



Minnesota Board of Chiropractic Examiners

**REPORT FROM THE SPECIAL BOARD MEETING
OF 20 NOVEMBER 2014**

In the Matter of the Employment of
Larry A. Spicer, DC, Executive Director

Table of Contents

Sections	Page
PROCEDURE	3
BACKGROUND	4
FINDING THE FACTS	5
ANALYSIS AND SUMMARY	15
CONCLUSIONS	16
RECOMMENDATIONS	17
APPENDIX A Timeline of Events Spicer-Marty-Thompson	18
APPENDIX B Politicization of the Process	21
Exhibit A Hearing Process	23
Exhibit B Senator’s Marty’s Response to the Hearing Process	26
Exhibit C Meeting Announcement Letter to Dr. Spicer Dated 15 October 2014	28
Exhibit D Dr. Spicer’s Response Letters Dated 20 October 2014 & 27 October 2014	30
Exhibit E Senator Marty’s Letter Dated 27 August 2014	33
Exhibit F Dr. Spicer’s Letter Dated 02 September 2014	36
Exhibit G Senator Marty’s Letter Dated 24 September 2014	42
Exhibit H Questions for Dr. Spicer	47
Exhibit I Dr. Spicer Letter of Achievements Dated 11 November 2014	51
Exhibit J Federation of Chiropractic Licensing Boards Letter Dated 30 October 201	54
Exhibit K Paul Thompson Complaint History	57
Exhibit L Senator Marty’s Response to Dr. Spicer’s Meeting Request	59
Exhibit M Dr. Spicer’s 2 nd Request for a Meeting with Senator Mary	61

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Employment of
Larry A. Spicer, DC, Executive Director

**REPORT FROM SPECIAL BOARD MEETING
OF 20 NOVEMBER 2014**

This matter came before the Minnesota Board of Chiropractic Examiners (Hereinafter "Board") for the purposes of considering the request of the Board by State Senator John Marty, asking for the resignation of Larry Spicer, DC, Executive Director.

PROCEDURE

Pursuant to the request of Senator Marty for Dr. Spicer's resignation, the Board designed a procedure for the purposes of considering Senator Marty's criticisms and request, as well as hearing the responses of Dr. Spicer. Senator Marty was advised of this proposed detailed procedure on September 25, 2014 via email. (Exhibit A, page 23) On September 26, 2014, via an email, Senator Marty responded, "Your proposed process appears to be thorough and fair." (Exhibit B, page 26)

Given the fairly unprecedented nature of this request, the Board modeled procedures established through the contested case process generally applied for the resolution of contested cases against licensees. Thus, the assistance of a staff person, Micki T. King, was enlisted to manage the administrative requirements of this process. On all matters related to this process, Ms. King was separated from Dr. Spicer, and confined her activities solely to the discretion and requirements of the Board President. In addition to this, Board members were advised that they were not to discuss matters related to the substance of this complaint with Dr. Spicer. Hence, Dr. Spicer was completely isolated from any discussions or management of this process.

On October 15, 2014, Dr. Spicer was sent a letter advising him of a special Board meeting to be held for the purposes of reviewing this matter. (Exhibit C, page 28) He was advised that he could have the meeting either open or closed to the public and advised of his right to counsel and union representation¹. He was asked to respond verifying his attendance, as well as to advise the Board of his discretionary decisions. In a response letter of October 20, Dr. Spicer verified his attendance, that counsel would not represent him², nor would a union representative represent him. Dr. Spicer withheld his decision regarding the open or closed meeting question. On October 27, Dr. Spicer submitted a follow-up letter indicating he wished the meeting to be closed stating, "I fully expect that either the recording or transcripts of the meeting will become public at some later date, and believe this should satisfy any public interest in transparency and accountability." (Exhibit D, page 30)

¹ Evidently, Dr. Spicer was later informed that due to the unclassified nature of his position, union representation was not available to him.

² Dr. Spicer did not waive this right and reserved the right to counsel.

On November 20, 2014, a special meeting was held as described above. During the meeting, a series of questions were asked of Dr. Spicer. These questions were derived primarily from Senator Marty's September 24th letter. The Board offered Dr. Spicer ample time to respond to the questions completely. The Board then excused all persons except the assigned Board staff, and the Administrative Services Unit Human Resources Specialist, who was in attendance. Dr. Spicer was also excused, and the Board entered deliberations. During the deliberations, all information available to the Board was considered. Each Board member then stated their view as to the appropriate outcome of this proceeding. From this activity, a report was created and served on the appropriate parties. The Report was then submitted to the Board during an open meeting, 16 December 2014 and voted upon for acceptance as the final report and recommendations.

BACKGROUND

In late 1990, Paul Thompson, Respondent, was the subject of a complaint alleging that he "...inappropriately touched and/or made suggestive or inappropriately personal remarks to several female patients and a female employee..." The Respondent denied these allegations, but agreed to a Stipulation and Order of probation, which was issued on August 8, 1991. This order required, among other things, that Respondent participate in therapy until otherwise indicated, treat female patients only in situations where passage of normal level sound is permitted to adjacent areas, and not treat female patients unless he has staff on premises.³ On September 25, 1995, as a result of meeting the conditions of his probation, the Board terminated the conditions of probation, effectively granting him an unconditional license.

In approximately early 2004, a new complaint was received from a female patient. As a result, the Respondent met with a complaint panel to discuss allegations that he "...inappropriately touched and/or made suggestive or inappropriate personal remarks to a female patient." The Respondent took and passed, the National Board of Chiropractic Examiners Ethics and Boundaries Examination. The Respondent also submitted to additional examination by a psychotherapist on several occasions, which indicated that he "...demonstrated a history of interpersonal and sexual behavior problems that are not resolved and required professional attention..." The evaluator also concluded "...the Respondent would be less likely to act in sexually inappropriate ways with female patients if a third-party adult was present during examination and treatment." A follow up report indicated that Respondent "...appeared to be benefitting from individual therapy." The net result was another Stipulation and Order issued on July 14, 2005. Again, the Respondent denied the allegations, but agreed to a two-year probation, which required, in part, that Respondent always have a third party present when treating female patients, and that the third party "...sign the clinical record upon conclusion of the visit to verify his or her continual presence." In 2007, subsequent to a petition from Respondent, the Board reviewed records and determined there was an occasional failure of compliance with one of the terms of the Order. Given that there were no additional

³ A Stipulation and Order is a document in which the licensee agrees to the conditions. In this case the licensee denied the allegations, but agreed to the order presumably to forgo the necessity of trial and otherwise protracted and expensive proceedings.

complaints or any verifiable evidence of lack of third-party presence, the Board added some conditions and extended the terms of the Order for an additional two years through an Amended Order. On October 6, 2009, the Board concluded that Respondent had met all of the conditions of the Amended Order, and approved an unconditional license. From this time to the instant case, Respondent was not under any license restrictions.

In late May of 2014, the Board received a report that Respondent was charged with the rape of a patient in his office. Based on the egregiousness of the allegations, the Board moved to an immediate Temporary Suspension pursuant to the provisions of the newly enacted Minn. Stat. §214.077. Given the uncontested admissions of Respondent, this was followed by a formal Board Revocation on June 17, 2014. On or about August 27, 2014, the Board received a letter from Senator John Marty, seemingly critical of the Board's previous actions, and requesting that the Board essentially explain its previous actions with this licensee, and asking "...is there anything that the Board can do to let the victims of this tragic situation see that the Board understands their pain and will spare no effort to prevent a similar mistake from occurring again?" (Exhibit E, page 33) On August 28, 2014, Dr. Spicer forwarded this letter to the Board members proposing to construct a letter for their review. Over the next couple of days, drafts of this proposed letter were forwarded to the Board members, which resulted in several revisions. Eventually, all responses received from the Board members were supportive of the letter, and approved sending it, which occurred on September 2, 2014. (Exhibit F, page 36) Approximately three weeks later on September 24, 2014, a follow up letter was received from Senator Marty. (Exhibit G, page 42) This letter was highly critical of the Board response, and called for the Board to request Dr. Spicer's resignation as the signatory of the letter. This proceeding was instituted to address the request of Senator Marty.

FINDINGS OF FACT

During the hearing, Dr. Spicer was asked a series of questions, some of which were complex or multiple-part questions, and all of which were derived from Senator Marty's letters dated August 27, 2014 and September 24, 2014, Dr. Spicer's letter dated September 2, 2014, and other appropriate documents. A recitation of the questions, as well as a summary of the answers is included. (Exhibit H, page 47)

1. A) Dr. Spicer, please give us brief description of your professional background, career and accomplishments.
 - a. Dr. Spicer stated that he has been in the health care field for 45 years, and over those years he was a practitioner; educator, author, regulator and consultant. He started as an electrographic technician in 1969. He moved on to become a practical nurse in different fields including psychiatric nurse, staff nurse at a Boys home, geriatric and a private duty nurse in the fields of cardiac, genitourinary, geriatric, substance abuse, orthopedic, surgical rehabilitation, and psychiatric rehabilitation. From there, Dr. Spicer developed an interest in medical school, and enrolled. However, he became disillusioned and withdrew. At this point, he became a consultant to major hospitals in various areas of administration. Through a friend he learned about chiropractic and started working in a clinic in

the area of X-ray. He, also, became an X-ray instructor. It was at that point he decided to become a Doctor of Chiropractic and enrolled in school. While in school, he supported himself by being a consultant and teaching. In 1985, Dr. Spicer graduated, opened a practice in Beverly Hills and continued to teach. While in California, he met the woman, who was to become his wife and who was a Minnesota resident. He then moved to Minnesota where they were married. In 1990, Dr. Spicer became a member of the faculty at Northwestern Health Sciences University in Bloomington, Minnesota. Since 1993, Dr. Spicer has been serving as the Executive Director of the Minnesota Board of Chiropractic Examiners. Dr. Spicer provided a brief letter listing his accomplishments while serving with the Board. (Exhibit I, page 51)

Additionally, a letter of support for Dr. Spicer was received from the Federation of Chiropractic Licensing Boards (FCLB) dated 30 October 2014. (Exhibit J, Page 54)

- B) Dr. Spicer, please provide us with a description of this licensee's disciplinary history.
- a. First, Dr. Spicer stated because Mr. Thompson's license was revoked that he would refer to him as Mr. Thompson. Dr. Spicer described Paul Thompson's disciplinary history. In 1991, The Board received a complaint for the first time. The complaint was of inappropriate touching and comments. As a result of the complaint, Mr. Thompson entered into a 3-year probation. Fourteen years later, 2005, the Board received a new complaint of similar allegations. This complaint resulted in a 2-year probation, Mr. Thompson had to successfully pass the National Board of Chiropractic Examiners' Ethics and Boundaries Examination, undergo a mental health evaluation with a therapist which resulted in a positive report indicating that Mr. Thompson was benefitting from his therapy, and a third party observer had to be present when Mr. Thompson was with a female patient. In 2007, Mr. Thompson sought reinstatement. It was found that all conditions were met except an occasional signature verifying the presence of a third party observer. As a result of this finding, Mr. Thompson agreed to 1-year suspension with all but 14 days stayed, and also, agreed to an additional 2-year probation. In 2009, Mr. Thompson sought reinstatement again, and since all conditions of the 2007 order had been met, he was granted an unconditional license, which meant from this point on, Mr. Thompson was unsanctioned. In late May 2014, the Board became aware of the alleged rape. In early June, the Board issued the "Order for Temporary Suspension" against Mr. Thompson, effective immediately. In June 2014, The Board, via an emergency phone conference, acted upon the recommendation of the Complaint Panel, issuing a Stipulation and Order for Revocation signed and effective immediately. (Exhibit K, page 57)

In giving the history of Paul Thompson, Dr. Spicer indicated the belief that Senator Marty doesn't understand the nuance of a partial stayed suspension, and that this event became part of the Senator's criticism. Furthermore, Dr.

Spicer stated that the therapist, who had contact with Mr. Thompson, reported that he was fit to return to practice after each complaint. In conclusion, Dr. Spicer pointed out all complaints heard by the Board have a representative from the Office of the Attorney General present and *all actions*, taken by the Board, are reviewed by and assessed for compliance with the State of Minnesota laws, statues, and/or rules by the Office of the Attorney General. If the Board's actions are in compliance, they are implemented. This was the case in all matters pertaining to Paul Thompson.

2. A) Dr. Spicer, what was the intent and purpose of your letter to Senator Marty?
 - a. Dr. Spicer responded that as a lifetime educator, his intent was merely to educate the Senator on the Board's functions, capabilities and limitations, as well as respond to his specific inquiries.

- B) Dr. Spicer, have you met with Senator Marty to discuss this matter, and especially, your letter dated 02 September 2014.
 - a. The simple answer is no. Senator Marty refused to meet. Dr. Spicer contacted several members of the legislature for their counsel, and they suggested he, Dr. Spicer, request a meeting with the Senator. Based upon that advice, Dr. Spicer phoned the office of Senator Marty, and Senator Marty answered the phone himself. Dr. Spicer made his request for a meeting and the Senator stated that one of his staff would get back to him to schedule a date and time. The meeting was never scheduled, and instead, Dr. Spicer received an email stating, "After consideration of the situation, I do not believe that such a meeting would be productive." (Exhibit L, page 59) Dr. Spicer made a second request for a meeting with the Senator, and Senator Marty did not respond to the request. (Exhibit M, page 61)

3. Dr. Spicer, Senator Marty stated that your letter attacks the father of the victim and questions the father's motives for contacting his elected representatives. How do you respond to this comment?
 - a. Dr. Spicer stated he was not trying to attack the father, and acknowledged the fathers right to contact his elected representatives. Dr. Spicer states he was merely reflecting on why the Board was not contacted by the father, when the father contacted so many others. Dr. Spicer asked this question stating that the Board could not be responsive to the father, if the father never made his views known to the Board. Dr. Spicer further invited the Senator to provide the responses to the father, thinking this may be the only opportunity to give information to the father if the father elected to not contact the Board. At the time of Dr. Spicer's letter, 02 September 2014, there was no contact by the father of the victim. The only time the father of the victim met with the Board was at its regular meeting dated 06 November 2014. Dr. Spicer and the father did meet, privately, after said meeting for about 45 minutes.

4. Dr. Spicer, in his letter to the Board, Senator Marty believes that the “tone of the letter failed to grasp the depth of the anger and frustration felt by a victim of sexual assault and her family.” Senator Marty characterizes your footnote regarding the process in which the family may have felt dismissed as “combative,” and further characterizes it as “tone deaf” How do you respond to these statements?
 - a. Dr. Spicer states that this was, also, a moment of reflection, wondering what in the process may have contributed to the sequence of events ultimately leading to this proceeding. In his letter to the Senator, he describes the normal process, which gives some venting opportunity to the victim, and then described this much abbreviated procedure, which prevented that. Dr. Spicer indicated that this may have some bearing on why the victim or her family may have felt dismissed by the process, perhaps even discouraging them from contacting the Board.

5. Dr. Spicer, Senator Marty states that you “...lack understanding of the ongoing pain experienced by victims and their families.” How do you respond to this comment?
 - a. Dr. Spicer testified to his extensive experience and knowledge of the subject matter of sexual conduct by licensee’s, having taught this subject all over the country, and having been published on the subject, as well as being referenced by other authors who have published on this subject. Dr. Spicer went on to describe his knowledge of the broad brush of effects applying to those who are affected by a single event. He described his experience with staff losing their jobs because of the loss of the doctor’s license, victims considering suicide, and doctors who have committed suicide. In sum, Dr. Spicer believes that his experience and knowledge in this subject matter far exceeds that of most Legislators themselves.

6. A) Dr. Spicer, per Senator Marty’s letter he believes that the Board does not understand its mission or purpose due to a lack of leadership from the executive director. As executive director, have you failed to “educate” the members of the Board as to the Board’s mission or purpose?
 - a. Dr. Spicer defined the roles of leadership as it is divided between the Board and the Executive Director primarily along the lines of policy development vs. policy implementation and office administration. Doctor Spicer went on to point out the fact that he provides an orientation and ongoing training (largely via experience) of all Board members on a regular basis. Also, he stated that the Board members are so well versed in their role of public protector that they (the individual Board members) are often the ones reflecting their mission to each other. Furthermore, Dr. Spicer addressed the uniquely distinct role of the public members, in assuring the Board’s continual focus on public protection.

- B) Dr. Spicer, do you have a vote on the matters before a Complaint Panel?
 - b. As Executive Director, and pursuant to statute, Dr. Spicer does not have a vote on any matters being heard by a Complaint Panel and/or the Board.

7. Dr. Spicer, Senator Marty states that you show great concern for [the perpetrator's] "property rights" and that the Board would have been on questionable legal grounds to pursue enforcement of the probationary conditions the Board imposed for patient safety. How do you respond to this?
 - a. Dr. Spicer states here, that he feels he failed to educate the Senator as to some of the requirements of the Board. Dr. Spicer agrees that he shows great concern for the Constitutional rights (i.e. "property rights") of the respondent. In his testimony, Dr. Spicer stated that as an American citizen he believes in these rights regardless of his personal views of a licensee or the licensee's conduct. More importantly however, Dr. Spicer pointed out that further public harm may come from the Board's failure to protect these rights, as an Appeals court may overturn a decision made by the Board for a failure of due process, thus returning the licensee back to the public domain. Finally, Dr. Spicer concluded stating that he would hope that the Senator would be given the same Constitutional due process protections if he (the Senator) were arrested for some alleged improper conduct.

Dr. Spicer also responded to the Senator's challenge regarding the likelihood of success on taking additional action for the Respondent's 2007 violations of his 2005 order. Dr. Spicer stated that he's been with this Board for 22 years. As a result, he has been through a number of contested case hearings, having gained substantial experience in this arena. While one can never consistently predict what a given judge will do, Dr. Spicer's experience indicated to him that the set of facts leading to the 2007 amendment were somewhat weak. In spite of this, the Board acquired a fairly significant Amended Order (stipulated), which Dr. Spicer believes would NOT have been improved upon by going to hearing at the Office of Administrative Hearings. Instead, he believes the likely outcome would have been even less than that achieved by the Board through its negotiated order. Moreover, to accomplish a similar outcome at best or a lesser outcome at worst, it would have cost the Board substantial money, depriving other more emergent cases. When taken in context, Dr. Spicer merely offered his opinion that this was an excellent outcome at the time, given the circumstances.

Dr. Spicer also addressed what he believed to be an errant position on the part of the Senator. The Senator continues to come to two conclusions: 1) that the Board failed to enforce its 2005 order following violations, and 2) that doing so would have prevented the events of 2014. On this Dr. Spicer states that the Board DID enforce its order via an amended order; thus the suspension (partially served, partially stayed; 2 years additional probation; additional counseling, additional continuing education, additional examination, and continued third party presence in the room.) These WERE enforcements of this provision which the Senator seems to continue to discount as having not happened. Moreover, the Senator appears to conclude that such failure led directly to the conduct of

May 2014. On this, Dr. Spicer states that following the additional enforcement via the 2007 amended order, the Respondent met all of the conditions of his order and was issued an unrestricted license.⁴ Dr. Spicer stated the *post hoc, ergo propter hoc* position of Senator Marty is simply unsupportable.

8. Dr. Spicer, Senator Marty stated that neither “office busy-ness nor a new computer system is an excuse for failing to document an essential safety procedure. This was referencing your comment as to why the Respondent in this matter failed to maintain third party signatures. Were you trying to excuse the Respondent’s failure to comply with a provision of the order?
 - a. Dr. Spicer actually agreed with Senator Marty that this conduct is not to be excused. However, Dr. Spicer, in his letter, was not trying to excuse the conduct, but to explain the conduct in response to the Senators questions. The Respondent’s failure to acquire some third party signatures on office notes was explained (by the Respondent) as an increase in the office activity, as well as the conversion to a new computer-based note taking system, compounded by a misinterpretation as to the enforcement requirements of the order. Dr. Spicer attempted to explain how this might happen, and what weight is given to various aspects by the Board such as additional patient harm, intent, outcome, etc. Finally, as has been previously discussed, the Board did not dismiss these violations, but imposed rather significant penalties through an Amended Order.

9. Dr. Spicer, Senator Marty points out a concern regarding relying upon the statement of the Respondent’s employee, due to a vested interest. How do you respond to this?
 - a. Dr. Spicer acknowledged that those who testify with a vested interest must be considered in that context, but may not be dismissed with impunity. Dr. Spicer related the story of a recent hearing he observed at the Appeals court, on a very similar case. During this hearing the Justices addressed this very issue, indicating that reasonable weight must be given even to those persons who may have a vested interest, but who may be testifying or providing information under threat of consequence (e.g. perjury.) In the Respondent’s case, there were two witnesses (the Respondent and the Respondent’s staff person, albeit both likely with vested interest), countered by no other evidence or witness statements to the contrary. Absent any evidence to the contrary, the balance shifted to the statements on hand. Therefore the ONLY evidence the Board had was a lack of some signatures, countered with an explanation, and two witness statements indicating third parties had always been present.⁵

⁴ See Order of Unconditional License, October 6, 2009.

<http://www.chiroboard.state.mn.us/Orders/SO%20Thompson%20Paul%20D%20Unconditional%20License%2009%2010%2006.pdf>

⁵ The Board included a statement in its Order, that there were times when third parties were not present, but this was a negotiated statement, and was an assumption based solely on the lack of signatures. There was no other evidence indicating an absence of third parties.

10. Dr. Spicer, Senator Marty states “...unless the board was able to contact each of the patients treated by Mr. Thompson during those years to confirm that there was an observer present in the room during their appointments, accepting Thompson’s excuses was putting patients at risk.” How do you respond to this?

- a. The Senator has no idea what would be required to accomplish his suggestion. The costs would have been substantial, would have likely yielded little, and would have caused other more emergent cases to fail for lack of resources. Moreover, even if they had yielded some statements by patients indicating a third party had not been present, it is unlikely the outcome would have been different. Certainly, given the level of egregiousness (in context with other conduct) it is at least reasonably likely this person still would have had licensure via some reinstatement process some 5 years later when the actual conduct occurred.

11. Dr. Spicer, Senator Marty states he knows a number of male and female chiropractors, and cannot picture any of them hugging a patient in 1991 or today. How do you respond to this?

- a. This particular question, combined with its immediately preceding statement are perhaps the most telling and enlightening regarding Senator Marty’s misunderstanding of the practice of chiropractic, as well as the intent of Dr. Spicer’s response. Senator Marty’s sentence preceding this question states “Even Dr. Spicer’s statement that hugging patients is a practice ‘which tends to be discouraged today’ is out of touch.” Dr. Spicer clearly pointed out the naiveté, or perhaps wishful thinking of Senator Marty on this subject. Senator Marty goes on to ask “Can you show me a single chiropractor who believes it is appropriate to hug a client in the scope of their practice?” In the paragraph preceding this inquiry, the Senator claimed to know “a number of male and female chiropractors” and “cannot picture any of them hugging a patient in 1991 or today.”

If Senator Marty had simply reached across the aisle to a State Representative, who is a licensed chiropractor, he could have put this issue to rest before posing such a question and exposing his unsupported predispositions. All licensee Board members acknowledge that this is an old behavior of licensees, dating back almost to the beginning of chiropractic. The Board regularly receives such complaints and so the Board members know that this conduct occurs. Moreover, the Board puts on an annual “Professional Issues” Seminar, in which this very conduct, the hugging of patients, is discussed and discouraged as “risky behavior” because of the misunderstanding, and resultant complaints it causes.

12. Dr. Spicer, Senator Marty states that you trivialize the sexual assault on a patient that might have been prevented, when you state, “...in the final analysis, it is just that...one bad outcome with approximately 60 successful ones.” How do you respond to that?

- a. Dr. Spicer added context to this statement by reading from his letter, in which he states “the Board does not have the luxury of allowing passion to overcome reason or prudence.” By this he was stating that such decisions cannot be made from an emotional standpoint, but from a rational, considered premise. He went on to point out the Board’s substantial experience in similar cases. In his response, Dr. Spicer indicated that during his tenure, the Board has handled approximately 60 cases with similar background elements. He then correctly questions how the Board could predict that this particular licensee would have a different outcome than the other 60, and questions under what conditions the Board should abandon consistent experience in the presence of a mere possibility.

Dr. Spicer then goes on to dispute the Senator’s characterization of his letter as trivializing the sexual assault. As evidence of his position, Dr. Spicer highlighted the various adjectives and descriptive phrases he used in his one letter to indicate his and the Board’s views on the conduct. Such adjectives and descriptive phrases included:

- Reprehensible
- The Board is not only aware of the pain, but shares in it
- Characterizing this as a “heinous act.”
- The Board “...shares the stigma...” of this conduct
- Acknowledging that this act “...resulted in substantial harm” to the victim
- Stating that this conduct was “...embarrassing to the profession...”
- Stating that the Board “...would pray for the emotional healing of those harmed by this man’s actions...” This is an interesting statement on the letterhead of government, so often attempting to impose “separation of church and state.”

13. Dr. Spicer, Senator Marty seems to contradict your view that there was no way to predict this Respondent’s behavior, because experts say that sexually predatory behavior often escalates. How do you respond to this?

- a. Dr. Spicer correctly points out that this term (predatory) was incorrectly used by the Senator, as the licensee’s previous behavior, which the Senator cites as predictive, was never classified as “predatory.” Dr. Spicer, also, states that a classification of “predatory” requires very specific criteria by mental health professionals, and this never occurred. Rather, the mental health professionals provided reports, which stated that the respondent would be safe to practice provided he participates in therapy. While the mental health professional(s) earlier indicated that ongoing therapy was necessary, they also indicated that the Respondent was benefitting from the therapy. Accordingly, there was nothing in the mental health evaluations, which would indicate predatory behavior. Therefore, nothing in the record or in the mental health evaluations

indicated a need for a different approach or provided insight, which could have served to predict this outcome.

14. Dr. Spicer, Senator Marty states your “vision is far short of 20/20, and that you are unable or unwilling to look at improvements in procedure.” How do you respond to this?
 - a. Dr. Spicer responded with a recitation of several ways in which this event has already impacted this and other Boards’ experience and thinking. Moreover, Dr. Spicer explained that this Board is and always has been open to innovation and new ideas. He cited as part of this experience, the Board’s longstanding participation with the Federation of Chiropractic Licensing Boards (FCLB) which is a clearing house for information from national and international chiropractic regulatory Boards. This information is used expressly for learning from each other about experiences of others related to what does and does not work, and what other challenges may be faced by member Boards. The sole purpose of this is to continually update procedures to respond to emerging threats to public safety.

15. Dr. Spicer, Senator Marty states that your “attitudes about unwanted sexual contact send a message to victims that the head of the State Licensing Board views their situation as frivolous.” How do you respond to that?
 - a. Dr. Spicer expresses a different viewpoint about his attitudes and what he’s trying to convey. Included in this is his interest in conveying that the Board is aggressive in its pursuit of sexual misconduct cases, but does so within the confines of appropriate legal process which, while they protect the Respondent, they also protect the Board and the State from reversible errors. He also states that the Board’s experience in preventing recidivism in sexual misconduct by licensed professionals is nearly 100%, a record that any Board should be proud of. Regardless, Dr. Spicer concludes, “...not all human actions can be predicted or prevented.”

16. Dr. Spicer, Senator Marty would like a response as to what policy or procedural changes the Board is considering to ensure that this type of situation – where the license holder can ignore patient safety conditions with impunity – does not happen again? How would you respond to this?
 - a. Dr. Spicer indicated that the Board is always open to suggestions and ideas for training, which can facilitate and improve the Board’s outcomes. Dr. Spicer notes that the Senator mentioned one organization, which provides such training, which has already been discussed for future consideration. However, Dr. Spicer laments the belief that there is ever to be found, a perfect record of predictability or preventability. Were that the case, the need for appointing professionals who are compelled to use their experience and training to make reasonable decisions, would become moot.

17. In reviewing the Senator's letter and looking again at the reply to the letter, Dr. Spicer is there anything that you would have done differently?

- a. Dr. Spicer spoke of his regret in using a phrase, which he considered to be emphatic ("OK...there is no explanation for that!") when referring to an allegation that the Respondent kissed a patient on the cheek. He stated in hindsight, he could see how that could be interpreted as an attempt at humor, and was disappointed in his verbiage, which could give rise to such an interpretation. He stated that he felt this may have cast the letter in a "...less than professional light..." and may have inadvertently set the stage for the Senator's further review of the letter. Dr. Spicer further stated that this is not the type of letter or subject matter in which he would ever attempt levity. He also points out here, that this is an example in which the absence of personal interaction versus the cold written word can give rise to misinterpretation. Dr. Spicer believes that had this phrase been delivered personally, the body language, verbal tone, facial expressions, etc. would have conveyed an entirely different intent. It was for this very reason Dr. Spicer attempted a personal interaction with Senator Marty, which Senator Marty subsequently and without explanation rejected.

18. At this time, Dr. Spicer is there anything you would like to say in closing?

- a. In closing, Dr. Spicer states that in his belief, this letter has been subject to "...wholesale misinterpretation and misunderstanding of the letter's content and of [his] intent." Further, Dr. Spicer describes the very difficult charge of carrying out fair and balanced regulation in the face of ever changing political waters. He states "One year the Legislature chastises Boards for being too harsh on their licensees, and the next year they chastise the Boards for being too lenient." The Boards are often challenged to act according to their successful (and occasional unsuccessful) experiences rather than political incongruence. Dr. Spicer acknowledges that the Senator has every right to express dissatisfaction and/or disagreement with his viewpoints. However, Dr. Spicer, also, believes that threatening his job and livelihood for the mere expression of an opinion, a right afforded by the Constitution, crosses a line. Rather, he believes it more appropriate that the Senator disagrees with him and expresses his dissatisfaction, while at the same time protecting his right to have a different opinion. Dr. Spicer stated that he neither lied, nor in any way provided false information, and to have his job threatened is simply inappropriate. Dr. Spicer concluded by pointing out some realities:

- That these decisions are not made in a vacuum;
- That these decisions are not black and white but are very nuanced;
- That not all outcomes are perfect;
- That not all behavior can be predicted;
- That not all harmful behavior can be prevented;
- That in the final analysis, this was a horrible, albeit unpredictable event.

ANALYSIS AND SUMMARY

On the basis of the information obtained, the following analysis and summary appears to be warranted.

In the final analysis, this is a matter of employment, which resides between the employer, the Minnesota Board of Chiropractic Examiners and the employee, Dr. Spicer, and it must be considered in that context. In a traditional state employment situation, employees are regularly evaluated for their performance and their conduct. Typically, conduct can be evaluated from two general approaches. First, there is a simple weighing of acceptable conduct and unacceptable conduct or substandard performance. Second, may be the weight given to a singular event. Both of these approaches are applied here in assessing the Senator's request.

To use the first approach, the Board must consider a number of factors. First is a balancing of Dr. Spicer's accomplishments against the letter provoking the Senator's request. A brief review of Dr. Spicer's accomplishments include the following:

- Dr. Spicer has successfully managed this agency for 22 years;
- Dr. Spicer moved this Board to become the recipient of the Outstanding Chiropractic licensing Board in the country 3 years after he took office;
- In 2005, Dr. Spicer was the recipient of the George Arvidson Award, the Federations highest honor for being an outstanding regulator;
- Dr. Spicer has become a nationally recognized speaker on subjects of professional boundaries and sexual misconduct by licensed professionals;
- Dr. Spicer has been published on these subjects, and has been referenced by other authors in their writings;
- Dr. Spicer imagined, designed, assisted in development, and launched the first Health Licensing Board website for the State of Minnesota, a 5 year project which permitted the online renewal of licenses. Additionally this was only the second agency in the State to establish this capability, the first being the Department of Public Safety;
- Dr. Spicer has shepherded this Board through three successful legislative audits, including the most recently completed this month, being one of only three Boards that had NO deleterious findings by the Legislative Auditor;
- Dr. Spicer has managed the Board's fiscal obligations without a raise in fees for his entire 22 years, an accomplishment experienced by no other Health Licensing Board;
- Dr. Spicer was thanked in open hearings by a state senator on the Sunset Committee for his service to the State of Minnesota.
- Every performance review, conducted by many different Board members over 22 years has resulted in outstanding evaluations.

The Board compared this against a singular letter of dissatisfaction to determine whether Dr. Spicer should be forced to resign his position.

The second approach considers the impact of a singular event such as mismanagement of the Board's resources, theft, fraud, or some other malfeasance. Other examples include the abuse of employees, an abuse of authority, violations of state standards, state policy, or state law.

Regardless of employment approach considered, Dr. Spicer runs afoul of neither.

Furthermore, the Board has a unique perspective, which cannot be shared by Legislators. The Board has extensive experience in considering matters related to the conduct of licensees (including sexual misconduct), which the Legislators do not have. In addition, there are case elements and information which are available only to the Board, which become part of the decision making process of the Board. Every case must be considered on its own merits, and cannot be adapted into any perfect algorithm. Rather, the Board members in deciding each case have to bring their background and continually increasing experience to make the best decisions they can at the time. Certainly, it's easy to be an "arm-chair quarterback" in situations where limited information is available to others. It is certainly easy to levy charges against an employee who can't defend their positions due to the limitations imposed by the Minnesota Government Data Practices Act. More importantly, these decisions are not Dr. Spicer's decisions. These are, in the final analysis, Board decisions made after careful review of all the evidence, consideration of advice by the Attorney General's office, and due deliberation.

This process considers no malfeasance or illegal activity whatsoever. Rather, in its most fundamental state, it relates to a disagreement on language in a correspondence. Communication is made up of nonverbal actions (70%), facial expression (23%) and written symbols (7%). Words, by themselves, result in a "toneless" communication. Written communications lack inflection of the words, emotional pitch of the writer, and nonverbal gestures and expressions. Thus, just words leave the interpretation of a written message in the hands of the receiver without knowing the paradigm or the frame of reference of the writer.

CONCLUSIONS

Due to Mr. Thompson's heinous act and admission, the Board's actions occurred in unprecedented record time. From the first report of the rape to the suspension of Mr. Thompson's license was two weeks, and then *less* than two weeks to revocation. In truth, these actions occurred so quickly because of the Board's outrage by Mr. Thompson's ruthless and cruel conduct.

On the basis of the findings, the following generalizations appear to be warranted within the restrictions imposed by the process developed and implemented, and the type of analysis employed.

The Board finds Senator Marty's request to be unbalanced and overreaching. Even if one were to assume that the Senator's opinions were accurate, Dr. Spicer's accomplishments and value to the agency far outweigh the impact of a singular letter. And, even if one were to surmise that the Senator's conclusions were accurate, there are far more appropriate methods by which to address this than the approach demanded by the Senator. Finally, the Board shares

some responsibility for this letter, as the Board reviewed and approved the letter prior to submission. However, the Board did so knowledgeable of the intent of the letter, which the Board agrees has been "...subject to wholesale misinterpretation and misunderstanding of the letters content and of his [Dr. Spicer's] intent..."

RECOMMENDATIONS

First and foremost, the Board recognizes the tragedy of the incident fostered by the unconscionable behavior of Mr. Thompson. The Board acknowledges the emotional toll on the victim and her family and extends its sympathy to her and her family.

The following recommendations appear to be justified on the basis of the results of the analysis of the information collected.

Assessment

The Board appoints an *ad hoc* committee to assess the strengths and weaknesses of the complaint process noted by the information collected. Careful appraisal of the information collected could result in retaining the strengths and correcting the weaknesses of the process.

Employment

The Board concludes by affirmatively stating its unqualified confidence in Dr. Spicer's exceptional past and current performance, and respectfully declines to request his resignation.

APPENDIX A

Timeline of Events

Spicer-Marty-Thompson

- 22 May 2014 MBCE Office became aware of the alleged rape.
- MBCE Office assigned the case to a Complaint Panel, same Panel as previously reviewed complaints against Thompson.
- Via emergency phone conference, the Complaint Panel meets and makes a recommendation to request Thompson Cease Practicing immediately.
- Dr. Spicer called Thompson and received Thompson's agreement to an emergency order to Cease Practice pending the outcome of his trial.
- 5 Jun 2014 The Board President signed an "Order for Temporary Suspension" against Thompson, effective immediately.
- 17 Jun 2014 The Board, via an emergency phone conference, acted upon the recommendation of the Complaint Panel, issuing a Stipulation and Order for Revocation signed and effective June 17, 2014.
- 08 Aug 2014 Ramsey County Attorney's office contacts the Board/King for guidance on sending a subpoena for historical Thompson complaint records.
- 11 Aug 2014 Follow up emails between Ramsey County Attorney and the Board/King discussing details of requested information. We will want our attorney to review prior to release for legal considerations, but intend to cooperate.
- 13 Aug 2014 Board received a subpoena from the Second Judicial District Court (Ramsey County Attorney) asking for all past complaints against Thompson that allege sexual misconduct.

Board/King sent AGO a detailed list of the information we intend to send to Ramsey County Attorney.

25 Aug 2014 The Board received a draft letter from the AGO to the Ramsey County Attorney requesting they send a Court Order in lieu of a subpoena for legal reasons.

Thompson pled guilty in court.

As a result of Thompson's guilty plea, it was determined that the Ramsey County Attorney no longer needs the documents. The plea of guilty makes the subpoena moot."

27 August 2014 Adam Prock, Deputy Chief of Staff, notified MBCE Office that the Governor's office was contacted by the Victim's father and expressed concerns over Thompson's long history with the Board.

Dr. Spicer met with members of the Governor's staff to discuss our handling of the case.

The MBCE Board President and Executive Director received a letter from Senator Marty relaying that the victim's father contacted his office and expressed concerns over Thompson's long history with the Board. Sen. Marty also questioned the actions of the Board. Additionally, a copy of Senator Marty's letter, dated 27 August 2014, was forwarded to the MBCE Board membership as requested by the Senator

02 Sep 2014 In consultation with the Board members, the Executive Director responded to Senator Marty's letter, dated 27 August 2014, copying the MBCE Board members and the Governor's Office.

24 Sep 2014 Senator Marty phoned the Board President stating that a letter was being sent demanding the resignation of the Executive Director due to what is believed to be an inappropriate response to the Senator's letter.

The members of MBCE received the Senator's letter, dated 24 September 2014, via email as an attachment.

- 25 Sep 2014 The Board President responded, via email to Senator Marty, laying out the Board's plan to address the Senator's concerns.
- Board President called Ms. Micki King, Health Program Representative, for the purpose of establishing a "firewall" between the processing and the Executive Director.
- 26 Sep 2014 The Board received Senator Marty's 24 September 2014 letter via U.S. mail.
- 14 Oct 2014 A closed session with the Executive Committee for the purpose of discussing procedure and process related to this matter was held. Present were the Executive Committee and Ms. King. The Executive Director was not in attendance.
- 21 Oct 2014 Dr. Spicer called the Office of Senator Marty, and actually spoke to the Senator requesting a meeting between the both of them. Senator Marty accepted and advised Dr. Spicer, his staff would return the call to schedule the meeting.
- 22 Oct 2014 Via an email, Senator Marty declined Dr. Spicer's request for a meeting and stated a process is already in place.
- Upon receiving Senator Marty's email, Dr. Spicer asked for a meeting again, via an email, and Senator Marty did not respond to Dr. Spicer's second request.
- 20 Nov 2014 Special Board meeting to resolve the above matter regarding the Executive Director's handling of the Senator's request.
- 16 Dec 2014 Special Board meeting to receive, accept and adopt the report regarding the Executive Director's handling of the Senator's request.

APPENDIX B

Politicization of the Process

The politicization of this event is terribly disturbing to the Board. In this case, there has been considerable pressure exerted by an official of the legislative branch of government to take aggressive and sweeping action against a staff member of the executive branch of government merely for expressing an opinion with which the Legislator disagrees. It would have seemed appropriate at this time, for the Senator merely to inform the Board of his displeasure and disagreement, and even for the Board to consider an appropriate review of the matter. However, the Senator overstepped when he called for the resignation of Dr. Spicer, especially when the request was made over a single disagreement rather than a broad review of Dr. Spicer's long-term performance.

Additionally the Senator ramped up the pressure on multiple occasions. First, in spite of a seeming agreement between the Senator and the Board for an appropriate review process, the Senator has engaged the press on multiple occasions with the same viewpoints, essentially trying Dr. Spicer in the press, rather than allowing a proper review to proceed and conclude. At least one of these press articles (October 20, 2014 St. Paul Pioneer Press article) included veiled (or perhaps not so veiled) threats or suggestions when he stated, "The Governor can say 'If the Board's not going to change this, we have to change the Board.'" In addition, these articles have persisted with the Senator continuing to fan the coals, rather than letting the process, to which he agreed, conclude properly. There is one important element, which seems to have been forgotten or ignored by those who are critical of Dr. Spicer...he is not, and has never been the decision maker. In all matters related to discipline, the Board, constructed of seven members including two members of the public, and advised by the Attorney General's office, have made all decisions related to disciplinary matters. Prior to Dr. Spicer sending it, the Board members ultimately approved the September 2nd letter of response. Dr. Spicer was merely explaining the Board's procedures and approach to decision making. So in the final analysis, this is simply an ill-advised attempt to "shoot the messenger."

The Board has determined that this level of influence is an abuse of status, and overreaches the Senator's charge. The Board acknowledges that part of an elected official's function can be to advocate for constituents. However, of the several options available to the Senator to carry out that charge, this approach was the least appropriate and most destructive. In spite of multiple attempts by Dr. Spicer to meet with the Senator to discuss the matter in a professional manner, the Senator having first agreed, inexplicably then refused any such contact. As a result of this process, rather than being afforded a professional and proper review, Dr. Spicer has been subject to public humiliation despite an exemplary career.

Finally, the Board recognizes that it takes this position at the risk of grave political threat, given that the Legislative session is soon to start, and the Board's budget is up for its biennial review. The concern expressed by some is that should the Senator not receive the

outcome he wishes, he could then impose such political pressure as to detrimentally impact the Board's budget. Accordingly the Board hereby forwards notice, that such action would not cause direct harm to Dr. Spicer or the Board members. Rather, it would substantially compromise the health, safety, and welfare of the public by significantly impacting current investigations and complaint resolutions, which are now, or may in the future, be in process, thus, impacting the Board's mission to protect the public.

Exhibit A
Hearing Process

Hearing Process

(Letter Sent Via Email)

>>> "Stouffer, Ralph E." <RESTOUFFER@stthomas.edu> 09/25/14 11:05 PM >>>

Dear Senator Marty:

The Board is in receipt of your letter dated 09/24/2014 calling for the resignation of Dr. Larry Spicer, the Boards Executive Director. Therefore, it seems most appropriate at this time to consider this as a personnel matter, and to address it accordingly. As President of the Board, I am writing to inform you that the Board considers this to be a serious request, and intend to afford this process the respect and diligence which it is due. I expect this process will include the following:

- A thorough review of the history of the disciplinary matter which led to this series of events;
- A thorough review of the Boards activities and decision-making processes as part of this history;
- A thorough review of the correspondences which have taken place recently, including the three documents you supplied in your email of 09/24/2014;
- A review of Dr. Spicer's conduct and correspondences in general, and specifically with respect to this series of events;
- Consultation with the Attorney General's office;
- Consultation with other appropriate state agencies which deal with personnel matters and/or grievances;
- Consultation with Union representatives of the Managerial plan, to assure the Board is compliant with any requirements of State employment law and/or the Managerial contract;
- Any additional procedures which the Board is obligated to undertake in order to assure a fair, orderly, and legally defensible process; and
- A decision on the employment status of Dr. Spicer.

Please be advised that as part of this process, I anticipate the Board will conduct this with procedures similar to those utilized in a contested case proceeding. Accordingly it is expected Dr. Spicer will be insulated from the process, and will not be involved in any deliberations or decision making.

Sincerely,

Ralph Stouffer, Ed.D.

President

Minnesota Board of

Chiropractic Examiners

Exhibit B
Senator Marty's Response
to the Hearing Process

thanks for your prompt and appropriate response

Sen. John Marty [jmarty@senate.mn]

To: Stouffer, Ralph E.

Cc: hfidlerdc@aol.com; gstele@catholicunited.org; nstrdnvstr@comcast.net; treatydc@hickorytech.net; wfc@hickorytech.net; docmatta@hotmail.com; adam.prock@state.mn.us; benjamin.wogsland@state.mn.us; Jennifer.O'Rourke@state.mn.us; Larry.Spicer@state.mn.us; lfankie38@yahoo.com

Friday, September 26, 2014 11:52 AM

Ralph Stouffer, Ed.D.
President, Board of Chiropractic Examiners

Dear Dr. Stouffer:

Thank you for your response to my letter. I appreciate the Board's prompt and appropriate response to this serious matter.

Your proposed process appears to be thorough and fair.

Sincerely,

John Marty

John Marty
323 State Capitol
St Paul, MN 55155
jmarty@senate.mn
651.296.5645

Exhibit C
Meeting Announcement
Letter to Dr. Spicer
Dated 15 October 2014



Minnesota Board of Chiropractic Examiners

October 15, 2014

LARRY A SPICER DC
4059 BERYL ROAD
EAGAN MN 55122

Dear Dr. Spicer:

The Minnesota Board of Chiropractic Examiners has scheduled a special meeting on November 20, 2014 at 11:00 AM. This meeting will be held in the Plaza Conference Room on the first floor of University Park Plaza, 2829 University Avenue Southeast, Minneapolis Minnesota 55414. The meeting is expected to last two to three hours and will be recorded. A light lunch will be provided.

This meeting is being called to respond to a request by Senator John Marty for your resignation as the Board's Executive Director. Senator Marty makes the request based on your response to his initial inquiry into the Board's handling of the Paul D. Thompson arrest for rape of a patient and the Board's alleged failure to take adequate action against Dr. Thompson in 2007 which may have prevented the 2014 incident.

You may elect to have this meeting open or closed to the public. You have the right to be represented by legal counsel and your union representative. Please notify Micki King at the board office in writing at least 14 days prior to the meeting to confirm your attendance and indicate whether you will be represented by legal counsel and/or your union representative.

Sincerely,

A handwritten signature in cursive script that reads "Micki King".

Micki King
Health Program Representative

cc: Ralph E. Stouffer, Ed.D.

2829 University Avenue SE #300, Minneapolis, Minnesota 55414-3220
Telephone 651-201-2850 • Fax 651-201-2852 • Internet www.mn-chiroboard.state.mn.us

The Minnesota Board of Chiropractic Examiners is an affirmative action / equal opportunity employer. The Minnesota Board of Chiropractic Examiners does not discriminate in employment on the basis of race, color, creed, religion, national origin, sex, marital status, disability,

Exhibit D

Dr. Spicer's Response Letters

Dated 20 October 2014 & 27 October 2014

Larry A. Spicer, DC
4059 Beryl Rd.
Eagan, MN 55122
Voice: (651) 452-4500
Fax: (651) 452-4500
Email: Laspicer@comcast.net

October 20, 2014

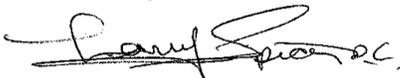
MICKI KING
MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS
2829 UNIVERSITY AVE SE SU 300
MINNEAPOLIS, MN 55414

Dear Ms King:

I am in receipt of your letter of October 15, 2014, notifying me of the special meeting on November 20, 2014, at 11am, to consider issues related to my employment with the Board, and requesting my response to several questions. My responses are as follows:

1. I hereby confirm my attendance at the above referenced meeting;
2. I will not have representation by union representatives;
3. I do not anticipate having representation by legal counsel at the meeting, although I do not waive, and hereby reserve my right to reconsider. Should I do so, I will notify you within 48 hours that I've made a different decision, and will also request that such attorney provide a Notice of Representation for your records;
4. I have not made the decision regarding my preference for having the meeting opened or closed. As I understand it, the meeting is to be closed unless I request that it be open. I am currently giving strong consideration to this question, and will notify you as soon as I come to a decision. In any event, should I elect to have the meeting open, I do not waive, and hereby reserve the right to rescind this decision at any time.

Sincerely,



Larry A. Spicer, DC

Larry A. Spicer, DC
4059 Beryl Rd.
Eagan, MN 55122
Voice: (651) 452-4500
Fax: (651) 452-4500
Email: Laspicer@comcast.net

October 27, 2014

MICKI KING
MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS
2829 UNIVERSITY AVE SU 300
MINNEAPOLIS, MN 55414

Dear Ms. King:

Please consider this a follow up to my response letter of October 20, 2014. At that time I had not yet determined whether I wished to have the special Board meeting of November 20, 2014, (related to the request for my resignation by Senator John Marty) open or closed to the public.

Please be advised that I have decided to have the meeting closed to the public. I fully expect that either the recording or transcripts of the meeting will become public at some later date, and believe this should satisfy any public interest in transparency and accountability.

Sincerely,



Larry A. Spicer, DC
Executive Director

Exhibit E
Senator Marty's Letter
Dated 27 August 2014

Senator
John Marty

Senate
State of Minnesota

Minnesota Board of Chiropractic Examiners
Ralph Stouffer, ED.D., President of the Board
Larry A. Spicer, D.C., Executive Director
2829 University Ave S.E., Suite 300
Minneapolis, MN 55414

August 27, 2014

Dear Dr. Stouffer and Dr. Spicer,

A constituent recently contacted my office because his daughter was raped by her chiropractor, Paul D. Thompson, in May. Although the board finally revoked Thompson's license in June due to the sexual assault, I have some questions related to the Board of Chiropractic Examiners' long history of dealing with Mr. Thompson.

According to a July 12, 2014 Star Tribune story about the case, back in 2007, a couple years after Thompson had been placed on probation (for at least the second time by the board), a letter from the board indicated that Thompson violated the terms of his probation "by treating one or more female patients on certain occasions without having a third party present in the same room at all times."

When a licensed professional faces allegations of improper conduct with a patient, the board's obligation to protect the public appropriately led the board to place him on probation, even though they were allegations, not convictions. And, the board's condition of probation (prohibiting him from treating female patients unless there is another person present in the room) appears to have been very appropriate in light of your responsibility to protect public safety.

However, when he violated the conditions of probation that were put in place in order to protect public safety, it should have been clear that the license holder was ignoring the explicit direction of the board. And, what is most troubling, it meant his clients were at risk of severe harm.

Now, several years later, when one of his patient's was sexually assaulted during a clinical visit, we see the consequent of the board's failure to enforce the board's own probation requirements.

I understand that "hindsight is 20/20" and one cannot undo previous actions of a licensing board. However, when the Star Tribune news reporter inquired about "whether the board should have taken a stronger stance with Thompson," the response: "Honestly, I don't think

State Capitol, St. Paul, MN 55155-1606 (651) 296-5645 jmarty@senate.mn

it's a fair question," suggests to me that **even in hindsight, the board's vision is far short of 20/20.**

A patient of the doctor has is sexually assaulted and it is not fair to question whether the board should have enforced its own conditions of probation?

The Board of Chiropractic Examiners has an obligation to protect the public interest. That does not mean it should immediately revoke the license of any professional based on allegations against that individual. The public interest certainly includes working with license holders who have, or may have, acted inappropriately, in order to make sure that they get the help they need to practice properly.

As a result, it seems that the board's conditions of probation were very reasonable. However, when the board learns that those conditions are violated – putting patients at risk of significant harm – it seems that revocation of the license or some other strict action is essential.

The board's response that revisiting past mistakes is "not a fair question" is grossly insensitive to the victim of the criminal assault, and reduces public confidence in the board's willingness to learn from its errors.

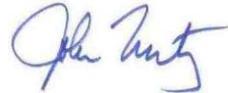
According to one of the articles, Thompson's license was suspended for a year in 2009, and then reinstated after just two weeks. What goes into the board's thinking in such a rapid reversal of such a significant action, presuming that the suspension was intended to protect patients?

When the board finds it appropriate to put a chiropractor on probation and imposes conditions on their practice *in order to protect patient safety* as it did in 2006, it is critical that full compliance with those conditions is enforced. Is the board currently considering policy or procedural changes to ensure that this type of situation – where the license holder can ignore patient safety conditions with impunity – does not happen again?

Finally, is there anything that the board can do to let the victims of this tragic situation see that the board understands their pain and will spare no effort to prevent a similar mistake from occurring again?

I would appreciate your careful consideration of these questions and a response as soon as possible.

Sincerely,



John Marty

cc: Governor Mark Dayton
Members of the Minnesota Board of Chiropractic Examiners

Exhibit F

Dr. Spicer's Letter

Dated 02 September 2014



Minnesota Board of Chiropractic Examiners

September 2, 2014

Senator John Marty
323 State Capitol
75 Dr. Martin Luther King Blvd.
St. Paul, MN 55155

Dear Senator Marty:

The Minnesota Board of Chiropractic Examiners (hereinafter "Board") is in receipt of your letter, sent via email, dated August 27, 2014. As requested by Hannah Pallmeyer, I have forwarded your letter on to the Board members, but I will respond on their behalf, and in consultation with the Board President, Ralph Stouffer, Ed.D. Your letter asks questions about the Board's activities with regard to a Mr. Paul Thompson, a chiropractor whose license is now revoked by the Board.¹

I would like to start by thanking you for your willingness to directly contact the Board with your questions. You reference a "constituent" who has contacted your office regarding this matter, whom you identify as being the father of the patient "raped by her chiropractor." This person has also contacted the press (presumably the genesis of the Star Tribune article) and the Governor's office (resulting in a meeting with representatives of Governor Dayton.) So this is now the third time I've been asked to answer these questions. However, I am compelled to wonder why this gentleman has not contacted this office as you have, to ask these same questions. I am similarly compelled to ask what the constituent is trying to accomplish? Whether he simply wants answers or a change in procedure is unclear, since he has never expressed his views here, nor has he availed himself of an opportunity to assess why the Board has made decisions that have been made, or why certain actions have/have not been taken. Accordingly, the Board is at a loss to determine what outcome, if any, this constituent would find acceptable. So I will do the best I can to give you a complete picture by producing a response with as much candor as possible. Should this constituent contact you again, please feel free to share this response, as he may find information in this letter that at least sheds light on the decision making process of the Board.

It should be first pointed out that your letter references a news article from the Star Tribune, and seems to derive some or much of its information from this article. As you are a professional in the world of politics, I need not share with you the vagaries of relying upon the

¹

Although Mr. Thompson holds the degree of doctor of chiropractic, the Board withholds the appellation of "Doctor" as a result of the revocation of his license.

2829 University Avenue SE #300, Minneapolis, Minnesota 55414-3220
Telephone 651-201-2850 • Fax 651-201-2852 • Internet www.mn-chiroboard.state.mn.us
Thompson Paul Response to Senator Marty.wpd

MN Relay Service for Hearing or Speech Impaired: 1-800-627-3529
AN EQUAL OPPORTUNITY EMPLOYER

media for accurate information. I have little doubt that misquotes, mischaracterizations, or errant juxtaposition of a question and answer in a news article has had the effect of distorting your views or the intention of your statements, whether intentional or unintentional. Nevertheless, I will do the best I can to answer your questions, within the constraints of Minn. Stat. § 13.41 (A.K.A. the Data Practices Act.)

To begin with, under no circumstances does the Board condone, or in any way support the actions of Mr. Thompson, and finds such actions as reprehensible as any other reasonably minded person. It is even fair to state that the Board is truly embarrassed at such an unexpected and unanticipated series of events. However, it is simply unreasonable to draw a straight line between events in Mr. Thompson's regulatory history, and the events of May, 2014, for the purpose of making any predictions. As stated in your letter, "hindsight has 20/20 vision." However, that may even be inapplicable in this case, since experts familiar with this case are loathe to predict the events of May 2014 from the preceding conduct, and Board statistics overwhelmingly support reluctance to do so. But let's first set the table.

All complaints are considered by a complaint panel, often referred to as a complaint resolution committee. The Board maintains three separate complaint resolution committee's. Each of these committees consists of 2 member's of the Board, the Executive Director, an additional staff person, and an Assistant Attorney General. Every case is first considered for jurisdiction, and then followed up on through the gathering of additional information, including the response of the Respondent (Doctor.) Complaints alleging any hint of a sexual allegation are always, as an operation of law, subject to a full investigation. This means they are forwarded to the Attorney General's office, investigation division. This investigation is conducted by professional investigators, who conduct interviews, gather and compile documents, review records, and acquire any and all additional evidence necessary to complete the investigation. The investigators then draft a complete report, which is presented to the complaint resolution committee for review and further action. If the complaint provides sufficient evidence of a violation, the committee can proceed. If the evidence is poor or non supportive, then the committee determines whether it can pursue the complaint further, or whether it must be closed.²

Just to add to the picture, the State of Minnesota has established a policy standard, via Legislation, which states:

The Legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful ...profession...is essential to rehabilitation...^{3, 4}

² The undersigned has pondered the following question. It seems that the victim and/or the victim's father feels disenfranchised or otherwise somehow disregarded by this process, erroneously concluding that the Board has no sympathy for these events. The events leading to the revocation of Mr. Thompson's license took a slightly different path than that described above. In this case, the evidence was extremely clear, and included Mr. Thompson's admissions. This allowed the Board to bypass many procedural requirements and, as a result, no interviews were conducted as would normally happen. This resulted in essentially no contact with the victim or victim's family. This was followed by a nearly record short time line from our learning of the violation, to Mr. Thompson's license revocation. It is possible that the speed and finality of this process inadvertently left the victims feeling dismissed.

³ SEE Minn. Stat. §364.01; Criminal Offenders; Rehabilitation

⁴ The reader is reminded that this was not even a criminal act, but an administrative action.

This stated legislative philosophy is at least considered when reviewing cases, especially those with some element of antecedent history.

It must be emphasized, that the holding of a license is a property right, essentially no different than a persons ownership of their home. For the government to rescind the holders right to that property, there must be a significant compelling interest, supported by substantial evidence, which is filtered through the holders Constitutional protections, and which would withstand the scrutiny of a court of law. Similar to a court of law, health licensing agencies cannot act in an arbitrary and capricious manner. However, distinct from a court of law, health licensing agencies cannot, as a first order of business, act in a purely punitive manner. Rather, their charge is to protect the public from incompetent or substandard care, or illegal conduct of the licensee. If this mission can be accomplished while retaining the license, then the Boards are encouraged to do so. It is only when protection of the public and maintenance of the license cannot be reconciled, that protection of the public dominates, and measures to terminate the licensee's authority to practice are pursued. Let us then review the history of this particular case and apply this information accordingly.

In 1991, Mr. Thompson was the subject of an order for inappropriate touching or making suggestions or personal remarks to patients. Inappropriate touching in this case included hugging patients (a practice often engaged in in those days, but which tends to be discouraged today), and kissing a patient (O.K...there is no explanation for that!) However, to put this in context, two things must be pointed out:

- A psychotherapist indicated that he "was not a current risk to act out and that he should be allowed to continue practice while undergoing therapy
- he successfully met all of the conditions of his probation, and was eventually granted an unconditional license.

With the above in mind, it is certainly a challenge to suggest that one might be able to predict the events of May 2014 occurring over 20 years later. But of course, the picture is not yet complete.

Approximately 15 year later, Mr. Thompson allegedly engages in similar behavior...specifically making inappropriate remarks or inappropriately touching a patient, an allegation he denied. Nevertheless, to settle the case, he agrees to additional evaluations, and enters into an order to, again, have a third party present, and participate in additional therapy. Frankly, this was a reasonably good outcome, given Mr. Thompson's denials of the conduct, and what the Board perceived as a witness credibility issue at the time. Under these conditions, this would have been a challenge to pursue in administrative court. The Board established a probationary period of two years, during which there were no further complaints.

In 2007, subsequent to a petition by Mr. Thompson to restore an unconditional license, the Board performed a records compliance review. During this review, it was determined that there were times, when Mr. Thompson failed to acquire the third party's signature during the patient visit. Mr. Thompson stated that this would occur as a result of office busy-ness as well as a changeover in his computerized approach to record keeping. Nevertheless, Mr. Thompson avers that he always had the third party present, and his staff person confirms this. In spite of this, the Board convinces Mr. Thompson to agree to an additional 2 years of probation, and a

one year suspension, with 14 days served, and the rest stayed.⁵ Once again, this was a case the Board might be reluctant to pursue in court, due to the quality of the evidence supporting the allegation. At this point, the only allegations we had were that he failed to obtain signatures 100% of the time...we had no allegations that third parties were not present (to the contrary a witness statement stating that they always were)...no allegations that he had engaged in similar misconduct, and no patient complaints. All things considered, an additional 2 years of probation, and a stayed suspension was a rather *substantial* outcome for a case with these vague elements, which seems more than consistent with your suggestion of "...some other strict action..."⁶ My experience informs me that the Board would not likely have prevailed in court with the assertion that Mr. Thompson was "...ignoring the explicit direction of the Board..." as stated in your letter. Rather, it is more likely the court would consider it an unintentional failure, rather than an intentional thwarting of the Board's authority. Further, the actions taken by the Board seem contrary to your statement "...we see the consequent (sic) of the Board's failure to enforce the Board's own probation." As stated above, the Board did "...enforce [its] own probation..." by taking significant action for what most would consider a minor violation, a violation for which there can be no direct link assigned to the actions which occurred recently.

A bit of statistical analysis may also add to the conversation here. During my tenure with the Board (over 21 years), this Board has received approximately 195 complaints alleging some form of sexual misconduct, which run the gamut from the less egregious (inappropriate comments) to the more egregious (sexual intercourse whether consensual or non-consensual.) During that time, the Board has taken approximately 60 disciplinary/corrective actions relative to these complaints, most of which have similar structures. On occasion, some have experienced what some persons or judges might consider minor violations, such as failure to acquire a signature during a particular patient visit. However, this is the *ONLY* such case which has proceeded to this extent. Rather, most of the other cases have concluded in a successful outcome, which indicates that the Board's approach is appropriate, measured, and well considered.⁷ Therefore, on what basis should the Board conclude that such a minor violation is likely to result in such an outcome, and therefore the license should be revoked? In other words, should the Board now conclude that one bad outcome should be sufficient to overturn the approach which has been successful in approximately 60 good outcomes? Or should the Board somehow be able to draw a straight line from a minor violation of the order to an anticipation that a licensee will rape a patient? I believe that most would agree that this is an unsupportable posture.

Please do not see the above as an intent to defend the outcome in this particular case, but merely to provide the information requested. For well over 21 years I have worked with dedicated, hard working, self-sacrificing Board members who have given up a tremendous

⁵ The assertion that the license was "suspended for a year, and then reinstated after just two weeks..." is simply a mischaracterization of the order. This is a condition in which the suspension of one year is imposed, but is stayed for all but two weeks. This is a very typical procedure in criminal courts in which, for example, someone is sent to jail for 6 months, but the sentence is "stayed." What this means is that the "stayed" portion is held in abeyance, pending any further significant violations. In this case, Mr. Thompson was required to "serve" the two weeks (this being more on the punitive side) of his suspension, but the rest being held over his head like a Damocles sword, lest he violate the conditions of probation again, which he did not.

⁶ For the benefit of the reader, placing a doctor on an additional two years of probation has substantial impact on that doctor's practice. Very typically, when a doctor is under a disciplinary order, third party payors refuse to accept the doctor as a provider. This means the doctor has substantially reduced access to patient populations who are subsidized by insurance, thereby forcing the doctor to maintain a nearly 100% cash practice. In today's health care delivery system, this is an extremely difficult type of practice to maintain, and is very often fatal to the business.

⁷ By using the term "most" I am not including those that are the subject of current orders, for which no conclusion is yet drawn.

amount of time, energy and income over the years (for which they got reimbursed \$55), solely to police their own profession, often to the derision of their own colleagues. They work hard at making the best decisions they can with all of the information they can muster. However, the Board does not have the luxury of allowing passion to overcome reason or prudence. There will never be a way to defend an unintended outcome, particularly to the victim of that outcome. But in the final analysis, it is just that...ONE bad outcome against many more successful ones.

Senator Marty, there simply is never any way to predict what will happen in the future. If there was, we could simply dismantle the entire system of jurisprudence, and just imprison those we thought might violate society's laws, or otherwise bring harm to society's innocent citizens. While it is not the undersigned's intention to seem glib, the Board is faced with certain realities and constraints, and must apply its best judgement in this context. Yet in partial answer to your final question about the Board being aware of the public's pain, I hope that the above serves that purpose. The Board is not only aware of that pain, but shares in it. Even though the Board is here to protect the public, it is still made up of a combination of public members and members of the profession. Those of us, myself included, share the stigma that one of our profession committed a heinous act, which resulted in substantial harm to the victim as well as the victim's family, is embarrassing to the profession, and diminishes the public's confidence in their doctors and the Board. It should not be assumed that this will be forgotten, but that it will come up each time similar events arise. It will become part of the Board's "institutional memory" having already been invoked when other cases have come under discussion. This will also be discussed by Board members and representatives of the Attorney General's office for this and other health care licensing professions. I meet monthly with the executive directors of all of the other health care licensing Boards, and it will be discussed at that forum. Finally, these actions appear in at least three national licensing databases, making the likelihood of any future licensure, anywhere in this country, a remote likelihood.

In conclusion, I'm sure that the Board members would share my views when I say we'll pray for the emotional healing of those harmed by this man's actions. As protectors of the public, we will continue to seek discernment in our deliberations, and impart wisdom in our decisions...and hope this remains the exceptionally rare, unsatisfactory outcome that it is.

I hope this writing is informative. Should you wish more information, I am happy to meet with you or others on this subject, including members of the family (with the understanding of the constraints of the Data Practices Act.)

Sincerely,



Larry A. Spicer, DC
Executive Director

cc MBCE Board Members
Governor's office.

Exhibit G
Senator Marty's Letter
Dated 24 September 2014

Senator
John Marty

Senate
State of Minnesota

September 24, 2014

Dear Members of the Board of Chiropractic Examiners,

I received Dr. Larry Spicer's September 2nd letter in response to my concerns regarding discipline taken against Mr. Paul Thompson, the chiropractor who recently pled guilty to sexually assaulting a patient. I found Dr. Spicer's response tactless, inappropriate for the executive director of a state licensing board, and unacceptable. Although you have seen the previous letters, for your convenience I am attaching my letter that Dr. Spicer forwarded to you, as well as the response from Dr. Spicer.

When I read the letter, my initial reaction was that Dr. Spicer needed immediate sensitivity training. After I considered this situation more, I have become convinced that Dr. Spicer is not fit to be the executive director of the Minnesota Board of Chiropractic Examiners, and I call for his resignation. I hope that after you read the rest of this letter, you will ask him to resign.

Most disappointing to me was Dr. Spicer's language attacking the father of the victim of sexual violence. In the letter, Dr. Spicer questions the father's motives for contacting his elected representatives to express frustration with what he felt was a lack of follow through in the board's discipline of the man who eventually assaulted his daughter. I was shocked that Dr. Spicer attacked the victim's father for reaching out to public officials – the father did what we hope others in his situation would do. Dr. Spicer's letter is grossly insensitive and offensive; he is blaming the victims and attacking their motives.

Furthermore, the tone of the letter fails to grasp the depth of the anger and frustration felt by a victim of sexual assault and her family. The combative suggestion in Dr. Spicer's footnote that the family is upset because they weren't interviewed before the board pulled Mr. Thompson's license is tone-deaf and lacks understanding of the on-going pain experienced by victims and their families. In this particular case, it also dismisses the father's legitimate belief that the assault might have been prevented if the Board of Chiropractic Examiners had enforced its own sanctions against Mr. Thompson.

As Dr. Spicer notes in his reply letter, and as I said in my letter to you, the Board of Chiropractic Examiners' obligation to protect the public interest does not mean it should immediately revoke the license of any professional based on allegations against that individual. The public interest certainly includes working with license holders who have, or may have, acted inappropriately, in order to make sure that they get the help they need to practice properly. I am a strong advocate

for living up to the state's commitment to offender rehabilitation in Chapter 364, but that does not override the board's obligation to protect the public.

Dr. Spicer's statement that the holding of a license is a "property right, essentially no different than a persons [sic] ownership of their home," does not reflect the responsibilities of the license holder, nor does it recognize the harm that can occur when a license holder violates their obligations to the community.

The board's paramount responsibility is public safety, as stated in its own mission:

"The mission of the Minnesota Board of Chiropractic Examiners (MBCE) is to protect the public through effective licensure and enforcement of the statutes and rules governing the practice of chiropractic to ensure a standard of competent and ethical practice in the profession."

The board's mission does not reference a person's "right" to a chiropractor license, yet Dr. Spicer's letter shows such great concerns about Mr. Thompson's "property rights" to his license that he clearly believes the board would be on questionable legal grounds in enforcing all of the probationary conditions that the board had previously determined were necessary to protect patient safety.

In his letter to me, Dr. Spicer explains that while Mr. Thompson was required to have a third person present in the room when he was with his clients, his failure to document his board-ordered procedures is a "minor violation."

I strongly disagree. In this case, record keeping is not a technical detail; it is a matter of public safety. In putting Mr. Thompson on probation, the board was recognizing a potentially dangerous situation, *requiring* an observer being present. He failed to comply with the board's procedure for proving the observer was present.

Neither office "busy-ness" nor a new computer system is an excuse for failing to document an essential safety procedure.

As far as relying on a statement from Mr. Thompson's employee, because that individual's job depends on Thompson's good will, he or she would be under great pressure to agree with the bosses' recollection that an observer was always present. Unless the board was able to contact each of the patients treated by Mr. Thompson during those years to confirm that there was an observer present in the room during their appointments, accepting Thompson's excuses was putting patients at risk.

Dr. Spicer's language in discussing inappropriate sexual contact is also deeply troubling:

"Inappropriate touching in this case included hugging patients (a practice often engaged in in those days, but which tends to be discouraged today), and kissing a patient (O.K., there is no explanation for that!) However, to put this in context"

While our society's understanding of sexual harassment and violence has certainly matured over the last few decades, unwanted physical contact has never been considered appropriate. I know a number of male and female chiropractors, and cannot picture any of them hugging a patient in 1991 or today.

Even Dr. Spicer's statement that hugging patients is a practice "which tends to be discouraged today" is out of touch. Can you show me a single chiropractor who believes it is appropriate to hug a client in the scope of their practice?

Joking about there being "no explanation" for kissing a patient makes this seem to be a frivolous problem, not a serious matter of *absolutely unacceptable, unwanted* sexual contact. Not only is this joking unprofessional, it continues the victimization of the patient(s) who faced Mr. Thompson's unwanted advances.

After reading his letter again, it is clear that Dr. Spicer fails to comprehend how serious this matter is, and how inappropriate his attitude is. Insisting that "in the final analysis, it is just that...ONE bad outcome..." again trivializes the sexual assault on a patient that might have been prevented.

Additionally, Dr. Spicer insists that there was no way for the board to predict Mr. Thompson's behavior. However, experts say that sexually predatory behavior often escalates.

In summary, for each of the following reasons, I call for Larry Spicer to resign as executive director of the Board of Chiropractic Examiners.

- Dr. Spicer fundamentally fails to understand the board's mission of protecting the public. This will prevent the board from making the changes needed to ensure that future requirements to protect patient safety are fully enforced.
- He lacks insight into the trauma caused by boundary violations and sexually predatory behavior.
- His flat-out dismissal of an inquiry about whether, in hindsight, the board should have taken stronger action to protect the public from Mr. Thompson, suggests that even in hindsight, Dr. Spicer's vision is far short of 20/20. He is either unable or unwilling to look at improvements in procedure.
- Dr Spicer's attack on the motives and actions of the victim's father is offensive and totally unacceptable.
- His attitudes about unwanted sexual contact send a message to victims that the head of the state licensing board views their situation as frivolous. This weakens the well-deserved trust that thousands of Minnesotans have with their chiropractors.

When I wrote my letter to the board last month, I pointed out that it is too late to undo previous actions of the board, but hoped to have the board reexamine its procedures so that we prevent future problems from continuing the way Mr. Thompson's did.

At that time, I did not intend to ask for Dr. Spicer's resignation. However, his response makes it clear that the board cannot live up to its mission under Dr. Spicer. I ask you to call for his resignation and replace him with someone who can move the board forward.

It is also essential that the board send a clear message that you take issues of sexually predatory behavior, boundaries, and sexual trauma seriously. The Minnesota Coalition Against Sexual Assault would be a good place for you to turn, for education and training resources.

And, I will request again, please let the victims of this tragic situation see that you understand their pain and will spare no effort to prevent a similar mistake from occurring again.

Finally, I return to the main point of my last letter, to which I would like a response: What policy or procedural changes is the board considering to ensure that this type of situation – where the license holder can ignore patient safety conditions with impunity – does not happen again?

Sincerely,



John Marty

cc: Dr. Larry Spicer, Executive Director
Lori Swanson, Attorney General
Governor Mark Dayton
Mr. Nestor Riano

enc: August 27 letter from Senator Marty to Minnesota Board of Chiropractic Examiners
September 2 response from Dr. Spicer to Senator Marty

Exhibit H
Questions for Dr. Spicer

Questions for Dr. Spicer

1. A) Dr. Spicer, please give us brief description of your professional background, career and accomplishments.

B) Dr. Spicer, please provide us with a description of this licensee's disciplinary history.
2. A) Dr. Spicer, what was the intent and purpose of your letter to Senator Marty?

B) Dr. Spicer, have you met with Senator Marty to discuss this matter, and specially, your letter dated 02 September 2014.
3. Dr. Spicer, Senator Marty stated that your letter attacks the father of the victim and questions the father's motives for contacting his elected representatives. How do you respond to this comment?
4. Dr. Spicer, in his letter to the Board, Senator Marty believes that the "tone of the letter failed to grasp the depth of the anger and frustration felt by a victim of sexual assault and her family." Senator Marty characterizes your footnote regarding the process in which the family may have felt dismissed as "Combative," and further characterizes it as "tone deaf" How do you respond to these statements?
5. Dr. Spicer, Senator Marty states that you "... lack understanding of the ongoing pain experienced by victims and their families." How do you respond to this comment?
6. A.) Dr. Spicer, per Senator Marty's letter he believes that the Board does not understand its mission or purpose due to a lack of leadership from the executive director. As Executive Director, have you failed to "educate" the members of board as to the Board's mission or purpose?

B.) Dr. Spicer, do you have a vote on the matters before a Complaint Panel?
7. Dr. Spicer, Senator Marty states that you show great concern for [the perpetrator's] "property rights" and that the Board would have been

on questionable legal grounds to pursue enforcement of the probationary conditions the Board imposed for patient safety. How do you respond to this?

8. Dr. Spicer, Senator Marty stated that neither “office busy-ness nor a new computer system is an excuse for failing to document an essential safety procedure. This was referencing your comment as to why the respondent in this matter failed to maintain third party signatures. Were you trying to excuse the Respondents failure to comply with a provision of the order?
9. Dr. Spicer, Senator Marty points out a concern regarding relying upon the statement of the Respondent’s employee, due to a vested interest. How do you respond to this?
10. Dr. Spicer, Senator Marty states “...unless the board was able to contact each of the patients treated by Mr. Thompson during those years to confirm that there was an observer present in the room during their appointments, accepting Thompson’s excuses was putting patients at risk.” How do you respond to this?
11. Dr. Spicer, Senator Marty states he knows a number of male and female chiropractors, and cannot picture any of them hugging a patient in 1991 or today. How do you respond to this?
12. Dr. Spicer, Senator Marty states that you trivialize the sexual assault on a patient that might have been prevented, when you state, “...in the final analysis, it is just that...one bad outcome with approximately 60 successful ones.” How do you respond to that?
13. Dr. Spicer, Senator Marty seems to contradict your view that there was no way to predict this Respondent’s behavior, because experts say that sexually predatory behavior often escalates. How do you respond to this?
14. Dr. Spicer, Senator Marty states your “vision is far short of 20/20, and that you are unable or unwilling to look at improvements in procedure.” How do you respond to this?
15. Dr. Spicer, Senator Marty states that your “attitudes about unwanted sexual contact send a message to victims that the head of the State Licensing Board views their situation as frivolous.” How do you respond to that?

16. Dr. Spicer, Senator Marty would like a response as to what policy or procedural changes the Board is considering to ensure that this type of situation – where the license holder can ignore patient safety conditions with impunity – does not happen again? How would you respond to this?
17. In reviewing the Senator's letter and looking again at the reply to the letter, Dr. Spicer is there anything that you would have done differently?
18. At this time, Dr. Spicer is there anything you would like to say in closing?

Exhibit I

Dr. Spicer's Letter of Achievements

Dated 11 November 2014



Minnesota Board of Chiropractic Examiners

November 11, 2014

RALPH STOFFER Ed.D., PRESIDENT
BOARD MEMBERS et. al.
MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS
2829 UNIVERSITY AVE SE SU 300
MINNEAPOLIS MN 55414

Dear Dr. Stouffer and Board members:

In anticipation of the upcoming scheduled employee review, I hereby submit a short list of my accomplishments, during my tenure as Executive Director to the Minnesota Board of Chiropractic Examiners. I do this for the purpose of providing information for the Board members to consider as they weigh the merits of Senator John Marty's request against my performance in this position. Accordingly, I would request that this list be provided to the Board members during the November 20, 2014 meeting, and that it be added to the record.

- I have successfully managed this agency for 22 years
- This board became the recipient of the Outstanding Chiropractic Licensing Board in the country, in 1996, three years after I took office;
- I was the recipient of the George Arvidson Award, the Federation's highest honor, given for being an outstanding regulator; (by the way, I believe that Minnesota is the only state to have received both of these awards)
- I have been nationally recognized as a speaker on the subjects of professional boundaries and sexual misconduct by licensed professionals; I have been published on these subjects.¹ Further, I have been referenced by other authors on this subject in their publications;^{2,3}
- I imagined, designed, assisted in development, and launched the first licensing Board's web based license renewal system in the State of Minnesota. This was a 5 year project which permitted licensee's to renew licenses online, and was only the second agency in the state of Minnesota to have this capability (behind the Department of Public Safety for drivers licenses)
- Designed and launched an online jurisprudence examination for Minnesota licensure applicants; now being reviewed for modeling by other MN. Health Licensing Boards;

¹ See: e.g. 25 STEPS TO NAVIGATE THE SLIPPERY SLOPE OF SEXUAL BOUNDARIES, Spicer, L. Chiropractic Economics. May/June 1996. Delivered to 63rd Annual Congress of the Federation of Chiropractic Licensing Boards. Chicago Ill. April 1996.

² See: e.g. BEHIND CLOSED DOORS. GENDER, SEXUALITY AND TOUCH IN THE DOCTOR PATIENT RELATIONSHIP. Redleaf, A., Baird S. Pg. 189. Auburn House. Westport CT. 1998

³ See: e.g. UNDERSTANDING AND RESPECTING PROFESSIONAL BOUNDARIES, Part IV. Lalla, G.; Lalla, D. Dynamic Chiropractic. Vol. 17, Issue 16. July 26, 1999.

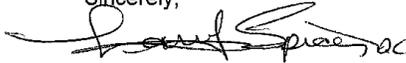
2829 University Avenue SE #300, Minneapolis, Minnesota 55414-3220
Telephone 651-201-2850 • Fax 651-201-2852 • Internet www.mn-chiroboard.state.mn.us

MN Relay Service for Hearing or Speech Impaired: 1-800-627-3529
AN EQUAL OPPORTUNITY EMPLOYER

- Managed the Board's fiscal obligations without a raise in fees for 22 years...the only HLB to do so;
- Was trained and certified on the Supreme Court's Neutrals roster for the purpose of being able to mediate and arbitrate disputes. This has been of great service in being able to negotiate settlements in difficult disciplinary cases, saving considerable resources for the Board over the years.
- Thanked in open hearings by the Sunset Commission for service to the State of Minnesota;
- Every performance review for all 22 years has been outstanding
- Shepherded the Board through 3 comprehensive Legislative audits, including one ending this month, being one of only three Boards that had NO deleterious findings by the Legislative Auditor

Please consider this partial list of accomplishments as compared with the request of Senator Marty. I appreciate your consideration in this matter.

Sincerely,



Larry A. Spicer, DC
Executive Director

Exhibit J

Federation of Chiropractic Licensing Boards Letter

Dated 30 October 2015



**Federation
of Chiropractic
Licensing Boards**

RECEIVED

NOV 03 2014

MINNESOTA BOARD OF
CHIROPRACTIC EXAMINERS

EXECUTIVE OFFICES

5401 W. 10th Street
Suite 101
Greeley, Colorado 80634

970.356.3500
970.356.3599 FAX

www.fclb.org
info@fclb.org

Jon Schwartzbauer, D.C.
Executive Director

October 30, 2015

MN State Board of Chiropractic Examiners
2829 University Avenue SE- #300
Minneapolis, MN 55414-3220

OFFICERS

LeRoy F. Otto, D.C.
President

Farrel I. Grossman, D.C.
Vice President

Margaret Colucci, D.C.
Treasurer

Lawrence O'Connor, D.C.
Immediate Past President

Dr. Ralph Stouffer, President:

The Federation of Chiropractic Licensing Boards (FCLB) is organized for charitable and educational purposes to provide programs and services that assist national and international member chiropractic licensing boards to fulfill their statutory obligations to regulate the profession in the interest of public protection and for the purpose of lessening the burdens of government.

EXECUTIVE BOARD

Michael Coon, D.C.
*Board Chair and
District V Director*

Carol J. Winkler, D.C.
District I Director

William Rademacher, D.C.
District II Director

Kirk Shilts, D.C.
District III Director

Gary Counselman, D.C.
District IV Director

These programs and services include, but are not limited to, those that promote uniform standards among licensing boards, examination and testing services, and chiropractic educational programs leading to the Doctor of Chiropractic degree, postgraduate chiropractic education, diplomate and certification programs, and continuing education for relicensure purposes.

The FCLB has had a great working relationship with Dr. Larry Spicer throughout his tenure as the administrator for the Minnesota Board of Chiropractic Examiners (MBCE). Below are just a few accolades and accomplishments of his during his involvement with FCLB.

**ADMINISTRATIVE
FELLOW DIRECTOR**

Larry Spicer, D.C.

-The MBCE was the recipient of the Outstanding Chiropractic Licensing Board in 1996 in large part to Dr. Spicer's efforts after only being in office for three years.

-Dr. Spicer was the recipient of the George Arvidson Award (1995); Highest honor of FCLB for being an outstanding regulator.

-Dr. Spicer has taught numerous programs over the years in subject matters related to professional boundaries and sexual misconduct by licensed professionals.

-Dr. Spicer is a grader for the National Board of Chiropractic Examiners Ethics and Boundaries Assessment Examination.

-Dr. Spicer is highly regarded for his knowledge and expertise in the subjects of Ethics, Boundaries, and Sexual Misconduct by licensed professionals.

FCLB is a non-profit
501(c)(3) corporation.

Contributions are
deductible as allowed
under section 170 of
the IRS Code.

Tax ID 83-0208564

-Dr. Spicer is an active member of the Chiropractic Board Administrators Committee, providing support and education to other licensing board administrators. He was an essential part of developing a scholarship for these key figures to attend the FCLB annual meeting.

-Dr. Spicer is highly regarded for his regulatory knowledge and experience and often sought out for advice by other regulators.

-The FCLB has benefited greatly from Dr. Spicer's service to regulation and his time on our Board of Directors. He has proven himself to be a fair-minded, thoughtful, and ethical leader. We look forward to his continued service and insight.

If the FCLB can ever be of any assistance to the MBCE, please do not hesitate to contact us.

Kind Regards,


Michael Coon, DC
Chairman, FCLB

Exhibit K

Paul Thompson Complaint History

PAUL THOMPSON CHRONOLOGY

1. **1991**
 - a. Complaints re: period of 1986-89
 - i. inappropriate comments; inappropriate touch
 - (1) Several female patients; patient employee
 - (2) Denied these allegations
 - ii. Had assessment by therapist; Received therapist report
 - (1) Safe to practice (not at risk to act out) with ongoing therapy
 - (2) Recommended he be allowed to continue to practice
 - b. Action
 - i. Probation (3 years)
 - (1) participate in group or individual therapy
 - (2) regular reports from therapist
 - (3) may not provide service to minor or female patients in place where passage of normal voice transmission can't occur
 - (4) Staff member must always be on premises
 - (5) Post notice re; policy of gowning
 - c. Petition 9/1995; granted
2. **2005**
 - a. Complaint (single)
 - i. inappropriate comments; inappropriate touch
 - (1) Denied these allegations
 - (2) took and passed the NBCE Ethics and Boundaries exam (multiple choice)
 - (3) Had evaluation
 - (a) evaluator concluded:
 - (i) still had unresolved issues; recommended continued therapy
 - (ii) additional recommendations regarding practice conditions; specifically 3rd party presence
 - (iii) additional report received stating respondent benefitting from therapy
 - b. Action
 - i. Probation (2 years)
 - (1) third party presence w/ signatures on record
 - (2) continue therapy with quarterly reports
 - (3) Take/pass online CE remediation course re: professional boundaries
 - (4) Take/pass NBCE E&B exam (already completed)
 - (5) refrain from inappropriate comments
 - (6) refrain from socializing with any patients
 - (7) Violations may mean suspension or extension of probation/conditions
 - c. Petition 2007
 - i. Resulted in records review
 - (1) missing signatures; assumption of no female presence
 - (2) denied absence of third party; verified by staff
 - (3) stated result of change of computer record keeping
3. **2007**
 - a. Complaint: Violation of 2005 order
 - b. Action: Amended Order
 - i. Suspension 1 year; 14 days served; the rest stayed
 - ii. Extension of previous conditions
 - (1) note: Created 3rd party signature log (in lieu of signing computer records)
 - (2) affirmations that staff have read/understand order
 - iii. Completed all terms
4. **2009**
 - a. Unconditional license

Exhibit L

Senator Marty's Response to Dr. Spicer's Meeting Request

your meeting request

Sen. John Marty [jmarty@senate.mn]

To: Larry.Spicer@state.mn.us

Cc: [Stouffer, Ralph E.](#)

Wednesday, October 22, 2014 8:28 AM

Dr. Spicer,

Thanks for your call yesterday afternoon requesting a meeting with me.

After consideration of the situation, I do not believe that such a meeting would be productive. I already expressed my concerns about your work to you and the board, and have no further role in the matter.

The September 25th letter from Board Chair, Dr. Ralph Stouffer, spells out a responsible process that the board apparently plans to follow. I have not been in contact with the board since that time, but believe that your concerns are most appropriately addressed to your board.

Sincerely,

John Marty

John Marty

323 State Capitol

St Paul, MN 55155

jmarty@senate.mn

651.296.5645

Exhibit M

Dr. Spicer's 2nd Request for a Meeting with Senator Mary

RE: your meeting request

Spicer, Larry (HLB) [larry.spicer@state.mn.us]

To: Sen. John Marty [jmarty@senate.mn]

Wednesday, October 22, 2014 9:29 AM

Senator Marty:

Thank you for your email of this morning. It is my sincere belief that I have done a poor job of conveying my intent through my writing. I believe this may have left you with questions or misunderstandings which have led to our current disagreement. It is also my experience that very often such misunderstandings are better resolved through personal interaction. No doubt, not being a writer as you are, my written response has given a terribly skewed view of Board function and decision-making. It appears I've left you with more question than answers. I would merely ask for the opportunity to repair that, to assure that all of your questions are answered, and/or to seek out Legislative initiatives which may provide solutions not currently available to the Boards. Accordingly, I would respectfully ask that you reconsider your decision to meet with me.



Sincerely,

Larry A. Spicer, DC, Executive Director
Minnesota Board of Chiropractic Examiners
2829 University Ave. SE, STE 300
Minneapolis, MN 55414
(o) 651-201-2850 (f) 651-201-2852