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NOV 7 2001

Keith Miller, D.C.
6608 Copper Ridge Drive
Mount Washington, Maryland 21209

MARYLAND STATE BOARD OF
CHIROPRACTIC EXAMINERS

Date

Jack Murray, D.C., President
Board of Chiropractic Examiners
4201 Patterson Avenue
Baltimore, Maryland 21215

Re: Surrender of Chiropractic License
License Number: S01427

Dear Dr. Murray and Members of the Board:

Please be advised that I have decided to surrender my license to practice chiropractic in the State of Maryland, License Number S01427. I understand that I may not give chiropractic advice (in areas over which the Board has exclusive jurisdiction) or treatment to any individual, with or without supervision and/or compensation, cannot recommend treatments or otherwise engage in the practice of chiropractic as it is defined in the Maryland Chiropractic Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") § 3-101, *et seq.* (2000 Repl. Vol.). This does not preclude me from obtaining a license or employment in a field over which another Board or agency has jurisdiction, e.g., the State Board of Dietetic Practice or as a personal trainer. In other words, as of November 30, 2001, the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual.

I understand that this Letter of Surrender is a **PUBLIC** document.

My decision to surrender my license to practice chiropractic in Maryland has been prompted by an investigation of my licensure by the Maryland Board of Chiropractic Examiners (the "Board"). The most recent investigation stemmed from a complaint that the Board received on or about November 11, 2000.

Because this complaint contained many of the same allegations that led to the Board's February 10, 2000 Order, the Board, on August 30, 2001, issued a Notice of Initial Denial of Renewal of Chiropractic License and Charges. Subsequently, the Board issued an Amended Notice, dated October 11, 2001, which contained allegations regarding a violation of the Board's Orders requiring that I attend psychotherapy and have the therapist send reports to the Board regarding same.

Jack L. Murray, Jr., D.C., President, and Members of the Board

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The Board's February 2000 Order suspended my license for three years. The event which led up to that Order was the receipt by the Board of several complaints and a subsequent investigation of those complaints. Consequently, the Board notified me, on February 8, 1998, that it intended to summarily suspend my license for my inappropriate conduct during the course of my chiropractic practice. In lieu of that suspension, I surrendered my license on February 20, 1998, on the condition that I undergo psychiatric evaluation. Following the receipt of the evaluation, the Board reinstated my license on April 30, 1998, with the conditions, *inter alia*, that I not treat female patients and that I continue psychotherapy.

A September 24, 1998 Amended Order of the Board allowed me to practice chiropractic on women over the age of forty with a chaperone in the room, and to continue psychotherapy. Charges were subsequently issued against me for the actions that formed the basis of the Board's notice of intent to summarily suspend my license. The February 2000 Order resulted from a multi-day hearing before the Board in which testimony from many witnesses indicated that I had made sexually harassing remarks or had told inappropriate "jokes" to female patients; that I had sent pornographic e-mail to a patient; that I had inappropriately touched female patients, such as tickling their feet; and, that I had, under the guise of "therapy" used a chain device with cuffs that I would use to suspend the patient from the ceiling.

I filed an appeal of the February 2000 Order to the Circuit Court for Baltimore City, requesting a Stay of the Board's Order. On February 14, 2000, Judge Evelyn Omega Cannon ordered that the Board's Order be stayed "for no longer than 90 days provided that the plaintiff seeks an expedited hearing to review the decision and provided that plaintiff's practice be restricted as stated in the April 30, 1998 Order of Reinstatement as amended in the September 24, 1998 Amended Order." The next day, Judge Kathleen O'Ferrall Friedman signed a second Order "Staying the Order of the Board, pending judicial review by this Court."

After a hearing on the appeal, on January 6, 2001, Judge Prevas issued an Order which affirmed the Board's Order. However, Judge Prevas stayed the Board's Order "pending further judicial review."

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I affirm that I was served with a copy of the Notice and the Amended Notice and have otherwise been advised on the Board's actions through communications with representatives of the Office of the Attorney General. Although I have been represented by counsel for the pursuit of my appeal to the Court of Special Appeals, with regard to the Notice herein, I am not represented by counsel, and knowingly and voluntarily waive my right to counsel. I understand that, by entering into this Letter of Surrender, I am withdrawing my appeal, which would mean that the Board's Order would be in effect and that the Stay would not be in effect. However, because I am surrendering my license, the Board's Order is moot as to the suspension.

I have decided to surrender my license to practice chiropractic in Maryland to avoid further prosecution of the aforementioned charges/Notice. The basis for the charges against me include the findings of the investigations described above, and by virtue of this Letter of Surrender, I waive any right to contest those charges. I wish to make it clear that I have voluntarily, knowingly and freely chosen to submit this Letter of Surrender. I understand that by executing this Letter of Surrender, I am waiving any right to contest these findings in a formal evidentiary hearing at which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf and to all other substantive and procedural protections provided by law, including the right to appeal.

I hereby affirm that I will terminate my chiropractic practice on November 30, 2001, whether or not a sale of my chiropractic business takes place on that date. Although I will not be providing any hands-on care, I will, for three months after the sale, pursuant to my contract of sale, assist the transitioning of my current patients to the new owner/health provider. I will call each patient by telephone to advise him/her of the sale of my practice and to offer him/her an opportunity to continue to receive chiropractic care under the new provider. Any patient that I cannot contact by telephone, I will send a letter advising them of the same. Patients will also be advised that they have the right to obtain their medical records, if they choose not to continue with the new provider. I will send to the Board a copy of any such letter that I send to the patients. Furthermore, for three months after November 30, 2001, I will, pursuant to my contract of sale, provide the new provider/owner with a summary of each patient's status and treatment issues.

I acknowledge that, on or before the effective date of this Letter of Surrender, I shall present to the Board my Maryland chiropractic license, number S01427, including any renewal certificates and wallet-sized renewal cards and wall certificate.

Jack L. Murray, Jr., D.C., President, and Members of the Board

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I understand that the Board will advise any data bank that it is required to report to of this Letter of Surrender, and in any response to inquiry, that I have surrendered my license in lieu of disciplinary action under the Act as resolution of the matters pending against me. I also understand that, if, within two years from the effective date of this Letter, I would apply for licensure in any form in any state or jurisdiction, that this Letter of Surrender, and all underlying documents, may be released or published by the Board to the same extent as a final order that would result from disciplinary action pursuant to Md. State Govt. Code Ann §10-611, *et seq.* (1999 Repl. Vol.).

I further recognize and agree that, by agreeing to this Letter of Surrender, my license will remain surrendered until such time as I apply for reinstatement. I understand that I may not apply for reinstatement of my license to practice chiropractic in Maryland for not less than two years from the effective date of the surrender. I understand that I must demonstrate to the Board that I have submitted to an independent evaluation by an evaluating psychotherapist selected by the Board who must indicate in writing to the Board that I am able to safely practice chiropractic; that I shall demonstrate to the Board and present to the evaluating psychiatrist that I have attended regular psychotherapy sessions and submit reports of my attendance and status to that evaluating psychotherapist for use in his/her evaluation. (The evaluating psychotherapist shall also be allowed to confer with my treating psychotherapist, if need be.) I understand that I must also take and pass the SPEC examination. I further understand that, following a Case Resolution Conference where these issues and documents are presented, the Board may set terms and conditions for me to be reinstated, including having a mentor supervise my practice. I further understand that I will not be reinstated to practice until I have paid the cost of the court reporting services, as ordered by the Board. In the event that I apply for reinstatement of my Maryland license or for the issuance of a new Maryland chiropractic license, I understand that I bear the burden of demonstrating to the Board that I am competent to practice chiropractic and possess good moral character, as specified in H.O. § 3-302(b). I understand that if I determine that if I would like once again to practice chiropractic in Maryland, I will approach the Board in the same posture as one whose license has been revoked on the above charges.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have knowingly and voluntarily waived the right to consult with an attorney before signing this Letter of

Jack L. Murray, Jr., D.C., President, and Members of the Board

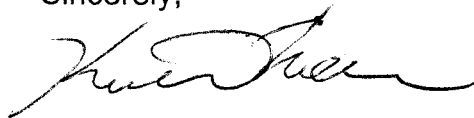
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Surrender. I understand both the nature of the Board's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Sincerely,



Keith Miller, D.C.

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 7th day of NOVEMBER, 2001,

before me, JUDITH THIBAUT
~~Keith Miller~~, a Notary Public of the City/County and State aforesaid
(Print Name)

personally appeared Keith Miller, and declared and affirmed under the penalties of perjury that signing the foregoing letter of surrender was his voluntary act and deed.

AS WITNESS my hand and notarial seal.

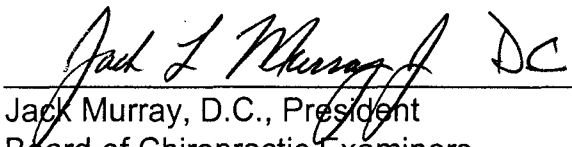
Judith A. Thibault
Notary Public

My Commission expires: 9-1-04

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ACCEPTANCE

ON BEHALF OF THE BOARD OF CHIROPRACTIC EXAMINERS, on this 8
day of November, 2001, I accept Keith Miller's public letter of surrender of
his license to practice chiropractic in the State of Maryland.



Jack Murray, D.C., President
Board of Chiropractic Examiners

cc: Roberta Gill, Assistant Attorney General
Administrative Prosecutor

IN THE MATTER OF

KEITH MILLER, D.C.,

License No. SO1427,

Respondent.

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BEFORE THE STATE BOARD

OF CHIROPRACTIC

EXAMINERS

* * * * *

FINAL DECISION AND ORDER

As a result of charges issued against Respondent Keith Miller, D.C. for violations of the Maryland Chiropractic Act ("Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 3-101 *et seq.*, and a subsequent evidentiary hearing pursuant to H.O. §3-315, the State Board of Chiropractic Examiners ("Board") hereby issues the following final order:

I. PROCEDURAL HISTORY

A. Summary Suspension Proceedings

On February 13, 1998, after conducting an investigation into allegations that Respondent was engaging in sexual misconduct and sexual harassment, the Board notified Respondent of its intent to summarily suspend his license to practice chiropractic, pursuant to its authority under Md. Code Ann., State Gov't ("S.G.") §10-226(c)(2).¹ The Board's notice informed Respondent

¹ S.G. §10-226(c)(2) provides:

A unit may order summarily the suspension of a license if the unit:

- (I) finds that the public health, safety, or welfare imperatively requires emergency action; and
- (ii) promptly gives the licensee:
 - 1. written notice of the suspension, the finding, and the reasons that support the

that it had reason to believe that he was engaged in sexual misconduct and sexual harassment and that the Board determined that such conduct posed a risk of harm to the public health, safety, and welfare, and, if proven, would violate provisions of the Maryland Chiropractic Act, Md. Code Ann., H.O. § 3-313(9), (20) and (21).² On February 19, 1998, prior to the Board's vote on the summary suspension, Respondent further was notified of his opportunity for a hearing before the Board.

On February 19, 1998, Respondent informed the Board of his desire to surrender his license in lieu of a summary suspension. On February 20, 1998, Respondent signed a Letter of Surrender wherein he surrendered his license to the Board. The Letter provided that Respondent would refrain from the practice of chiropractic until authorized by the Board in the future, through reinstatement. The Letter set forth the following conditions, in pertinent part, that Respondent was required to meet before he could petition the Board for reinstatement of his license:

I understand that the Board will not entertain a petition for reinstatement of my Maryland chiropractic license unless and until the following conditions are met:

-
2. finding; and
an opportunity to be heard.

² H.O. §3-313(9), (20) and (21) provide that the Board can take disciplinary action against a licensee if the licensee:

- (8) is professionally incompetent;
- (20) behaves immorally in the practice of chiropractic; and
- (21) commits an act of unprofessional conduct in the practice of chiropractic.

1. I agree to be evaluated by a psychotherapist whom I may chose [sic] from a list of therapists selected by the Board and which was provided to me on February 19, 1998;
2. I agree to sign a release to permit the evaluating therapist to submit a report to the Board detailing the results of his or her evaluation, recommended treatment, my fitness to practice chiropractic, including whether I present a risk of harm to the public if permitted to practice, and what restrictions, if any the therapist recommends be place on my practice if I am permitted to practice;
3. I acknowledge that the Board will forward to the evaluating therapist a copy of its investigative report and that the report will not be made available to me by the evaluating therapist unless approved by the Board;
4. I acknowledge that my license will not be reinstated unless and until the Board signs an order to that effect, and that the Board will not sign such an order reinstating my license unless and until the evaluating therapist recommends to the Board that my practice of chiropractic presents no risk of harm to the public health, safety, and welfare[.]

In addition, Respondent's Letter of Surrender provided the following:

* * * I further acknowledge that my completion of the above conditions does not guarantee reinstatement of my Maryland license if there are circumstances that the Board determines would impact my ability to safely and competently practice chiropractic in the State of Maryland.

I further acknowledge that the action of surrendering my license or the Board's acceptance of that surrender under the terms and conditions outlined herein does not preclude the Board from charging me with violations of the Chiropractic Practice Act based on the same allegations set out in the proposed Order for Summary Suspension and taking disciplinary action based on those charges.

B. Partial Reinstatement of Respondent's license

Respondent subsequently underwent evaluation and on March 12, 1998, the evaluating psychotherapist issued a report opining that Respondent did not pose a risk of harm to the public health, safety, or welfare, provided that he practiced chiropractic under certain conditions and/or

restrictions.³ On April 9, 1998, Respondent appeared before the Board and petitioned for the reinstatement of his license. The Board voted to reinstate Respondent's license with certain conditions and restrictions. On April 30, 1998, the Board issued an Order of Reinstatement, authorizing Respondent to provide chiropractic services only to male patients. The Board also imposed the following conditions on the reinstatement and the future release of restrictions on his practice, in pertinent part:

1. Respondent shall continue therapy with the Board-approved psychiatrist from whom he is receiving care at the time of the reinstatement of his license, and at a frequency recommended by the treating psychiatrist;
2. Respondent shall continue therapy with his Board-approved psychiatrist until such time as the treating psychiatrist recommends termination, Respondent petitions the Board for termination of this requirement, and the termination is approved by the Board.⁴

On September 10, 1998, Respondent again appeared before the Board to petition for reinstatement of the restricted aspects of his practice, namely, to treat female patients. On September 24, 1998, the Board issued an Amended Order, which authorized Respondent to treat male patients and female patients over the age of 40. The conditions outlined in the Letter of Surrender and April 30, 1998 Order of Reinstatement still applied.

³ The psychotherapist, Dr. Janofsky, initially sent his report only to Respondent's former counsel, Robert Kessler, Esq., which was inconsistent with the requirements set forth in the Letter of Surrender. In his transmittal letter, Dr. Janofsky stated his understanding that Respondent and his counsel "would decide whether to make my report available to the Chiropractic Board." The report later was forwarded to the Board.

⁴ The Order of Reinstatement further provided that "neither the Letter of Surrender executed by Respondent and the Board on February 20, 1998, preclude or prevent the Board from charging Respondent with violations of the Chiropractic Practice Act for the conduct outlined in the proposed Order for Summary Suspension"

C. Charges under the Act

On September 24, 1998, the Board also issued charges against Respondent for violations of the following provisions the Maryland Chiropractic Act:

- (8) is unethical in the practice of chiropractic;
- (9) is professionally incompetent;
- (21) commits an act of unprofessional conduct in the practice of chiropractic;
- (27) is physically or mentally impaired to the extent that it impairs the applicant's or licensee's ability to practice chiropractic safely[.]

The charge letter initially identified the contested case hearing to commence on December 17, 1998. However, at the request of Respondent and the concurrence of the Administrative Prosecutor, the pre-hearing conferences and the hearing were postponed twice. The first continuance was a result of Respondent's request to wait until a second re-evaluation report was completed by the evaluating therapist, Dr. Janofsky. This report [hereinafter "Dr. Janofsky's Second Report"] was completed on November 20, 1998, but again submitted only to Respondent's counsel, not to the Board. *See supra* note 3. The second continuance was granted based on Respondent's request for transition time between his former counsel and his current counsel.

The evidentiary hearing on the charges took place on March 4 and 18, 1999, and April 13 and 22, 1999.⁵ The matter was heard by a quorum of the full authorized membership of the

⁵ On March 8, 1999, Respondent filed with the Board his Petition to Further Amend Order of Reinstatement. On March 9, 1999, the State filed a Response to the Petition, and Respondent filed a Reply to the State's Response. On March 11, 1999, the Board issued an Order Staying Petition to Further Amend Order of Reinstatement, which

Board, consisting of the following members: Paul H. Goszkowski, D.C., Vice-President of the Board and Presiding Officer over the hearing; Jack Murray, D.C., Board member; Paul J. Conway, D.C., Board member; Ivy Logan Harris, Board consumer member; Sheila Leatherbury, Board consumer member; and Paula Lawrence, D.C., Board member.⁶ Also present were Kitty Travagline, Board Administrator, and Andrea Brisbin, Assistant Attorney General and Board Counsel. The State's case was presented by Roberta Gill, Assistant Attorney General and Administrative Prosecutor. Respondent was present during the entire hearing, and was represented by his counsel, Fred Allentoff, Esq.

On June 9, 1999, a quorum of the Board deliberated and arrived at the findings of fact, conclusions of law, and order set forth below.

II. SUMMARY OF THE EVIDENCE

A. Exhibits

Board Exhibit 1	Return receipt of document sent to Respondent, dtd.9/25/99
Board Exhibit 2	Motion Seeking Extension of Time For Filing Pre-Trial Motions and Continuance of Contested Case Hearing

stayed Respondent's Petition pending the outcome of the hearing on the September 24, 1998 charges. As stated *infra*, by this Order, Respondent's Petition is denied.

⁶ To avoid any appearance of impropriety, Howard Lewis, D.C., Board President, recused himself from all of the proceedings involving Respondent based on his former employment relationship with Respondent. Tr. 6, 856-57.

In addition, neither Ms. Leatherbury nor Dr. Lawrence were present during the entire four days of hearing. Ms. Leatherbury therefore did not participate in the Board's deliberations subsequent to the close of the hearing. Although the parties agreed that Dr. Lawrence qualified to participate in the deliberations because she viewed the videotaped testimony of the proceedings from which she was absent and read the hearing transcript of the experts' testimony, *see* Tr. 736-37, Dr. Lawrence was unable to participate.

Board Exhibit 3	2/9/99 Ltr., Bd. Counsel to F. Allentoff
Board Exhibit 4	Motion Seeking Recusal of State Board of Chiropractic Examiners and Delegation of Contested Case Hearing to Office of Administrative Hearings
Board Exhibit 5	State's Response to Respondent's Motion Seeking Recusal of State Board of Chiropractic Examiners and Delegation of Contested Case Hearing to Office of Administrative Hearings
Board Exhibit 6	Respondent's Reply to State's Response
Board Exhibit 7	Order Denying Respondent's Motion Seeking Recusal
Board Exhibit 8	Respondent's First Motion <i>In Limine</i>
Board Exhibit 9	Respondent's Second Motion <i>In Limine</i>
Board Exhibit 10	Petition to Further Amend Order of Reinstatement
Board Exhibit 11	State's Response to Petition
Board Exhibit 12	Respondent's Reply to State's Response
Board Exhibit 13	Order Staying Petition to Further Amend Order of Reinstatement

State's Exhibit 1	State Board printout of record re: status of Respondent's license
State Exhibit 2A	Charge Letter dtd. 9/24/98
State Exhibit 2B	Charges under the Maryland Chiropractic Act
State Exhibit 2C	Patient Identification List ⁷
State Exhibit 2D	Summons and Notice of Hearing
State Exhibit 3A	1/19/98 Complaint from Patient A
State Exhibit 3B	2/11/98 Complaint from Patient C
State Exhibit 3C	1/24/98 Complaint from Patient H
State Exhibit 4A	Patient A records
State Exhibit 4B	Patient B records
State Exhibit 4C	Patient C records
State Exhibit 4D	Patient D records
State Exhibit 4E	Patient E records
State Exhibit 4G	Patient G records
State Exhibit 4H	Patient H records
State Exhibit 4I	Patient I records
State Exhibit 4J	Employee 1 records

⁷ At the request of the State, Patient F was deleted from this list. See Tr. 14. In addition, State Exhibit 4F was not introduced into the record.

State Exhibit 5A Physical evidence (chain, wrist cuffs, ankle cuffs) and photographs of physical evidence

State Exhibit 5A-1 E-mail messages and attachments

State Exhibit 5B Affidavit of James J. Vallone, Board Investigator

State Exhibit 5C Document Receipt signed by Robert Jay Kessler, Esq.

State Exhibit 5D Investigation Report

State Exhibit 6 Report of Jeffrey S. Janofsky, M.D., dtd. 3/12/98

State Exhibit 7 Curriculum Vitae, S. Michael Plaut, Ph.D.

State Exhibit 8 Curriculum Vitae, Blaise M. LaVorgna, D.C.

State Exhibit 9 Photocopied image

State Exhibit 10 Brochure, "Activator Methods Chiropractic Technique"

Respondent Exhibit 1A Employment Agreement with Patient A

Respondent Exhibit 1B Proposed Independent Practitioner Agreement

Respondent Exhibit 2 Employee 2 records

Respondent Exhibit 3 Affidavit of Laura Benton Covelley

Respondent Exhibit 4 Signed Statement of Employee 3 dtd. 2/11/98

Respondent Exhibit 5A Janke, A.W. *et al.*: The Biomechanics of Gravity-Dependent Traction of the Lumbar Spine. Spine, Vol. 22, No. 3: 253-260 (1997)

Respondent Exhibit 5B Shterenshis, M.V.: The history of modern spinal traction with particular reference to neural disorders. Spinal Cord. 35: 139-46 (1997)

Respondent Exhibit 5C Pellechia, G.L.: Lumbar Traction: A Review of the Literature. JOSPT. 20, No. 5: 262-67 (1994)

Respondent Exhibit 5D Keane, J.R.: Neurecstasy: The short history of therapeutic nerve stretching and suspension. Neurology. 40: 829-31 (1990)

Respondent Exhibit 5E Gianakopoulos, G. *et al.*, Abstrat: Inversion Devices: Their Role in Producing Lumbar Distraction. Arch. Phys. Med. Rehab. 66: 100-02 (1985)

Respondent Exhibit 5F Oudenhoven, R.C.: Clinical Notes: Gravitational Lumbar Traction. Arch. Phys. Med. Rehab. 50: 510-12 (1978)

Respondent Exhibit 5G Nosse, L.J., Abstract: Inverted spinal traction. Arch. Phys. Med. Rehab. 59: 367-70 (1978)

Respondent Exhibit 5H Tsung-min, L. *et al.*, Vertiscal suspension traction with manipulation in lumbar intervertebral disc protrusion. Chinese Medical Journal. 3(6): 407-12 (1977)

Respondent Exhibit 5I Rolf, H.F., Treatment in suspension, Progress in Physical Therapy. 1(4): 330-31 (1970)

Respondent Exhibit 7 Letter of Kellie Ramey, Sexual Assault/Domestic Violence Center, dtd. 4/13/98

Respondent Exhibit 8A Letter of Paul Ephross, Ph.D., dtd. 7/9/98⁸

B. Witness Testimony--State's Fact Witnesses

1. James J. Vallone

Mr. Vallone testified that he served as the Board's Investigator between February 1997 and October 1998, and that since October 1998, Mr. Vallone has served as the Board's Deputy Director. Mr. Vallone testified that on or about January 23, 1998, the Board received a written complaint from Patient A⁹ regarding alleged inappropriate conduct by Respondent. State's Exhibit (SX) 3A. Patient A's complaint identified potential witnesses, patients, and employees who might provide additional information regarding Respondent. In addition, Mr. Vallone testified that on or about January 28, 1998, the Board received a written complaint from Patient H alleging that Respondent had engaged in inappropriate conduct with her. SX 3C. Based on these complaints, Mr. Vallone testified that he initiated an investigation into the allegations. Mr. Vallone testified that during his interview, he contacted and interviewed the following individuals: Patients A, B, C, D, I, and J, Employees 1 and 2,¹⁰ and two other employees of

⁸ The Board notes that RX 6 (Report of Jeffrey S. Janofsky, M.D., dtd. 11/20/98) was, apparently inadvertently, not formally admitted into evidence. However, because this report was submitted to the Board independent of the hearing and is contained in the Board's files, the Board takes administrative notice of the report and will consider it as evidence in this proceeding.

⁹ The names of Respondent's patients, and of Respondent's employees who also had a doctor-patient relationship with him, will be kept confidential. A list identifying these individuals is kept on file with the Board.

¹⁰ Employee 1, who worked in Respondent's office as an independent contractor, is the mother of Patient C. Employee 2 is the mother of Patient I. Therefore, in order to maintain the confidentiality of Patients C

Respondent, Marsha Bromberg and Mary Jane Chambers. In addition, Mr. Vallone testified that he interviewed Respondent for approximately two and one-half hours in the presence of Respondent's then-attorney, Ms. Leslie Leader.¹¹ Tr. 43-46. Mr. Vallone testified that he summarized his investigation in a final written report dated February 17, 1998. Tr. 54; SX 5D.

Mr. Vallone testified that during his interview of Respondent, he asked questions regarding Patient A's allegations and regarding the other witnesses he had interviewed. Mr. Vallone testified that he also asked Respondent about the alleged use of a "hanging device, a chain device with leather cuffs," to which Respondent indicated that he had a "piece of equipment" that he would show Mr. Vallone. Respondent then escorted Mr. Vallone to Treatment Room 6 in Respondent's office, the next to the last room in the corridor of the office. Mr. Vallone testified that Respondent used a wooden stick with a hook on the end of it to move a ceiling tile in the room, then pulled a metal chain down from the ceiling, where it appeared to be connected to a beam in the ceiling. Upon further inquiry from Mr. Vallone, Respondent also removed from a drawer two vinyl or leather wrist cuffs, which had metal clasps used to attach them to the chain hanging from the ceiling. To demonstrate to Mr. Vallone, Respondent slipped the cuffs over his wrists and attached them to the chain. Mr. Vallone testified that Respondent indicated that the device was used to stretch the trapezius muscles. Respondent indicated that he

and I, Employees 1 and 2 will remain confidential as well.

¹¹ At the time of the interview, Ms. Leader was Respondent's fiance. Ms. Leader currently is Respondent's wife. Tr. 775.

purchased the device from a physical therapy catalog, but he could not recall the name of the catalog. Pursuant to a subpoena that Mr. Vallone presented to Respondent, Respondent provided Mr. Vallone with the equipment. SX 5A. Tr. 45-49.

Mr. Vallone further testified that he conducted two telephone interviews of Patient D, during which she indicated that Respondent had made inappropriate comments to her during her treatment and that some of his techniques were of an inappropriate sexual nature. Patient D further stated to him that Respondent had sent to her, via e-mail, photographs that she considered to be pornographic. Patient D forwarded the e-mails that Respondent sent to her to Mr. Vallone. SX 5A-1. Patient D did indicate that she had a side business of manufacturing adult paraphernalia, and that there was some business interest between her and Respondent. However, Patient D stated that she never requested Respondent to send her the photographs and that she felt that Respondent had crossed the boundaries of any business dealing. Tr. 50-53.

On cross-examination, Mr. Vallone testified that during Respondent's demonstration of the hanging device, Respondent showed him that the chain was attached to a beam in the ceiling for support so that it could handle the weight of the patients. Mr. Vallone testified that he did not notice a stool near the device, but recalled that Respondent stood on a stool and that Respondent stated that patients would step off of the stool to use the device. Mr. Vallone further testified that Respondent also indicated to him that the stool would remain close to the patient in the event that the patient needed to use it to relieve himself or herself from his or her body weight, and that he was always present in the room when patients used the device. Mr. Vallone testified that he

presented a second subpoena to Respondent, which requested the patient records of all of Respondent's patients who had used the device. Respondent provided those records in response, and Mr. Vallone testified that he recalled that upon his review of the records, it appeared that the total number of persons exposed to the device were approximately four to five persons. In response to Respondent's counsel, Mr. Vallone recalled that one of the patients was a male. Mr. Vallone did not recall the names of other male patients named by Respondent's counsel, and testified that he did not contact Respondent's male patients. Mr. Vallone testified that he focused his investigation on the complaints about alleged harassment and bondage incidents regarding females. Mr. Vallone further testified that he used the word "bondage" because during his interview of Respondent, Respondent indicated that he had an interest in bondage in certain aspects. Tr. 58-63.

With respect to Patient A, who also formerly worked in Respondent's office, Mr. Vallone testified that during his interview of her, she indicated that she had been contemplating staying on in Respondent's practice despite Respondent's conduct. Mr. Vallone stated that Patient A indicated that she initially had a lot of respect for Respondent but later became confused. She thought that she could discuss with Respondent his behavior and he consequently would cease such behavior. However, Patient A told him that after she and other employees warned Respondent about his conduct, it did not cease. Tr. 68-69.

2. Patient A

Patient A testified that she attended Life Chiropractic College in Atlanta, Georgia, and

has been licensed to practice chiropractic in Maryland since December 7, 1997. Patient A testified that she began working in Respondent's office as a billing clerk on July 29, 1997. Patient A stated that she usually did not work in Respondent's office during normal business hours, and therefore her work involved little contact with patients. Patient A stated that she worked in the office alone with Respondent on Tuesdays, when the office was closed, and worked with a chiropractic assistant on Thursday mornings before Respondent arrived for his afternoon appointments, and during Thursday afternoons while Respondent treated patients. Tr. 364-67.

Patient A testified that during Respondent's initial interview of her for the job, he asked her if she was married or had children. Patient A further testified that on her first day of employment in the office, Respondent told her that a massage therapist worked in the office, but that he also performed massages himself. Patient A stated that Respondent also touched her on the shoulder and asked her if it was all right to touch her because he knew that some women were "strange" about that. Patient A testified that she told Respondent that it was okay for him to touch her. Patient A testified that Respondent also grabbed her hand and began massaging it, and told her that it was important that chiropractors have good hands. Patient A testified that Respondent's staff told her that Respondent showed her a lot of attention because she was young and cute, but that she thought he did so because she was a chiropractor and was excited about chiropractic. Tr. 365-67.

With respect to the hanging device, Patient A testified that a few weeks into her

employment, Respondent told her that he had a traction unit in the back of the office that he thought was good for the back. Patient A further testified that Respondent told her that Employee 1 had used the device while he was not there, and really enjoyed it. Patient A testified that she then tried the device approximately three to five times. Patient A testified that the first time, she and Respondent were alone in the office and he took her to the back room where he pulled the chain down from the ceiling tile. Patient A stated that Respondent then presented her with velcro wrist cuffs to put on her wrists, then attached her wrists to the chain. Patient A stated that she then hung from her arms from the chain. Patient A testified that she thought it was very strange, that she was uncomfortable and the device hurt her wrists, and that she did not want to use it again. Patient A testified that Respondent assured her that he used the device with other patients. Patient A testified that approximately one and one-half weeks later, Respondent brought in socks for her to use to protect her hands, and that she used the device with the socks on her hands. Patient A testified that she tried the device at least one other time with the socks on her hands at Respondent's insistence. Patient A further testified that the last time she used the device, Respondent had her use cuffs for her feet, and that she hung from the device with both her wrists and feet cuffed, which did take pressure off of her wrists. Patient A described her position as hanging by her wrists from the ceiling, with her legs bent at the knees and tied together behind her. Patient A testified that while she was hanging from the device, she told Respondent that she felt very vulnerable because she could not move, to which he responded, "you're cute but not that cute." Patient A testified that Respondent told her that she could get out

of the device by herself, but that she perceived it to be very difficult to do. Patient A testified that Respondent began rubbing trigger points or muscle spasms in her back while she was hanging from the device. Patient A testified that she had neither seen nor heard of a device of this nature during her training in chiropractic college, and that Respondent did not tell her from where he had obtained the device. Patient A testified that Respondent told her that he used the device himself, and that he could get on and off the device by using a stool. Tr. 269-71.

Patient A further testified about an incident in which Respondent handed her a paycheck in the office, in the presence of Ms. Bromberg, and said "I better hand you your check instead of sticking it down your pants." Patient A testified that she was very upset by the comment, but that she did not say anything to Respondent because she hoped that her silence would send a message that she did not appreciate the comment. Tr. 371-72.

Patient A further testified that Respondent also massaged her back on two separate occasions. Patient A stated that the first time, Respondent had observed that her back muscles were tight after he performed an adjustment on her, and asked if he could massage her back. Patient A testified that Respondent asked her if she could unhook her bra strap, which she did, and that after the massage, Respondent insisted on re-hooking her bra strap for her. Patient A further testified that the second time, Respondent had indicated that her lower back was tight and that he wanted to massage her lower back. Patient A stated that she thought Respondent would limit the massage to her lower back up to her waist, but he undid her pants snap. Patient A testified that Respondent then began massaging her buttocks. Patient A testified that she felt

very uncomfortable because she was alone with Respondent in the office, and that she did not tell him to stop because she was in a strange position. Tr. 372-73.

Patient A further testified that subsequent to this incident, on November 3, 1997, when she and Respondent were alone in the office, Respondent asked her to take her shirt off and lay on the table so that he could perform a massage on her. Patient A testified that when she refused, Respondent asked her for a second time and did not offer a gown or to leave the room. Patient A testified that she refused again and ran out of the office, and did not return to work in Respondent's office. Patient A testified that she went out of town for a few weeks, then returned to speak with Respondent about his conduct. Patient A testified that she told Respondent that she thought his conduct with her was inappropriate, to which Respondent told her that she was not his type. Patient A testified that Respondent then told her that he did not want her to quit, and offered to not work in the office when she was present. Patient A stated that she then agreed to continue, but that Respondent subsequently showed up during her work hours when she was supposed to be working in the office alone. Patient A testified that she then stopped going into work, and subsequently called Respondent and told him that she had quit. Patient A testified that after she quit, she had contact with three of Respondent's patients--Patients B, C, and H-- regarding similar problems with Respondent. Tr. 373-77.

Patient A further testified that after she became licensed as a chiropractor, Respondent discussed with her the possibility that she would stay with the practice and work for him. Patient A testified that she had signed a written agreement when she first began working in

Respondent's office in July 1997, and that the agreement contained a covenant not-to-compete clause which prohibited Patient A from working in a chiropractic practice within a six-mile radius of Respondent's office until July 2002. Patient A stated that after leaving Respondent's employment, she opened up her own chiropractic practice on March 31, 1998 down the road from Respondent's office. Patient A testified that she treated two of Respondent's former patients, who had been referred to her by Employee 1, but that as of the date of the hearing, she no longer treats either of them. Patient A stated that she became friends with Employee 1 when she worked in Respondent's office, and that she had shared her problems with Respondent with Employee 1 and Employee 1 had conveyed problems she had heard about from other females who had complaints regarding Respondent. Patient A testified that when Employee 1 told her that she was leaving Respondent's office, Patient A invited her to work in her practice on a temporary basis and Employee 1 accepted and worked in Patient A's office for a few months. Patient A further testified that she met Employee 2 at Employee 2's home while she was marketing chiropractic to local communities door-to-door. Patient A testified that she previously worked for Respondent, but that she was looking for a job. Patient A testified that Employee 2 contacted her a few months later, and Patient A hired Employee 2 as a chiropractic assistant from approximately April to October 1998. Tr. 378-81.

With respect to her treatment by Respondent, Patient A testified that the general treatment consisted of adjustments using the activator method. Patient A further testified that she did not recall Respondent taking a patient history from her upon her first treatment, nor did Respondent

provide her with a treatment plan. Tr. 381-82.

On cross-examination, Patient A testified that she did not recall the exact number of times she utilized the hanging device, but that she was certain that she used it at least three times.

Patient A further testified that with respect to the statements made in her complaint, she had heard Respondent's comments on some occasions, but she did not have first-hand knowledge of whether Respondent made such comments to every one of his female patients. Tr. 385-96.

Patient A testified that Respondent never asked her out on a date, or required anything of a sexual nature to be a condition of her employment. With respect to Employee 1, Patient A testified that she was on a friendly basis with her in that they talked inside and outside the work environment. Patient A further testified that she continued speaking with Employee 1 after Patient A had left Respondent's practice and Employee 1 remained. Patient A testified that the "confidante" she referred to in her written complaint to the Board, *see* SX 3A, is Employee 1. Patient A stated that Employee 1 told her about problems between Respondent and the patients listed in Patient A's complaint. Tr. 403-07.

Patient A stated that regarding the statement in her complaint that "[i]t also appears that it is a trend of Dr. Miller's with attractive females between the approximate ages of 20-40," she did not recall what she based her theory on, but that the intent of her statement was for the Board to investigate the matter. Patient A testified that she had conversations with Patients C and H around the time she filed her complaint. With respect to her own treatment, Patient A testified that she could not recall the last day of her treatment by Respondent nor the exact days of the

massage incidents with Respondent, and could not speak to the records indicating that she quit her employment in Respondent's office at least several weeks after these incidents. Patient A testified that regarding the incident in which Respondent massaged her buttocks, she did not recall Respondent talking to her about the Logan Basic technique. Patient A testified that she did not know the purpose of the technique, that she was not taught the technique at her chiropractic college, and that she did not know where the hands are placed when performing this technique. Tr. 411-20.

On further cross-examination, Patient A testified that Respondent had mentioned to her an opportunity to stay in his practice and that he intended to present her with a management contract for her review. Patient A testified that she told Respondent that she would look at the contract. Patient A stated that she was not interested in staying in Respondent's practice, but was interested in seeing what kind of contract Respondent would present. Patient A further stated that she also wanted to attend the Katz Management weekend seminar in Philadelphia on November 22 and 23, 1997, which she attended and was paid for by Respondent. Patient A stated that she drove to the seminar separately from Respondent, and stayed in a separate hotel room. Patient A testified that she had dinner with Respondent and two other people after being invited by another chiropractor to join them. Patient A testified that nothing inappropriate occurred during that weekend. Tr. 432-35.

With respect to the hanging device, Patient A testified that Respondent showed it to her, explained to her that he used it himself, and that she observed him using the device. Patient A

stated that during her use of the device, Respondent assisted her off of it when she became uncomfortable, and that she was fully clothed during her use of the device. Patient A testified that Respondent told her that the device would stretch out her muscles, and that Respondent did not force her to use the device. Tr. 440-43.

In response to questions from the Board, Patient A testified that while she was at chiropractic school, she received a ten-minute lecture on the Logan Basic technique. Patient A described the technique as sticking the thumb in some kind of ligament in the buttocks. Patient A stated that she believed that Respondent performed the technique on her at least once. Patient A further testified that she did not recall that Respondent told her that the hanging device was experimental. Patient A testified that she never observed anyone other than herself and Respondent using the device, but that she was told that other people had used it. Tr. 450-53.

3. Patient B

Patient B testified that she sought treatment from Respondent in early December 1997 for work-related neck, back, and shoulder pain. Patient B testified that Respondent's treatment consisted of use of an activator to adjust her neck and back, and that he used the activator along her legs, feet, jaw and ribs. Patient B further testified that Respondent also performed paraffin treatments on her hands, and that he took X-rays.

Patient B testified that she terminated treatment by Respondent because his comments made her uncomfortable. Patient B testified that during her first visit, Respondent commented to her about an overweight patient, stating to the effect of "you should have seen the 300 pounder in

there. I could barely get her up on the table.” Patient B further testified that during her next visit, Respondent asked her if she was “getting enough sex lately.” Patient B stated that during her other treatments when Respondent would use the activator on her ankles and request her to open her legs, he would comment to the effect of “Oh, look I see you have trouble keeping your legs together.” Patient B stated that she would disregard these comments.

Patient B testified that during her last treatment, Respondent asked her if she was getting enough sex lately, to which Patient B responded that she did not appreciate his humor. Patient B testified that when Respondent began using the activator to adjust her ribs, he maneuvered the activator down the middle of her breast. Patient B testified that she then stood up, told Respondent, “that’s not right,” and walked out. Patient B testified that Respondent’s receptionist, Marsha Bromberg, asked her if she was coming back, and Patient B told her no. Patient B testified that Ms. Bromberg called her the next day to schedule her next appointment, to which Patient B responded that she was not returning for treatment. Patient B testified that it was unfortunate that she felt that she had to terminate her treatment because she was beginning to feel better.

On cross-examination, Patient B testified that during the last treatment, a woman with blonde hair also was in the treatment room. Patient B further testified that after she terminated her treatment, she was contacted by Patient A regarding Respondent’s behavior in the office. In response to questions from the Board, Patient B recalled that she mentioned her problems with Respondent to Employee 1, who told her that other women were having problems with him as

well.

4. Patient C

Patient C testified that she initially went in to see Respondent for a routine X-ray in 1991, after her then-fiancé had a visit with Respondent. After reviewing the X-ray, Respondent advised her that he found a slight curvature of her spine and that she needed a series of adjustments. Patient C testified that Respondent told her that although she did not suffer any pain, her body would function better with respect to digestion, etc. Patient C testified that she continued treatment with Respondent more for preventive care. Patient C also testified that her mother (Employee 1) was a massage therapist and proponent of chiropractic care. Tr. 70-73.

Patient C testified that she initially went for treatment frequently, per Respondent's suggestion, and continued treatment until her last visit on or about October 25, 1995. Patient C testified that on that day, subsequent to a visit with Respondent earlier in the day, she experienced a tingling in her leg and called Respondent with her concerns. Patient C testified that Respondent told her to come back in to the office that evening. Patient C testified that when she arrived, no one other than Respondent was in the office. Respondent told her to undress in the treatment room and put on a green paper gown, and to crack the door open when she was done. Patient C testified that Respondent left the treatment room and closed the door, but walked into the room approximately one minute later, without knocking, to find Patient C still undressed. Patient C testified that when she tried to cover herself up, Respondent stated "Don't worry, I won't rip your clothes off today," and left the room. When Respondent returned, Patient

C was dressed in the gown. Tr. 72-74.

Patient C testified that during the treatment, Respondent made various inappropriate comments and engaged in inappropriate conduct, including: commenting on her flexibility and that her fiancé must be really happy that she was so flexible; commenting that she was beautiful; pulling off her socks, tickling her feet, and stating “maybe I should just tie you up...Well, how am I going to explain the rope burns?”; commenting that “If I were younger and you were older, I wouldn’t be able to do this examination”; after conducting strength tests on Patient C’s legs and determining that she could push her legs together more easily than pushing them apart, commenting that “your sex life must be suffering”; after finishing the examination, pulling her up off the the table and hugging her in her gown, telling her that she gave “the best hugs” and asking for another hug and hugged her again. Tr. 74-76.

Patient C testified that in response to Respondent’s comments and conduct:

[I felt c]onfused. Because I liked Dr. Miller and I -- he had done nice things for me too and I sort of -- those comments along the way . . . I guess I let them roll off me. . . . I always thought they were inappropriate and put me on the spot. You’re already pretty vulnerable when you’re lying there in a green paper gown on a table and, you know, I didn’t like the comments, but I liked Dr. Miller But the last visit was bad for me. . . . [I]t was shocking and scary and just made me feel really bad.

Tr. 76-77. Patient C testified that immediately after the incident, she told her mother and her then-fiancé. Upon her mother’s urging her to complain to the Board, Patient C called the Board’s Administrator and told her of the incident. However, because Patient C did not want to follow through with the report in writing at the time, she did not take her complaint any further until she was contacted by Mr. Vallone in relation to this case. Tr. 77-78.

On cross-examination, Patient C admitted that Respondent's comments to her, although inappropriate, probably were intended as compliments. Patient C further stated that Respondent's comments to her throughout her treatments did not offend her, but she was surprised and a little confused. Patient C stated that she continued to return to Respondent because he told her that she needed to come back to treat the curvature in her spine. Patient C testified that during a blizzard in 1993, Respondent came to her home to adjust her, and that she did not think it was inappropriate but that in fact she appreciated it very much. Patient C agreed that the nature of her relationship with Respondent had become less formal and maybe took on a friendly dimension to it. Patient C further stated that she may have invited Respondent to a New Year's Eve party at a bar which she and her then-fiancé owned. Patient C recalled that her mother (Employee 1) worked in Respondent's office at the time, and that she probably invited everyone in the office. Patient C testified that she did not think that the invitation was inappropriate. Tr. 80-83.

Patient C testified that between October 1991, when she first began treatment with Respondent, she was satisfied with Respondent's care for the most part. Patient C stated that although Respondent engaged in inappropriate conduct throughout her treatment, his conduct did not rise to the level of the last visit in October 1995. Patient C further stated that during her initial visit and a few other visits with Respondent, a chaperone was in the room, including her mother, but that often a chaperone was not there. Patient C specifically recalled that the treatment room door was always closed. In addition, Patient C recalled that Respondent tickled

her feet on several occasions and that she thought it was unusual, but that she did not know whether he was performing a diagnostic test or checking for her Babinski sign.

On re-direct examination, Patient C testified that Respondent never explained why he was tickling her feet. Patient C estimated that Respondent had tickled her feet approximately seven or eight times. Tr. 96-97.

In response to questions from the Board, Patient C testified that Respondent had tickled her feet with more than one finger, and never used an instrument to check her reflexes. Tr. 99-100.

5. Patient D¹²

Patient D testified that she received chiropractic treatment from Respondent while she worked as a computer trainer in Maryland. Patient D stated that she sought treatment because she had a pre-existing injury to her neck. Patient D testified that while she was familiar with Patient A at the time she received treatment from Respondent, she only spoke to Patient A regarding billing questions. After terminating her treatment by Respondent, Patient D did not speak with Patient A. Tr. 480-83.

Patient D also testified that at that time, she was engaged in the business of making leather armory for individuals who were involved in medieval and Renaissance re-enactments,

¹² Patient D testified via a telephone speaker phone which all present Board members, counsel, and the court reporter could hear. Patient D's testimony was admitted over the objections of Respondent's counsel. Tr. 472-77. The Board ruled that in assessing Patient D's credibility, it would recognize its inability to observe her physical demeanor during her testimony. *Id.* at 477.

which included leather accessories. Patient D stated that she had a mail-order catalog of her goods, and that she brought the catalog into Respondent's office at the request of Ms. Bromberg and another assistant. Tr. 492-94.

Patient D testified that when she went to Respondent's office for care, her attire varied depending on her schedule: if she came directly from work, she typically would wear a pantsuit, a blouse, a pair of pants, and blazer; if she went home first to change, she would wear jeans, a tank top, and a work shirt tied at the waist. Patient D stated that she still wears this attire when she goes for chiropractic treatment where she now lives. Patient D stated that when she wore tank tops, it was possible to see a portion of her midriff. Patient D further testified that sometimes she wore a choker-style piece of the leather goods she sold. Patient D testified that during her visits, her fiancé would accompany her into the treatment room, and she would hand him her blazer or work shirt to hold while she received treatment. Tr. 483-85, 492.

Patient D testified that she terminated treatment by Respondent twice. Patient D testified that the first time occurred in early 1997, as a result of her personal dislike for Respondent and her perception that Respondent was trying to instigate problems between her and her fiancé. Patient D testified that she was offended when Respondent would make comments to her fiancé to the effect of "Oh women, you know how they are." Patient D further testified that she had attended a spinal care class given by Respondent, but was bored by the class. Patient D testified that she returned to chiropractic care after she began working full-time, and returned to Respondent's care specifically, because she had thought that her initial personal judgments had

been unfair as long as Respondent was professionally competent. Tr. 486-87. Patient D testified that she terminated treatment the second time because she felt that she was getting worse, and that Respondent was advising her of possible medical problems that she felt he was not qualified to diagnose, such as lupus, arthritis, and multiple sclerosis (MS). Tr. 491.

Patient D testified that while she received treatment from Respondent, he made inappropriate comments to her that were not treatment-related, such as: "You have the perfect size breasts"; informing her and her fiancé that he had performed oral sex on a female on the inversion table and that she had had an "incredible" orgasm, and describing how the woman looked on the table; and remarking about his interest in hanging from a chain that was concealed behind a ceiling tile in the treatment room. Tr. 490.

Patient D also testified that she received inappropriate e-mail messages from Respondent. Patient D stated that she gave Respondent her e-mail address to facilitate professional communication, *i.e.*, if she had a problem or a question, she could communicate with Respondent over e-mail. Patient D testified that Respondent sent her an unsolicited e-mail message in September 1997, with a photo attachment of a woman in rope bondage and a text message of "I think this is a sensuous use of rope." Patient D testified that she did not recall what her response to the message was, possibly something to the effect of "Well, I'm not really impressed." Patient D testified that Respondent sent her a second e-mail message with an attached photo in October 1997, requesting information as to whether Patient D had similar types of restraints and a quote on their cost, accompanied by a text message that included "I really do care." Patient D testified

that she probably responded to the message with a cost estimate. Patient D testified that Respondent then sent her another message dated November 2, 1997, saying "clean and simple bondage. Yes, I do care." Patient D testified that Respondent sent her the next message with an accompanying photo on November 9, 1997, requesting a price quote on rib cuffs. Patient D testified that Respondent sent her the next message on November 10, 1997, again requesting a price quote on cuffs. Patient D testified that she did not respond to the e-mail messages for a period of time, but that she responded to the November 10th message in capital letters for emphasis, stating "YOU JUST DON'T GET IT, DO YOU!!! LEAVE ME ALONE. I DON'T NEED TO SEE ANY MORE PICTURES, AND DEFINITELY NOT OF REDHEADS." Patient D testified that this was the last message to which she responded. Tr. 497-502.

Patient D further testified that the last e-mail message she received from Respondent was dated February 7, 1998, which advised her to erase all of the e-mail messages he had sent her.¹³ Patient D testified that she did not print any of the e-mail messages she received from Respondent. Patient D testified that she subsequently forwarded the messages to the Board's Investigator. Tr. 502-03. Patient D stated that she had two e-mail addresses, one for business

¹³ The message stated:

"Attention all previous recipients of e-mail. Random e-mail from my computer contained a virus. I did not know this. Erase. Wipe all e-mail. Erase. Wipe all e-mail from my computer, making sure to empty the recycle bin and trash. Then run your antivirus program or get one from www.mcafee.com. DO NOT PRINT ANY OF THE E-MAIL FROM ME. If the virus is enclosed in one of them, this will liberate it. I apologize for being the innocent carrier of this vermin."

SX 5A-1 at 000434.

and one that was personal. Patient D testified that she did not recall how Respondent obtained her personal e-mail address.

On cross-examination, Patient D testified that in addition to wearing a leather choker to Respondent's office, she also wore a matching leather bracelet. Patient D testified that she left Respondent's treatment the first time because of his abrasive personality and antagonism, but returned to his care in May 1997 because she did not want to go through the process of randomly selecting a chiropractor with whom she was not familiar. Tr. 504, 507-09.

Patient D further testified regarding contact she had with Respondent outside of his office setting. Patient D testified that she stopped by Respondent's booth at the Reisterstown Festival in September 1997, met Respondent's then-fiancé, and sat down at the booth for a while because the heat was bothering her. Tr. 510-11. Patient D testified that she also recalled an occasion when she arranged for Respondent to come to her apartment with his then-fiancé to look at her products. Patient D testified that she showed them her products, including bracelets and various other pieces. Patient D stated that regardless of her dislike for Respondent, she viewed him as a potential customer. Tr. 529-31. Patient D testified that she would not characterize her relationship with Respondent to be personal, but that Respondent seemed to want to become friends. Patient D testified that she did not want to reciprocate. Tr. 518-19.

On re-direct examination, Patient D testified that Respondent had made some innuendo about his interest in bondage, then at some point in time he informed her of his interest. Patient D further testified that her e-mail address was printed on the catalog that she brought into the

office for Respondent's employees. Tr. 532-33.

In response to questions by the Board, Patient D testified that during the time when she was under Respondent's treatment, she and Respondent discussed the topic of bondage and what he liked about it. Patient D further testified that Respondent tickled her feet with his fingers on more than one occasion, and that she asked him if he had a foot fetish. Tr. 536, 538. Patient D testified that after Respondent had sent her the e-mail messages, she did not verbally request him to stop, and that she did not discuss them with him at all. Tr. 537-38.

6. Patient E

Patient E testified that as a result of an automobile accident in October 1997, she sought treatment from Respondent in November 1997. Patient E's visits with Respondent lasted until January 1998. Patient E stated that when she began treatment, she had a nagging, dull ache in her lower back and some neck problems, and that Respondent generally treated her with adjustments. Patient E testified that one evening during a visit at Respondent's office, she noticed equipment hanging from the ceiling and inquired about it. Patient E stated that Respondent explained that it was an alignment mechanism that was used on the premise from which an individual's natural weight achieved alignment. Patient E used the device one time. Patient E testified that "protective sleeves" were put over her wrists and hands, and that she hung from the device, with her feet free, for two minutes at most. Patient E stated that she was able to step off a stool at her leisure and step back on when she felt it had been long enough. Patient E testified that overall, the mechanism felt very tight on her wrists and that it was not very

comfortable. Tr. 138-41.

Patient E testified that Respondent often told corny jokes, but that she never found them to be offensive. Patient E further testified that Respondent never made inappropriate comments to her, and that she never heard Respondent make inappropriate comments to others. Tr. 141-42.

On cross-examination, Patient E testified when she began treatment with Respondent, she was at a very low emotional point in her life resulting from a "quasi-abusive" employment situation, and that she looked forward to her visits to Respondent's office. Patient E found the staff to be cordial and professional. Patient E stated that Respondent on occasion would hug her because she was in an emotional state, and that she found it comforting. Patient E stated that Respondent would hug her in the common areas of the office, either in the hallway and right near the front door. Tr. 143, 145-46.

Patient E testified that during her treatments there always was a chaperone in the room, except if the chaperone had to greet someone at the front door for a few minutes. Patient E stated that during the periods when she was alone with Respondent, Respondent never treated her in an inappropriate manner or touched her in an offensive way. Tr. 143-44. Patient E further testified that during her visit in which she utilized the hanging device, only she and Respondent were in the room, but that Employee 1 was present somewhere in the office. Patient E stated that she was fully clothed when she used the hanging device. Patient E further stated that Respondent did not make any inappropriate comments to her while she was hanging from the device. Patient E stated that Respondent never represented the hanging device as something she needed to do as

part of her treatment. Patient E testified that if she needed further treatment, she would return to Respondent for treatment. Tr. 144-46.

On re-direct examination, Patient E testified that when she was utilizing the hanging device, the door to the treatment room was open. Patient E further testified that she could not free herself from the wrist straps by herself. Tr. 147. On re-cross-examination, Patient E testified that she felt comfortable using the device because the stool was nearby and Respondent was in the room. Tr. 148.

7. Patient G

Patient G testified that as a result of an automobile accident, she began treatment with Respondent in May 1996. Patient G selected Respondent after listening to a talk show radio host who spoke of Respondent. Patient G's treatment with Respondent lasted until August 1996. Tr. 102-03.

Patient G testified that during her initial visit, Respondent took her into an X-ray room and put his arm around her and said, "Don't worry, we're not going to hurt you. We're going to take good care of you." Patient G testified that no one else was in the room. Patient G testified that she then told Respondent that it made her uncomfortable, tense, and nervous when he put his arm around her, and that she did not want him to do it again. Tr. 105-06. Patient G testified that during another visit, she was lying face down on the treatment table and Respondent tapped her on the behind and told her to turn over. Patient G stated that she subsequently spoke to Respondent about it, and told him that she did not want him to touch her on the behind again.

Tr. 106.

Patient G testified that her ten-year-old son accompanied her during her last visit and was present in the treatment room with her and Respondent. Patient G testified that no one else was in the room. Patient G stated that during the treatment, Respondent turned to her son and said, "Want to see me piss your mother off?", then smacked her on the behind. Patient G testified that she then stood up, told Respondent that she had had enough, and that she was leaving. Patient G testified that Respondent stated that he was only joking, and put his arm around her and said that he was only kidding. Patient G stated that when she told Respondent to get his hands off of her, and that as she was leaving with her son, Respondent began apologizing. Tr. 106-08. Patient G did not return for further treatment from Respondent.

Patient G testified that during her treatments with Respondent, he made several inappropriate comments to her and to others. Examples included: when Respondent offered to do an adjustment of Patient G's pelvic area, Respondent stated that it would alleviate menstrual cramps and help with pre-menstrual syndrome (PMS), and that "wouldn't her husband be real happy about that?"; during Respondent's treatment of Patient G, he told her that he was "going to make [her] a loose woman, which [her] husband would really like"; and during Respondent's treatment of male patients, he made comments to them about "not being able to get it up anymore." Tr. 111-14. Patient G testified that as a result of her experience with Respondent, she only will allow a woman to treat her other than her family physician. Tr. 115.

On cross-examination, Patient G testified that she believed that there should have been a

chaperone in the X-ray room during her initial visit, in light of Respondent's conduct. Patient G stated that she thought it was inappropriate conduct for a doctor to put his arm around a patient he has just met, and that she did not interpret Respondent's conduct as an attempt to reassure her. Tr. 130.

8. Patient H

Patient H testified that as a result of an automobile accident, she sought chiropractic treatment from Respondent in late 1996, when Patient H was 21 years of age. Patient H testified that throughout her treatment, Respondent made comments to her that she considered inappropriate. Patient H stated that Respondent once made comments to her about another patient, whom Respondent referred to as a "pretty woman" sitting in the lounge area. Patient H testified that Respondent told her that the other patient was about 40 years old and fun and spontaneous and acts like she is 30 years old. Respondent further commented that Patient H was mature for her age and acted closer to 30 years old. Patient H testified that she did not understand what his comments had to do with her pain and her treatment. Tr. 158-61.

Patient H testified that during her initial visit, Respondent took X-rays. As a result, Respondent advised her that one of her legs was shorter than the other, and that he could tell by her pelvis bones that childbirth was going to be difficult for her. Patient H testified that Respondent's comment about childbirth "slightly freaked [her] out" because she was still so young and did not want to anticipate difficult childbearing. Tr. 161-64.

Patient H testified that she initially began receiving treatment from Respondent

approximately three times per week, but that she gradually began missing her appointments. Patient H testified that she asked her boyfriend to go with her to the office because she felt uncomfortable when she went to the office. Patient H testified that although she continued to have back pain, she did not keep her appointments because she did not want to be subject to the “unprofessional” attitude in the office.¹⁴ Patient H testified that she also heard Respondent make inappropriate remarks to other patients, including: when another female patient was laying on a roller bed, Respondent said to her “you’ve got to scooch down like you’re in the other doctor’s office, ha ha. You know, like referring to the gynecologist”; and asking “have you been getting enough sex lately?” Patient H testified that she sent a written complaint to the Board regarding Respondent’s conduct. SX 5C. Tr. 165-69.

On cross-examination, Patient H stated that her whole experience with Respondent consisted of five visits, beginning in November 1996. However, Patient H continued to receive massages from Employee 1. Patient H stated that during one of her discussions with Employee 1 about Respondent’s continued inappropriate comments, Employee 1 suggested that Patient H write a letter to the Board. Patient H testified that she subsequently wrote her complaint and sent it to the Board. Patient H testified that at the time she wrote her complaint, she was not aware that anyone else was submitting complaints to the Board. Tr. 177-79.

9. Patient I

¹⁴ Patient H testified that she considered “unprofessional” to encompass Respondent’s comments, including discussing her hair color, discussing another patient with her, discussing the level of her maturity, and other matters unrelated to her pain and treatment. Tr. 166.

Patient I testified that she sought chiropractic treatment from Respondent between April 1996 and May 1997.¹⁵ Patient I stated that she had chronic back problems and chose Respondent for treatment because her mother (Employee 2) began working in Respondent's office. Patient I testified that Respondent helped her back and neck problems, which included a previously broken tailbone, spine curvature, disk problems, and problems resulting from TMJ. Patient I testified that Respondent's treatment included manual and activator adjustments and paraffin treatments for her hands. Tr. 149-50.

Patient I testified that Respondent had made sexual comments to her during her treatments, and made sexual references that she found offensive and inappropriate. Patient I recalled that during a paraffin treatment, she was having trouble removing her bracelet and Respondent asked if he could help. Patient I said yes and Respondent then stated that he would like to undress her. Patient I further stated that Respondent would ask her about her sexual exploits with her boyfriend, and during one of her treatments, he asked her to turn over and if she "liked it that way." Patient I stated that Respondent would say things "that were inappropriate to come from a doctor's mouth about what I was doing sexually, things that I felt had no place in my treatment." Tr. 150-51.

On cross-examination, Patient I recalled that on an office questionnaire, she had indicated that Respondent should "learn new jokes." Patient I stated that she perceived Respondent's

¹⁵ Based on SX 4I (Bates 000366), Respondent's counsel noted for the record that Patient I began treatment on September 26, 1996. Tr. 149.

comments as jokes, but that she could see how other people would not. Patient I stated that because she works in a predominantly male environment, she tends to brush off inappropriate comments. Patient I further testified that she was offended by Respondent's comments, but that because she was receiving significant discounts for her treatment as a result of her mother's employment in Respondent's office, she was not willing to jeopardize her opportunity to receive treatment for her physical problems. Patient I stated that as a doctor, Respondent helped her a great deal. With respect to inappropriate touching, Patient I testified that Respondent did not touch her inappropriately except that he tickled her feet. Patient I was not sure whether he was checking her reflexes. Tr. 153-55.

On re-direct examination, Patient I testified that Respondent tickled her feet several times throughout her treatment. Patient I was not sure if he used one finger or several fingers. Tr. 156-57.

10. Patient J

Patient J testified that she was employed by Respondent between October 1994 and June 1997, initially as a billing clerk and later she became registered as a chiropractic assistant. Patient J testified that during her employment at Respondent's office, she observed Respondent make inappropriate remarks to all of his patients, regardless of age or gender. Patient J recalled that such remarks included asking a female patient "does your husband know you can't get it up" when Respondent was checking how far the patient could lift her leg during treatment. Tr. 265-67.

Patient J testified that she was a chaperone during one of Respondent's treatments of Patient G. Patient J testified that during patient treatments in which the patient was lying on his or her stomach, Respondent always would tap the person to indicate that it was time to get up. Patient J testified that during Patient G's treatment, Patient G was lying on her stomach and Respondent touched her on the buttocks. Patient J testified that the incident could be perceived in two manners. Patient J stated that Patient G commented to Respondent about the incident. Patient J further recalled that this incident happened again, but that she was not present in the treatment room. Patient J testified that Patient G came out of the treatment room stating that Respondent had touched her in front of her son. Tr. 267-68.

Patient J further testified that she also was one of Respondent's patients. Patient J stated that as a patient, she used the hanging device in Respondent's office approximately two to three times. Patient J testified that Respondent told her that the device would stretch out her shoulder and upper back muscles. Patient J stated that she has a little bit of claustrophobia and did not like anything on her arms holding her back. Patient J further stated that her feeling was personal to her and had nothing to do with the device or with Respondent's treatment. Patient J testified that she found the device painful in her wrist area, and when she asked Respondent to take her down, he did so. Patient J further testified that at some point Respondent put bands similar to the wrist bands around her ankles as well, and that the ankle bands were pulled back behind her and hooked on to a chain to stretch out her quadriceps. Patient J testified that she hung by her wrists and ankles at the same time. Patient J stated that she probably only hung there for a few seconds,

because she told Respondent that she did not like the position and he took her down.

Tr. 268-70.

Patient J testified that during her employment in Respondent's office, she pulled Respondent aside on certain occasions to advise him that she thought that his jokes to patients had made them uncomfortable and that he should stop making them. Patient J testified that Respondent at times would apologize and promise not to make any more jokes, but that within a week or so Respondent would begin making the jokes and comments again. Patient J testified that she perceived that it did not occur to Respondent how he affected the patients. Tr. 270-71.

On cross-examination, Patient J testified that Respondent made comments with sexual connotations to all patients regardless of age or gender, but that he did not make such comments to children. Patient J testified that she told Respondent that she did not appreciate the comments he made to her, and that subsequently he stopped making such comments to her for the most part. Patient J testified that at times she still had to tell him that she did not think one of his comments to her was appropriate, and that Respondent then would apologize. Patient J testified that she did not leave her employment at Respondent's office because of his comments. Patient J further testified that during her employment at Respondent's office, Respondent used chiropractic assistants to take notes during his treatment of patients approximately eighty-five to ninety percent of the time. Tr. 272-73.

Regarding her treatment by Respondent, Patient J testified that the use of the hanging device was not part of her formal treatment, but rather was experimental. Patient J stated that the

wrist and ankle bands were not handcuffs, but were bands that were hooked together with a "dog hook thing." Patient J testified that during her use of the hanging device, both she and Respondent were fully clothed, and that Respondent did not touch her in an offensive or inappropriate fashion. Patient J stated that Respondent was present when she used the device because she could not get in and out of the device by herself. Patient J testified that there always was a stool present, because she "panic[ked] too much" and did not like the feeling of not being able to use her hands. Patient J testified that she would stand on the stool and step off to hang from the device, and that if she stretched out her leg enough, she could touch the stool and move it over to step back on it. Patient J testified that when she used the ankle cuffs on one occasion, she did not like it because she felt very confined. Tr. 275-77.

Patient J further testified on cross-examination that she recalled Respondent's treatment of Patient D. Patient J testified that at times during Patient D's treatment, Patient D's boyfriend would be present in the treatment room as well. Patient J testified that Respondent generally permitted patients' family members and friends to accompany them to the treatments. Patient J testified that she recalled that Patient D would wear what she considered to be inappropriate attire, *e.g.*, biker shorts, tight stretch pants, and mid-drift shirts, to her appointments at Respondent's office. Patient J further testified that she recalled Patient D and Respondent exchanging Internet addresses after one of her treatments. Tr. 284-87.

Patient J stated that she received a benefit from her chiropractic treatment by Respondent, and that she generally was pleased with the results. Patient J further testified that if the occasion

arose, she would return to Respondent for treatment without hesitation. Tr. 288-89.

On re-direct examination, Patient J testified that she utilized the hanging device multiple times, in spite of the fact that she felt claustrophobic, because she trusted Respondent's judgment. Patient J testified that she was never forced to do anything she did not want to do. Patient J further described her position when she utilized both the wrist and ankle straps of the hanging device. Patient J stated that her wrists were hooked to a chain from the ceiling so that her arms were straight above her head, then her ankles were hooked together and her feet were pulled back behind her, almost to her buttocks, and then a chain hooked her ankles to the chain hanging from the ceiling. Patient J testified that Respondent told her that the purpose of this position was to stretch her quadriceps. Patient J stated that the position was very strainful on her knees, and that was why she only utilized the hanging device in this manner one time. Tr. 289-99.

In response to questions from the Board, Patient J confirmed that when she used the hanging device with the ankle straps, she hung from a continuous chain from the ceiling that was hooked to her wrists over her head, then continued downward and up behind her to be hooked to her ankles that were pulled up behind her, then continuing up towards the ceiling to be hooked back to the beginning of the chain. Patient J testified that she recalled that a young male patient asked to try the device, and that he tried it in the presence of her, Respondent, and a few of his friends. Patient J recalled that he hung there for a few minutes, but then decided that he did not feel anything. Patient J testified that she did not recall that it hurt his wrists. Patient J further

testified that for Respondent, this was not for entertainment, but rather to see if it would stretch out his shoulders and upper back. Patient J testified that Respondent did not require the patient to try the device. Tr. 301-05. Patient J further testified that she did not see a patient use the hanging device with the ankle straps. Patient J stated her opinion that there was nothing sexual about the use of the hanging device. Tr. 308.

On further re-direct examination, Patient J testified that she had been present when Respondent himself used the hanging device, and that she personally hooked him up to it. Tr. 209-10.

11. Marsha Bromberg

Ms. Bromberg testified that she has worked in Respondent's office as a receptionist since June 1997. Ms. Bromberg testified that during her employment in the office, she heard Respondent make comments that were not appropriate, but could not be *per se* characterized as sexual; rather, it depended on how the recipient took the comment. As examples of these comments, Ms. Bromberg testified that Respondent made statements to patients such as "open or close your legs, I know you can do that." With respect to Patient B, Ms. Bromberg testified that Patient B told her that she was never returning for treatment because she felt uncomfortable with Respondent. Regarding Patient D's side business of selling adult paraphernalia, which she advertised through a catalog, Ms. Bromberg testified that she asked Patient D to bring in the catalog to look over. Ms. Bromberg testified that she would not purchase any of the products, but that she did not find the catalog to be in poor taste.

Ms. Bromberg further testified that she recalled an incident in which Respondent was speaking with Patient A regarding her paycheck, and that Respondent stated something to the effect of he would like to put the paycheck down her pants. Ms. Bromberg testified that she was flabbergasted when she heard the discussion, but that she did not say anything because it was not her business. Ms. Bromberg further testified that she noticed a negative change in Patient A's attitude towards Respondent after the incident.

Ms. Bromberg testified that she spoke with Respondent several times about the comments he made to others, and that she told him that his comments were unprofessional. Ms. Bromberg stated that she did not believe that Respondent intentionally meant to harm anyone, but rather that he speaks before he thinks and that he attempts to alleviate his insecurity by trying to relax himself and the patient.

On cross-examination, Ms. Bromberg testified that she never heard Respondent ask anyone if they have had enough sex lately. Ms. Bromberg further testified that she was aware that Respondent and Patient A discussed the possibility of Patient A joining the practice. With respect to Patient D, Ms. Bromberg testified that Patient D wore sensuous clothing and sometimes wore a black leather dog collar around her neck. Ms. Bromberg testified that she believed that Respondent and Patient D were comfortable with one another, and that she recalled them discussing their exchange of e-mail messages. Ms. Bromberg testified that the e-mail messages did not appear to bother Patient D. Ms. Bromberg further stated that she never observed Respondent inappropriately manipulating Patient D, or treating her inappropriately, as

opposed to other patients, in any way. Ms. Bromberg testified that she was present during Patient D's last visit, and that Respondent discussed with Patient D the possibility of having M.S., and suggesting that she see a neurologist or physiatrist. Ms. Bromberg testified that Patient D was quite upset over the conversation, and that she did not want to hear what Respondent was saying.

Ms. Bromberg further testified that Respondent has changed his behavior towards patients. Ms. Bromberg stated that Respondent is very professional, and that she has not discussed any inappropriate behavior with him.

In response to questions from the Board, Ms. Bromberg testified when Respondent saw patients, she either was at the front desk or in the treatment room taking notes. Ms. Bromberg further testified that there was no specific pattern to Respondent's inappropriate comments, and that Respondent did not direct the comments to any class of patients, *i.e.*, longer-term patients, patients who complained more than others, and that the comments were not dependent on gender or age. In addition, Ms. Bromberg testified that it was typical for Respondent to have a chaperone with him during treatment, approximately 95 percent of the time.

12. Employee 1

Employee 1 testified that she worked in Respondent's office as a massage therapist and chiropractic assistant for four and one-half years, in the capacity of an independent contractor. Employee 1 testified that during her employment at Respondent's office, she witnessed Respondent make inappropriate comments to patients. Examples included: when Respondent

was instructing a male patient to place his face in the holes (of presumably a treatment device), Respondent would ask "isn't that what your wife always tells you"; when Respondent performed testing of inner and outer leg muscle strength, Respondent would say "do you know what it means when you're better at keeping your legs apart than together, it means that you're getting enough or you're having a good sexual life"; when Respondent performed testing of leg muscles that require the patient to lift his leg, Respondent would say "get it up, get it up higher, does your wife know you can't get it up." Employee 1 testified that she often told Respondent that she and other people found his comments offensive, and that he would respond by telling her that she was right, and promising that he would cease making such comments. Employee 1 testified that subsequent to these conversations, Respondent would make the comments again. Employee 1 further testified that she knew that Patients B, C, and G were so offended by Respondent's comments that they did not return to Respondent for treatment. Tr. 312-15.

With respect to Patient B, Employee 1 heard from Ms. Bromberg that Patient B had indicated that she was not returning for treatment because of Respondent's comments. With respect to Patient G, Employee 1 walked into the office just as Patient G was yelling at Respondent, "saying that I told you never to do that again, you smacked me on the butt in front of my son, and I told you never to do that again." With respect to Patient C (Employee 1's daughter), Employee 1 was not present during the last incident in Respondent's office, but Patient C told her what had happened. Employee 1 testified that after the incident, she did not confront Respondent about it, but had privately decided to quit working in Respondent's office.

Employee 1 testified that prior to the incident, Respondent would mention Patient C's name to her in conversation almost every day, but after the incident, he never mentioned Patient C's name again. Tr. 316-20.

With respect to the hanging device, Employee 1 testified that she only saw it from her peripheral vision when she passed by, and that she witnessed Patient E hanging from it once. Employee 1 stated that she did not ask Respondent what it was, but Respondent mentioned the device to her once, indicating that Patient A had hung from it. Employee 1 stated that she was not curious about the device. Tr. 328-30.

Employee 1 further testified that on March 6, 1998, Respondent's billing clerk spoke with her, advised her that she was tape recording the conversation, and advised her that her employment as a massage therapist was terminated. The billing clerk further advised her that she could, however, remain in Respondent's employment as a chiropractic assistant. Employee 1 testified that in May or June of 1998, she instead began working in Patient A's chiropractic office as a subcontractor massage therapist until October 1998. Tr. 331-33.

On cross-examination, Employee 1 admitted that she remained working as a massage therapist in Respondent's office, after the incident with her daughter (Patient C) and her resulting decision to leave, because she had scheduled patients, got back "into the whole groove" of things, and hoped the incident would go away. Employee 1 testified that for her, working in Respondent's office was convenient, she received business from working there, and he helped her professionally by financing her education to become a chiropractic assistant. Employee 1

stated that as time progressed, she probably became more desensitized to Respondent's conduct. Tr. 344-45, 351.

On re-direct examination, Employee 1 testified that she would tell Respondent that his comments were inappropriate in order to try to get him to improve his behavior. Employee 1 further testified that when Respondent became engaged to be married, he asked the staff not to tell certain patients whom he thought had a crush on him, because he was afraid that they would not return for treatment. Tr. 359, 361.

13. Employee 2

Employee 2 testified that she was employed as a chiropractic assistant in Respondent's office between August 1996 and May 1997. Employee 2 testified that she left her employment there because she felt uncomfortable working in the office, and that an incident between her daughter (Patient I) and Respondent during her daughter's paraffin treatment ultimately prompted her to leave. Employee 2 stated that other patients did not return for treatment because of inappropriate remarks and conduct by Respondent. Employee 2 testified that she, Employee 1 and Patient J held a meeting with Respondent and told him that they, as women, felt uncomfortable with the sexually explicit remarks that he made in the office. Employee 2 testified that Respondent thanked them for bringing it to his attention and that he would try to watch his remarks in the future. Employee 2 stated that Respondent refrained from such remarks for a few days, but ultimately lapsed back into his usual conduct. Tr. 182-84.

Employee 2 stated that some of Respondent's inappropriate remarks included comments

to male patients. Employee 2 stated that when Respondent would ask a male patient to lift his leg and the patient would have trouble doing so, Respondent would say "What, you can't get it up? Get it up. Try and get it up. You can't get it up anymore?" In addition, when a patient would be dressed only in a gown during an initial visit, Employee 2 observed that when Respondent would check the patient's reflexes, he would pull the gown up to mid-thigh, which was higher than necessary. In addition, Employee 2 testified that when Respondent became engaged and informed his office staff, he told them not to "say anything to the single patients because I don't want them to stop coming to me." Tr. 184-85.

On cross-examination, Employee 2 testified that with respect to the incident between Respondent and her daughter (Patient I), she was not present in the room during the incident, but in the hallway. Employee 2 testified that she quit as a result of the incident, as "the straw that broke the camel's back." Employee 2 acknowledged that after she quit, her daughter returned to Respondent for one more visit, but that she paid for the visit and was not in the room alone with Respondent. Employee 2 testified that Employee 1 and Patient J were in the room during the last treatment. Tr. 191-92.

Employee 2 further testified that during her approximately nine months of employment at Respondent's office, the doors to the treatment rooms generally were open during treatments, with the exception of a few patients, including male patients. Employee 2 testified that Respondent made inappropriate remarks to male patients about not being able to "get it up" while performing strength testing. Tr. 192-93.

C. Witness Testimony--State's Expert Witnesses

1. Blaise LaVorgna, D.C.

Dr. LaVorgna testified that he is a licensed chiropractor in Maryland, after which the parties stipulated that the Board could accept Dr. LaVorgna as an expert in the practice of chiropractic.¹⁶ Dr. LaVorgna further stated that in preparing for his testimony, he did the following: listened to and observed the testimony of the State's witnesses; reviewed the State's and Respondent's Exhibits; and reviewed a publication entitled "Sexual Misconduct: Ethical, Clinical and Legal Ramifications in the Chiropractic Profession," published by the National Chiropractic Mutual Insurance Company (NCMIC), a malpractice insurance carrier for chiropractors. Dr. LaVorgna further stated that he based his testimony on his review of various textbooks, attendance at courses, and other experience he has acquired during his career.

Dr. LaVorgna described "traction" as a method of stretching muscles by using an external force. Dr. LaVorgna opined that the hanging device described in the proceedings could not work to stretch an individual's upper trapezius muscles, but rather may only accomplish some lower trapezius stretching. Dr. LaVorgna further stated that he had never seen the use of Respondent's hanging device taught in chiropractic college or in a chiropractic seminar, and has never seen a device of this design and used in this manner listed in chiropractic journals. Dr. LaVorgna noted that in the March 1998 report from Dr. Janofsky (SX 6), Respondent indicated that he was "not sure" whether the use of the device fell within the standard of care for chiropractic practice. Dr.

¹⁶ See SX 8 (*curriculum vitae* of Blaise LaVorgna, D.C.).

LaVorgna stated that he maintains a traction device at his practice, but that he does not hide such equipment. Tr. 632-37.

Dr. LaVorgna further testified that upon his review of Patient A's records, he could not find any documentation indicating that the hanging device was used on Patient A. Dr. LaVorgna further testified that prior to performing any type of traction, physical therapy, or exercise regimen, a practitioner should develop a treatment plan that defines the goals and objective parameters of the treatment, and document the progress of the treatment. Dr. LaVorgna stated that he did not find such documentation in Patient A's records. Tr. 632-33. Dr. LaVorgna further stated that he could not find any indication in Patient E's records that justifies the use of the hanging device. Dr. LaVorgna further distinguished the form in Patient E's file entitled "Letter of Medical Necessity for Cervical Traction Device" as not applicable to the hanging device. Tr. 657-59. Regarding Patient J, Dr. LaVorgna testified that Patient J's history of tendonitis in her wrist (demonstrated by the "Letter of Medical Necessity for the Hand/Wrist Support" in her file, signed by Respondent) provided contraindications to the use of the hanging device. Dr. LaVorgna testified that it also appeared illogical for Patient J to utilize the hanging device with her feet tied in back of her in light of her documented knee problems. Tr. 667-69.

With respect to Patient B, Dr. LaVorgna testified that during chiropractic treatment, there may be times when it is necessary to touch a woman's breast, depending on what the treatment is and its purpose. Dr. LaVorgna stated that adequate documentation of the treatment and its purpose are essential, and that adequate patient consent is indicated in the patient record. Dr.

LaVorgna further testified that Patient B's records fail to substantiate any reasons why using an activator down the middle of the breast, or touching the nipple area, was necessary. Tr. 642.

With respect to various patients' testimony that Respondent tickled their feet, Dr. LaVorgna testified the actions by Respondent that the patients described are distinguishable from a Plantar Reflex/Babinski sign, which is a technique used to look for cord or brain lesions. Dr. LaVorgna described the technique as scraping the bottom of the foot, and stated that it is a very serious examination, the results of which would be documented, as opposed to a casual tickling of the feet for joke purposes. With respect to the records of Patients C and D, Dr. LaVorgna could not identify documentation indicating that a Plantar Reflex/Babinski sign test was performed. Tr. 644-47, 655.

Dr. LaVorgna further opined that when a practitioner speculates as to potential physical conditions to a patient, the practitioner has an initial obligation to conduct proper background information on such conditions, and consider the emotional impact that such a statement may have on the patient. Dr. LaVorgna opined that prior to informing Patient D that she could have M.S. or lupus, he should have run a series of tests that fall within the scope of chiropractic care, or at least made a proper referral to a neurologist or another practitioner with the appropriate diagnostic background. Tr. 651-53.

With respect to Patient G, Dr. LaVorgna testified that there are times during treatment that a practitioner may need to tap a patient on the buttocks, but that he did not find anything the record to justify Respondent's tapping of Patient G on the buttocks. Regarding Patient H, Dr.

LaVorgna testified that her X-rays and patient records fail to indicate any contraindications to pregnancy and childbirth, and that there is no supportable scientific evidence that indicates that Patient H's condition would cause childbirth problems. Tr. 660-66.

On cross examination, Dr. LaVorgna testified that generally, it is a good practice for a practitioner to keep the treatment room open and to utilize staff as chaperons and scribes during treatment. Dr. LaVorgna further testified that these practices are not always required by the chiropractic standard of care. Tr. 677-78.

Regarding Patient H, Dr. LaVorgna testified that in his review of her records, he noted a transitional vertebra, a leg length discrepancy, and an unequal pelvic tilt, and that these conditions make her more prone to increased back pain, regardless of pregnancy. Dr. LaVorgna further noted that Patient H's records do not contain notations regarding any statements Respondent made to Patient H about difficult childbirth. Tr. 707-10. Regarding Patient D, Dr. LaVorgna testified that her records fail to indicate the basis for Respondent's discussion with her regarding M.S. or other possible neurological problems. Tr. 711-12.

On re-direct examination, Dr. LaVorgna noted that regardless of whether chaperons or scribes were present during the treatment of a patient, Respondent still made inappropriate comments and jokes. Dr. LaVorgna further opined that whether or not the treatment door should be open or closed depends on whether patient confidentiality would be compromised if the door were open, *e.g.*, if the practitioner were taking the patient history and discussing confidential matters with the patient. Dr. LaVorgna testified that keeping the door open during treatment is a

common practice, but not an absolute one, and that the preservation of patient confidentiality and privacy dictate whether to keep the door open and whether to gown the patient. Tr. 717-19.

Regarding the publications submitted by Respondent in RX 5A through 5I, Dr. LaVorgna testified that the articles were predominantly focused on traction that stretched the lumbar spine, which is distinguishable from the trapezius area (thoracic spine). Dr. LaVorgna further testified that a reference in the articles to the thoracic spine mentioned a shortening of the area, which is the opposite of traction (stretching). Dr. LaVorgna further noted that much of literature introduced by Respondent is antiquated, over twenty years old, and thus is of questionable validity for use today. Finally, Dr. LaVorgna also testified that he has never seen the hanging device or pictures of the hanging device in physical therapy catalogs. Tr. 721-25.

In response to questions from the Board, Dr. LaVorgna opined that the net effect of the use of the hanging device with feet pulled back behind the patient would be to put the lumbar facet joints in extension, which results in the compression in the facet joints. Dr. LaVorgna further testified that this is contraindicated by a hyperlordotic spine. Tr. 731.

2. S. Michael Plaut, M.D.

Dr. Plaut testified that he is a psychologist associated with the University of Maryland School of Medicine. Upon the stipulation of the parties, the Board accepted Dr. Plaut as an expert in health care provider-patient relations.¹⁷ Dr. Plaut testified that he prepared for his

¹⁷ See SX 7 (*curriculum vitae* of S. Michael Plaut, M.D.). The Board notes that from 1993 to 1995, Dr. Plaut served as the Chairperson of the Maryland Task Force to Study Health Professional-Client Sexual Exploitation (hereinafter "Task Force").

testimony by reviewing the Task Force's 1996 Report to the Governor and Maryland General Assembly ("Sexual Exploitation: Strategies for Prevention and Intervention"),¹⁸ and a book addressing health professional client boundaries authored by a Rhode Island chiropractor entitled, "Behind Closed Doors." Dr. Plaut further stated that he reviewed the State's exhibits, both reports by Dr. Janofsky (SX 6 and RX 6), and listened to the telephonic testimony of Patient D. Tr. 548-49, 553-54.

Dr. Plaut testified that he adopts the definition of "sexual misconduct" in the health professional setting that is provided in the Task Force Report, which consists of a wide range of activity, including performing procedures under the pretext of clinical benefit to the patient, inappropriate verbal exchanges of a sexual nature, and inappropriate disclosures of a sexual nature by the health care provider to the patient.¹⁹ Tr. 548. Dr. Plaut testified that sexual

¹⁸ The Board takes administrative notice of this Report.

¹⁹ See Task Force Rep. at 25. The Report defines sexual misconduct, in pertinent part, as the following:

A. An employee of this institutional shall be considered to have engaged in sexual misconduct if he or she:

1. Has engaged in sexual activity with a client in the context of a professional evaluation or procedure or other service to the client, regardless of the setting in which the examination, procedure or service is performed;
2. has engaged in sexual activity with a client on the pretense of therapeutic intent or benefit; or
3. has engaged in any sexual activity with a client that would be considered unethical according to the code of ethics of the employees's profession.

* * *

C. Definition of Sexual Activity

Sexual activity consists of, but is not necessarily limited to, any of the following activities, unless they are conducted for an appropriate professional reason and in a manner consistent with the standard of care for that procedure:

1. genital contact with the client;
2. asking a client to undress or to stimulate his or her genitals;
3. exposing or stimulating one's own genitals in the presence of the client; or

behavior, even if consensual, could create a hostile work environment for health professionals.

Tr. 567.

Dr. Plaut further defined a "boundary violation" as "any excessive contact between a health professional and a client that goes beyond the normal level of contact within the standard of care for that profession and that given situation. . . [i]t may or may not be sexual in nature."

Dr. Plaut testified that an assumption in defining professional boundaries is that there exists a power differential between a health professional and a patient such that the patient is assumed to trust the professional because of the professional's expertise and experience. Dr. Plaut further stated that based on this power differential, the professional will always be held responsible for maintaining professional boundaries, regardless of whether the professional or the patient initiated the boundary violation, and regardless of the patient's attire or choice of conversation.

Dr. Plaut testified that the issue of the patient's consent in engaging in conduct that violates professional boundaries is irrelevant to the professional's responsibility to maintain those boundaries. Tr. 550-53.

Dr. Plaut further defined "dual relationship" as when a health professional simultaneously has, in addition to the primary provider-patient relationship, a second relationship with the patient, either professional or personal. Tr. 557-58. In addition, Dr. Plaut defined "fiduciary duty" as the relationship between any professional service provider and a client in which the client trusts the professional to help him or her, and thus is placed in a vulnerable position. Dr.

4. discussions or disclosures of a sexual nature.

Plaut testified that when the professional abuses the client's trust and vulnerability, the professional has breached his or her fiduciary duty to the client. Tr. 574.

Dr. Plaut testified that Respondent has admitted to making comments to and engaging in behavior with patients and staff which, in his opinion, were inappropriate, including the following: telling off-color jokes to female patients; inappropriately referring to gynecological environments by asking the patient to "scooch" down to the end of the table; asking a patient "who has the handcuffs?"; making the comment to Patient A regarding putting the paycheck down her pants; commenting to patients about keeping their legs apart; stating to Patient A that "You are cute, but not that cute"; making frequent statements that were double entendres to patients. Tr. 555-56. Dr. Plaut further testified that Respondent made comments that would be considered to invade a patient's privacy, such as: asking a patient if she has had enough sex lately; asking a patient about the color of her hair; asking a male patient if his wife knows that "he can't get it up." Tr. 559-60.

With respect to conduct of a sexual nature that occurred within the pretext of treatment, Dr. Plaut testified that it was possible that Respondent's treatment of Patient A's gluteals would fall within this category, but it was inconclusive. Dr. Plaut noted, however, that Patient A raised the concern. Dr. Plaut further testified that, in his opinion, the following conduct constituted pretextual behavior: tickling the patient's feet without clinical justification and without appropriately explaining the procedure to the patient; grabbing a patient's hand and telling her that it was important for chiropractors to have good hands; unhooking a patient's bra strap;

repeatedly tapping a patient on the buttocks. Dr. Plaut testified that regarding patients' use of the hanging device, Respondent at times insisted that a patient try the device even if the patient was reluctant, and that in his opinion, such conduct constituted a misuse of his professional authority. Dr. Plaut testified that because of patients' trust and the power differential between them and the health professional, patients will continue to return for treatment until they begin to doubt the professional. Tr. 560-63.

Dr. Plaut testified that the evidence suggests that Respondent had a bias towards engaging in inappropriate conduct with women. Dr. Plaut noted Dr. Janofsky's recommendation in his March 1998 report that Respondent's practice be limited to the treatment of females over the age of forty and males. Dr. Plaut further noted that Respondent's staff members told Patient A that Respondent paid her much attention because she was "young and cute"; that Respondent asked female patients whether their feet were ticklish; that Respondent told a female patient, "Don't worry, I won't rip your clothes off today"; and that Respondent told a patient that if she was beautiful and that if she were older or he were younger, he would not be able to examine her; and that Patient J stated that she found Respondent to be unprofessional, especially with female patients between the ages of twenty and thirty-five. Tr. 563-67.

Dr. Plaut further testified that, in his opinion, Respondent engaged in conduct that constituted dual relationships with patients, violated professional boundaries, violated patient privacy and confidentiality, and violated Respondent's fiduciary duties to his patients. Dr. Plaut testified that this conduct included: calling patients at home without apparent clinical

justification; making comments about a "pretty blond woman" sitting in the waiting room to another female patient; discussing with a patient his sexual behavior with another woman on a treatment table; entering a treatment room while a patient was undressing without knocking. Dr. Plaut further testified that, in his opinion, Respondent engaged in a dual relationship with Patient D and breached his fiduciary duty to her. Dr. Plaut testified that he believed that Respondent was insensitive to the emotional needs, integrity, and privacy of his patients because Respondent selectively used them to satisfy his own needs. Tr. 568-74.

On cross examination, Dr. Plaut testified that Respondent's personal sexual interests are relevant to the Board's disciplinary proceedings to the extent that such interests enter into Respondent's professional setting. Dr. Plaut agreed that not all expressions of compassion or interest in a patient by a health professional *per se* constitute a boundary violation. Dr. Plaut further agreed that not all dual relationships are harmful, and that at times they are unavoidable, such as in small rural communities. However, Dr. Plaut testified that dual relationships are not necessarily beneficial, and that harm to the patient is not required to conclude that a dual relationship is inappropriate. Dr. Plaut testified that the profession still needs to be concerned about professionals who engage in inappropriate conduct, regardless of harm to patients, in order to maintain standards for the profession and trust by the community. Tr. 580-81.

Regarding the hanging device, Dr. Plaut testified that if Respondent had used the device on an equal number of males and females, that fact would appear to rebut his opinion that Respondent aimed his inappropriate conduct towards females patients, but only with respect to

the hanging device. Dr. Plaut further testified that in his opinion, each incident of inappropriate conduct by Respondent, by itself, would not constitute a major problem, but that Respondent engaged in a repetitive pattern of conduct that involved similar types of people and similar types of events, which is disturbing. Dr. Plaut testified that, in his opinion, the complaining patients did not appear to have engaged in collusion in making allegations against Respondent, but rather took the allegations seriously. Dr. Plaut testified that he did not believe that the complainants were coerced into making their complaints. Tr. 583-85.

Dr. Plaut further testified that, assuming that Respondent admitted to making comments to various patients which caused the patients to take offense, such conduct constituted boundary violations. Dr. Plaut stated that whether or not some of the patients enjoyed Respondent's humor or were unaffected by his humor is not a factor in determining a boundary violation, and is not a factor in determining whether sexual exploitation occurred. Tr. 588-89.

Dr. Plaut acknowledged literature in which sexually exploitative professionals have been classified in order to predict the likelihood of a professional's success in rehabilitation. Dr. Plaut further recognized the category of "naive and uninformed," but did not agree that Respondent fell within that category. Dr. Plaut testified that Dr. Janofsky's initial diagnosis of Respondent as having paraphilia, which he characterized as a serious sexual disorder in which the individual is often resistant to treatment, and Dr. Brandt's subsequent disagreement with that diagnosis, precluded him from placing Respondent in any classification. Regarding Dr. Janofsky's second report, in which he concluded that there was no psychiatric contraindication to permitting

Respondent to engage in unrestricted chiropractic practice, Dr. Plaut interpreted the report as concluding that Respondent is psychiatrically sound, but that it was still up to the chiropractic profession to determine whether he is competent to practice. Tr. 589-92.

With respect to the July 1998 letter from Dr. Ephross to Respondent's former counsel, Dr. Plaut testified that he had no reason to disagree with Dr. Ephross' opinion that "I have no reason to believe that Dr. Miller has difficulty at this time controlling his impulses or that he poses a threat to patients who he treats regardless of their personal attributes." Tr. 593-94; RX 8A.

On re-direct examination, Dr. Plaut testified that with respect to Patient G, if Respondent had tapped her on the buttocks after asking her son, "Do you want to see me piss your mother off?", such conduct would have been inappropriate and unprofessional. Dr. Plaut further testified that the concept of "blame the victim" often arises in sexual misconduct cases, in which the victim of the conduct is held responsible by the offender for what occurred based on such factors as the victim's manner of dress. Dr. Plaut stated that the concept is used to reverse the professional's responsibility for his own behavior. Dr. Plaut testified that, in his opinion, the line of questioning of Patient D, which focused on her manner of dress and her disclosure of her personal life and sexual proclivities, was an attempt to "blame the victim." In addition, Dr. Plaut testified that, based on Dr. Janofsky's second report, it was clear that Respondent attempted to befriend patients or wanted them to like him, which went beyond the scope of his professional relationship with them. Tr. 600-02.

On re-cross examination, Dr. Plaut testified that when a professional befriends a patient, he or she makes the patient more dependent, and exploits the dependency of the patient. Dr. Plaut further testified that in his opinion, the chiropractor-patient relationship serves in some ways in the same manner as a psychotherapeutic relationship, in which the chiropractor must be sensitive to the emotional needs and history of the patient. Dr. Plaut testified that, in his opinion, taking advantage of the patient's emotional needs is one of the most blatant breaches of trust that could possibly occur. Tr. 602-03.

In response to questions from the Board, Dr. Plaut testified that during his telephone contact with Respondent in April 1998,²⁰ Respondent indicated that he needed to take a sexual sensitivity course per the Board's mandate. Dr. Plaut testified that Respondent indicated to him that he did not want the course to be expensive and that he wanted to get back to seeing female patients, and that it appeared to Dr. Plaut that Respondent assumed that the course would only last for one day. Dr. Plaut testified that he perceived that Respondent belittled the offenses that were alleged against him. Tr. 604-06. Regarding reports that are submitted by evaluating therapists, Dr. Plaut testified that such reports typically are submitted directly to the Board unless the Board permitted the practitioner's attorney to be involved, and that if the attorney is involved, the attorney typically will encourage the practitioner to attempt to demonstrate rehabilitation and show appropriate remorse. With respect to Dr. Janofsky's reports, which were addressed to

²⁰ Dr. Plaut previously testified that Respondent had contacted him directly in April 1998, when Respondent obtained his name as a possible resource for assisting him in fulfilling the Board's reinstatement order. Dr. Plaut advised Respondent that he could not help him because he already had been retained by the State as an expert witness. Tr. 592-93.

Respondent's attorney, Dr. Plaut further testified that this may have been the case in this situation. In addition, Dr. Plaut noted his surprise that Dr. Janofsky initially diagnosed Respondent with paraphilia, but essentially dismissed that diagnosis in his second report, which was submitted only eight months later. Tr. 608-10.

On further questioning from the Board, Dr. Plaut testified that he believes that Respondent engaged in a pattern of sexual boundary crossings that were abnormal in the professional setting. Dr. Plaut further described two manners in which a professional engages in rehabilitation: the first is when the professional understands that only refraining from unethical conduct will prevent the financial consequences of Board proceedings, which Dr. Plaut indicated may apply to Respondent based on his opinion of Respondent's statements to Dr. Janofsky; the second is when the professional gains a true understanding of other people's sensitivities and of ethical rules. Dr. Plaut stated that remedying the pattern of conduct in which Respondent engaged would be a time-consuming process involving more time and therapy. Tr. 611-14. Regarding Respondent's description of some of his patients as "freakish and needy," Dr. Plaut testified that Respondent's description partly demonstrates a "blame the victim" attitude and partly evidences Respondent's lack of sensitivity towards those patients who are most emotionally needy. Tr. 615-16.

Regarding the hanging device, Dr. Plaut further testified that Respondent did not need to inappropriately touch the patient to satisfy his sexual need or fantasies. Rather, Dr. Plaut testified that those needs may have been met by seeing someone who is sexually attractive and

needy in a compromising situation and without control over the ability to escape from that situation. Dr. Plaut further testified that those needs also could be met regardless of whether the person was clothed, and that often it is more exciting if the individual is fully clothed. Tr. 616-17.

D. Witness Testimony--Respondent's Witnesses

1. Patient K²¹

Patient K stated that she is a professional broadcaster heard nationwide and locally, and that she is the founder of the largest holistic health center in the United States, where she oversees 30 other health care practitioners. Patient K testified that she has known Respondent for approximately six years, since she had first been referred to Respondent by another chiropractor. Patient K testified that she has a history of back injuries and medical conditions exacerbated by her spinal injuries, and that since 1973, she has been treated by chiropractors in several different states and by several Maryland chiropractors. Patient K stated that when she selected Respondent, she was actively pursuing a "partnership rather than a subjectship." Patient K testified that she found Respondent to be extraordinarily knowledgeable and very patient in that he took the time to explain the purpose of a procedure, and that she eagerly has referred probably hundreds of individuals to his office. Patient K further testified that she appreciated Respondent's partnership approach to treatment and his "casual bedside manner." Patient K

²¹ Patient K, called by Respondent, had not been specifically identified or listed as "Patient K" or a patient witness in the proceedings. However, because Patient K's testimony identifies herself as one of Respondent's patients, the patient confidentiality principles that have been applied to the State's witnesses will apply this witness.

testified that she found Respondent's chiropractic care to be the most successful she has ever had. Tr. 755-60, 763.

Patient K further testified that she appreciated that Respondent never made her feel as if she always needed chiropractic care to maintain her wellness, but rather that she should seek care only when she felt she needed care. With respect to Respondent's bedside manner, Patient K testified that she appreciated his humanness, his good sense of humor, and his gentleness with all ages and personality types. Patient K further testified that, although she is a pretty open person, she has never found Respondent to be offensive in any way nor has she heard others complain about any aspect of Respondent's practice. Tr. 760-62.

Patient K further testified that twice she has invited and interviewed Respondent on her radio show and was impressed with Respondent's rapport with the radio audience. Patient K further stated that after Respondent was on her show, she referred callers to him and since has received many letters and calls thanking her for the referral and indicating that it made a difference in their lives. Tr. 763-77.

On cross-examination, Patient K testified that Respondent did not provide her with a formal treatment plan; rather, she was very knowledgeable about what type of treatment she needed, and she first visited Respondent to determine if he could provide that treatment. Patient K testified that "I'm not the average person and in terms of my plan what we decided was that if I felt that I needed care, to come." Patient K further testified that "I have always looked for a partnership and . . . not a subjectship. I don't believe that anybody in health care has the

province to tell a patient what they can or can't do, but to discuss the options." Tr. 767-69.

On continued cross-examination, Patient K testified that she has never heard Respondent ask the following of a female patient: (1) whether the patient was getting enough sex lately; (2) whether the patient had trouble opening her legs; and (3) whether the patient could scooch down like she was at "the other doctor's office." Patient K further testified that she has never heard Respondent ask the following of a male patient: (1) whether Respondent should tell the patient's wife that he was having trouble getting it up; and (2) whether the patient could put his face in the hole, and whether the patient's wife likes it like that. Patient K testified that although Respondent never slapped her on the buttocks to get her to turn over, she would not like it. Finally, Patient K testified that Respondent has tickled her feet once, when her daughter was with her and after Respondent asked her daughter whether Patient K was ticklish. Patient K testified that Respondent ran his finger up the arch of her foot. Tr. 770-71.

In response to questions from the Board, Patient K testified that traction was never part of her treatment by Respondent. Tr. 773.

2. Leslie Leader

Ms. Leader testified that she is Respondent's wife, and that they were married in August 1998. Ms. Leader stated that she has known Respondent since 1994. Ms. Leader testified that she met Patient A when Patient A first applied for the billing clerk position in Respondent's office in July 1997. Ms. Leader testified that she is an attorney, and prepared the Employment Agreement (RX 1A) for Respondent's and Patient A's signatures during the first week of Patient

A's employment. Ms. Leader testified that Respondent had a concern with Patient A because she was studying to become a chiropractor, and that Respondent wanted Patient A to be bound by a non-competition clause. Tr. 775-77.

Ms. Leader testified that after she and Respondent became engaged in April 1997, she spent a great deal of time in Respondent's office, for purposes of both working on their wedding plans and helping Respondent with billing and telephone coverage. Ms. Leader testified that she and Respondent discussed whether they would make their engagement public knowledge, and that she told him that she would feel uncomfortable if she were involved with patient billing and the patients knew she was Respondent's fiancé. Ms. Leader testified that she hoped Respondent would pass that on to the staff so that the patients would not find out that she was Respondent's fiancé until after the wedding. Ms. Leader testified that she previously worked for a law practice in which the attorney's wife was involved in similar work in her husband's office and kept her anonymity, and that Ms. Leader thought that it worked out well. Tr. 777-79.

Ms. Leader testified that she also prepared an Independent Practitioner Agreement (RX 1B), which Respondent provided to Patient A. Ms. Leader testified that Patient A suggested that she, Respondent, and Ms. Leader should meet and discuss the terms of the Agreement. Ms. Leader testified that she recalled that a meeting was held for this purpose on December 9, 1997, during which they discussed Patient A's concerns and objections to the compensation and restrictive covenant terms of the Agreement. Ms. Leader testified that she could not remain for the entire meeting, but that to her knowledge, Patient A did not sign the Agreement. Tr. 782-85.

Ms. Leader further testified that the Board's proceedings involving Respondent have been very difficult for him, and that they have imposed a tremendous emotional and financial strain. Tr. 790.

On cross-examination, Ms. Leader testified she served as Respondent's attorney during the Board's initial investigation in early February 1998, but that Respondent subsequently hired counsel to represent him during the Board's proceedings. Ms. Leader testified that she first became aware of the chain device during the investigation, when she accompanied Mr. Vallone in Respondent's office to retrieve the device. Ms. Leader further testified that she first became aware of Respondent's e-mail correspondence with Patient D during discussions between Respondent and his attorneys. Tr. 796-99.

On re-direct examination, Ms. Leader testified that she met Patient D during the Reisterstown Festival, where Respondent had set up a booth for his practice, in September of 1997. Ms. Leader testified that she and some of her family members visited Respondent's booth on the Sunday afternoon of the festival, where she found Patient D slumped in a chair looking upset and crying. Ms. Leader testified that Respondent was not present at that time but that Marsha Bromberg, who was present, told her that Patient D was upset because she had had a fight with her boyfriend. Ms. Leader testified that she believed Patient D was sitting there for approximately one hour. Tr. 801-04.

On re-cross examination, in response to the Administrative Prosecutor's question of whether Ms. Leader was aware that Respondent had invited Patient D to the Festival, Ms. Leader

testified that she was aware that Respondent invited all of his patients to stop by the booth at the Festival. Ms. Leader testified that she learned that Patient D was one of Respondent's patients because after she had witnessed Patient D sitting in the chair, she asked Marsha Bromberg who Patient D was. Tr. 804-05.

In response to questions from the Board, Ms. Leader testified that Respondent once had come home and told her something to the effect of they were invited to attend one of Patient D's bondage clubs. Tr. 805.

3. Mary Jane Chambers

Ms. Chambers testified that she has worked intermittently in Respondent's office as a chiropractic assistant for approximately five years, and that she has worked there consistently for the past two years. Ms. Chambers stated that she typically works a four-day week in the office, and that her assistant duties primarily consists of being present in the room and taking notes while Respondent treated patients. Tr. 808-10.

Ms. Chambers testified that she met Patient A while working in Respondent's office, but had limited contact with her. Ms. Chambers testified that she never personally observed Respondent engage in inappropriate behavior towards Patient A, nor was she aware at the time that Patient A had complaints about Respondent. Ms. Chambers further testified that she was aware that Patient A and Respondent possibly were involved in some type of partnership agreement, and recalled a meeting between Respondent and Patient A regarding the agreement. Tr. 810-11.

With respect to Patient B, Ms. Chambers testified that she recalled Patient B's last visit in Respondent's office. Ms. Chambers testified that she was present during the treatment and took notes indicating a rib adjustment on that date, which Ms. Chambers observed from a short distance. Ms. Chambers further testified that she did not recall any occurrence out of the ordinary during the treatment, nor did she recall Patient B making a complaint about Respondent touching her breast or touching her inappropriately during the treatment. Ms. Chambers testified that if she observed that Respondent had touched Patient B's breast, she would have spoken to him about it outside the presence of Patient B. Ms. Chambers testified that she considered touching a patient's breast to be grossly inappropriate. Tr. 811-14.

With respect to Patient D, Ms. Chambers testified that in her opinion, Patient D wore provocative clothing to her visits to Respondent's office and her demeanor "advertised" that she was heavily into "whips and chains" paraphernalia. Ms. Chambers stated that Patient D wore clothing, such as crop tops and miniskirts, that allowed body exposure during treatment due to body movements such as placing her arms above her head and lifting her legs. Ms. Chambers testified that Patient D exuded a crudeness that made her feel uncomfortable, so she normally requested Ms. Bromberg to assist Respondent during Patient D's visits. Ms. Chambers further testified that she recalled Respondent having concerns about Patient D's emotional state because she appeared to be extremely depressed and potentially considering suicide. Tr. 816-17.

Ms. Chambers further testified that she initially was not aware of the hanging device while she worked there, and that she never observed the device being utilized. Ms. Chambers

testified that once when she was cleaning Treatment Room No. 6, she opened one of the drawers and found the hanging device equipment in it. Ms. Chambers testified that Respondent explained that it was some form of therapy, but that she could not recall exactly what Respondent told her. Ms. Chambers testified that to her knowledge, it was not a form of treatment that Respondent regularly utilized. Tr. 818-19.

Ms. Chambers testified that she never witnessed Respondent making comments that she would consider inappropriate. Ms. Chambers testified that she never heard Respondent ask a patient if she had had enough sex lately. Ms. Chambers did recall comments to the effect of keeping the patient's legs together or the patient cannot keep her legs apart. Ms. Chambers testified that she believed that Respondent's comments were innocent and taken out of context, and that Respondent never made the comments with sexual innuendo or to a particular gender or age group. Ms. Chambers further testified that she never observed a patient become offended by a comment from Respondent. Ms. Chambers testified that with respect to Patient G and the incident in which Patient G alleged that Respondent tapped and smacked her buttocks, such actions are not typical of something Respondent would do. Tr. 819-22.

Ms. Chambers testified that within the last year, Respondent has not made any comments or jokes similar to those he previously made. Ms. Chambers further testified that in the last year, Respondent is never alone in the room with a patient. Tr. 824-25.

On cross-examination, Ms. Chambers testified that Respondent normally did not drape patients during treatment because the patients come in fully clothed. Ms. Chambers testified that

with respect to Patient D, Respondent would tell her that her body was “exposed” during treatment because of her clothing, but he did not drape her. Ms. Chambers testified that it was up to Patient D to adjust her clothing. Ms. Chambers further testified that Respondent’s relationship with Patient D was solely professional, and that there was no sexual or romantic content or flirting involved in the relationship. After being shown the photographs attached to the e-mails that Respondent sent to Patient D, Ms. Chambers testified that in her opinion, the photographs were of a sexual nature. Tr. 828-30.

Ms. Chambers further testified that she was not aware that Respondent had told Mr. Vallone that he typically taps a patient on the buttocks as a means of getting them to turn over when they are lying face down on the treatment table. Ms. Chambers testified that she was never in the room when Respondent did this. With respect to Patient B’s last treatment visit, Ms. Chambers testified that she could not say with certainty that she was present in the treatment room during Patient B’s entire treatment. Tr. 830-31. Ms. Chambers further testified that she observed that Respondent typically would tickle patients’ feet to relax them. Tr. 830-32.

On re-direct examination, Ms. Chambers testified that she has observed Respondent perform hundreds of treatments, and that in her opinion, an equally effective treatment can be performed with a patient either draped or fully clothed. Ms. Chambers further testified that her belief that it was the patient’s responsibility to be appropriately attired for examinations is based on common sense. Tr. 836-38.

In response to questions from the Board, Ms. Chambers testified that the only time a

patient is gowned is during the initial examination. Ms. Chambers further testified that when Patient D or other patients with a similar appearance came to Respondent's office, neither Respondent nor his staff treated them differently than they would have patients who were more formally dressed. Tr. 839-40.

4. Respondent Dr. Miller

a. Direct Examination

Respondent testified that he was licensed by the Board in December 1988, and has owned and operated his own chiropractic practice since 1991. Tr. 855-56. With respect to inappropriate comments and jokes testified to by other patient witnesses, Respondent acknowledged making the remarks, but noted that some of them were misquoted by the patients. Respondent testified that he attempted to joke with patients in order to relax and motivate them. Respondent testified that when he would examine the sacroiliac joint motion of a patient, which would require the patient to lift his or her leg, he may have said "Does your family know that you can't get it up?" Respondent stated that the purpose of the remark was to motivate the patient to raise his or her leg. However, Respondent denied ever asking a patient "Have you had enough sex lately?" and testified that the only question he would ask along this vein was if a female patient were pregnant prior to taking X-rays. Respondent further testified that he tickled patients' feet to get their attention or to relax them, and that at the time he did not believe that it was inappropriate. Respondent testified that he had the impression that most patients responded to his comments by becoming more relaxed and comfortable in his office. Respondent testified that he never

intended to invade a patient's privacy or make a sexual proposition to any patient. Respondent testified that in retrospect, since taking classes in sensitivity, ethics, and boundaries, he has a much better understanding of these issues and has deleted these comments and actions from his protocol. Tr. 868-70, 923-24.

Respondent testified that, although in his opinion the standard of chiropractic practice did not require the use of chaperones, he used them because they improved the quality and flow of treatment he provided to patients. Respondent further testified that he customarily invited a patient's "significant other" into the treatment room at the patient's request, and that it improved patients' compliance with home recommendations. Tr. 871-72.

Regarding Patient G, Respondent acknowledged tapping her on the buttocks to get her to turn over on the treatment table. Respondent testified that Patient G did advise him that she did not appreciate being touched on the buttocks, but that Respondent had forgotten her comment. Respondent testified that the second time he touched her buttocks, Patient G made it very clear that she was upset, and that Respondent "apologized profusely." Respondent testified that he "was devastated" by Patient G's reaction and very upset. Respondent testified that he generally touched patients to give direction and orders during treatment, but that there was nothing sexual intended by the touching. Tr. 873-75.

With respect to the hanging device, Respondent testified that he purchased the equipment from a physical therapy catalog in the 1994-95 time frame, based on his discussions with several patients who said that they used something similar at home or in the gym. Respondent testified

that he used the device on himself approximately once per week or once every two weeks. Respondent stated that he initially intended to stretch his lower back, but after using it, he noticed that the device helped stretch the muscles around his shoulder blades. Respondent testified that out of the approximately 2300 patients he has treated since 1991, he has used the device on less than a dozen patients. Respondent further testified that approximately half of the patients who used the device were male. Respondent stated that patients were never billed for using the device. Respondent further stated that the contraindications to using the device were torn rotator cuffs, and a fracture and dislocation of the arm or elbow. Respondent testified that based on RX 5A through 5I (containing literature addressing the use of gravitational suspended traction), and his experience, education, and training, it is his opinion that the use of the hanging device is not a deviation from the standard of chiropractic care. Tr. 891-97.

With respect to Patient B, Respondent denied ever grabbing her breast or laying a hand on her breast. Respondent stated that he may have come over the edge of her left breast during a rib adjustment. Respondent testified that he performed a rib adjustment during Patient B's last visit, and that Patient B did not say anything to him about touching her breast at the time, nor did she prematurely terminate the treatment session. Respondent testified that he first became aware of the allegation after Ms. Bromberg informed him a few days later that Patient B told her that she was not returning to Respondent for treatment. Tr. 898-901.

Regarding Patient H, Respondent testified that he found that she had a leg length discrepancy which could result in pinched neck nerves. Respondent further testified that in his

opinion, Patient H's leg length discrepancy would impact a subsequent pregnancy of Patient H's, namely that there is a greater risk of developing dramatically increased back pain at pregnancy. Respondent testified that he did not have an independent recollection of discussing these issues with Patient H. Respondent further testified that he specifically did not recall calling Patient H at home during the evening after her first visit, but believed Patient H's testimony that he did. Respondent testified that his long-standing regular practice, as a matter of good management taught to him in chiropractic school, was to call patients at home during the night after their first visits to follow up and see if they felt comfortable. Respondent testified that no other patient has ever suggested that the follow-up call was inappropriate, and that he does not consider this practice to be inappropriate. Tr. 901-06.

With respect to Patient A and the paycheck incident, Respondent acknowledged that he said to her, "I have your paycheck here. I'd rather put it in your hand, but -- if you don't take it, I'll stick it in your pants, but I'd rather put it in your hand." Respondent testified that he made the comment while Patient A was working as his billing clerk, and that he was standing near her, observing her work and intending to hand her her paycheck, but that she was purposely ignoring him for approximately ten minutes. Respondent testified that he was annoyed at the time he made the comment to Patient A, but that there was no sexual interest or innuendo involved in the comment. Tr. 917-19. Respondent further described the Logan Basic technique as a type of adjustment that is performed by placing the thumb on the sacrotuberous ligament that is attached to bones that a person sits on. Respondent testified that Patient A's treatment notes indicate that

he performed a Logan Basic on her during her last treatment by him. Tr. 923-24.

Respondent further testified that Patient A initially raised the possibility of her staying in his practice after she became licensed in Maryland. Respondent stated that he and Patient A engaged in discussions regarding an arrangement on December 9, 1997. Respondent testified that after those discussions, Patient A never returned to work in his office. Tr. 919-21.

Regarding Patient D, Respondent testified that he sent her pictures via e-mail to show her pictures of roughly what he wanted to purchase. Respondent testified that Patient D e-mailed pictures to him as well, and that her e-mail message preceded any message from Respondent to Patient D.²² Respondent testified that he and Patient D began e-mail correspondence near the end of October 1997. Respondent further testified that in January 1998, he inadvertently downloaded a virus into his computer, which attaches itself to outgoing e-mail messages. Respondent testified that he subsequently sent Patient D a message advising her to erase the message that he sent to her. Respondent testified that his entire version of Netscape, which included his outgoing e-mail messages, subsequently was erased from his computer as a result of the virus. Tr. 910-11.

Respondent further testified he had a "multilevel relationship" with Patient D, which consisted of a doctor-patient relationship and a friend relationship that included Patient D advising him how to run his computer and Patient D advertising the goods that she produced.

²² Respondent's counsel attempted to introduce RX 10 and proffer that it is an e-mail sent from Patient D to Respondent with attachments consisting of pictures of a clothed woman wearing what appears to be leather ankle, wrist, and neck bands or cuffs. The Board noted that the first page of the exhibit is already included in a separate State's Exhibit (SX 5A-1 at Bates 000433). However, because Respondent could not verify that the pictures actually were attached to the e-mail message when it was sent, the Board excluded RX 10.

Respondent testified that Patient D invited him to her home to view some of the goods, which included wrist restraints and various types of whips, and that Patient D demonstrated the use of whips to attach ankle and wrist restraints to a bed frame. Respondent testified that he issued a blanket invitation to his patients to stop by his booth at the Reisterstown Festival. Respondent further stated that Patient D invited him and Ms. Leader to a bondage club to which she belonged, but that they did not go. Respondent testified that in retrospect, his relationship with Patient D is a professional boundary issue. Respondent stated his belief that Patient D considered him not only a doctor, but a friend and confidante. Respondent further stated his surprise at Patient D's testimony that described him as abrasive and antagonistic. Tr. 911-13.

Regarding what Respondent described as a "multilevel relationship" with Patient D, Respondent testified that he viewed Patient D as a "very complicated puzzle" and a "challenging patient that took a lot of thought processes to figure out what was going on." Respondent further stated that Patient D would bring him books on computer programs, tell him about her paraphernalia business, and that she got him interested in buying some of her products. Respondent testified that he believes that the relationship was inappropriate because it confuses a patient into thinking of him as a friend or client, which then affects the patient's ability to understand his or her treatment plan. Respondent testified that he gained an understanding of this belief after he took classes in ethics, boundaries, and sensitivity. Respondent further testified that he believed, in hindsight, that his e-mail correspondence with Patient D was inappropriate, and that doing business with a patient is inappropriate. Tr. 915-17.

In describing actions he has taken to satisfy the requirements imposed by the Board since the initiation of the proceedings, Respondent stated that he attended a sexual sensitivity class and that "he learned a lot about the kinds of baggage, their term, that people carry around that you may not -- that the clinician may not realize and the ramifications of their actions that may, on the surface, appear to be totally innocent and how they can affect a patient who has other situations in their history." Respondent further stated that he took a 15-week course in ethics, and wrote a 45-page paper entitled "ethical Issues in Chiropractic Licensing," and continues psychiatric counseling. Respondent testified that in his opinion, he can now practice chiropractic safely because he is "like a reformed smoker" in that he has a heightened awareness that others may mistakenly perceive comments or innuendoes, and that even the inference of something can be mistaken by either someone else or himself. Respondent testified that he feels remorse and feels badly for affecting others in a way that contradicts the core of his being. Tr. 924-28.

b. Cross Examination

On cross examination, Respondent testified that he ordered the hanging device equipment from a physical therapy catalog, but could not recall the catalog. Respondent further denied that he kept the device hidden, but admitted that the device had to be removed by using a stick to remove a ceiling tile or piece of cardboard before pulling it down. Tr. 952-53, 961-62.

Respondent further testified that it was his practice that if a patient verbalized that his jokes made them uncomfortable during the initial examination, a note was made at the top of the patient's chart indicating that the patient preferred that no jokes be made during treatment. Tr.

956. With respect to Patient J, Respondent testified that his lack of sensitivity to the fact that Patient J was claustrophobic and a past rape victim²³ hindered him from recognizing that using the device would trigger claustrophobia. Tr. 959-60.

c. Board Examination

In response to questions from the Board, Respondent testified that the function of the hanging device was to stretch the body in long axis. Respondent further described the position of a patient using the device when the feet were involved as the front of ankles would be resting across a chair or stool and the knees would be bent, and the feet would be strapped to the stool. Respondent testified that there would be no cuffs on the ankles, but just a strap across a chair to keep the feet from freely swinging. Tr. 978-83. In response to a Board question indicating a discrepancy between this testimony and that of Patient J stating that her feet were bound behind her and tied to a continuous chain that ran up to the ceiling, Respondent stated that he did not think that she could see what actually was being done. Respondent further testified that he did not learn to use the device while in chiropractic school, but that he saw a picture of the device in one of his texts. Tr. 996-1000. Respondent testified that he conducted the search for the literature contained in RX 5A through 5I after the Board began its investigation, and therefore Respondent did not have possession of this research when he purchased the hanging device equipment. Tr. 1021-22.

²³ See SX 6 at Bates 000498 (3/12/98 Janofsky Report) (“[Respondent] stated that he knew the complainant [Patient J] was a rape victim and was claustrophobic. He denied tying her legs together with a black strap but did note that she used the chain device.”).

With respect to Patient G, Respondent testified that he did not specifically recall the events surrounding her final treatment, but that he thought he recalled that Patient G's son was in the treatment room. Respondent testified that he did not recall saying to Patient G's son, "Want to see me piss your mother off?" Tr. 1020-21.

Regarding the computer virus that Respondent testified contaminated his computer in January 1998 and the subsequent e-mail message he sent to Patient D advising her to erase all e-mail he sent to her, Respondent admitted that the print-out of the message indicates a date of February 7, 1998, one day after the Board's Investigator conducted an interview of Respondent regarding complaints received by the Board. Respondent testified that he could not recall with certainty whether he sent the e-mail message before or after his interview with Mr. Vallone. Respondent denied sending the e-mail for the purpose of destroying evidence that could be used against him in the Board's proceedings. Tr. 1003-05.

Respondent further testified that he did not consider the hanging device to be a form of bondage, and that he did not consider the picture on Bates 000453 to constitute a type of therapy. Respondent acknowledged, however, that the visual image in Bates 000453 of a naked woman hanging by her arms from two chains is similar to the visual image of the patients hanging from the device in his office, although the patients were fully dressed. Respondent further stated that the difference between classifying the hanging device as bondage versus therapeutic depended on the situation in which the device is being used. Tr. 1015-18.

When asked to explain his statement to Dr. Janofsky that he considered some of his

patients to be “freakish and needy,” Respondent stated that he described these patients as those he spent an inordinate amount of time with but to whom he was not sexually attracted or interested. Respondent stated that he considered these patients to be “fringe-type” people that he would never run into in the real world and that he found their “wildly different lifestyles” to be intriguing. Respondent testified that he found these patients to be more of a challenge and more interesting to spend time with. Tr. 983-85. Respondent further testified that he would consider some of the patients who testified at the hearing to be freakish and needy, such as Patient D. Respondent considered Patient D’s tattoos to be “freaky.” Respondent stated that there were some patients who were more needy than others, but that he treated them all equally. Respondent further testified that patients do not carry the responsibility of maintaining proper boundaries, and that he does not believe that it was these patients’ fault that he crossed professional boundaries. Respondent testified that he crossed professional boundary lines because he did not recognize them at the time, but that he recognizes them now. Tr. 1009-15.

Respondent further testified that he has gained a lot from the sensitivity and boundary courses, and that he now realizes how much he believes chiropractors lose sight of personal space because they are used to touching other people and invading personal space. Respondent testified that he is not claiming innocence and that he acknowledges that he did some extreme things. However, Respondent testified that he hired quite a few “rent-a-docs” during the period when his license was suspended and recognized in retrospect that every one of them did something that they should not have done. Respondent testified that “I happen to be the one

unlucky enough to get caught. If you get caught speeding . . . the argument that everybody speeds is not a good excuse.” Tr. 989-91.

d. Further Cross Examination.

In response to questions from the Administrative Prosecutor, Respondent testified that a patient’s emotional state affects physical health, and therefore at times it is appropriate for him to know the details of an emotional event to understand physical symptoms or complaints, “[u]nless the patient is trying to use that to draw the physician into their tangled web of emotional things that are going on in their private lifestyle.” Respondent testified that it is difficult at times to maintain the line between emotional and physical problems. Respondent further testified that if a patient’s emotional problems are taking up too much time, Respondent would refer the patient to a psychologist or mental health therapist. However, Respondent stated that he did not document such referrals because he did not feel comfortable putting that into the patient’s records for fear of disclosing to third parties and creating more problems for the patients. Tr. 1036-39.

In further describing the position of a patient using the device when the feet were involved, Respondent testified that the patient’s legs would be bent and held back behind the patient by resting the knees, with partial body weight on the kness, on a treatment table to which the ankles would be bound using a velcro strap across the ankles. Tr. 1026-36.

e. Further Re-Direct Examination.

In response to a questions from his counsel Respondent testified that the long piece of

velcro strap that he referred to secure the patient's ankles in the hanging device was not turned over to the Board Investigator.

III. FINDINGS OF FACT

Based on the foregoing evidence, the Board finds the following facts by a preponderance of the evidence:

1. At all times relevant to the Board's charges, Respondent was licensed to practice chiropractic with privileges to practice physical therapy in Maryland. The Board first issued a license to Respondent on December 2, 1988. Respondent has owned and operated Miller Chiropractic practice since 1991.
2. Since at least October 1994, Respondent engaged in a pattern of sexual misconduct with patients and staff. This conduct largely consisted of verbal comments and exchanges of a sexual nature.
3. Since at least October 1994, Respondent engaged in a pattern of professional boundary violations with patients and staff. This conduct included behavior that exploited these individuals' vulnerabilities that existed by virtue of the doctor-patient and employer-employee relationships. This conduct further included invading the privacy of these individuals.
4. Respondent engaged in the aforementioned misconduct with patients and staff regardless of whether another individual, such as a staff chaperone, was present.
5. Respondent made comments of a sexual nature to all patients regardless of age or gender, except children.
6. As a result of Respondent's pattern of conduct, some of Respondent's patients terminated treatment by Respondent, or decreased the frequency of visits to Respondent, despite the number of treatments per week recommended by Respondent.
7. As a result of Respondent's pattern of conduct, at least three of Respondent's employees terminated their employment at Respondent's office. In addition, staff members met with Respondent on more than one occasion to discuss his conduct and to advise him of their

opinion that neither they nor his patients appreciated his conduct. After each discussion, Respondent would apologize and immediately refrain from such conduct, but inevitably would relapse into engaging in such conduct after a short period of time.

8. Respondent maintained dual relationships with patients and staff members.
9. Since 1994 or 1995, Respondent has maintained a "hanging device" in a treatment room in his office. The device equipment consists of a metal chain that hangs down from a ceiling beam behind a ceiling tile, a pair of leather wrists cuffs and a pair of leather ankle cuffs which attach to the metal chain. A person is not aware that the device exists unless Respondent uses a wooden stick to move aside a ceiling tile and pulls the chain down. The leather cuffs were maintained in a drawer in the treatment room. The equipment does not include a black velcro strap.
10. On at least seven occasions, Respondent encouraged and/or assisted patients and staff in the use of the hanging device, in which the individuals would attach the wrist cuffs to the metal chain and hang from the ceiling with their arms overhead. Respondent told patients and staff that the device is used to stretch the trapezius muscles of the back. Respondent encouraged and assisted two of these individuals to use the ankle cuffs while hanging from the device, in which the patients' feet were pulled back behind them and hooked to the chain hanging from the ceiling. Respondent represented to these individuals that this position would stretch the quadriceps muscles of their legs.
11. During the use of the device, both Respondent and the individual would be fully clothed. Each individual expressed discomfort after using the device for only a few seconds. Some individuals, especially those who used the ankle cuffs, did not believe that they were in a position to extricate themselves from the device without Respondent's assistance. Other individuals, who did not use ankle cuffs, believed that they could get down from the device independently, by guiding their feet towards a nearby stool and standing on it. Respondent permitted each individual who expressed discomfort to get down from the device immediately.
12. The hanging device is not a valid form of chiropractic treatment, and does not fall within the standard of care for chiropractic practice. The device is not a recognized method of traction in traditional chiropractic education or in chiropractic literature.
13. The use of the device does not result in the stretching of the trapezius muscles in the manner and extent represented by Respondent to patients and staff. In addition, the effect

of using the device with the feet pulled back behind the individual is to put the lumbar facet joints in extension, which results in compression in the facet joints. This effect has no therapeutic value, and is contraindicated by an existing hyperlordotic spine. In addition, using the device with the feet pulled back behind the individual is contraindicated by knee problems.

14. Respondent gained sexual gratification from observing patients and staff using the hanging device. The visual images of Respondent's patients and staff who hung by their arms from the hanging device were similar to the visual images of the photographs of nude and/or scantily clothed women that Respondent sent to Patient D via e-mail. It was not necessary for Respondent's patients or staff to be undressed in order for Respondent to gain sexual gratification from the visual image of them hanging by their arms from the device.
15. Because the hanging device served no therapeutic purpose, Respondent represented the device as a legitimate form of treatment, and Respondent gained sexual gratification from observing patients using the device, Respondent engaged in a pattern of therapeutic deception.

A. Patient-Specific Findings

Patient A

16. Patient A graduated from chiropractic school in May 1997 and received her license to practice chiropractic in Maryland on December 7, 1997.
17. Patient A was employed as a billing clerk in Respondent's office between July 29, 1997 and December 1997. During this period, Patient A also received chiropractic treatment from Respondent. Although the record does not indicate Patient A's age during this period, based on the Board's observance of Patient A during her testimony, it appears that Patient A was well under the age of forty during this period.
18. Respondent maintained a dual relationship with Patient A, which consisted of an employer-employee relationship and a doctor-patient relationship.
19. Respondent introduced the hanging device to Patient A and encouraged her to use it. Patient A had never seen the device or something similar to it during her chiropractic

education. Respondent represented to her that he used the device on himself, other patients, and Employee 1, and that the device is used to stretch the trapezius muscles.

20. Patient A hung by her wrists from the device on at least three occasions. On at least one occasion, Respondent bound Patient A's feet behind her and hooked them to the chain hanging from the ceiling. While Patient A was hanging in this position, Respondent massaged her back.
21. Patient A and Respondent both were fully dressed during Patient A's use of the hanging device. Respondent assisted Patient A from the device after she told him that she was uncomfortable.
22. Respondent's encouragement of Patient A to use the hanging device to stretch her trapezius muscles constitutes therapeutic deception.
23. Respondent engaged in conduct with Patient A constituting boundary violations and invasion of Patient A's privacy, including such incidents as:
 - a. before Respondent handed Patient A her paycheck, and while he, Patient A, and Ms. Bromberg were together in the office, Respondent stated, "I better hand you your check instead of sticking it down your pants."
 - b. during Patient A's use of the hanging device when her feet were bound, and after Patient A had told Respondent that she felt very vulnerable while using the device, Respondent stated, "You're cute, but not that cute."
24. Before leaving Respondent's employment in December 1997, Patient A told him that she thought his conduct towards her was inappropriate. Respondent responded by telling Patient A that she was not his type.
25. In January 1998, Patient A filed a written complaint with the Board outlining Respondent's conduct.

Patient B

26. Patient B is a female and was 27 years of age when she received chiropractic treatment from Respondent during December 1997.

27. Respondent engaged in sexual misconduct with Patient B, consisting of making comments of a sexual nature, such as:
 - a. asking Patient B on multiple occasions whether she was “getting enough sex lately”;
 - b. after asking Patient B to open her legs for purposes of using an activator on her ankles, commenting that “I see you’re having trouble keeping your legs together”;
28. During Respondent’s last treatment of Patient B, Respondent used an activator, guided by his fingers, down the center of Patient B’s breast. The use of an activator down the center of a patient’s breast is of no therapeutic value. Therefore, Respondent engaged in therapeutic deception with Patient B.
29. Patient B terminated her treatment by Respondent because of his misconduct, even though she was beginning to feel better.

Patient C

30. Patient C is a female and was 21 to 25 years of age when she received chiropractic treatment from Respondent between 1991 and 1995.
31. Patient C’s mother, Employee 1, worked in Respondent’s office during the period of Patient C’s treatment by Respondent.
32. After Patient C’s initial examination in 1991, Respondent told her that she needed a series of adjustments and frequent treatments because of a slight curvature of her spine. Respondent further advised her that although she did not suffer back pain, treatments would help improve her body functions, such as digestion. Patient C continued treatment for preventive purposes.
33. Throughout Patient C’s treatment, Respondent engaged in a pattern of inappropriate behavior constituting sexual misconduct, boundary violations, and invasion of privacy, including:
 - a. commenting on her flexibility and that her fiancé must be really happy that she was so flexible;

- b. commenting that she was beautiful;
 - c. pulling off her socks, tickling her feet, and stating "maybe I should just tie you up...Well, how am I going to explain the rope burns?";
 - d. commenting that "If I were younger and you were older, I wouldn't be able to do this examination";
 - e. after conducting strength tests on Patient C's legs and determining that she could push her legs together more easily than pushing them apart, commenting that "your sex life must be suffering";
 - f. after finishing the examination, pulling her up off the table and hugging her in her gown, telling her that she gave "the best hugs" and asking for another hug and hugging her again.
34. When Respondent tickled Patient C's feet, he did not do so for any therapeutic purpose.
35. Patient C's last visit to Respondent was on October 25, 1995. On that day, subsequent to a visit with Respondent earlier in the day, she experienced a tingling in her leg and called Respondent with her concerns. Respondent told her to come back in to the office that evening. When she arrived, no one other than Respondent was in the office. Respondent told her to undress in the treatment room and put on a green paper gown, and to crack the door open when she was done. Respondent left the treatment room and closed the door, but walked into the room approximately one minute later, without knocking, to find Patient C still undressed. When Patient C tried to cover herself up, Respondent stated, "Don't worry, I won't rip your clothes off today," and left the room. When Respondent returned, Patient C was dressed in the gown.

Patient D

36. Patient D is a female and was 37-38 years of age when she received chiropractic treatment from Respondent from December 1996 to December 1997.
37. Patient D operated a mail-order business for the sale of adult paraphernalia, including whips and leather apparel. Patient D advised Respondent of her business during her visits to Respondent's office, and brought in a catalog of her goods at the request of

Respondent's staff. At some point during Patient D's treatments by Respondent, Respondent informed her of his interest in bondage.

38. In November 1997, Respondent advised Patient D that she may have other medical problems such as lupus, arthritis, and M.S. Patient D terminated her treatment with Respondent in December 1997 because she believed Respondent was advising her of possible medical problems that he was not qualified to diagnose. Respondent did not conduct tests, which fall within the scope of chiropractic practice, that would provide Respondent with a basis for his opinions. Respondent did not document whether he made an appropriate referral to a neurologist or other practitioner.
39. Throughout Respondent's treatment of Patient D, Respondent made inappropriate comments and engaged in inappropriate conversations with Patient D, including:
 - a. commenting to Patient D that "You have the perfect size breasts";
 - b. informing Patient D and her fiancé that he performed oral sex on a female on the inversion table and that she had an "incredible" orgasm, and describing how the woman looked on the table;
 - c. commenting to Patient D that "You are an average man's wet dream."²⁴
40. Patient D maintained two different e-mail addresses, one she designated for business and one that she characterized as private. At some point during Patient D's treatment, Respondent became aware of Patient D's e-mail addresses.
41. On at least four occasions between September and November 1997, Respondent sent e-mail messages to Patient D's private address, with attached electronic photographs of nude women bound with adult paraphernalia. The text of Respondent's messages requested price quotes on paraphernalia, and included comments such as "I think this is a sensuous use of rope" and "Yes, I really do care." Patient D responded to the last of these messages by emphatically requesting Respondent to leave her alone and to stop sending pictures to her. Respondent subsequently did not send similar e-mail messages to her.

²⁴ The Board bases this finding on Respondent's admission to this statement during the Board Investigator's February 6, 1998 interview of Respondent. See SX 5D at Bates 000475 ("I did make the statement "You are an average man's wet dream" to [Patient D]. I told her that because she brought in cuffs and whips to the office. She changed the relationship.").

42. On February 7, 1998, one day after the Board's Investigator interviewed Respondent regarding the allegations that initiated these proceedings, Respondent sent an e-mail message to Patient D. The message stated that his computer had contacted a virus which may have been transmitted through previous e-mail messages. The message strongly urged Patient D to erase all e-mail received from him and not to print out his messages.
43. Respondent's computer contacted a virus in January 1998, two months after the last of Respondent's initial set of e-mail messages to Patient D. Respondent could not have transmitted this computer virus to Patient D through his initial set of messages.
44. At some point during Patient D's treatment, Respondent went to Patient D's apartment to survey the adult paraphernalia products that she sold.
45. Respondent engaged in a pattern of sexual misconduct and boundary violations with Patient D. Respondent believed that this conduct was permissible because of Patient D's manner of dress, the nature of her business, and the topics she was willing to discuss with him. Respondent's staff also believed that Patient D either invited Respondent's conduct or was solely responsible for stopping such conduct.
46. Respondent maintained an inappropriate dual relationship with Patient D, consisting of a doctor-patient relationship, and a personal and/or business relationship.
47. Respondent considered Patient D to be an emotionally needy person and thus a "challenge." Despite this, Respondent disregarded the emotional needs of Patient D by informing her of potentially fatal medical conditions without conducting and documenting appropriate tests or referrals that would form the basis of those opinions.
48. After the Board initiated its investigations into the allegations that led to these proceedings, Respondent attempted to dupe Patient D into destroying evidence relevant to these proceedings, namely, the set of e-mail messages and photographs that Respondent sent to Patient D between September and November 1997.

Patient E

49. Patient E is a female and was 23 years of age when she received chiropractic treatment from Respondent between November 1997 and January 1998.

50. After Patient E noticed and inquired about the hanging device that she saw in Respondent's office, Respondent represented to her that it was an alignment mechanism that used a person's weight to achieve alignment. Patient E then used the device once by hanging from her wrists with her feet free, for approximately two minutes. Patient E stopped because the device was uncomfortable.
51. During her use of the device, Patient E could step on and off of a nearby stool. However, she could not free her wrists from the device while she was hanging from it. Both Respondent and Patient E were fully dressed during her use of the device.
52. Patient E gained emotional solace from her visits to Respondent's office. Patient E believed that she was at an emotionally low point in her life because she worked in what she characterized as a quasi-abusive environment. Respondent occasionally would hug Patient E when she was emotional.

Patient G

53. Patient G is a female and was 41 years of age when she received chiropractic treatment from Respondent between May and August 1996.
54. During Patient G's first visit, Respondent put his arm around her and assured her that his office was going to take good care of her. Patient G requested Respondent not to put his arm around her again because it made her uncomfortable, tense, and nervous.
55. During another visit, when Patient G was lying face down on a treatment table, Respondent patted her on the buttocks to signal to her to turn over. Patient G then asked Respondent not to touch her on the buttocks again.
56. During a subsequent visit, when Patient G's ten-year-old son was present in the treatment room, Respondent asked Patient G's son, "Want to see me piss your mother off?" and patted Patient G on the buttocks. When Patient G immediately got up to leave, Respondent put his arm around her and told her that he was only kidding. Patient G told Respondent to take his hands off of her, and left with her son. Respondent began apologizing to Patient G only after Patient G began to leave.
57. Based on the aforementioned conduct, Respondent engaged in boundary violations and invasion of privacy with Patient G. In addition, Respondent engaged in sexual misconduct with Patient G, consisting of the following comments of a sexual nature:

- a. when Respondent offered to adjust Patient G's pelvic area during one of her treatments, Respondent stated that it would alleviate menstrual cramps and help with Pre-Menstrual Syndrome, and "wouldn't her husband be real happy about that?";
 - b. during one of Patient G's treatments, Respondent told her that he was "going to make [her] a loose woman, which [her] husband would really like."
58. During her visits to Respondent's office, Patient G overheard Respondent making comments of a sexual nature to other patients, such as remarking to male patients about "not being able to get it up anymore."

Patient H

59. Patient H is a female and was 22 years of age when she received chiropractic treatment from Respondent between November and December 1996.
60. During Patient H's initial examination, which included X-rays, Respondent advised her that one of her legs was shorter than the other. Respondent advised her that as a result, she would experience difficulty during childbirth. Respondent did not restrict his opinion to be based solely on projected back pain during pregnancy. The discussion made Patient H very upset.
61. Respondent committed boundary violations when he engaged in an inappropriate discussion with Patient H about her and another patient, in which he commented about the attractiveness of the other patient and her youthful attitude, and about Patient H's above-average level of maturity.
62. During her visits to Respondent's office, Patient H overheard Respondent making comments of a sexual nature to other patients, including:
- a. when another female patient was lying on a roller bed, Respondent told her to "scooch down like you're in the other doctor's office, ha ha.";
 - b. asking patients whether they were getting enough sex lately.
63. Patient H sought treatment from Respondent as a result of an automobile accident. Patient H's total treatment by Respondent consisted of five visits. Patient H first began

treatment three times per week, but began cancelling appointments because she felt uncomfortable with Respondent's inappropriate behavior, even though she continued to experience back pain. Patient H ultimately sent a written complaint to the Board regarding this behavior.

Patient I

64. Patient I is a female and was 22-23 years of age when she received chiropractic treatment from Respondent between September 1996 and September 1997.
65. Patient I's mother, Employee 2, worked in Respondent's office during the period of Patient I's treatment.
66. Respondent engaged in sexual misconduct with Patient I, consisting of the following incidents and discussions:
 - a. when Patient I was having trouble removing her bracelet to receive a paraffin treatment, Respondent asked if he could help and then remarked that he would love to undress her;
 - b. Respondent repeatedly asked Patient I about her sexual activities with her boyfriend;
 - c. when Respondent asked Patient I to turn over during one of her treatments, Respondent asked her if she "liked it that way."
 - d. Respondent tickled Patient I's feet on several occasions with his fingers and did not explain its purpose.
67. When Respondent tickled Patient I's feet, he did not do so for any therapeutic purpose.
68. Patient I sought treatment from Respondent for chronic back pain resulting from significant neck and back injuries and problems. Despite Respondent's misconduct, Patient I continued treatment because she received significant discounts as a result of her mother's employment in the office, and because his treatments helped her physical problems.

Patient J

69. Patient J is a female and worked in Respondent's office as a billing clerk and chiropractic assistant between October 1994 and June 1997. Patient J also received chiropractic treatment from Respondent during this period. Although the record does not indicate Patient J's age during this period, based on the Board's observance of Patient J during her testimony, it appears that Patient J was well under the age of forty during this period.
70. Respondent maintained a dual relationship with Patient J, which consisted of an employer-employee relationship and a doctor-patient relationship.
71. Respondent introduced the hanging device to Patient J and encouraged her to use it to stretch out her shoulder and back muscles. Patient J utilized the device approximately two to three times. On at least one of these occasions, Respondent bound Patient J's feet behind her and hooked them to the chain hanging from the ceiling.
72. Patient J utilized the device upon Respondent's recommendation, despite claustrophobia and her tendency to panic. Respondent encouraged Patient J to use the device despite his knowledge that Patient was claustrophobic and a rape victim.
73. Patient J and Respondent both were fully dressed during Patient J's use of the hanging device. Respondent assisted Patient J from the device after she told him that her wrists were in pain and/or that she was uncomfortable.
74. Respondent's encouragement of Patient J to use the hanging device to stretch her trapezius muscles constitutes therapeutic deception.
75. Respondent engaged in sexual misconduct with Patient J, consisting of making comments to her of a sexual nature. Patient J repeatedly advised Respondent that she did not appreciate his comments, after which Respondent would apologize.
76. During her employment in Respondent's office, Patient J repeatedly advised Respondent that she believed his comments and jokes made patient uncomfortable, and were unprofessional. Respondent subsequently would apologize and promise to cease, but would relapse within a week or so.

IV. OPINION

A. Factual Evidence

The weight of the evidence adduced at the hearing demonstrates that, for the most part, Respondent made the statements and engaged in the conduct that has been alleged by his patients and staff and contained in the Charging Document. With respect to Patients B, C, E, H, I, and J, Ms. Bromberg, and Employee 2, the Board finds their testimony to be wholly credible. With respect to Patients A, D, and G, and Employee 1, the Board finds to be credible only the testimony regarding Respondent's conduct that was corroborated by other individuals. With respect to Respondent's suggestion throughout the hearing that the credibility of the patients' and staff's prior statements and testimony were compromised because most of them had contact with Patient A and/or Employee 1 regarding their complaints, the Board finds no merit in this suggestion. The Board finds nothing in the record to support collusion among these patients, and in fact perceives Patient A and/or Employee 1 as providing a means of getting their complaints heard before the Board.

With respect to Patient A, the Board finds that she failed to clarify with Respondent her relationship with him regarding whether she intended to join his practice or start up her own in late 1997. Respondent's counsel's demonstration of Patient A's ambiguous motivations regarding Respondent and the proceedings before this Board successfully clouded Patient A's credibility regarding her uncorroborated and/or contradicted statements and testimony. In

addition, the Board finds that some of Patient A's allegations were, at worst, mischaracterized and misrepresented or, at best, exaggerated for purposes of this proceeding. For example, both Patient A and Respondent have stated that Respondent performed massage on Patient A on several occasions, which included an incident in which Patient A allowed Respondent to unhook her bra strap. However, the Board finds Patient A's testimony that Respondent "insisted" on performing massage on her to be mischaracterized or exaggerated in light of the several occasions on which these incidents occurred. With respect to Patient A's allegation that Respondent massaged her buttocks without her permission, the Board finds that Respondent most likely performed a Logan Basic technique on Patient A. The Board's finding is further buttressed by Patient A's inconsistent testimony regarding the Logan Basic technique. Patient A's testimony ranged from denying any knowledge of or exposure to the technique, Tr. 419-20, to acknowledging that the technique involved touching a ligament in the buttocks and that Respondent most likely performed the technique on her. Tr. 451-52. However, the Board finds that these deficiencies do not detract from the fundamental misconduct Respondent engaged in with Patient A, and therefore are largely irrelevant to the focus of the Board's inquiry.

With respect to Patient D, the Board recognizes that it did not have the opportunity to observe Patient D's physical demeanor during her testimony because she testified by telephone, but it did have the full opportunity to listen to Patient D's responses and voice inflection, directly question her, and evaluate her credibility. Based on the corroborated testimony and statements

by other witnesses, including admissions by Respondent, the Board finds that most of the allegations of misconduct regarding Patient D to be true. The Board further finds Respondent's conduct towards Patient D to be the clearest and most egregious manifestation of Respondent's inability to recognize and maintain professional boundaries.

The Board does, however, recognize that some of Patient D's testimony could be inferred as internally inconsistent or exaggerated for purposes of this proceeding. For example, Patient D testified that she "could not stand" Respondent's personality and found him to be offensive, but subsequently exchanged e-mail correspondence with him, accepted his invitation to the Reisterstown Festival, and invited Respondent and his then-fiance to her apartment to view the adult paraphernalia that she sold. In addition, Patient D first characterized her products as leather armory used in medieval Renaissance re-enactments, but then testified that she invited Respondent to view her products after he told her of his interest in bondage. However, these inconsistencies and exaggerations do not undermine the basic facts constituting Respondent's misconduct towards Patient D, and therefore are largely irrelevant to the focus of the Board's inquiry.

Throughout the hearing, testimony was elicited from various witnesses regarding Patient D's manner of dress and her participation in communications with Respondent that were sexual in nature in an apparent attempt to justify, or at least mitigate, Respondent's blatant boundary crossings and sexual misconduct with Patient D. The Board finds such testimony to be

irrelevant to Respondent's professional liability for engaging in such misconduct. As Dr. Plaut emphasized during his testimony, it was Respondent's sole responsibility to refrain from sexual misconduct and boundary crossings regardless of Patient D's conduct or manner of dress. Respondent's attempt to raise Patient D's conduct and manner of dress as issues only reinforces the Board's perception that Respondent's tendency is to "blame the victim" and shrug his responsibility to maintain professional boundaries. In addition, the testimony by Ms. Chambers and Ms. Bromberg regarding this issue tends to demonstrate that Respondent fostered an office environment in which the sole or partial responsibility of maintaining professional boundaries was placed on the patient.

Regarding Patient G and Employee 1, the Board also finds some of their testimony to be exaggerated for purposes of this proceeding. However, the Board finds that these exaggerations do not undermine the basic facts constituting Respondent's misconduct, and therefore are largely irrelevant to the focus of the Board's inquiry.

With respect to Patient K, the Board finds her factual and lay opinion testimony to be largely irrelevant to the charges. When Patient K testified regarding her approach towards health care professionals, *i.e.*, that she typically is an active "partner" in her health care and is not the average person with respect to participation in formulating a treatment plan, she disqualified herself from the typical doctor-patient relationship in which a power differential is assumed. Thus, the Board finds Patient K's professional relationship with Respondent, in which Patient K

does not wholly rely on Respondent's judgment, to be irrelevant to his relationships with the other patients who testified in this proceeding. In addition, the Board finds that Patient K had insufficient personal knowledge of Respondent's practices with the other patients to render a competent lay opinion on Respondent's ability to maintain professional boundaries. The Board does give some weight, however, to Patient K's lay opinion regarding the quality of chiropractic care that he gave to her, and gives lesser weight to the hearsay opinions regarding same given to Patient K by other patients of Respondent.

The Board does not find the testimony of Ms. Chambers, who worked in Respondent's office for five years, to be credible with respect to her statement that Respondent never made inappropriate comments to patients. The overwhelming weight of the testimony supports a finding that Respondent engaged in a consistent pattern of making inappropriate comments to patients and staff, and that staff members repeatedly discussed the comments with Respondent and asked him to stop. Based on her testimony, however, the Board perceives that Ms. Chambers believed that the sole responsibility for maintaining appropriate boundaries and conduct lies with the patient.

The Board finds the majority of Respondent's testimony to be self-serving and to lack credibility. With respect to conduct that Respondent actually admitted to, Respondent simply maintains that after engaging in a short period of compulsory ethics training and psychotherapy, he now recognizes that such conduct was wrong and that he is like a "reformed smoker." With

respect to conduct that he outright denies, such as asking patients whether they were getting enough sex lately, the Board disbelieves Respondent in light of the repeatedly corroborated testimony of his patients and staff. The Board also finds that Respondent lacked credibility when he responded to questions regarding his use of the hanging device on patients and gave multiple contradictory descriptions of the position of the patients' feet when they were pulled behind them. The Board finds Respondent's assertion during the hearing that the hanging device falls within the chiropractic standard of care to contradict his earlier statement to Dr. Janofsky that he was "not sure" whether the device fell within the standard of care, *see* SX 6 at Bates 000494, and his apparent need to conduct a literature search for similar devices after the Board initiated its investigation. Respondent's assertion was further undermined when he admitted during the hearing that there was no real difference between the visual images of the women hanging by their arms in the pictures he sent to Patient D and the visual images of his female patients hanging from the ceiling in his treatment room, but rather that it merely depended on the context in which the hanging device was used. Finally, the Board considers Respondent's attempt to manipulate Patient D into destroying the e-mail messages he sent to her, and his failure to admit to such during the hearing, to seriously impair the credibility of his assertions that he is now "reformed."

B. Expert Evidence.

The Board accepts the uncontroverted testimony of Dr. LaVorgna and adopts his opinion that the hanging device utilized by Respondent served no therapeutic value within the scope of chiropractic care. The Board further agrees with Dr. LaVorgna's conclusion that the hanging device could not have achieved what Respondent represented to his patients and staff--that is, use of the hanging device, as used by patients and staff, could not have stretched the upper trapezius muscles. In addition, the Board does not find the publications submitted by Respondent in RX 5A through 5I to support the use of the device, and agrees with Dr. LaVorgna's distinction between the publications' endorsement of traction for stretching the lumbar spine and Respondent's argument that the hanging device is a form of traction that stretches the thoracic spine. Moreover, Respondent admitted that he did not conduct the literature search for RX 5A through 5I until after the Board initiated its investigation in early 1998, well after he began using the device on patients. Thus, the Board rejects Respondent's *post hoc* attempt to establish a clinical justification for his use of the device, and concludes that Respondent engaged in therapeutic deception when he used the device on patients and staff.

The Board accepts the uncontroverted testimony of Dr. Plaut and adopts his opinions regarding the type of conduct that constitutes sexual misconduct and boundary violations. In addition, because the Board has found as matters of fact that the evidence supports the majority of the allegations of such misconduct, the Board adopts Dr. Plaut's opinion that Respondent engaged in a pattern of sexual misconduct and boundary violations. The Board further agrees

with Dr. Plaut's opinion that any single incident of misconduct by Respondent, taken alone, would not constitute a grave problem, but that the evidence as a whole demonstrates a clear pattern of sexual misconduct and Respondent's inability to appreciate professional boundaries.

The record establishes by a preponderance of the evidence that Respondent is impaired to such an extent that he cannot practice chiropractic safely. While the Board acknowledges that prior to the hearing, it reinstated Respondent's license with certain practice restrictions, *i.e.*, required chaperones and prohibition of treatment of female patients under forty years of age, the Board finds that based on the current record, Respondent's misconduct extended beyond these limitations. The record is clear that Respondent engaged in misconduct regardless of whether a chaperone was present, and the weight of the testimony indicates that Respondent engaged in misconduct, therapeutic deception, and boundary violations with patients regardless of gender or age, with the exception of children. In addition, as discussed in greater detail below, the record does not sufficiently convince the Board that Respondent is capable of refraining from this misconduct in the future.

Regarding the precise severity of Respondent's impairment, the record is inconclusive. The Board echoes Dr. Plaut's concern that Dr. Janofsky diagnosed Respondent with paraphilia in March 1998, but dismissed that diagnosis only eight months later. Moreover, the Board does not find that the substance of Dr. Janofsky's Second Report supports his conclusion that he sees no contraindications to Respondent's return to unrestricted practice. Rather, taken in conjunction

with Respondent's hearing testimony, the Board believes that Respondent's statements in the report, while providing lip service to the elements of rehabilitation, demonstrates a lack of understanding of his patients' sensitivities and his ethical boundaries.

Regarding the issues of potential rehabilitation of Respondent and professional disciplinary action, the Board considers and weighs the following evidence: (1) Dr. Plaut's testimony; (2) Dr. Janofsky's reports (SX 6 and RX 6)²⁵; (3) Letter from Kellie Ramey regarding Respondent's participation in sensitivity training (RX 7); (4) Letter from Dr. Ephross and Dr. Ephross' *curriculum vitae* (RX 8A and 8B); (5) the 1996 Task Force Report; and (6) Respondent's prior statements and hearing testimony.

At the outset, the Board notes and adopts the Task Force Report's definition of "rehabilitation" as the following:

A structured sequence of activities including, but not limited to, personal psychotherapy, education, clinical supervision, and practice limitations, the purpose of which is to support the practitioner who has sexually exploited a client in his efforts to resolve personal and clinical issues that caused or contributed to his misconduct so that he may

²⁵ The Board further acknowledges and agrees with the caveats that Dr. Plaut placed on the forensic evaluation reports by Dr. Janofsky (SX 6 and RX 6). While the Board does not doubt the credibility of the factual bases of the reports, the Board is concerned that potential miscommunication among the Board, Dr. Janofsky, and Respondent's counsels may have resulted in Dr. Janofsky acting as an advocate for Respondent rather than a neutral evaluator serving the Board. Specifically, in the March 12, 1998 Report, Dr. Janofsky addressed the report to Respondent's then-counsel, instead of the Board per the February 12, 1998 Letter of Surrender, and further stated that "I informed Doctor Miller that you and he would decide whether to make my report available to the Chiropractic Board." SX 6 at Bates 000488 (emphasis added). *But see* SX 2B at Bates 000013 ("2. I agree to sign a release to permit the evaluating therapist to submit a report to the Board detailing the results of his or her evaluation . . .") (emphasis added). In addition, the November 20, 1998 report also was addressed to Respondent's counsel. Thus, without more evidence, such as testimony from Dr. Janofsky himself, the Board believes that this miscommunication casts doubt on the objectivity and ultimately credibility of the conclusions reached in the reports.

safely return to practice. Rehabilitation plans must be designed to meet the particular needs of the practitioner who has sexually exploited and should result in a high degree of assurance that the practitioner will never again sexually exploit a client.

Task Force Rep. at 43-44. The Report further stated that the minimum indicators of a successful rehabilitation include: (1) “a clear recognition of the absolute inappropriateness of his actions”; (2) “an appreciation of the harm caused to the victim, the victim’s family, and any other associate victims such as his own family, practice associates, congregation, and so forth”; (3) “the practitioner should assume full responsibility for his actions, should not attempt to shift the blame to the victim, and should express genuine remorse”; and (4) “the offender should have received treatment for and resolved any underlying condition(s) . . . that caused or contributed to his exploitation of his client.” *Id.* at 44.

The record fails to satisfy these minimum indicators that Respondent is rehabilitated.

The most blatant deficiency is Respondent’s attempt to place partial or entire blame on his patients for his misconduct, which is reflected largely in Dr. Janofsky’s Second Report and in Respondent’s hearing testimony.²⁶ In reviewing the Second Report, the Board perceives Respondent’s characterization of some of his patients as “freakish and needy,” in conjunction with the overall tone of his comments recorded in the report, to constitute a failure to take

²⁶ The Board believes that Respondent’s attitude has not changed to a large degree since the beginning of these proceedings. *See, e.g.*, SX 5D (2/6/98 Interview of Respondent) at Bates 000475 (“I did make the statement “You are an average man’s wet dream” to [Patient D]. I told her that because she brought in cuffs and whips to the office. She changed the relationship. . . . I had no problem making the statement to her because of her bringing in pictures and because she left as a patient.”) (emphasis added).

personal responsibility for his actions. Moreover, Respondent's demeanor throughout his testimony was that of a defiant victim who has been unfairly treated because of the wrongs of his patients. The Board perceives Respondent's attitude as demonstrating his belief that his patients, and any external factors other than himself, are the problem.

Moreover, the Board finds Respondent's testimony to demonstrate, at best, an intellectualized reformation of his conduct resulting solely from the fact that he "got caught,"²⁷ and at worst, a complete failure to understand the fundamental guiding principles for recognizing boundary issues and maintaining professional boundaries. In addition, the Board perceives that Respondent still attempts to minimize his misconduct and the Board's concerns regarding whether he could practice chiropractic safely in the future.²⁸ This perception is buttressed by the testimony of Respondent's staff, which indicated that after each of their discussions with Respondent requesting him to cease his conduct, Respondent would agree, immediately refrain from misconduct, then inevitably relapse into the misconduct after a short period of time.

²⁷ See Tr. 991 ("I'm saying that I am not innocent. I'm saying that, yes, I have done things that were maybe more extreme or more than a lot, but you know what? I've had quite a number of rent-a-docs in my office during the period of closure and with 20/20 retrospect every one of them did things that they shouldn't do. I happen to be the one unlucky enough to get caught. If you get caught speeding on 95, its doesn't--the argument that everybody speeds is not a good excuse.") (emphasis added).

²⁸ See Tr. 927-28 (testimony of Respondent) (testifying that with respect to his ability to practice safely in the future, "I'm like a reformed smoker" but that "[n]othing in life is assured, except death and taxes."); *id.* at 604-06 (testimony of Plaut) (stating his belief that Respondent belittled the offenses alleged against him).

Based on the foregoing, the Board agrees with Dr. Plaut's opinion that Respondent's rehabilitation would require a time-consuming process that includes more therapy, the details of which to be determined by an independent evaluating psychotherapist selected by the Board.

C. Respondent's Petition To Further Amend Order of Reinstatement.

In his Petition to Further Amend Order of Reinstatement, filed during the hearing, Respondent requests the Board to reinstate his license and permit his unrestricted practice of chiropractic, based on his satisfaction of the conditions set forth in the Board's previous orders of reinstatement and Dr. Janofsky's Second Report. The Board recognizes Respondent's efforts to satisfy the reinstatement conditions and the documentation he submitted in support. However, based on the above discussion of the full record in these proceedings, the Board finds that the record contradicts reinstatement of Respondent's license.

V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, the Board concludes as a matter of law that Respondent violated the Maryland Chiropractic Act, H.O. §3-313(8), (21), and (27). The Board concludes as a matter of law that Respondent did not violate H.O. §3-313(9).

The Board concludes that Respondent was unethical and committed acts of unprofessional conduct in his practice of chiropractic, in violation of H.O. §3-313(8) and (21), and is mentally impaired to the extent that it impairs his ability to practice chiropractic safely, in violation of H.O. §3-313(27), based on the following: Respondent's pattern of sexual

misconduct with his patients and staff, including inappropriate remarks and touching; Respondent's pattern of therapeutic deception with his patients and staff, including inducing patients and staff to utilize the hanging device, of no therapeutic value, for Respondent's sexual titillation; Respondent's pattern of boundary violations with his patients, including asking patients inappropriate personal questions and maintaining multi-level relationships with patients; and Respondent's attempt to destroy evidence relevant to this proceeding. The Board also bases its conclusion that Respondent is mentally impaired on Respondent's failure to demonstrate his rehabilitation sufficient to indicate an ability to practice chiropractic safely.

The Board further concludes that Respondent is not professionally incompetent, and thus did not violate H.O. §3-313(9). There is nothing in the record that conclusively supports a finding of professional incompetence within the meaning of the Act. *See Blaker v. Board of Chiropractic Examiners*, 123 Md.App. 243, 257-58, 717 A.2d 964, 971-72 (1998).

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 10 of ~~January~~ ^{Feb 2000} 2000, hereby:

ORDERED that Respondent's Petition to Further Amend Order of Reinstatement is DENIED;
and be it further

ORDERED that Respondent license is SUSPENDED for three (3) years, said suspension to commence on February 14, 2000;

and be it further

ORDERED that after two years from the commencement of the suspension, Respondent may petition the Board for reinstatement of his license;

and be it further

ORDERED that the Board may reinstate Respondent's license upon Respondent's petition for reinstatement and demonstration of the following:

- (1) that Respondent submitted to an independent evaluation by an evaluating psychotherapist selected by the Board ("Evaluating Psychotherapist");
- (2) that Respondent has engaged in continuous psychotherapy with a treating psychotherapist recommended by the Evaluating Psychotherapist, at a frequency and duration determined by the evaluating and/or treating psychotherapists;
- (3) that an independent evaluation of Respondent, performed by the Evaluating Psychotherapist, indicates that Respondent is able to practice chiropractic safely;
- (4) that the Evaluating Psychotherapist and treating psychotherapist are provided and have reviewed copies of this Order and the underlying record; and
- (5) that Respondent took and passed the SPEC examination;

and be it further

ORDERED that upon reinstatement of Respondent's license, Respondent shall be placed on PROBATION for two years, subject to the following conditions:

- (1) for the first year, Respondent shall be supervised by a mentor selected by Respondent from a list provided by the Board, and that:
 - (a) the mentor shall supervise Respondent's practice for one day (8 hours) per month;
 - (b) the mentor shall observe Respondent's interaction with patients and staff, focusing on Respondent's ability to maintain professional boundaries;
 - (c) the mentor shall discuss with Respondent's staff his behavior when the mentor is not present, focusing on Respondent's ability to maintain professional boundaries;
 - (d) the mentor shall submit monthly written reports to the Board. Neither Respondent nor any representative of Respondent may review or have access to these reports prior to the receipt of same by the Board. In addition, no representative of Respondent may have any contact, written or verbal, with the mentor, unless prior written approval is obtained from the Board; and
 - (e) Respondent shall bear the cost of the services provided by the mentor, at a rate not to exceed \$175.00 per hour; and

- (2) for the second year, Respondent shall be placed on unsupervised probation, if the Board receives favorable reports from the mentor during the first year of probation;

and be it further

ORDERED that Respondent shall pay to the Board the cost of court reporting services incurred in this matter, pursuant to Section 3-315(g) of the Act;

and be it further

ORDERED that should Respondent further violate the Chiropractic Act or Board regulations, or this Order and/or the conditions of Probation, the Board may, after notice and an opportunity to be heard, take further disciplinary action, including revocation, against Respondent's license to practice chiropractic with physical therapy privileges;

and be it further

ORDERED that this Order is effective upon the date of the signature by the Board;

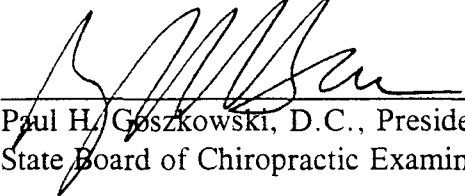
and be it further

ORDERED that this Order shall supersede the Board's April 30, 1998 Order of Reinstatement and the Board's September 24, 1998 Amended Order of Reinstatement;

and be it further

ORDERED that this Order is **PUBLIC** and, as such, may be disclosed pursuant to the Public Information Act, Md. Code Ann., State Government §10-611 *et seq.*

02-10-00
Date



Paul H. Gószkowski, D.C., President
State Board of Chiropractic Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., H.O. §3-316, you have a right to take a direct judicial appeal of this Order. A petition for judicial review must be filed within thirty (30) days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision under the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

IN THE MATTER OF
KEITH MILLER, D.C.

Respondent

BEFORE THE MARYLAND
STATE BOARD OF
CHIROPRACTIC EXAMINERS

• • • • •
AMENDED ORDER

On February 20, 1998, Keith Miller, D.C. (the "Respondent") surrendered his Maryland chiropractic license to the Maryland State Board of Chiropractic Examiners (the "Board") after he was notified of the Board's intent to summarily suspend his license. The Letter of Surrender is incorporated into this Amended Order and attached as Appendix A. On April 30, 1998, the Board issued an Order of Reinstatement whereby it reinstated Respondent's license, permitting a restricted practice. The Order of Reinstatement is incorporated into this Amended Order and attached as Appendix B.

On September 10, 1998, Respondent appeared before the Board to request modification of the terms and conditions set out in the Order for Reinstatement. On that date, the Board convened for consideration of Respondent's petition for modification.

FINDINGS OF FACT

1. On February 20, 1998, Respondent surrendered his Maryland chiropractic license to the Board after he was notified of the Board's intent to summarily suspend his license based on allegations of sexual harassment and sexual misconduct in his practice of chiropractic.

2. On April 30, 1998, the Board reinstated Respondent's chiropractic license after his evaluation by a Board-approved therapist. The Order of Reinstatement prohibited Respondent from treating any female patients. Furthermore, the Order of Reinstatement required

Respondent to: undergo psychotherapy with a Board-approved therapist; complete Board-approved courses in sexual misconduct and sensitivity training; see patients only in the presence of a Board-approved chaperone; and to comply with all laws governing the practice of chiropractic. The Order of Reinstatement further provided that Respondent could petition the Board for approval to see female patients over the age of 40, provided he had successfully completed Board-approved courses in the areas of sexual misconduct and sensitivity training.

3. Respondent has successfully completed Board-approved courses in sexual misconduct and sensitivity training.

4. To the Board's knowledge and belief, Respondent is in compliance with the conditions and restrictions of the Order of Reinstatement dated April 30, 1998.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent has completed the conditions necessary to treat female patients over the age of 40 as set out in the April 30, 1998 Order of Reinstatement.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 24th day of September, 1998, by the Maryland State Board of Chiropractic Examiners hereby:

ORDERED, that Respondent, Keith Miller, may provide chiropractic services to female patients over the age of 40 years old; and it is further

ORDERED, that Respondent shall see patients only in the presence of a Board-approved chaperone. The Board-approved chaperone shall sign all patient charts verifying that the treatment to the patients was provided in his or her presence; and it is further

ORDERED, that all other terms and conditions set out in the Order for Reinstatement remain in full force and effect, including that Respondent shall continue therapy with a Board-approved therapist until such time as the treating therapist recommends termination; the submission of monthly reports by the treating therapist; and continue to comply with all laws governing the practice of chiropractic in Maryland; and it is further

ORDERED, that neither the April 30, 1998 Order of Reinstatement or this Amended Order shall preclude the Board from charging Respondent with violations of the Chiropractic Practice Act for the conduct outlined in the proposed Order for Summary Suspension, served upon Respondent on February 8, 1998, and that, if the Board finds Respondent guilty of such conduct, can impose any sanction it deems appropriate, including probation with additional conditions, suspension, or revocation of his license; and it is further

ORDERED, that if the Board determines that Respondent has violated any of the terms and conditions of this Order, or if the Board otherwise determines that Respondent's continued practice poses a risk of harm to the public health, safety, or welfare, the Board may immediately and without prior notice or opportunity to be heard suspend Respondent's license, provided that Respondent is offered the opportunity for a hearing before the Board within thirty days of his request for such a hearing; and it is further


ORDERED, that Respondent may petition the Board for approval to treat female patients under the age of 40 when he can demonstrate to the Board his ability to do so safely and professionally. Factors the Board may consider in its decision include, but are not limited to, a psychiatric examination by a Board-approved psychiatrist and a recommendation from the evaluating psychiatrist that Respondent may safely treat female patients, and termination of

therapy by Respondent's Board-approved treating psychiatrist, though Respondent may continue voluntarily to see the treating psychiatrist; and it is further

ORDERED, that this is a PUBLIC DOCUMENT pursuant to Md. Code Ann., State Gov't

§§ 10-611 et seq.

09/24/1998
Date


Paul H. Goszkowski, D.C.
Vice President

Keith Miller, D.C.
11618 Reisterstown Road
Reisterstown, Maryland 21136

February 20, 1998

Kitty Travagline, Executive Director
Maryland State Board of Chiropractic Examiners
4201 Patterson Avenue
Baltimore, Maryland 21215

Re: Letter of Surrender

Dear Ms. Travagline and Members of the Board:

Please be advised that I have decided to surrender my license to practice chiropractic in the State of Maryland. I understand that, upon acceptance of this Letter of Surrender by the Maryland State Board of Chiropractic Examiners (the "Board"), as evidenced by Ms. Travagline's execution of this letter on behalf of the Board, I may no longer engage in the practice of chiropractic as it is defined in Md. Code Ann., Health Occ. ("H.O.") § 3-101. In other words, I understand that this surrender of my license in the State of Maryland means that I am in the same position as an unlicensed individual in this State. I understand that this Letter of Surrender is a PUBLIC DOCUMENT pursuant to Md. Code Ann., State Gov't ("S.G.") §§ 10-601 et seq.

My decision to surrender my license to practice chiropractic has been prompted by my receipt on February 13, 1998, of the Board's notice of its intent to summarily suspend my license pursuant to its authority under S.G. § 10-226, which authorizes the Board to summarily suspend a license if it determines that the public health, safety, or welfare imperatively require emergency action. The Board's intent to summarily suspend my license was based on allegations that I had engaged in sexual misconduct and sexual harassment of patients and employees in my practice. I acknowledge that the Board voted to accept this surrender in lieu of proceeding with the summary suspension of my chiropractic license based on those allegations. If the Board had proved those allegations after a hearing, such conduct would have violated H.O. 3-313(8) and (21) which provide:

(8) Is unethical in the practice of chiropractic; and

(21) Commits an act of unprofessional conduct in the practice of chiropractic.

My decision to surrender my license has been prompted by my desire to avoid further proceedings before the Board and to attempt to seek evaluation and rehabilitation for conduct which may be deemed by the Board to be unprofessional and unethical in the practice of chiropractic.

EXHIBIT 1

Keith Miller, D.C.
Re: Letter of Surrender
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I acknowledge that I have been advised of my right to a show cause hearing before the Board to show cause why the Board should not execute the proposed Order for Summary Suspension which was served on me on February 13, 1998. I further acknowledge that I have been advised of my right to a full evidentiary hearing on the merits of the allegations set out in the proposed Order for Summary Suspension within thirty days if the Board had executed the Order, and that I am entitled to be represented by an attorney of my choosing at all stages of these proceedings. I further acknowledge that by executing this Letter of Surrender, I AM WAIVING MY RIGHT TO BOTH A SHOW CAUSE HEARING BEFORE THE BOARD AND AN EVIDENTIARY HEARING WITHIN THIRTY DAYS ON THE MERITS OF THE SUMMARY SUSPENSION AND MY RIGHT TO CONTEST THE PROPRIETY OF THE BOARD'S ACTIONS OR THE SURRENDER OF MY LICENSE IN LIEU OF A SUMMARY SUSPENSION. I understand that the decision to surrender my Maryland chiropractic license is IRREVOCABLE, i.e., that I may not subsequently request either a show cause hearing or a hearing on the merits of the summary suspension.

I understand that this Letter of Surrender is a PUBLIC DOCUMENT under the Maryland Public Information Act, S.G. §§ 10-610 et seq., and disclosable to any individual requesting this Letter of Surrender under the Act. I further acknowledge that this Letter of Surrender will be REPORTABLE TO THE CHIROPRACTIC DATA BANK of which the Board is a member. I acknowledge that the proposed Order for Summary Suspension, which was not executed by the Board after it agreed to accept this Letter of Surrender in lieu of a summary suspension, would not be public and thus not disclosable as set out above.

I acknowledge that, on February 19, 1998, I submitted to the Board my Maryland chiropractic license, based on my agreement with the Board that I would sign and the Board would execute this Letter of Surrender on February 20, 1998. I acknowledge that I agreed that, upon the submission of my license to the Board on February 19, 1998, I would refrain from the practice of chiropractic from that date, unless and until authorized to do so by the Board and though the Letter of Surrender would not be executed until February 20, 1998.

I understand that the Board will not entertain a petition for reinstatement of my Maryland chiropractic license unless and until the following conditions are met:

1. I agree to be evaluated by a psychotherapist whom I may chose from a list of therapists selected by the Board and which was provided to me on February 19, 1998;
2. I agree to sign a release to permit the evaluating therapist to submit a report to the Board detailing the results of his or her evaluation, recommended treatment, my fitness to practice chiropractic, including whether I present a risk of harm to the public if permitted to practice, and what restrictions, if any, the therapist recommends be placed on my practice if I am permitted to practice;

Keith Miller, D.C.

Re: Letter of Surrender

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3. I acknowledge that the Board will forward to the evaluating therapist a copy of its investigative report and that the report will not be made available to me by the evaluating therapist unless approved by the Board;

4. I acknowledge that my license will not be reinstated unless and until the Board signs an order to that effect, and that the Board will not sign such an order reinstating my license unless and until the evaluating therapist recommends to the Board that my practice of chiropractic presents no risk of harm to the public health, safety, and welfare;

4. I agree that I shall have no contact whatsoever with patients and shall not visit my office or the premises during times when patients are scheduled for treatment by another chiropractor. I further agree that I shall have no contact with employees or former employees of my practice except the three approved by the Board to act as liaisons between myself and my practice; and

5. I agree that, if the Board determines that my continued practice does not constitute a risk of harm to the public health, safety, or welfare and reinstates my license, I shall be bound by those conditions the Board deems appropriate, including but not limited to:

a. Treatment by a psychologist or psychiatrist whom I may select from a list of therapists approved by the Board, who cannot be the same person as the therapist who performs my evaluation; and

b. Successful completion of a Board approved course in professional ethics on the subject of professional sexual misconduct;

c. Successful completion of a Board approved course in sensitivity training;

d. Any other restrictions on my practice or conditions for practice that the Board deems appropriate, including but not limited to, use of a chaperone during all patient contact, restrictions on providing chiropractic services to female patients, a requirement that I use only legitimate chiropractic treatment methods that are recognized by the profession, and supervision of my practice by a mentor approved by the Board.

I understand that I would be responsible for all costs associated with performing the terms and conditions outlined above. I further acknowledge that my completion of the above conditions does not guarantee reinstatement of my Maryland license if there are circumstances that the Board determines would impact my ability to safely and competently practice chiropractic in the State of

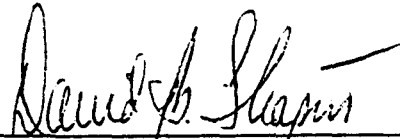
Keith Miller, D.C.
Re: Letter of Surrender
Page 4

Maryland.


I further acknowledge that the action of surrendering my license or the Board's acceptance of that surrender under the terms and conditions outlined herein does not preclude the Board from charging me with violations of the Chiropractic Practice Act based on the same allegations set out in the proposed Order for Summary Suspension and taking disciplinary action based on those charges. I understand that, if the Board issues charges, I would be entitled to a contested case hearing on those charges in conformance with the Maryland Administrative Procedure Act, S.G. § 10-201 et seq.

I acknowledge that I have been advised of my right to be represented by the attorney of my choice throughout proceedings before the Board, including the right to consult with an attorney prior to signing this Letter of Surrender, and have done so. I understand both the nature of this action, the terms and conditions of this Letter of Surrender, and the effect of the surrender, and am aware that the surrender of my license may have an impact on licenses I may have in other states. I voluntarily choose to SURRENDER my Maryland chiropractic license pursuant to the terms and conditions set out herein. I have made this decision knowingly and voluntarily.

Sincerely yours,



David Shapiro, Esquire
Counsel for Respondent

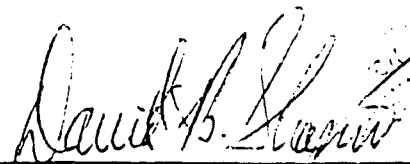


Keith Miller, D.C.
Respondent


STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 20th day of February, 1998, before me, a Notary Public of the State and City/County aforesaid, personally appeared before me Keith Miller, D.C., and made oath in due form of law that the foregoing Letter of Surrender, consisting of 5 pages, was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.



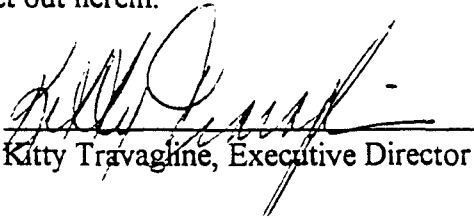
DAVID B. SHAPIRO Notary Public
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 18, 1998



My commission expires: _____

Keith Miller, D.C.
Re: Letter of Surrender
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On behalf of the Maryland State Board of Chiropractic Examiners, this 30th day of February, 1998, I accept this Public Letter of Surrender of the chiropractic license of Keith Miller, D.C., under the terms and conditions set out herein.


Kitty Travagline, Executive Director

cc: Cynthia G. Peltzman, Assistant Attorney General, Board Counsel
Roberta Gill, Assistant Attorney General, Administrative Prosecutor