

5. The charge against Dr. Case as set forth in Ms. Jethro's complaint was that Dr. Case violated N.C.G.S. 90-154(b)(7) and (8) by not rendering acceptable care and by engaging in lewd or immoral conduct. The conduct alleged to constitute unacceptable care and lewd or immoral conduct was the rendering of a purported treatment which included the fondling of Ms. Jethro's breast.

6. Brenda S. Jethro is a citizen and resident of Wake County, North Carolina. She is thirty-three years old and is employed full-time by the North Carolina Chiropractic Association as a secretary. She is married but is presently separated from her husband. She has no children.

7. In January 1987, Ms. Jethro became a patient of Dr. Case as the result of a referral from another chiropractor. Her primary injury was a traumatic injury to the low back which occurred while she was moving furniture.

8. Ms. Jethro had had no substantive contact with Dr. Case until she became his patient. However, she did meet or talk to him on two prior occasions in connection with her job at the North Carolina Chiropractic Association.

9. From the date her treatment commenced until the first week in March, Ms. Jethro was seen as frequently as three times per week by Dr. Case, and she at no time found her treatment to be improper or objectionable.

10. On two early office visits, Ms. Jethro was asked to remove her clothes and wear a gown. However, this practice was discontinued, and in the majority of office visits she received chiropractic therapy to her back without being asked to remove her clothes.

11. On March 4, 1987, Ms. Jethro came to Dr. Case's clinic at 5:00 p.m. for a routine office visit pursuant to a scheduled appointment. She was not seen immediately and sat for about one-half hour in the waiting room. By 5:30 p.m., there was only one other patient, a woman, remaining in the waiting room. At about 5:35 p.m., both Ms. Jethro and the other female patient were led into separate treatments rooms.

12. Shortly thereafter, Dr. Case came into Ms. Jethro's treatment room, gave her an adjustment and determined that on this particular day her neck and shoulders were more of a problem than her low back. He placed her under a therapeutic modality known as an accuscope for about 15 minutes. He then asked her how she felt, and she said better, except that she still had a "catch" in her neck. He said he would try to relieve her pain and told her to take off her clothes, that he would bring her a gown.

13. Dr. Case left the room but did not close the door completely. As Ms. Jethro began undressing, she heard Dr.

Case's chiropractic assistant tell him goodnight and leave. A few minutes later, she heard the other female patient leave. At that point, she believed herself to be alone in the clinic with Dr. Case.

14. Ms. Jethro completed removing all her clothes except her panties and pantyhose and sat on the treatment table waiting for Dr. Case to return. When he came back in he did not have a gown for her. Ms. Jethro instinctively attempted to cover herself and grabbed a folded piece of cloth which she saw lying on the accuscope. The cloth proved to be a gown. Ms. Jethro put it on but could not find any ties or closures with which to secure it around her neck. It tended to slip down into her lap, exposing her upper body.

15. Ms. Jethro sat in the center of the treatment table with her legs dangling over the edge. Dr. Case lifted one of his legs over the table and straddled it as though he were astride a horse. He slid down the table until his leg was touching or almost touching Ms. Jethro's right thigh. He thereupon told Ms. Jethro to twist her upper body so as to face him; which she did. He reached around her with his left arm and drew her towards him with light pressure. Initially, her nose and lips were pressed against his cheek, but she moved her head to avoid prolonged facial contact.

16. Dr. Case manipulated the soft tissue in Ms. Jethro's neck with his right hand. He then slid his hand under her left armpit and began pressing the area under and around her left shoulder blade with his thumb. He then moved his hand back around to her left breast and fondled it. This process was repeated several, perhaps as many as four, times.

17. The manner in which Dr. Case touched Ms. Jethro's breast did not resemble breast examinations which she had undergone in the past. It resembled contact of a sexually intimate nature.

18. Dr. Case's physical closeness and the way in which he touched her made Ms. Jethro uncomfortable, but she was not sure whether or not his actions were part of the treatment. She wanted to give him the benefit of the doubt because his treatments had helped her in the past. She did not protest verbally or pull away from him.

19. After six or seven minutes of treatment, Dr. Case stopped, released her and asked Ms. Jethro how she felt. She said she felt much better but her neck still bothered her a little. Dr. Case stood up and asked Ms. Jethro to stand up with her arms extended in front of her. He then repeated the process of holding her body loosely against his with his left arm, manipulating her neck and shoulder, and fondling her breast with his right hand. With her arms extended, Ms. Jethro had great

difficulty keeping the gown from slipping down and exposing her upper body.

20. No chiropractic assistant was present in the treatment room during any part of the encounter between Dr. Case and Ms. Jethro.

21. The second treatment ended after a few minutes. Dr. Case told Ms. Jethro she could get dressed and left the room. He was turning off the clinic lights when she emerged in her clothes. They both went up front to the reception area, and he asked if he could make an appointment for her two days later at the usual time of 5:00 p.m. She said he could, and he entered it into his appointment ledger. They both put on their overcoats and left the clinic together. He locked the front door behind them, and as she walked to her car, she saw him get in his car and leave.

22. Ms. Jethro was troubled by her experience of March 4th. She thought about it the following day, but did not discuss it with anyone. On March 6th, she told her supervisor at work what had happened. At her supervisor's suggestion, she contacted the immediate past President of the Board of Examiners, who told her that the procedure she described did not sound like recognized chiropractic treatment. At that point, she decided to initiate a complaint. She cancelled her appointment with Dr. Case for

later that day and has had no subsequent contact with him except as an incident to these proceedings.

23. At hearing, Dr. Case denied fondling Ms. Jethro's breast, but admitted that in the course of treatment he was physically close to her and assumed the approximate position she described. His stated rationale for performing a therapy which, as he demonstrated it, involved holding the patient's upper body in a loose, frontal embrace as he reached around her back and pressed various points along the shoulder blade (scapula) and armpit (axilla) was to break up muscle spasms and adhesions in that area of her body.

Based on the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

1. This Board is duly constituted and has jurisdiction of subject matter. The Respondent has been given notice as required by law, and this Complaint is properly before the Board for adjudication.
2. The fondling of a female patient's breast in a manner suggestive of sexual intimacy constitutes lewd and immoral conduct on the part of a doctor of chiropractic.
3. The preferred position for breaking up muscle spasms or adhesions in the region of the scapula and axilla is to place the patient face down on the treatment table with her

arms at her side so that the practitioner can manipulate the affected tissue from above. However, it is not unacceptable care per se to perform this manipulation with the patient sitting or standing upright as the practitioner reaches under her armpit.

4. The standards of acceptable care require that a chiropractic assistant be present in the treatment room whenever a practitioner undertakes to perform any therapy upon a female patient which involves placing his hands or upper body in close proximity to the patient's breasts.

Based on the foregoing Findings of Facts and Conclusions of Law, the North Carolina Board of Chiropractic Examiners enters the following:

FINAL AGENCY DECISION

IT IS ADJUDGED that George D. Case engaged in lewd and immoral conduct against Brenda S. Jethro on March 4, 1987, by fondling her breast in a sexually suggestive manner while performing an unorthodox treatment intended to break up muscle spasms or adhesions in the region of the left scapula and axilla. It is further adjudged that Dr. Case failed to render acceptable care to Ms. Jethro by not having a chiropractic assistant present in the treatment room while he performed a therapy which involved placing his hands and upper body in close proximity to Ms. Jethro's breasts.

THE BOARD OF EXAMINERS notes with extreme displeasure the offensive nature of Dr. Case's conduct and condemns said conduct as a violation of the trust between doctor and patient and as an affront to the dignity of the chiropractic profession.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that George D. Case, D.C., be and is hereby censured, and that he be placed on probationary status for a period of one (1) year, to commence upon the effective date of this Decision.

This the _____ day of _____, 1987.


G. Kenneth Miller, D.C., Chairman
N. C. Board of Chiropractic Examiners

Attest:


Darrell Trull, D. C.
Secretary