _____, 2015.



Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2014-07325

KENNETH ZANE FINGER, D.C.

RESPONDENT.

SETTLEMENT AGREEMENT

RESPONDENT, Kenneth Zane Finger, referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Settlement Agreement and to the entry of a Final Order of the Board of Chiropractic Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 460, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed chiropractic physician within the State of Florida, having been issued license number CH 8208 on June 28, 2001.

2. The Department charged Respondent with violations of Chapter 460, Florida Statutes, in an Administrative Complaint that was filed and properly served upon Respondent. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit "A".

3. For the purposes of these proceedings, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that in his capacity as a chiropractic physician he is subject to the provisions of Chapters 456 and 460, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of

Chapter 460, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand:** The Board of Chiropractic Medicine shall issue
a reprimand against Respondent's license.

2. **Fine:** The Board of Chiropractic Medicine shall impose an administrative fine of \$7,500.00 against Respondent's license, to be paid by Respondent to the Department of Health, Compliance Management Unit, Bin C76, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within three years of the Final Order accepting this Settlement Agreement. **All fines shall be paid by cashier's check or money order.** Any change in the terms of payment of any fine imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY, AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN THREE YEARS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER THAT THE FULL AMOUNT OF HIS FINE HAS BEEN RECEIVED, RESPONDENT AGREES TO CEASE PRACTICING UNTIL SUCH TIME AS WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER.

3. **Reimbursement Of Costs**: Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, any other costs Respondent incurs to comply with the Final Order, and the Board's

administrative costs directly associated with Respondent's probation, if any. Respondent agrees that the amount of Department costs to be paid in this case is \$1,847.74 but shall not exceed \$2,847.74. Respondent will pay costs to Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, within three years from the date of filing of the Final Order in this cause. **All costs shall be paid by cashier's check or money order.** Any change in the terms of payment of any fine imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN THREE YEARS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT

AGREES TO CEASE PRACTICING UNTIL SUCH TIME AS WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD OF CHIROPRACTIC COMPLIANCE OFFICER.

4. **Continuing Education – Risk Management:** Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend three hours of Board approved Continuing Education in Risk Management, two of which must be laws and rules. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, documenting completion of this course. All such documentation shall be sent to the Department of Health Compliance Unit, Bin C76, P. O. Box 6320, Tallahassee, FL 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within 13 months from the date of filing of the Final Order in this cause. These hours shall be in addition to all those hours required for renewal of licensure; and unless otherwise approved by the Board, said continuing education course(s) shall consist of the formal, live lecture format.

5. **Continuing Education – Ethics and Boundaries:** Within one year of the date of the filing of a Final Order in this cause,

Respondent shall attend two hours of Board approved Continuing Education in Ethics and Boundaries. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, documenting completion of this course. All such documentation shall be sent to the Department of Health Compliance Unit, Bin C76, P. O. Box 6320, Tallahassee, FL 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within 13 months from the date of filing of the Final Order in this cause. These hours shall be in addition to all those hours required for renewal of licensure; and unless otherwise approved by the Board, said continuing education course(s) shall consist of the formal, live lecture format.

6. **National Ethics and Boundaries Examination**: Within one year of the filing date of this Final Order, Respondent shall take, and pass, the Ethics and Boundaries Examination (E & B) administered by the National Board of Chiropractic Examiners (NBCE).

7. **Probation / Practice Restrictions**: Effective on the date of the filing of the Final Order incorporating the terms of this Settlement Agreement, Respondent's license to practice chiropractic

medicine shall be placed on probation for a period of four years. The purpose of probation is not to prevent Respondent from practicing chiropractic medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession; and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another chiropractic physician with appropriate expertise. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

A) **Restrictions During Probation:** During the period of Probation, Respondent's license shall be restricted as follows:

i. **Indirect Supervision** - Respondent shall practice only under the indirect supervision of a Board-approved chiropractic physician, hereinafter referred to as the "monitor", whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 50 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor

shall be Board Certified in Respondent's specialty area unless otherwise provided by the Board. In this regard, Respondent shall allow the monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

B) Required Supervision:

i. If the terms of the Settlement Agreement include indirect monitoring of the licensee's practice or direct monitoring of the licensee's practice, Respondent shall not practice chiropractic medicine without an approved monitor/supervisor, as specified by this Settlement Agreement, unless otherwise ordered by the Board.

ii. The monitor/supervisor must be a licensee under Chapter 460, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the

Board and be practicing within a reasonable distance of Respondent's practice, a distance of 20 miles unless otherwise specifically provided for in the Settlement Agreement. The Board may also reject any proposed monitor/supervisor for good cause shown.

C) **Mechanism for Approval of Monitor/Supervisor:**

i. Temporary Approval - The Board confers authority on the Chairman of Board to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. Once a Final Order adopting the Agreement is filed, Respondent shall not practice chiropractic medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Board.

ii. Formal Approval - Respondent shall have the monitor/supervisor with Respondent at Respondent's first probation appearance before the Board. Prior to the consideration of the monitor/supervisor by the Board, Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final

Order in this case. Respondent shall submit a current curriculum vitae and a description of current practice from the proposed monitor/supervisor to the Board office no later than 14 days before Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Board at such other times as directed by the Board. It shall be Respondent's responsibility to ensure the appearance of the monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of this Settlement Agreement and shall subject Respondent to disciplinary action.

D) **Change in Monitor/Supervisor:** In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill the responsibilities of a monitor/supervisor as described above, Respondent shall immediately advise the Board of this fact. Respondent shall immediately submit to the Chairman the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Board at its next regularly

scheduled meeting for consideration of the monitor/supervisor by the Board. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Board at which the issue of the Board's approval of Respondent's new monitor/supervisor shall be addressed.

E) **Responsibilities of the Monitor/Supervisor:** The Monitor shall:

i. Review Respondent's log of all visits with female patients to ensure that Respondent's chaperone is present during all such visits.

ii. Maintain contact with Respondent on a frequency of at least once per quarter. In the event that the Respondent does not timely contact the monitor, then the monitor shall immediately report this fact in writing to the board.

iii. Submit reports on a quarterly basis, in affidavit form, which shall include:

1) A brief statement of why Respondent is on probation;

- 2) A description of Respondent's practice;
- 3) A statement addressing Respondent's compliance with the terms of probation;
- 4) A brief description of the monitor's relationship with Respondent;
- 5) A statement advising the Board of any problems which have arisen; and
- 6) A summary of the dates the monitor went to Respondent's office, the number of visits listed on the log of visits with female patients, an indication whether the chaperone signed off as being present for each of the visits, and the dates Respondent contacted the monitor as referenced above.

iv. Report any violations by Respondent of Chapters 456 or 460, Florida Statutes, and the rules promulgated thereto, to the Board immediately.

v. Respondent's monitor shall appear before the Board at the first meeting of said board following commencement of the probation, and at such other times as directed by the Board. It shall be Respondent's responsibility to ensure the appearance of Respondent's

monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Board, **Respondent shall immediately cease practicing chiropractic medicine until such time as the approved monitor or alternate monitor appears before the Board.**

F) **Reports from Respondent:** Respondent shall submit quarterly reports, in affidavit form, the contents of which the Board, may further specify, but which shall include:

- i. A brief statement of why Respondent is on probation;
- ii. A description of practice location;
- iii. A description of current practice
- iv. A brief statement of compliance with probationary terms;
- v. A description of the relationship with monitoring chiropractic physician;
- vi. A statement advising the Board of any problems which have arisen; and
- vii. A statement addressing compliance with any restrictions or requirements imposed, including the number

of visits during which he treated female patients during that quarter, and whether his chaperone was present for all of them.

G) **Appearances:** Respondent shall appear before the Board of Chiropractic Medicine at the first board meeting after probation commences, at the last meeting of the board preceding scheduled termination of the probation, and at such other times as requested by the board. The Board staff of the date, time and place of the board meeting at which Respondent's appearance is required shall notice respondent. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Agreement, and shall subject Respondent to disciplinary action.

H) **Continuity of Practice:**

i. **Tolling Provisions:** In the event Respondent leaves the

State of Florida for a period of 30 days or more, or otherwise does not treat patients or engage in the active practice of Chiropractic Medicine in the State of Florida, then the following provisions of Respondent's probation shall be tolled as enumerated below and shall remain in a

tolled status until Respondent returns to active practice in the State of Florida:

a. The time period of the probation shall be tolled;

b. The provisions regarding supervision by another chiropractic physician, and required reports from the monitor shall be tolled; and

c. The provisions regarding Respondent's preparation

of reports detailing compliance with this Settlement Agreement shall be tolled.

ii. **Active Practice:** In the event that Respondent leaves the active practice of chiropractic medicine for a period of one year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice chiropractic medicine with skill and safety to patients prior to resuming the practice of chiropractic medicine in this State.

8. **Restriction of Practice:**

i. Respondent's practice is restricted in that Respondent may not examine or treat female patients without the

presence of a chaperone who must be present in the treatment area/examination room throughout the duration of the visit with all female patients.

ii. Respondent must maintain a log of all visits with female patients, which includes the date of the visit and the patient's name. The chaperone must sign the log next to each visit listed on it to attest to the fact that the chaperone was present throughout the duration of the visit.

STANDARD PROVISIONS

1. **Appearance:** Respondent is required to appear before the Board at the meeting of the Board where this Settlement Agreement is considered.

2. **No Force or Effect Until Final Order:** It is expressly understood that this Settlement Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Settlement Agreement.

3. **Addresses:** Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten days of any changes of said addresses.

4. **Future Conduct:** In the future, Respondent shall not violate Chapter 456 or 460, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice chiropractic medicine. Prior to signing this Settlement Agreement, the Respondent shall read Chapters 456 and 460, Florida, Statutes, and the Rules of the Board of Chiropractic Medicine, at Chapter 64B2, Florida Administrative Code.

5. **Violation of Terms of Settlement Agreement**
Considered Violation of Final Order: It is expressly understood that a violation of the terms of this Settlement Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 460, Florida Statutes.

6. **Purpose of Settlement Agreement:** Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Settlement Agreement. In this regard,

Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Settlement Agreement. Respondent agrees to support this Settlement Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

7. **No Preclusion of Additional Proceedings:** Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

8. **Waiver of Attorney's Fees and Costs:** Upon the Board's adoption of this Settlement Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and/or the Board in connection with this matter under Florida Statutes, Chapters 57, 120, 456, and 460, or on any other basis.

9. **Waiver of Further Procedural Steps:** Upon the Board's adoption of this Settlement Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Agreement and the Final Order of the Board incorporating said Settlement Agreement.

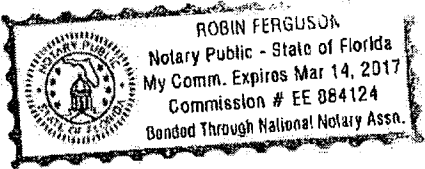
SIGNED this 15th day of September, 2015.


Kenneth Zane Finger, D.C.

Before me, personally appeared Kenneth Zane Finger,
whose identity is known to me by Florida DC

(type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 15th day of September, 2015.



[Signature]
Notary Public State Of Florida
Printed Name: Robin Ferguson
Commission No.: EE884124
Commission Expires: Mar 14, 2017

APPROVED this 16th day of September, 2015.

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

BY: [Signature]
Jenifer L. Fortenberry
Assistant General Counsel
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 245-4640 ext 8141
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Florida Bar # 0021640

**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



Jennifer L. Fortenberry
Florida Bar No. 0021640
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 245-4444 x8141
(850) 245-4681 FAX

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Angela Sanders

DATE: MAY 19 2015

PCP Date: May 19, 2015
PCP Members: Larissa, 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.