

NORTH CAROLINA
MACON COUNTY

NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

In the Matter of:)
)
DAVID C. HENSHAW, D.C.,)
)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at a special meeting held on the date indicated below; and after hearing the evidence presented and giving due consideration to the arguments of counsel and the record as a whole, the Board, with the consent of the parties, makes the following:

Findings of Fact

1. This case was heard by a majority of the Board, Dr. Randy Schilsky, presiding, Dr. John Webster, Secretary of the Board, was also present but did not actively participate in the Board's deliberations due to his earlier participation in the formation of the charges against the respondent.
2. The respondent waived preliminary hearing and stipulated that there is probable cause to refer this matter to the full Board of Examiners for final disposition.
3. The respondent, Dr. David C. Henshaw, is a duly licensed chiropractic physician in North Carolina and at all times pertinent to the complaint maintained a chiropractic office in Franklin, N.C.
4. This matter comes before the Board upon a formal complaint filed on April 9, 2009 by Ms. Amanda Russell, a patient of Dr. Henshaw. The complaint alleges that Dr. Henshaw engaged in lewd or immoral conduct towards Ms. Russell during an office visit on April 1, 2009.
5. Ms. Russell was a patient under active care with Dr. Henshaw for fibromyalgia. She kept a scheduled appointment at 6:00 p.m. on April 1, 2009. She was the last patient of the day, and she was alone in the office with Dr. Henshaw. Ms. Russell alleges treatment proceeded as usual until he handed her a towel and asked her to remove her shirt and bra so he could work on her shoulder. She complied, thinking she would remain partially covered with the towel.
6. Ms. Russell alleges Dr. Henshaw began massaging her arms to the shoulder joints, then slipped his hands down her torso and started massaging her chest and breast area. After some period of time, he said that she could get dressed, and he left the treatment room.

Ms. Russell claims she was shocked and upset by what had happened. She did not confront Dr. Henshaw at the time but discontinued treatment soon thereafter.

7. Eight days after the office visit, Ms. Russell filed a disciplinary complaint with the Board of Chiropractic Examiners. On the same day, she gave a sworn statement to the Macon County Sheriff's Department, which resulted in the filing of a criminal warrant against Dr. Henshaw alleging Sexual Battery. She has also retained an attorney and filed a civil suit for monetary damages against Dr. Henshaw.

8. On January 11, 2010, Dr. Henshaw entered into a plea transcript with the Macon County District Attorney under which he pleaded guilty to misdemeanor Assault on a Female. His plea was accepted by the Macon County Superior Court, and he received a fine of \$200 and a fully probationary sentence. The court imposed two special conditions of probation, as follows:

- a. That Dr. Henshaw not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with Amanda Russell;
- b. That Dr. Henshaw not perform any other related procedure on any other female patients without written permission, and that he not violate any laws of state or federal government.

9. Dr. Henshaw denies that he engaged in any lewd or immoral conduct, sexual battery, or assault with Ms. Russell. In addition to being a licensed chiropractor, at all relevant times Dr. Henshaw was also a licensed massage and bodywork therapist and he claims there were clinical massage and body work therapy and/or chiropractic indications for the treatment he performed and that Ms. Russell consented to such treatment. Nevertheless, in an effort to conclude this matter without further delay, hearings or proceedings in criminal court or before the Board, he pled guilty to Assault on a Female and is willing to enter into this Consent Order.

BASED ON THE FOREGOING Findings of Fact, the Board enters the following:

Conclusions of Law

1. The Board of Chiropractic Examiners is duly constituted and has jurisdiction of subject matter and of the person of the respondent. The complaint filed on April 9, 2009 is properly before the Board of adjudication on the merits. The burden of proof is borne by the staff of the Board, and the standard of proof is the greater weight of the evidence.

2. N.C.G.S. 90-154(b)(8) states that lewd or immoral conduct towards a patient is grounds for disciplinary action by the Board.

3. Massaging the breasts of a female patient under a pretext of providing chiropractic treatment for fibromyalgia would constitute lewd or immoral conduct.

4. By consenting to the entry of this Final Agency Decision, the respondent waives any objection to venue or defect in the service of notice of hearing and agrees and stipulates that the Board may take up this matter at this time.

5. Under the Chiropractic Disciplinary Guidelines currently used by the Board, lewd or immoral conduct towards a patient falls within the "Serious" category of disciplinary violations. The presumptive sanctions for this category, when neither aggravating nor mitigating factors predominate, range from probation upon specified terms and conditions to one-year license suspension. Probation may also be added to license suspension.

6. Part III of the Chiropractic Disciplinary Guidelines sets forth numerous aggravating and mitigating factors commonly considered by the Board in selection sanctions. Pursuant to Part III, the Board finds as follows:

- a. The aggravating factor present in Dr. Henshaw's case is: he violated the victim's trust or preyed upon the victim's vulnerability;
- b. The mitigating factors present in Dr. Henshaw's case are:
 - i. He has no recent history of disciplinary violations;
 - ii. He has exhibited remorse; and
 - iii. His conduct has been addressed by the criminal justice system.

7. In the judgment of the Board and in conformity with the Chiropractic Disciplinary Guidelines, sanctions shall fall within the middle of the presumptive range for a "Serious" violation.

WHEREFORE, BY CONSENT, and upon his plea of guilty, the North Carolina Board of Chiropractic Examiners hereby finds the respondent, Dr. David C. Henshaw, guilty of lewd or immoral conduct towards a patient, in violation of N.C.G.S. 90-154(b)(8). It is ordered, adjudged and decreed that Dr. Henshaw be sanctioned as follows:

1. Dr. Henshaw's license to practice chiropractic in North Carolina shall be and is hereby suspended for 90 consecutive days.

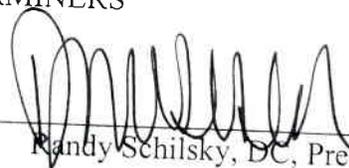
2. At the conclusion of the term of active suspension, Dr. Henshaw's license shall be restored and he shall be placed on probation for a period of three years upon the following terms and conditions:

- a. That he not touch, massage or purport to treat the breasts of any female patient;

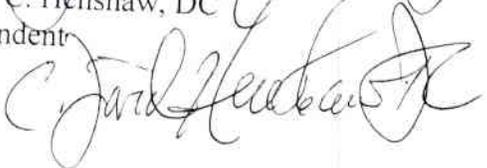
- b. That he not examine or treat any female patient without a chiropractic assistant either being present in the same room or present on the premises with the door to the examination/treatment room open;
 - c. That within six months after the entry of this Decision, he take and pass the Examination in Ethics and Boundaries given by the National Board of Chiropractic Examiners.
3. This Decision shall become effective upon ratification.
4. This Decision is a public document and shall be reported to national data banks and to the chiropractic licentiate body in North Carolina by summary in the Board's next newsletter.
5. If the respondent willfully fails to comply with this Decision, he shall be subject to further disciplinary action pursuant to N.C.G.S. 90-154(b)(20).

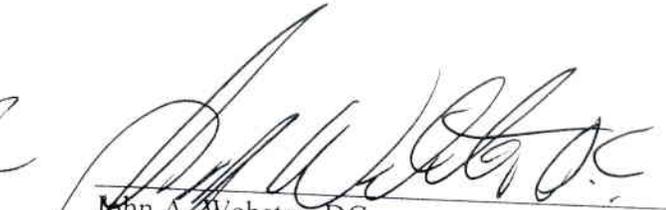
RATIFIED THIS 22nd day of May 2010.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

By: 
Randy Schilsky, DC, President

CONSENT:


David C. Henshaw, DC
Respondent



John A. Webster, DC
Secretary of the Board