OAH 71-0901-35869

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Temporary Suspension of Marshall Allen Harris, D.C.

RECOMMENDED ORDER ON MOTION FOR SUMMARY DISPOSITION

This matter came before Administrative Law Judge Jessica A. Palmer-Denig upon a Motion for Summary Disposition filed on April 9, 2019, by the Minnesota Board of Chiropractic Examiners (Board) Complaint Panel (Panel). Marshall A. Harris, D.C. (Licensee) did not file a response to the motion. The record closed on April 26, 2019, the deadline for the filing of Licensee's response.[1]

Tiffany M.W. Sedillos, Assistant Attorney General, appeared on behalf of the Panel. Charles Clas, Caplan & Tamburino Law Firm, P.A., appeared on behalf of Licensee.

Based upon the files and record in this proceeding, and for the reasons explained in the Memorandum below, the Administrative Law Judge issues the following recommended:

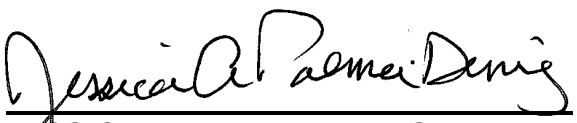
ORDER

1. The Panel's Motion for Summary Disposition should be **GRANTED**.

2. The Board may impose discipline upon Licensee's license.

3. As this recommended order disposes of all issues presented for determination, the record shall be transmitted to the Board.

Dated: May 17, 2019



JESSICA A. PALMER-DENIG
Administrative Law Judge

[1] *See* Minn. R. 1400.6100, subp. 2, .6600 (2017); Affidavit (Aff.) of Service by U.S. Mail (Apr. 9, 2019).

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2018), the Board shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Michelle Becker, Executive Director, Minnesota State Board of Chiropractic Examiners, 2829 University Avenue SE, Suite 300, Minneapolis, Minnesota 55414, telephone (651) 201-2850, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2018). In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2018), the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Introduction

The Panel moves for summary disposition regarding its claims against Licensee. Specifically, the Panel alleges that Licensee: (1) has a conviction for a crime involving moral turpitude in violation of Minn. Stat. § 148.10, subd. 1(a)(4) (2018); (2) engaged in unprofessional conduct in violation of Minn. Stat. § 148.10, subd. 1(a)(11) (2018); and (3) violated or failed to comply with the provisions of Minn. Stat. §§ 148.01 through 148.105 (2018), or the rules of the Board, in violation of Minn. Stat. § 148.10, subd. 1(a)(10). The Administrative Law Judge concludes that there are no issues of material fact at issue and that the Panel has shown it is entitled to judgment as a matter of law.

II. Factual Background

Licensee has held a license to practice chiropractic since June 15, 1991.[2] During the time period relevant to this case, Licensee owned and operated a clinic in St. Paul, Minnesota, called Payne Avenue Chiropractic.[3]

[2] Aff. of Michelle T. Becker (Becker Aff.) at ¶ 2; Aff. of Tiffany Sedillos (Sedillos Aff.) at Ex. J at 1.
[3] Sedillos Aff. at Ex. J at 1.

A. Charges and Conviction for Third-Degree Criminal Sexual Conduct

On September 19, 2018, Licensee was charged with felony third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b) (2018).[4] This statute criminalizes acts of sexual penetration when the complainant is between 13 and 16 years old and the actor is more than 24 months older than the complainant.

The charges arose from a report to police made by 15-year-old A.S.[5] A.S. reported that she met Licensee on a website, seekingarrangements.com, that pairs females with older males acting as "sugar daddies." A.S. stated that Licensee offered her $150 to "spend time with him," and they arranged to meet on June 29, 2018, outside of Highland High School. She reported that he picked her up there and brought her to his chiropractic office, and then into a room with massage tables. According to the criminal complaint:

> He told her that he had a condom and he told her to remove her clothing. He performed oral sex on her. He told her that she will enjoy it and he stated, 'I'm very good at it.' He then put on the condom and had sexual intercourse with her. He paid her $150 in cash. She stated that she told him that she was 15 years old.[6]

The police interviewed Licensee, who admitted he had sexual contact with A.S. at his clinic. Licensee admitted meeting A.S. through seekingarrangements.com, and to picking her up at the high school. According to the criminal complaint:

> He stated that she told him that she was a virgin and he told her he would be gentle and slow. He admitted to performing oral sex on her. He denied that she ever told him 'No.' He acknowledged that he may have put his penis inside of her vagina. He admitted that he gave her some money after the sexual contact. He stated that he assumed that she was 18 [years old].[7]

Licensee entered a guilty plea to the charged offense on January 14, 2019.[8] His petition to enter the guilty plea states, in part, "I now make no claim that I am innocent."[9] On March 15, 2019, Licensee was convicted of felony third-degree criminal sexual conduct and sentenced to a term of imprisonment of 36 months, stayed for ten years.[10] Licensee was sentenced to serve 180 days of confinement in the Ramsey County Correctional Facility, and to supervised probation for a term of ten years.[11]

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[4] Becker Aff. at Ex. A.
[5] *Id.* at Ex. A at 2. At this time, Licensee was 58 years old. *See id.* (noting Licensee's birthdate).
[6] *Id.*
[7] *Id.*
[8] *Id.* at Ex. B.
[9] *Id.* at Ex. B at 2.
[10] *Id.* at Ex. C.
[11] *Id.* at Ex. C at 2.

B. Untruthful Answer on Licensee's License Renewal Application

On December 30, 2018, Licensee submitted an online chiropractic license renewal application to the Board.[12] The renewal application asks the question:

> Since your last application for renewal, have you been charged with and/or convicted of any misdemeanor, gross misdemeanor, or felony crime, including but not limited to any crime related to the use of alcohol or drugs?[13]

Notwithstanding that Licensee had been charged with felony criminal sexual conduct just three months before, Licensee answered "no."[14] On January 2, 2019, Licensee came to the Board's office in person and asked to change his response to the question regarding criminal charges.[15] License changed his "no" to a "yes," wrote "I was charged with a crime," and provided a telephone number for his attorney.[16]

C. Other Sex-Related Charges and Conviction

Licensee has also been convicted of fifth-degree criminal sexual conduct, a gross misdemeanor. In 2007, Licensee was charged with a violation of Minn. Stat. § 609.3451, subd. 1(1) (2006). This statute prohibits nonconsensual sexual contact.

The complaint in that case alleged that Licensee engaged in nonconsensual sexual contact at a community center's public pool with an 18-year-old female, K.A.B.[17] On October 28, 2006, K.A.B. reported that Licensee approached her in the pool and, as he came closer to her, Licensee reached out and squeezed her left breast, digging in his fingernails.[18] K.A.B. immediately told her friends and a lifeguard about Licensee's actions.[19] The police were called, and when they arrived, K.A.B. showed a police officer her chest. The officer observed a one-quarter to one-half inch red mark in the center of

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[12] *Id.* at ¶ 3.
[13] *Id.*
[14] *Id.* at ¶3, Ex. H. at 2.
[15] *Id.* at ¶ 4.
[16] *Id*. at ¶ 4, Ex. H. at 2.
[17] *Id.* at Ex. D at 2. The Panel alleged in its Notice and Order for Hearing on Temporary Suspension (Notice and Order), that Licensee committed this offense against an eight-year-old girl. *See* Notice and Order at 4 (Jan. 7, 2019); *see also* Becker Aff. at ¶ 8. In the Complaint Panel's First Set of Requests for Admissions, the Panel requested that Licensee "[a]dmit on or about October 28, 2006, you grabbed the left breast of an 8 year old girl at a public swimming pool." Sedillos Aff. at Ex. I at 4. Licensee responded: "Deny. I did not grab the left breast of an 8 year old girl at a public swimming pool." *Id.* at Ex. J at 1. The criminal complaint related to this conviction identifies K.A.B.'s birthdate as January 9, 1988. Becker Aff. at Ex. D at 2. Though the complaint states that K.A.B. was a minor and that she was playing in the pool, based on the birthdate identified in the complaint K.A.B. would have been 18 years old on October 28, 2006. *Id.* There is no evidence in the record showing that the birthdate identified for K.A.B. in the complaint is inaccurate.
[18] *Id.*
[19] *Id.*

K.A.B.'s chest.[20] The investigator referenced the mark as a scratch, noting it was bright red, and K.A.B. confirmed the mark had not been there before and was caused by Licensee grabbing her.[21]

Licensee entered an Alford plea to this offense on October 15, 2007.[22] Licensee was sentenced to probation and was ultimately discharged on January 10, 2012.[23]

In 2003, Licensee was charged with disorderly conduct for exposing his penis at a public beach.[24] He entered into an agreement that the charge would be dismissed after one year if he engaged in no offenses that were the same or similar to the charged offense.[25]

D. Restraining Orders

Licensee was the subject of four civil restraining orders issued by the district court, arising from petitions filed by two women between 1999 and 2018, in Ramsey County.[26] One petitioner accused Licensee of repeated instances of stalking.[27] One petitioner was the guardian for A.S., who reported that Licensee texted A.S. after engaging in sexual contact with her, asking to see her again.[28]

III. Procedural Background

The Board issued an Order of Temporary Suspension to Licensee dated January 7, 2019.[29] The Panel commenced this contested case by filing its Notice and Order on January 7, 2019.[30] The hearing was scheduled for February 6, 2019, pursuant to Minn. Stat. § 214.077(c) (2018). On January 17, 2019, the Administrative Law Judge held a prehearing conference, during which Licensee requested that the

[20] *Id.*
[21] *Id.*
[22] *Id.* at Ex. E at 2.
[23] *Id.*
[24] Sedillos Aff. at Ex. J. at 1.
[25] Becker Aff. at Ex. A at 2.
[26] Sedillos Aff. at Ex. J; *see* Becker Aff. at Ex. G.
[27] Becker Aff. at Ex. G at 14.
[28] *Id.* at Ex. G at 26-28.
[29] *See* Order for Temporary Suspension (Jan. 7, 2019). Under Minn. Stat. § 214.077(a) (2018), "when a health-related licensing board receives a complaint regarding a regulated person and has probable cause to believe that the regulated person has violated a statute or rule that the health-related licensing board is empowered to enforce, and continued practice by the regulated person presents an imminent risk of serious harm, the health-related licensing board shall issue an order temporarily suspending the regulated person's authority to practice."
[30] Notice and Order (Jan. 7, 2019).

hearing be set for a later date.[31] The Administrative Law Judge granted the request and issued a First Prehearing Order setting the hearing on March 27, 2019.[32]

On March 21, 2019, Licensee filed a letter requesting an additional continuance, as Licensee was serving a sentence in Ramsey County Jail, and Licensee believed that the matter would likely be resolved without a hearing.[33] The Administrative Law Judge granted the request, issuing an Order for Continuance on March 25, 2019.[34] The parties were unable to resolve the matter without further proceedings, however, and the Panel filed its motion on April 10, 2019.[35] Licensee did not file a response to the motion.

IV. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.[36] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition.[37] A motion for summary disposition may be granted when no genuine issue of material fact exists.[38] A genuine issue is one that is not a sham or frivolous, and a fact is material if resolving it will affect the result or outcome of the case.[39]

The moving party must initially show the absence of a genuine issue of material fact.[40] To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.[41] The non-moving party must establish facts at issue by substantial evidence, and may not rest upon general averments or denials.[42] Evidence offered to support or defeat summary judgment must be such evidence as would be admissible at

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[31] Under Minn. Stat. § 214.077(c), when a temporary suspension is in place, the contested case hearing must be held within 30 days. The hearing date may be delayed under Minn. Stat. § 214.077(e) (2018), upon request of the regulated person, but if such a request is made, the temporary suspension remains in place pending the outcome of the proceeding.

[32] First Prehearing Order (Jan. 17, 2019).

[33] Letter from Charles Clas, Jr. to Administrative Law Judge (Mar. 20, 2019) (on file with the Minn. Office Admin. Hearings). This filing was received by facsimile at 5:30 p.m. on March 20, 2019. The Office of Administrative Hearing considers documents filed after close of business at 4:30 p.m. to be filed the following business day.

[34] Order for Continuance (Mar. 25, 2019).

[35] Complaint Panel's Amended Notice of Motion and Motion for Summary Disposition (Apr. 9, 2019). Note that the Panel styled its motion as an amended document, however, no earlier motion for summary disposition was filed in this case. It appears that the inclusion of the word "amended" in this document is a typographical error.

[36] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2017).

[37] *See* Minn. R. 1400.6600; Minn. R. Civ. P. 56.

[38] *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).

[39] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare,* 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

[40] Minn. R. Civ. P. 56.01; *Anderson v. Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005).

[41] *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

[42] *Id.* at 70.

trial,[43] though the evidence presented need not be in a form that would be admissible.[44] "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial."[45]

When considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party, and doubts and factual inferences must be resolved against the moving party.[46] The trial court's function is not to decide the facts at issue, but to determine whether a genuine dispute of fact exists.[47]

V. Expert Opinion

The Panel offers an expert report from Dr. Richard Tollefson, D.C., in support of its motion.[48] Dr. Tollefson provides his opinion regarding Licensee's conduct based upon his professional experience as a chiropractor, prior service on the Board, and service as an examiner for several National Board of Chiropractic Examiners' (NBCE) examinations.[49] In particular, Dr. Tollefson has served as an examiner for the NBCE examination on Ethics and Boundaries since 2012.[50] The Administrative Law Judge determines that some portions of Dr. Tollefson's report are inadmissible because he offers opinions constituting legal conclusions.

As noted above, evidence offered to support or defeat summary disposition must be such evidence as would be admissible at trial.[51] Admission of expert opinion is governed by Minn. R. Evid. 702. This rule states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In matters involving health professionals, expert testimony can be helpful to establish the applicable standard of care and actions that would be required to diagnose or treat a medical condition. Expert testimony may also be helpful to provide general information about a particular health care specialty or practice issue. Such testimony can provide technical or other specialized information and background context to assist the trier of fact.

In this case, however, the Panel has not alleged any deficiencies in Licensee's chiropractic practice. Instead, the Panel alleges that Licensee's criminal sexual conduct

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[43] *Hopkins v. Empire Fire & Marine Ins., Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991).
[44] *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989).
[45] *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).
[46] *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).
[47] *See id.* at 664 (citing *DLH*, 566 N.W.2d at 70).
[48] Sedillos Aff. at Ex. K.
[49] *Id.* at Ex. K at 1.
[50] *Id.*
[51] *Hopkins,* 474 N.W.2d at 212.

offenses and harassing behavior toward women, the majority of which occurred outside Licensee's clinic, merits disciplining his license. The Panel's claims rest upon the interpretation of non-technical statutory terms and seek a legal conclusion that Licensee's actions violate statutory standards.

In general, Minnesota's appellate courts have held that expert opinion as to legal conclusions is inadmissible.[52] The Minnesota Supreme Court has concluded that, while expert opinions may embrace an ultimate issue of fact,[53] opinions involving a legal analysis or regarding mixed questions of law and fact are not helpful.[54] The Minnesota courts' guidance is consistent with the federal courts' treatment of expert legal opinions under Fed. R. Evid. 702, where such opinions have also been deemed inadmissible.[55]

Dr. Tollefson offers several opinions that verge into legal analysis. For example, he opines as to the meaning of the statutory term "moral turpitude," and avers that Licensee's convictions are crimes falling within the statutory definition.[56] He recites the statutory definition of "unprofessional conduct," and opines that Licensee's conduct violated this legal standard.[57] Further, he opines that Licensee's conduct failed to comply with Minn. Stat. §§ 148.01-.105.[58] The Administrative Law Judge does not find these opinions aid her understanding of the evidence or help her to determine a fact at issue in this case. Statutory construction is a question of law,[59] not a matter of opinion. To the extent that Dr. Tollefson has offered opinions as to what a statute says or means the Administrative Law Judge determines that the opinion evidence is inadmissible and has not relied on it.

Notwithstanding this, the Administrative Law Judge finds other portions of Dr. Tollefson's report to be helpful. Dr. Tollefson offers opinions regarding the doctor-patient relationship, including the power differential between doctors and patients and the need for trust between the patient and a health care professional.[60] Dr. Tollefson references the American Chiropractic Association's Code of Ethics, and the requirement that doctors "do no harm."[61] He also speaks to the reliance placed in health care professionals by their patients regarding appropriate physical interactions and respect for patient's bodies.[62] These opinions stem from Dr. Tollefson's lengthy experience as a practitioner and go to industry practices and standards, rather than to the meaning or

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[52] *See Safeco Ins. Co. v. Dain Bosworth Inc.*, 531 N.W.2d 867, 873 (Minn. Ct. App. 1995) (holding that "[o]pinions regarding legal issues are ordinarily not admissible"), *review denied* (Minn. July 20, 1995); *see also* 8 *Minnesota Practice* § 32.56 (4th ed.) (noting that "an opinion as to whether a defendant's conduct 'falls within a legal standard' in general is not helpful to the [fact-finder] and not admissible.").
[53] *See* Minn. R. Evid. 704.
[54] *State v. Moore*, 699 N.W.2d 733, 739-40 (Minn. 2005).
[55] *See Thomas v. Barze*, 57 F.Supp.3d 1040, 1059 (D. Minn. 2014).
[56] Sedillos Aff. at Ex. K at 2-3.
[57] *Id.* at Ex. K at 3-5.
[58] *Id.* at Ex. K at 6.
[59] *Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, 53 (Minn. 2005).
[60] Sedillos Aff. at Ex. K at 3.
[61] *Id.* at Ex. K at 5-6.
[62] *Id.* at 3.

application of various statutes.[63] These opinions constitute "specialized knowledge" under Minn. R. Evid. 702, and are helpful in addressing whether Licensee's conduct was "unprofessional," within the context of the statutory definition. Therefore, the Administrative Law Judge has considered the opinions expressed by Dr. Tollefson that do not amount to legal conclusions or legal argument.

VI. Analysis

By statute, the Board "may refuse to grant, or may revoke, suspend, condition, limit, restrict or qualify a license to practice chiropractic . . ." upon a showing of misconduct.[64] Relevant here, the Board may impose disciplinary action upon a license if an individual has a conviction for a crime involving moral turpitude;[65] has engaged in unprofessional conduct;[66] or has violated or failed to comply with the statutes governing chiropractic practice, Minn. Stat. §§ 148.01 through 148.105, the Board's rules, or a lawful order of the Board.[67]

A. Crimes Involving Moral Turpitude

The Panel contends that the Board may discipline Licensee under Minn. Stat. § 148.10, subd. 1(a)(4) because Licensee's 2018 conviction for third-degree criminal sexual conduct and 2007 conviction for fifth-degree criminal sexual conduct are convictions for crimes involving moral turpitude.[68]

Minn. Stat. § 148.10 does not define the term "moral turpitude." Black's Law Dictionary defines moral turpitude to mean: "[c]onduct that is contrary to justice, honesty, or morality," and especially "an act that demonstrates depravity."[69] Another dictionary defines the term to mean "an act or behavior that gravely violates the sentiment or accepted standard of the community."[70] This tribunal has held that convictions for criminal sexual conduct in the second degree and possession of child pornography involve moral turpitude.[71] The Administrative Law Judge determines that Licensee's two criminal sexual conduct offenses are crimes involving moral turpitude.

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[63] *Thomas*, 57 F.Supp.3d at 1059 (stating that "expert testimony on industry practice or standards may often be relevant . . . and expert or fact testimony on what these are is often admissible.") (quotation omitted).
[64] Minn. Stat. § 148.10, subd. 1(a).
[65] *Id.*, subd. 1(a)(4).
[66] *Id.*, subd. 1(a)(11).
[67] *Id.*, subd. 1(a)(10).
[68] Under Minn. Stat. § 148.10, subd. 7, a conviction for certain felony-level criminal sexual conduct offenses leads to the automatic revocation of a chiropractic license. The offenses for which Licensee has convictions are not identified by the statute as grounds for automatic revocation.
[69] *Black's Law Dictionary* (10th ed. 2014).
[70] *Moral turpitude*, MERRIAM-WEBSTER ONLINE, https://www.merriam-webster.com/legal/moral%20turpitude (last visited Apr. 30, 2019).
[71] *See In re the License and Application for Licensure of Wells*, No. 7-1004-16567-2, 2006 WL 980526, at *3 (Minn. Office Admin. Hearings Apr. 16, 2006) (holding that possession of child pornography is a crime of moral turpitude); *In re the Resident Insurance Producer's Application of Maxwell*, No. 11-1004-17015-2, 2006 WL 1412814, at *5 (Minn. Office Admin. Hearings Mar. 9, 2006) (reasoning that conviction for

The specific conduct underlying Licensee's criminal convictions is relevant to this determination. Licensee committed the 2018 sexual offense against a minor. Licensee picked up a 15-year-old girl outside a high school, took her to his clinic, engaged in oral sex and sexual intercourse with her, and paid her money after the sexual contact.[72] The legislature has criminalized certain sexual acts based upon the age of the victim,[73] as minors are considered a particularly vulnerable group. The Administrative Law Judge determines that Licensee's sexual offense against A.S. demonstrates depravity and gravely violates accepted standards of conduct.

With regard to the 2007 conviction, Licensee grabbed the breast of an 18-year-old girl, digging his fingernails into her chest and leaving a visible mark. Licensee committed this offense at a community center, a public place and community gathering space, and a place where members of the public expect to feel and be safe. In committing this offense, Licensee violated legal, as well as social and community, norms.

Therefore, the Panel has established that Licensee has convictions for crimes involving moral turpitude in violation of Minn. Stat. § 148.10, subd. 1(a)(4).

A. Unprofessional Conduct

The Panel also contends that Licensee engaged in unprofessional conduct under Minn. Stat. § 148.10, subd. 1(a)(11). Unprofessional conduct is defined by statute to include: "any unethical, deceptive or deleterious conduct or practice harmful to the public."[74]

The Panel asserts that Licensee engaged in unprofessional conduct when he had sexual contact with 15-year-old A.S. in his chiropractic clinic and then again when he was untruthful about the criminal charge for this offense on his license renewal application. The Panel also argues that Licensee has a pattern of sexual and harassing conduct toward women that constitutes unprofessional conduct, including the 2007 criminal sexual conduct conviction, the charge arising from the incident in which he exposed himself, and the four documented restraining orders against him.

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criminal sexual conduct in the second degree, arising from applicant's sexual contact with a minor child, involves elements of depravity and violation of accepted moral standards, falling within definition of moral turpitude).

[72] Licensee acknowledges engaging in sexual contact with A.S. at his chiropractic clinic, but denies that the sexual offense took place in an examination room. Sedillos Aff. at Ex. J at 2. The location within the clinic where Licensee had sexual contact with A.S. is not material to the outcome here. Licensee also denies that he knew that A.S. was 15 years old. *Id.* A mistake-of-age affirmative defense is only available to an actor who is no more than 120 months older than the complainant. *See* Minn. Stat. § 609.344, subd. 1(b). Licensee was 58 years old at the time of this incident and well outside the age range for this defense.

[73] *See State v. Holloway*, 905 N.W.2d 20, 28 (Minn. Ct. App. 2017), *aff'd* (Minn. Aug. 1, 2018).

[74] Minn. Stat. § 148.10, subd. 1(e). The statute also provides a non-exclusive list of specific acts constituting unprofessional conduct relating to the practice of chiropractic and financial misconduct. *See* Minn. Stat. § 148.10, subd. 1(e)(1)-(7).

Licensee's commission of a sexual offense against a minor in his chiropractic clinic is, in and of itself, sufficient to support discipline as unprofessional conduct. Such conduct is unethical, deleterious, and harmful to the public. Licensee's deception about the criminal charge in his renewal application compounds the problem, because concealing the offense denied the Board an opportunity to learn of and evaluate the potential risk Licensee posed to the public. Therefore, Licensee's untruthfulness in his disclosures to the Board also constitutes unprofessional conduct.

The Administrative Law Judge agrees with the Panel that Licensee's pattern of sexual offenses and sexually-related conduct, as well as harassing conduct toward women, provides additional grounds for considering his conduct unprofessional. This conduct is unethical, deleterious, and harmful to the public. As a health care provider, Licensee has an obligation to be law abiding, to avoid the appearance of impropriety, and to behave in a manner that merits the trust placed in licensed health care professionals by the public.[75] Chiropractic treatment, in particular, involves hands-on contact with patients, requiring licensees to be respectful of patients' bodies and make good decisions about touch during treatment.[76] Licensee's actions were far outside the bounds of trustworthy conduct, and were unprofessional for a chiropractic licensee.

B. Violation of Board's Statutes

Finally, the Board contends that Licensee's conduct is not in compliance with Minn. Stat. §§ 148.01 through 148.105, the Board's rules, or a lawful order of the Board.[77] The conduct discussed above violated Minn. Stat. § 148.10, subd. 1(a)(4), (11). Therefore, Licensee has not complied with all statutes enforced by the Board.

VII. Conclusion

The Panel has established as a matter of law that Licensee violated the legal standards governing the conduct of chiropractic licensees. Therefore, the Panel's motion for summary disposition should be **GRANTED** and the Board may impose discipline upon Licensee's license.

J. P. D.

[75] *See* Sedillos Aff. at Ex. K at 3-6.
[76] *See id.* at Ex. K. at 3.
[77] Minn. Stat. § 148.10, subd. 1(a)(10).