OAH 21-0901-39937

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the Temporary Suspension of Connor Reed Ginder, D.C. License No. 6829	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Kimberly Middendorf for a hearing on May 30 and 31, 2024. The record closed on July 15, 2024 upon filing of the parties' written closing arguments.[1]

Jamal A. Zayed and Erin Farmer, Assistant Attorneys General, appeared on behalf of the Complaint Panel (Panel) of the Minnesota Board of Chiropractic Examiners (Board). Thomas Jensen, Lind, Jensen, Sullivan & Peterson, P.A., appeared on behalf of Connor Reed Ginder, D.C. (Licensee).

STATEMENT OF THE ISSUES

1. Did Licensee engage in unethical, deceptive or deleterious conduct or practice harmful to the public, or a willful disregard for the health, welfare or safety of patients, in violation of Minn. Stat. § 148.10, subd. 1(a)(11) (2022), as defined by Minn. Stat. § 148.10, subd. 1(e) (2022)?

2. Did Licensee engage in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient, as defined by Minn. Stat. § 148.10, subd. 1(e)(2), in violation of Minn. Stat. § 148.10, subd. 1(a)(11)?

SUMMARY OF RECOMMENDATION

Licensee engaged in unprofessional conduct with patients that was sexual and sexually demeaning, in violation of Minn. Stat. § 148.10, subd. 1(a)(11) and subd. 1(e)(2). The Judge respectfully recommends that the Board take reasonable and appropriate disciplinary action against the license of Licensee.

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[1] The Panel withdrew and did not submit Exhibits 1-15. Licensee withdrew submission of Exhibits 103, 107, 116, and 127. The Administrative Law Judge admitted without objection Exhibits 100, 101, 108, 112, 115, 117, 118, 119, 120, 125, 133, and 133A. The Administrative Law Judge overruled the Panel's objections to Exhibits 104, 106, 110, 113, 114, 121, 122, 123, 124, and 130, and these Exhibits were admitted. The Administrative Law Judge sustained the Panel's objections to Exhibits 105, 105A, 109, 111, 126, 128, 129, 131, and 132, and these exhibits were not admitted. The Panel called three patient witnesses, Licensee, and one rebuttal witness. Licensee called 11 witnesses, including himself.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Minnesota law[2] authorizes the Board to regulate and discipline persons licensed as practitioners of chiropractic in the State of Minnesota. It also authorizes the Board to bring disciplinary proceedings against chiropractors in the manner prescribed by applicable law.[3] The law, in turn, empowers the Panel, as Board members designated by the Board, to review investigations and matters that might warrant disciplinary action and to initiate disciplinary hearings in the manner prescribed by applicable law.[4]

Licensee's Education, Experience, and Employment

2. In May 2016, Licensee graduated from Central College in Pella, Iowa, with a Bachelor of Arts degree in Athletic Training and Pre-Physical Therapy.[5]

3. Licensee attended a three-year course of chiropractic study at Palmer College in Davenport, Iowa, to become a chiropractor, at his own significant expense.[6] The coursework involved some training in professional boundaries and informed consent.[7]

4. Licensee began treating patients as a student intern in February 2020, earning his Doctorate of Chiropractic in February 2021.[8]

5. The Board licensed Licensee to practice chiropractic in the State of Minnesota on March 1, 2021.[9] Licensee has had no professional complaints or disciplinary action brought against him prior to this matter.[10]

6. Licensee was employed as an associate chiropractor at Carlson Clinic of White Bear Lake, in White Bear Lake, Minnesota, from March 2021 to October 2021.[11]

7. Licensee was next employed by LifeClinic Physical Therapy and Chiropractic in St. Louis Park, Minnesota (LifeClinic). LifeClinic is embedded within the St. Louis Park LifeTime Fitness Club (LifeTime).[12]

8. When the events at issue occurred, the LifeClinic facility was small, with a reception desk, a small open treatment space behind the reception desk, and two small,

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[2] Minn. Stat. §§ 148.01 - .106 (2022).
[3] *Id*.; Minn. Stat. § 214.10 (2022).
[4] Minn. Stat. §§ 214.10 and 214.103 (2022).
[5] Ex. 119.
[6] Ex. 117; Tr. at 370.
[7] Tr. at 370, 375; *see* Ex. 116.
[8] Exs. 118, 119.
[9] Tr. at 237.
[10] Tr. at 420.
[11] Ex. 119; Tr. at 238.
[12] Ex. 119.

private treatment rooms behind the open treatment space.[13] The private treatment rooms were completely enclosed, windowless spaces.[14]

9. LifeClinic's founding chiropractor developed integrated muscle joint therapy (IMJT), which is a soft tissue technique used to restore and maintain the balance of the muscles, nerves, and joints.[15] IMJT is a form of manual therapy, which is defined in statute as "manipulation or adjusting joint articulation without anesthesia" and is a form of chiropractic services.[16] IMJT is a technique exclusive to LifeClinic.[17]

10. IMJT can be used to alleviate Upper Cross Syndrome, which is the weakening of mid and upper back muscles and the corresponding tightening of the pectoralis muscles due to repetitive desk and computer work.[18] The pectoralis major and pectoralis minor are muscle groups located in the chest and shoulder region of the human body.[19]

11. LifeClinic requires its chiropractors to perform adjustments, IMJT and rehabilitation on all patients.[20] Chiropractors are also required to use a script to explain IMJT to patients, ostensibly to ensure a uniform experience regardless of which LifeTime club the patient attends.[21] When Licensee began employment at LifeClinic, he underwent training for IMJT.[22] Licensee described his IMJT-related training on maintaining professional boundaries and obtaining consent:

> We were required to use a towel for draping. Any time we use IMJT, you would drape a towel. It doesn't even matter if it's not anywhere sensitive. If it was on their low back, you still tuck a towel in to just -- we use lotion to decrease friction with that method, and so the towel would be used for draping. And we would say, hey, we're using this for modesty as well. And then, obviously, going over the procedure with them and getting consent before performing it.[23]

12. When a chiropractor performs manual therapy, including IMJT, the chiropractor is held to the chiropractic standard of care.[24]

13. It is essential for a chiropractor to get a patient's informed consent prior to performing chiropractic services on the patient.[25] This includes explaining to the patient

[13] Tr. at 287-88, 351-52, 376; Ex. 100.
[14] Ex. 100.
[15] Ex. 133; Tr. at 238-39.
[16] Tr. at 456-57; Minn. Stat. § 146.23, 148.01, subd. 1(2).
[17] Tr. at 457.
[18] Tr. at 267.
[19] Ex. 114.
[20] Tr. at 376-377.
[21] Tr. at 242.
[22] Tr. at 238-39, 266.
[23] Tr. at 379.
[24] Tr. at 457.
[25] Tr. at 245, 267, 452.

what treatment the chiropractor is going to perform and how the chiropractor is going to perform the treatment and then asking the patient if it is okay if the chiropractor performs that treatment.[26]

14. When performing IMJT on a female patient in the pectoral region, which is near a female's breast tissue, it is the standard of care for a chiropractor to use a towel to cover the patient's breast area for modesty and to eliminate any possibility of sexual conduct.[27]

15. The standard of care requires a chiropractor to be mindful of a patient's intimate parts when working in proximity to those parts, and to do so by explaining the treatment to the patient prior to treating that area.[28] Licensee acknowledged the particular importance of this standard when treating female patients.[29]

16. To administer IMJT to the pectoral muscles, the patient is positioned supine on an adjustment table while the chiropractor stands to the side of or over the patient.[30] IMJT can be provided while a patient is fully clothed.[31]

17. Administering IMJT in the pectoral region requires the practitioner to use the palm or the "knife edge" of the hand. According to Licensee, "It's basically using the inside of your hand, so your fingers are not going to get close to [the breast]. You always start proximally and go distally. So we're going to be working away from, you know, proximity of breast tissue as we work into that."[32]

18. There is no acceptable form of chiropractic treatment or services, including IMJT, that requires a chiropractor to touch or otherwise encounter a female's breast.[33]

19. According to Licensee, as a chiropractor, he has never touched a female patient's breast and has only gone under patient's sports bra strap to tuck a towel for modesty.[34]

20. Licensee preferred working with the population present at LifeTime because the patients are generally fit and many appreciate holistic health. He conveyed this appreciation to his patients.[35]

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[26] Tr. at 246.
[27] Tr. at 270-71, 378, 446-47; Ex. 115.
[28] Tr. at 446-47.
[29] Tr. at 265.
[30] Ex. 133.
[31] Ex. 133; Tr. at 270.
[32] Tr. at 380.
[33] Tr. at 267-268, 452.
[34] Tr. at 269.
[35] Tr. at 274-275.

21. Licensee often hugged his patients, typically at the beginning or end of a treatment session but had denied doing so to investigators.[36] When asked to explain his denial of hugging patients to investigators, Licensee said:

> I believe I already explained it, but back then, we were discussing S.B. We were discussing what she claimed about me, where a hug to her was squeezing tightly, not letting go, and with embrace and affection. I don't do that to anybody besides my family and close friends, and I -- so, no, I never did that. But in terms of a warm welcome or a warm regard or greeting somebody that I've been seeing for two years, I think it's perfectly normal to go up to them and put your arm around their shoulder and say, hey, how's it going?[37]

According to Licensee, the only patient he ever hugged was an elderly man with Alzheimer's disease.[38]

22. Between April 2023 and March 2024, the Board received complaints from Licensee's former patients, C.D., S.B., and V.M. Each woman alleged that Licensee engaged in unprofessional conduct towards them and an investigation ensued.[39]

23. On April 5, 2024, the Board issued an order to temporarily immediately suspend Licensee's chiropractic license and timely ordered a contested case hearing.[40]

Licensee's Conduct with Patient C.D.

24. Patient C.D. worked at LifeTime in 2021 and 2022 at the front reception desk.[41]

25. From late 2021 to early 2022, C.D. saw Licensee approximately five times for chiropractic treatment, complaining of lower back, neck and shoulder pain.[42]

26. During C.D.'s first three sessions with Licensee, the treatment room door was closed. C.D. would take off her shirt and would be wearing pants and a sports bra.[43] C.D. and Licensee talked mostly about personal things during the treatment sessions.[44]

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[36] Tr. at 275, 321-324.
[37] Tr. at 278.
[38] Tr. at 278.
[39] Notice and Order for Hearing on Temporary Suspension (Apr. 5, 2024) (Notice and Order).
[40] Notice and Order.
[41] Tr. at 183-184.
[42] Tr. at 183.
[43] Tr. at 185, 192.
[44] Tr. at 186.

27. C.D. had been treated by other chiropractors before seeking care from Licensee. At C.D.'s first session, Licensee made some "standard adjustments" which were "pretty normal, standard" chiropractic treatments.[45]

28. During the second and third treatment sessions, Licensee performed some work on C.D.'s pectoral muscles that made her uncomfortable.[46] Licensee told C.D. it would help her shoulder and provided no further explanation of the treatment.[47] C.D. was supine on the adjustment table. Licensee used his fingertips to massage from her armpit area inward towards her breast and underneath her sports bra.[48] Licensee placed his fingertips approximately one inch underneath the cup portion of C.D.'s sports bra where his fingertips came into direct contact with her breast.[49]

29. C.D. did not consent to Licensee touching her breast.[50] C.D. did not require any treatment that would have required Licensee to place his fingers underneath the cup of her sports bra or to have contact with C.D.'s breast. Licensee denied touching her breast, even accidentally.[51]

30. Licensee also attempted to convince C.D. to spend time with him outside of her chiropractic treatment, suggesting they meet up for coffee. Licensee asked C.D. for her personal phone number and tried to connect with her on social media.[52]

31. Licensee would occasionally stop by the front desk where C.D. worked and by the gym floor when C.D. was working out to see her.[53]

32. After the third visit, C.D. decided not to continue care with Licensee because he made her feel uncomfortable by touching her breast, engaging in personal conversations, and giving her the impression that he wanted to spend time with her outside of work.[54]

33. C.D. did not feel that Licensee's touching of her breast was sexual in nature.[55] She did not consider Licensee's conversations with her to be seductive or sexual in nature.[56] She observed no sexual reaction by Licensee to touching her breast.[57]

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[45] Tr. at 184.
[46] Tr. at 184, 186.
[47] Tr. at 185-186.
[48] Tr. at 185, 200.
[49] Tr. at 186, 199.
[50] Tr. at 191.
[51] Tr. at 273-74.
[52] Tr. at 188.
[53] Tr. at 189.
[54] Tr. at 187.
[55] Tr. at 195.
[56] Tr. at 197.
[57] Tr. at 195-196.

34. C.D. was offered and, after ensuring she would not be alone in the treatment room with Licensee, accepted free treatment to participate in a video for LifeClinic.[58] C.D.'s fourth and fifth treatments were markedly different from her second and third treatments. Licensee provided more explanation of the treatments being provided and did not engage in personal conversation with C.D. while the filming occurred. Rather than being placed on her back, C.D. was positioned sitting up or on her stomach while treatment was provided.[59]

35. C.D. described Licensee as a "creep," explaining:

> I mean, I think the touching felt uncomfortable to me and, just, the presence felt uncomfortable to me. I no longer wanted to see him after the conversations that we were having. And I felt like I kept trying to be nice about it, but I wasn't comfortable seeing him anymore around our place of work.[60]

36. C.D. shared her assessment with another female employee at the front desk who was considering seeking treatment from Licensee. C.D. told the coworker she would not recommend it.[61]

Licensee's Conduct with Patient S.B.

37. Patient S.B. received a degree in psychology and criminology from the University of Minnesota – Duluth in 2017 and received a master's degree in business administration from Capella University in 2019.[62]

38. In 2022, S.B. was a yoga instructor at LifeTime in St. Louis Park.[63] When she began complaining of upper back pain from a slipped rib, her yoga manager, E.B., referred her to Licensee for chiropractic care.[64] S.B. had never received chiropractic treatment before.[65]

39. S.B. attended seven chiropractic treatment sessions with Licensee, between August 24, 2022, and September 16, 2022.[66] During each treatment session, Licensee asked questions about S.B.'s personal life and hugged S.B.[67] S.B. believed Licensee's hugs were "a sexual touch," that Licensee was physically attracted to her, and that he wanted to touch her.[68]

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[58] Tr. at 188.
[59] Tr. at 189.
[60] Tr. at 191.
[61] Tr. at 191.
[62] Tr. at 68.
[63] Tr. at 69.
[64] Ex. 110; *see* Tr. at 282, 289.
[65] Tr. at 122, 146-47.
[66] Tr. at 76; Ex. 108.
[67] Tr. at 77, 108; *see* Tr. at 275.
[68] Tr. at 109.

40. At each appointment, S.B. was alone with Licensee with the treatment room door closed.[69] After the first appointment, Licensee would instruct S.B. to remove her shirt, so that he could provide treatment while she was clad in her sports bra.[70] Licensee told S.B. that he enjoyed working on pretty and fit people, and that she was pretty, fit, and one of his favorites.[71]

41. At S.B.'s first appointment, on August 19, 2022, Licensee conducted intake and performed typical adjustments.[72] Licensee documented that S.B. had back and shoulder pain.[73] Licensee asked S.B. personal questions about her childhood and mental health.[74] S.B. informed Licensee that she had breast augmentation surgery and a plate in her collarbone.[75] Licensee documented that S.B. denied "implants, pins or screws" but also documented that she had "left clavicle repair" and "breast augmentation."[76]

42. Afterward, although she had felt somewhat uncomfortable by Licensee's demeanor, she thanked E.B. for the referral and told E.B. that she felt "so much better."[77] S.B. believed it was necessary to be positive about her experience given E.B.'s role as S.B.'s manager and the need to appease E.B. to secure various advantages at LifeTime.[78]

43. On August 24, 2022, S.B. returned for a second chiropractic treatment session with Licensee.[79] Licensee hugged S.B., told her to take off her shirt, performed chiropractic services, and continued to ask personal and nontherapeutic questions.[80]

44. On August 26, 2022, S.B. attended her third appointment with Licensee.[81] Licensee hugged her, made comments about her appearance, and continued to try to get to know S.B. by asking her questions about her personal life, which made her uncomfortable.[82] Licensee again performed chiropractic services on S.B., including working on S.B.'s arm.[83]

45. At her fourth appointment, on August 29, 2022, Licensee again hugged S.B. and continued to try to get to know her by asking personal questions.[84] Licensee

[69] Tr. at 77-78, 101-104.
[70] Tr. at 74, 82, 84, 111.
[71] Tr. at 73-74.
[72] Tr. at 69; Ex. 108 at 1.
[73] Tr. at 399; Ex. 108 at 1.
[74] Tr. at 69-70.
[75] Tr. at 77, 89.
[76] Ex. 108 at 1; Tr. at 399-400.
[77] Ex. 106 at 1.
[78] Tr. at 107-08, 161; Ex. 106 at 1.
[79] Ex. 108 at 6.
[80] Tr. at 74-75; Ex. 108.
[81] Ex. 108 at 8.
[82] Tr. at 77-78.
[83] Tr. at 78, 120.
[84] Tr. at 79.

massaged S.B.'s bicep but did not explain why he was doing so.[85] During this visit, Licensee documented that S.B. had a history of chest pain.[86] S.B. has never had chest pain.[87]

46. S.B. continued to feel uncomfortable about Licensee's conduct during her treatment.[88] To S.B., Licensee was "creepy" and crossed boundaries with his questions and hugging.[89] Licensee's behavior was confusing to S.B., and she was questioning whether it was abnormal.[90] Because her symptoms were improving and because her yoga manager had provided S.B. with the referral, S.B. continued to seek chiropractic treatment from Licensee.[91]

47. On September 2, 2022, S.B. attended her fifth chiropractic appointment with Licensee.[92] Again, Licensee had S.B. remove her shirt, performed similar chiropractic services, and asked nontherapeutic questions of S.B.[93] Licensee again massaged S.B.'s bicep, which she believes was Licensee's way of gauging what she would allow.[94]

48. At S.B.'s sixth appointment, on September 7, 2022, Licensee told S.B. that her pectoral muscles were tight and began to work his hands in towards the pectoral muscles under her sports bra.[95] She had not reported having pain in the area. Licensee did not use a towel and did not explain to S.B. what he was doing. Licensee did not obtain S.B.'s consent to administer IMJT.[96] S.B. thought Licensee may have touched the bottom of her breast but she was unsure due to having decreased sensitivity in the lower area of her breast.[97]

49. S.B. attended her seventh and final chiropractic session with Licensee on September 16, 2022.[98] Licensee greeted S.B., brought her back to a treatment room, and instructed her to remove her shirt.[99] After performing the usual adjustment on S.B., Licensee groped her breasts under her sports bra with both hands.[100] S.B. had no medical condition that would require chiropractic treatment of her breasts and the contact was not accidental.[101]

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[85] Tr. at 79, 123.
[86] Tr. at 425; Ex. 108 at 11.
[87] Tr. at 83.
[88] Tr. at 80.
[89] Tr. at 80-81, 126.
[90] Tr. at 80.
[91] Tr. at 81, 106, 125.
[92] Ex. 108 at 15.
[93] Tr at 82.
[94] Tr. at 82.
[95] Ex. 108 at 17, Tr. at 83, 130.
[96] Tr. at 84.
[97] Tr. at 130-31, 144.
[98] Ex. 108 at 20.
[99] Tr. at 84.
[100] Tr. at 84-87.
[101] Tr. at 272.

50. Licensee kept his bare fingers under her sports bra for approximately ten minutes and exposed her nipple.[102] S.B. froze, was confused and shocked, and felt dissociation.[103] S.B. left and cancelled all remaining appointments.[104]

51. A couple weeks after the final visit, S.B. texted Licensee to schedule another appointment because her rib slipped out again and she was experiencing a lot of pain.[105] Licensee responded that he could schedule her to come in, but S.B. did not reply to his text or schedule anything because she "knew it wasn't good to go back." Licensee again texted S.B., who did not respond.[106]

52. In October 2022, S.B. reported Licensee's conduct to her yoga manager, E.B. and another instructor, A.R.[107] E.B., who also received chiropractic care from Licensee, did not experience similar conduct and did not believe S.B. E.B. did not report Licensee's conduct to her supervisor, and S.B. felt stupid, useless, and invalidated.[108] As a result, S.B. did not immediately report Licensee's conduct to police.[109]

53. On April 17, 2023, S.B. made a police report regarding Licensee's conduct towards her.[110]

54. On May 3, 2023, S.B. reiterated her allegations against Licensee to LifeTime.[111]

55. On May 4, 2023, S.B. filed a complaint against Licensee with the Board.[112]

56. S.B. continued to teach yoga at LifeTime for a while after discontinuing treatment and sought a harassment restraining order (HRO) against Licensee.[113] S.B. believed that an HRO would be automatically entered when criminal charges would be filed, which she expected was imminent. S.B. preferred not to be in Licensee's presence. She did not appear for the court hearing, and on July 13, 2023, the district court denied the restraining order by default.[114]

57. The police investigated and eventually submitted the case for prosecution. The prosecution declined to prosecute Licensee for criminal sexual conduct because of insufficient evidence of sexual intent.[115]

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[102] Tr. at 84-87.
[103] Tr. at 84-87.
[104] Tr. at 85.
[105] Tr. at 146-474.
[106] Tr. at 146-147.
[107] Ex. 114; Tr.
[108] Tr. at 148, 151, 168-69, 300-01.
[109] Tr. at 170-171; Ex. 121.
[110] Tr. at 170-71; Ex. 121.
[111] Ex. 114.
[112] Ex. 110.
[113] Tr. at 156.
[114] Tr. at 158; Ex. 113.
[115] Tr. at 173.

58. After learning that the prosecutor declined to bring charges against Licensee for the conduct S.B. alleged, S.B. filed a civil suit against Licensee.[116]

59. On August 16, 2023, S.B. filed a discrimination claim against Licensee with the Minnesota Department of Human Rights.[117] S.B.'s attorney drafted the document.[118]

Licensee's Conduct with Patient V.M.

60. Patient V.M. graduated from the University of Minnesota in 2017 with a degree in marketing.[119]

61. V.M. was a LifeTime Fitness member at the St. Louis Park club. She had been a patient of Licensee's predecessor and began seeing Licensee for chiropractic treatment when her prior chiropractor left LifeClinic, approximately two years prior to this matter.[120]

62. V.M. was being treated for a herniated disk in her lower back.[121] The frequency of V.M.'s appointments varied, seeing Licensee about once a month if she was doing well with her pain and weekly if it was bad.[122] V.M. never complained to Licensee about chest pain, never asked Licensee to work on her pectorals, did not recall telling Licensee about any issues with her shoulder, and had never had a chiropractor massage her pectoral muscles.[123]

63. V.M. often scheduled her chiropractic appointments around her workout schedule, and so usually wore yoga pants or shorts with a sports bra or top to her appointments.[124] Licensee closed the treatment room door during sessions with V.M.[125]

64. Licensee told V.M. that he liked working with her.[126] Licensee considered V.M. a "good friend" from interacting in and around LifeTime.[127] V.M.'s close friend worked at the front desk of LifeClinic.[128] According to Licensee, V.M. "would come down and just hang out at our front desk when [V.M.] didn't have appointments. [V.M.] was always at the club."[129]

65. When asked if he ever hugged V.M., Licensee responded:

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[116] Tr. at 169-171. The record is not clear, but it appears that the civil suit remains active.
[117] Tr. at 173; Ex. 122.
[118] Tr. at 173.
[119] Tr. at 204.
[120] Tr. at 205.
[121] Tr. at 205.
[122] Tr. at 206.
[123] Tr. at 208, 213, 231.
[124] Tr. at 208.
[125] Tr. at 208.
[126] Tr. at 279.
[127] Tr. at 412.
[128] Tr. at 277.
[129] Tr. at 277.

> Again, it's probably one of those “arm around the shoulder, hey, how you doing,” but I've been treating her for two years. I've seen her over 70 times. Her best friend is our -- was our dog-sitter, who worked for us -- she worked our front desk, so I knew V.M. very well. We were good friends. So, yeah, I've had -- I did, you know, put my arm around her shoulder, say, hey, how's it going today?[130]

66. V.M.’s first few visits with Licensee went well. Licensee massaged V.M.’s back in addition to performing regular chiropractic adjustments like those V.M. had previously received from Licensee’s predecessor.[131] V.M.’s previous chiropractor had not performed any soft tissue work on her.[132]

67. At Licensee’s request, V.M. posted a five-star review of Licensee on Google, calling him a “miracle worker.”[133]

68. After approximately one and a half years of treating V.M., during the second half of the year 2023, Licensee began performing soft tissue work on V.M.’s shoulders and pectoral muscles.[134] At some point, Licensee went underneath V.M.’s sports bra and touched her breast with his fingers, which caused her to freeze in shock.[135]

69. V.M. had no condition and required no treatment that would necessitate Licensee placing his fingers under V.M.’s sports bra or to touch her breast. Licensee denied that his hands could have slipped and accidentally touched her breast.[136]

70. At treatment sessions, Licensee made comments about V.M.’s body and appearance, as well as comments with sexual innuendos.[137] While gossiping about a LifeTime manager’s rumored affair, Licensee told V.M. that if the two of them were to have sex, no one would find out.[138] On another occasion, Licensee told V.M. that her new sports bra was “ten out of ten sexy.”[139] V.M. considered these comments sexual in nature and inappropriate.[140] Licensee made other comments that made V.M. uncomfortable such as “you look good today” or “you look fit.”[141] Licensee told V.M. that what he says to her in the treatment room should stay in the treatment room or else he could lose his job.[142]

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[130] Tr. at 277.
[131] Tr. at 206-07.
[132] Tr. at 208.
[133] Tr. at 222-23; Ex. 104. The record contains no evidence of when this review was posted.
[134] Tr. at 208, 213, 220.
[135] Tr. at 210-11.
[136] Tr. at 273-74.
[137] Tr. at 214.
[138] Tr. at 214.
[139] Tr. at 214.
[140] Tr. at 214.
[141] Tr. at 215.
[142] Tr. at 230.

71. V.M. interpreted Licensee's comments "[o]bviously, like, in a way that was complementary in, like, a sexual way that wouldn't necessarily be appropriate between patient and chiropractor."[143]

72. While she was still Licensee's patient, Licensee added V.M. on the social media application Snapchat.[144] V.M. had not exchanged phone numbers with Licensee and assumed Licensee must have searched for her on Snapchat to add her.[145] Towards the beginning of the year 2024, Licensee sent V.M. a "selfie" at around 10:00 p.m. on a Friday night.[146] V.M. then talked to some of her friends about the Snapchat conduct, Licensee's inappropriate comments during treatment, the "pectoral work" and her growing discomfort. When her friends confirmed that her experiences were not normal parts of chiropractic treatment, V.M. decided to discontinue chiropractic care with Licensee.[147]

Additional Information

73. Patients C.D., S.B., and V.M. each testified credibly. By comparison, Licensee's testimony was not credible.

74. Licensee denied the possibility that he accidentally touched the breast of C.D., S.B., or V.M. during chiropractic treatment.[148]

75. Licensee touched the breasts of C.D., S.B., and V.M. under their bras, without a chiropractic reason.

76. Licensee hugged C.D., S.B. and V.M., attempted to develop relationships outside of the patient-chiropractor relationship with C.D. and V.M., and made inappropriate comments reasonably interpreted as sexual to all three of the patients.

Based on these findings of fact, the Judge makes the following:

CONCLUSIONS OF LAW

1. Minnesota law[149] gives the Judge and the Board authority to conduct this administrative contested case proceeding to consider whether Licensee has violated provisions of the Chiropractic Practice Act.[150]

2. The Panel gave Licensee proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Judge.

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[143] Tr. at 214.
[144] Tr. at 216.
[145] Tr. at 216.
[146] Tr. at 216, 220.
[147] Tr. at 217, 218.
[148] Tr. at 267-268, 272-274.
[149] Minn. Stat. § 14.50 (2022), § 148.10, subds. 1 and 3, and § 214.10 (2022).
[150] Minn. Stat. §§ 148.01 through 148.106.

3. The Panel has the burden of proving the alleged violations, and it must establish the facts that are material to those charges by a preponderance of the evidence.[151] Licensee has the burden of proving by a preponderance of the evidence facts establishing the existence of any affirmative defense.[152]

4. A "preponderance of the evidence" means that the ultimate facts must be established by a greater weight of the evidence.[153] "It must be of a greater or more convincing effect and . . . lead you to believe that it is more likely that the claim . . . is true than . . . not true."[154]

5. In assessing witness credibility, the following factors may be relevant: (1) whether a witness gain or lose if this case is decided a certain way; (2) the witness's relationship to the parties; (3) how the witness learned the facts and the witness's ability to recall and relay the facts; (4) the witness's manner; (5) the witness's age and experience; (6) whether the witness appeared honest and sincere; (7) whether the witness was frank and direct or vague and evasive; (8) whether the testimony is reasonable compared with other evidence; and (9) whether there are any other factors that bear on believability and weight. In addition, the factfinder should rely upon their own experience, good judgment, and common sense.[155] "[O]rdinary variances of human memory in recalling events after the passage of time" do not "necessarily indicate the testimony is false."[156]

6. A license to practice a profession is a property right entitled to due-process protections.[157] The Chiropractic Practice Act[158] provides, in part, that the Board "may revoke, suspend, condition, limit, restrict or qualify a license to practice chiropractic" upon one of a number of grounds.

7. The grounds for discipline include engaging in unprofessional conduct.[159]

8. Unprofessional conduct means:

> any unethical, deceptive or deleterious conduct or practice harmful to the public, any departure from or the failure to conform to the minimal standards of acceptable chiropractic practice, or a willful or careless disregard for the

[151] Minn. R. 1400.7300, subp. 5 (2023).
[152] *Id.*
[153] 4 Minnesota Practice, CIV JIG 14.15 (2020).
[154] *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).
[155] *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532 (Minn. Ct. App. 2007) (quoting 4 Minnesota Practice, CIVJIG 12.15 (2006)).
[156] *State v. Spickerman*, No. A10-1285, 2011 WL 781245 *3 (Minn. Ct. App. Mar. 8, 2011).
[157] *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995).
[158] Minn. Stat. § 148.10, subd. 1(a) (2022).
[159] Minn. Stat. § 148.10, subd. 1(a)(11).

health, welfare or safety of patients, in any of which cases proof of actual injury need not be established.[160]

9. Unprofessional conduct includes but is not limited to "engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient[.]"[161]

10. In common and ordinary usage, sexual conduct is conduct relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals; conduct of, relating to, or associated with sex.[162]

11. A patient's "intimate parts" include the "breast of a human being[.]"[163]

12. In addition to the "sexual conduct" prohibition, a chiropractor is prohibited from engaging in "seductive behavior" with a patient. "Seductive" is not defined in the statute, but in plain English means "tempting and attractive; enticing."[164] Synonyms for "seductive" include:

> sexy, sexually arousing, sexually exciting, alluring, tempting, suggestive, tantalizing, fascinating, ravishing, captivating, bewitching, immodest, shameless, erotic, sensuous, sultry, slinky, passionate, raunchy, steamy, coquettish, amorous, flirtatious, provocative, and come-hither.[165]

13. "Sexually demeaning" conduct includes unwelcome sexual advances, requests for sexual favors, sexually-motivated physical contact or other verbal or physical conduct or communication of a sexual nature.[166]

14. "Respect for professional boundaries is essential" in any doctor-patient relationship.[167]

15. A preponderance of the evidence establishes that Licensee engaged in sexual conduct when he intentionally touched C.D.'s, S.B.'s, and V.M.'s breasts without a therapeutic reason, in violation of Minn. Stat. § 148.10, subd. 1(e)(2).

16. The Panel established that Licensee engaged in seductive or sexually demeaning conduct, in violation of Minn. Stat. § 148.10, subd. 1(e)(2), by hugging C.D., S.B., and V.M., and making unwelcome sexual innuendos and similar remarks to them.

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[160] Minn. Stat. § 148.10, subd. 1(e).
[161] Minn. Stat. § 148.10, subd. 1(e)(2).
[162] *See* https://www.merriam-webster.com/dictionary/sexual; *see also* Minn. Stat. § 609.341, subd. 11.
[163] Minn. Stat. § 609.341, subd. 5.
[164] *https://en.oxforddictionaries.com/definition/seductive.*
[165] *Id*.
[166] *See* Minn. Stat. §§ 148.10. subd. 1(e)(2), 363A.03, subd. 43.
[167] *In the Matter of Woggon*, No. A19-1280, 2020 WL 2119244 *4 (Minn. Ct. App. May 4, 2020).

17. The Panel established that it is reasonable and appropriate for the Board to impose discipline against Licensee's chiropractic license.

18. The Board has grounds to impose discipline, bearing in mind that professional licensing disciplinary action:

> is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. The function of the Board is, therefore, not only to consider [the professional's] acts, but also the harm to the public if such acts remain unpunished and the deterrent effect upon others of a severe penalty."[168]

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Judge makes the following:

RECOMMENDATION

The Judge recommends that the Board take appropriate disciplinary action against the license of Licensee.

Dated: August 8, 2024

KIMBERLY MIDDENDORF
Administrative Law Judge

Reported: Digitally Recorded
Transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Board of Chiropractic Examiners (Board) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2024), 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 the Executive Director of the Minnesota State Board of Chiropractic Examiners, 335 Randolph Avenue, Suite 280, St. Paul, MN 55102, 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 (2024). In

[168] *Padilla v. Minnesota State Bd. of Medical Examiners,* 382 N.W.2d 876, 887 (Minn. Ct. App. 1986).

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 to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2024), 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

As the Minnesota Court of Appeals has observed:

> Professionals have a deep responsibility not to abuse the trust which licensure places in them. There is no other profession in which one passes so completely within the power and control of another as does the medical patient.[169]

Whether, as the Panel alleges and Licensee denies, Licensee abused this trust turns on who is more credible: the complainant patients or Licensee. For the following reasons, the Judge credits the accounts of the patients and concludes the Panel met its burden of establishing that Licensee violated Minn. Stat. § 148.10, subd. 1(a)(11) and (e)(2).

First, C.D.'s, S.B.'s, and V.M.'s accounts were detailed and notably similar to each other. All described a pattern of behavior that escalated from one appointment to the next. They testified to being hugged, rather than being greeted with an arm around the shoulder, as Licensee claimed. Licensee asked intrusive personal questions that could not be correlated to a therapeutic need for information at their earliest appointments.

As Licensee's familiarity with these women increased, so did his boundary transgressions. Licensee began administering IMJT in the pectoral area. The patients recounted a gradual progression from the pectorals toward their breasts, culminating in Licensee touching each woman's breast tissue. Each described Licensee massaging them with fingers pointed toward the breast, not away from or with the "knife edge" of his hand, as Licensee claimed.

All three of these witnesses described a similar lack of explanation prior to Licensee administering IMJT. Significantly, C.D., S.B. and V.M. did not seek out this treatment or any chiropractic care for Upper Cross Syndrome. Each was surprised and disconcerted when Licensee administered this treatment, with C.D. and V.M. observing it to be unusual and outside of their prior experiences with other chiropractors.

C.D. and V.M. both described Licensee's attempts to create some kind of relationship beyond one of doctor and patient. In C.D.'s case, Licensee sought her phone number and suggested getting coffee together under the guise of wanting to mentor her.

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[169] *Id*.

As to V.M., Licensee connected with her on Snapchat without her invitation, and sent her a selfie at 10:00 p.m. on a Friday night, well outside of office hours.

The complainant patients each testified to Licensee making unwelcome comments about their bodies and comments with sexual innuendo. All three testified that Licensee told them they were "fit." S.B. testified that Licensee told her she was "pretty" and V.M. testified that he told her the sports bra she was wearing was "sexy." They all described in similar fashion that Licensee's comments were inappropriate and made them feel demeaned and uncomfortable.

To be sure, there were minor discrepancies in the patients' accounts over time as well as memory lapses. This is to be expected given the way in which human memories are formed and retained. Minor variations in the various accounts the patients have given do not diminish their credibility as Licensee argues. To the extent that their answers were not identical to their deposition responses, this is attributable to the variation in the questions asked and further reflection by the witness.

For example, Licensee testified that he referred S.B. to a colleague for treatment called "dry needling." S.B. does not recall this. According to Licensee, this diminishes the credibility of her testimony about Licensee's conduct. This argument is not persuasive. The failure to remember everything does not mean that what one does remember is false. Indeed, testimony that one recalls every detail no matter how innocuous or immaterial it may be would itself be suspect. It is to be expected that being inappropriately touched by a healthcare provider may make a deeper and lasting impression than a suggestion to try another form of therapy.

As another example, V.M. testified that she and Licensee generally had positive communications throughout the time she was under his care. This does not diminish the reliability of her testimony that Licensee also made inappropriate sexual comments toward her. The fact that V.M. was fair in many of her characterizations of Licensee lends weight to those that were critical of him. This is true of C.D. as well throughout her testimony. All three Panel witnesses appeared to be thoughtful in their responses and took readily apparent care to be accurate.

The similarities in the patients' accounts of Licensee's conduct lend weight to their testimony. They were sequestered at trial and not present to hear each other testify. The record contains no indication they are well-acquainted with each other or have had any opportunity to reconcile their individual accounts.

No evidence in the record establishes sufficient motive for C.D., S.B., or V.M. to fabricate their testimony. There is no evidence in the record suggesting that C.D. would have had any motive to fabricate her statements, and her account was very credible.[170] While E.B. had many disparaging things to say about S.B., she offered nothing to discredit C.D, a fellow LifeTime employee. None of Licensee's witnesses' testimony addressed

[170] Although Licensee testified under oath that he did not and could not have touched C.D.'s breast, he seems now to concede he may have. *See* Licensee's Proposed Findings of Fact ¶ 40 (Jul. 15, 2024).

C.D. in any way. There is no apparent reason for C.D. to repeatedly subject herself to obviously difficult examination by investigators and attorneys throughout these proceedings only to perjure herself. The same must be said for V.M.'s testimony, given by someone Licensee considered a friend. It was clear that neither woman made their accusations against Licensee lightly nor failed to appreciate the gravity of their testimony.

Much more focus was placed on S.B.'s credibility than on V.M.'s or C.D.'s. S.B.'s mental health diagnoses do not lessen her credibility. These diagnoses did not prevent her from obtaining multiple degrees. Her testimony was coherent and orderly. Her account has been substantially consistent over time. She provided reasonable explanations for minor inconsistencies, like being uncertain whether something occurred at the sixth appointment or whether it may have happened at the seventh. While Licensee maintains that S.B. consequently may have misperceived events, it is also plausible that the type of knowledge Licensee had regarding her mental health made her a more attractive target. If S.B.'s account was the result of her misperception, one would not expect that C.D. and V.M. would recount similar treatment as they did. S.B. was no less credible than V.M. and C.D.

Licensee's suggestion that S.B. fabricated her allegations against Licensee as part of an effort to receive monetary value from Licensee as part of a civil suit lacks merit. The mere fact that monetary damages may be a component of a civil suit does not disprove the conduct supporting a cause of action. As the defendant in the same suit, facing the prospect of paying money damages, Licensee's credibility is at least equally in question by virtue of the suit.

Further, the sequence of events supports a determination that S.B. is motivated more by justice than money. She reported her concerns first to her manager at LifeTime in October 2022. This was just a few weeks after her final appointment. As she feared, this did not endear her to E.B. or advance her career at LifeTime. She was told that the matter was not LifeTime's concern because LifeClinic is a separate entity.[171] This reaction understandably made S.B. reluctant to report Licensee's behavior to other authorities. Nevertheless, she finally turned to the police and the criminal justice system for help, in April 2023. After it became apparent that Licensee would face no criminal consequences, S.B. looked elsewhere for justice, seeking remedy from the Minnesota Department of Human Rights, the Board, and the civil court. This sequence of events is common among abuse survivors.

Licensee's denials, however adamant, are not credible. Licensee denied touching the complainant patients' breasts intentionally or even accidentally. It seems highly unlikely that three women with little to no apparent relationship each fabricated their claims, repeatedly perjuring themselves. They each presented as sincere in their perception that they had been touched and spoken to inappropriately by a trusted medical provider. This is not the type of experience about which a woman is likely to be mistaken. It is equally unlikely that each of the three female patients misperceived the sight and

[171] While this may be LifeTime's position, the Judge should not be understood to endorse it as there is reason in the record to doubt this distinction in practice.

sensation of fingertips on their bare breasts. Licensee's absolute denial of even accidental contact in view of this evidence is not credible.

Licensee gave testimony to the effect that it was not possible to have touched breast tissue while administering IMJT, based on his position in relation to the patient, and the position of his hands while massaging the pectoral muscles. This testimony was not persuasive. The video demonstration of IMJT[172] demonstrates how easy it would be to slip one's fingers under the bra and onto the breast while performing the technique in the pectoral area.

Licensee denied making any inappropriate remarks to the patients. He also attempted to minimize his comments about these patients' bodies. According to Licensee, he did not tell them they are fit or pretty but merely complimented their posture. It does not seem likely that three women would each mistake an innocuous comment about posture as flirtatious or sexual. Licensee's testimony in this regard was not credible.

Finally, Licensee has much more to lose than any of the Panel's witnesses. His love for his chiropractic work was readily apparent. He stands to lose the reputation and license in which he has much invested and he is acutely aware of these possibilities. It cannot be said that V.M. or C.D. have anything to gain by the outcome of this case. To the contrary, they could have simply stopped seeing a chiropractor who made them uncomfortable, as many patients might. Instead, they subjected themselves to deeply unpleasant examinations in deposition and at trial. Their only objective appears to be to tell the truth and protect others from their experiences. While the civil suit gives S.B. some financial interest in the outcome of this case, as noted above, this is insufficient motivation to commit perjury.

Licensee presented many witnesses to praise his skill as a chiropractor and his good character. Licensee's skill is not at issue. It was clear that Licensee's witnesses appreciate his skill and were not subjected to conduct they felt was sexual or sexually demeaning. Yet, none of these witnesses were present or otherwise in a position to observe what happened to C.D., S.B., or V.M. behind the closed treatment door.

Sexual conduct is prohibited under the Chiropractic Act but is not defined by statute. It is understood to be an umbrella term for any conduct of a sexual nature. Intentionally touching a woman's breast without a therapeutic reason meets the definition of sexual conduct. Licensee argues there is no evidence of sexual gratification, apart from S.B., who he considers not credible. Whether Licensee found sexual gratification from this conduct is not material to a determination that he engaged in unprofessional sexual conduct under Minn. Stat. § 148.10, subd. 1(a)(11) and (e)(2). Sexual conduct by a chiropractor is subject to discipline, and the Panel met its burden of proving it.

Licensee points to V.M.'s and C.D.'s testimony that his actions and comments were not "seductive" as evidence that he has not engaged in unprofessional conduct. It appears that they did not consider it seductive because neither woman was seduced by

[172] Ex. 133.

or receptive to his actions and comments. S.B. reasonably believed it to be intended to be seductive, as many patients would. More importantly, however, is the prohibition against conduct or comments reasonably interpreted as sexually demeaning. The unwelcome comments Licensee made to these three patients about their physical appearance or being sexy are sexually demeaning, as is alluding to having a sexual relationship.

The record establishes that Licensee transgressed the boundaries in place to ensure trust in the chiropractic profession and abused his position of authority with C.D., S.B., and V.M. The Board has authority and grounds to discipline Licensee accordingly.

K. J. M.