

In the Matter of:)
)
ROBERT P. LILLY, D.C.,)
)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at its regular quarterly meeting held on October 26, 2013; 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. Michael Estremonte, presiding. Dr. Ricky Sides, Secretary of the Board, was also present but did not actively participate in the Board's deliberations due to his earlier participation in the investigation of the disciplinary complaint against the respondent.
2. A preliminary hearing was held in this matter on August 15, 2013, and the Chiropractic Review Committee found that probable cause existed to refer this complaint to the full Board of Examiners for final disposition.
3. The respondent, Dr. Robert P. Lilly, is a duly licensed chiropractic physician in North Carolina and at all times pertinent to the complaint maintained a chiropractic office in Columbus, N.C. He also practiced one day a week at Body Synergy, an exercise studio in Flat Rock, N.C., which is where the incident that is the subject of the complaint took place.
4. This matter comes before the Board upon a formal complaint filed on October 31, 2012 by Ms. Maria Parrino, a patient of Dr. Lilly. The complaint alleges that Dr. Lilly engaged in lewd or immoral conduct towards Ms. Parrino during an office visit on July 23, 2012. Dr. Lilly enters a plea of guilty to this charge.
5. Ms. Parrino, aged 72 at the time of the events complained of, had been a patient under active care with Dr. Lilly since March 2010 for problems with her jaw and spine. She had selected him because he was trained in Directional Non-Force Technique, a method of treatment that had previously provided relief when she was under chiropractic care in another state. Ms. Parrino was comfortable with Dr. Lilly's treatment protocol, and it was not unusual for her to doze off during the course of a 50 to 60 minute office visit.

6. The treatment room at Body Synergy in Flat Rock is a second-floor loft overlooking the exercise area. Dr. Lilly does not employ a chiropractic assistant at this location, but there is a receptionist supplied by Body Synergy. The waiting room for chiropractic patients is upstairs next to the treatment room, and patrons of Body Synergy are usually present downstairs.

7. On the office visit of July 23rd, Ms. Parrino was gowned and wearing underwear while on the treatment table. At first Ms. Parrino lay on her stomach to receive treatment on her back. Dr. Lilly then asked her to turn over so that he could address pain in her right hip and leg. Ms. Parrino dozed off while on her back. When she awoke, she realized that Dr. Lilly's hands were under her gown. He brushed his hands over her breasts from the top of the breasts downward over her nipples. He then placed his hand under her panties and touched her vagina.

8. Ms. Parrino gave unsworn testimony before the Review Committee on August 15, 2013 indicating that Dr. Lilly "rubbed his finger in my vagina." Dr. Lilly chose not to appear at the preliminary hearing. On October 9, 2013, Dr. Lilly's counsel notified the Board's attorney that Dr. Lilly admits willfully touching Ms. Parrino's vagina but denies inserting his finger into her vagina.

9. In the past, Ms. Parrino had received pelvic adjustments that involved Dr. Lilly placing his hand slightly above the pubic bone, outside her gown. He had never before touched her under the gown or in or near the vagina.

10. Ms. Parrino was surprised and upset by Dr. Lilly's actions. She cried on the way home and reported the matter to law enforcement authorities in Henderson County within two or three days. For the next three months, she frequently awakened shaking and crying, and she continues to experience emotional trauma from the experience of July 23rd.

11. Dr. Lilly was subsequently charged with a violation of the criminal statutes. On August 15, 2013, he entered a plea of guilty to misdemeanor Assault on a Female in Henderson County District Court Case No. 12 CR 53474. The court continued prayer for judgment for twelve months on the condition that Dr. Lilly obtain psychological counseling. The court will review Dr. Lilly's progress under counseling and make a final disposition of the criminal case on or about August 15, 2014.

12. According to expert opinion presented to the Board, the probability of Dr. Lilly engaging in future sexual misconduct is low. Dr. Lilly voluntarily underwent a psychological assessment after criminal charges were brought against him, and the assessment was performed by Dr. Pete Sansbury, a licensed psychologist. Dr. Sansbury's report, dated October 6, 2012, states:

Based upon the STATIC-99R, an actuarial risk assessment using historical data for individuals who were convicted of a sexual crime, Mr. Lily [*sic*] falls in the Low range for future risk of sexual offending. His older age, his lack of prior sexual offenses, no history of violent crimes, his history of being in a marital

relationship, and no male victims are all factors which decrease the probability of future sex offending. Individuals convicted of a sexual offense who scored the same as he on the STATIC-99R had a 12% rate of recidivism over the next 10 years.

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 October 31, 2012 is properly before the Board for 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. It is lewd or immoral conduct for a chiropractic physician to brush his hands downward over the breasts and torso of a female patient then willfully touch the patient's vagina with his fingers.

4. 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.

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

- A. The aggravating factors present in Dr. Lilly's case are:
 - 1. His conduct resulted in actual emotional harm to the patient; and
 - 2. He violated the victim's trust and preyed upon the victim's vulnerability.
- B. The mitigating factors present in Dr. Lilly's case are:
 - 1. He has no recent history of disciplinary violations; and
 - 2. His conduct has been addressed in part by the criminal justice system.

6. In the judgment of the Board and in conformity with the Chiropractic Disciplinary Guidelines, neither aggravating nor mitigating factors predominate, so sanctions should 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. Robert P. Lilly, 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. Lilly be sanctioned as follows:

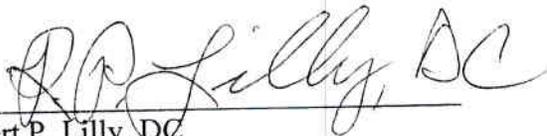
1. Dr. Lilly's license to practice chiropractic in North Carolina shall be suspended for a term of six consecutive months, said term to commence on January 1, 2014 and conclude on June 30, 2014.
2. Prior to June 30, 2014, and as a condition of license reinstatement, Dr. Lilly shall complete six hours of Board-approved remedial education in Ethics and Sexual Boundaries. This remedial education shall be in addition to and shall not count towards satisfying the 24-hour annual continuing education requirement for license renewal.
3. Prior to June 30, 2014, and as a condition of license reinstatement, Dr. Lilly shall take and pass the Examination in Sexual Boundaries given by the National Board of Chiropractic Examiners.
4. At the conclusion of the term of active suspension and the satisfaction of the foregoing conditions, Dr. Lilly's license shall be restored, and he shall be placed on probation for a period of two years upon the following terms and conditions:
 - a. That he not touch, massage, rub or purport to treat the breasts or vaginal area (below the pubic bone) 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; and further, that he disclose to the Board the name and contact information of the chiropractic assistant or assistants he employs to satisfy this condition of probation;
 - c. That he complete psychological counseling as ordered by the Henderson County District Court in Case No. 12 CR 53474; and further, that he provide copies to the Board of any progress notes and psychological re-evaluations prepared by his counselor and filed with the District Court.
5. This Decision shall become effective upon ratification.
6. 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.
7. 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 26th day of October 2013.

N.C. BOARD OF CHIROPRACTIC EXAMINERS

By: 
Presiding

CONSENT:


Robert P. Lilly, DC