

**BEFORE THE NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS**

**In the matter of:**

**ERIK R. MADSEN, D.C.  
LICENSE NUMBER 3208**

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**FINAL AGENCY DECISION**

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This matter was heard on December 13, 2019, at an administrative hearing of the North Carolina Board of Chiropractic Examiners (“Board”), pursuant to Article 3A, Chapter 150B of the North Carolina General Statutes and Article 8, Chapter 90 of the North Carolina General Statutes. The hearing was held in the offices of the N.C. Board of Nursing in Raleigh, N.C.

Board members present were Kevin Sharp, D.C. and Presiding Officer; Thomas Ayres, III, D.C.; Christopher Outten, D.C.; Thomas Mitchell, D.C.; and Kimberly Swintosky. In accordance with N.C. Gen. Stat. § 90-141, a quorum of the Board was present. The Board was assisted and advised by Administrative Law Counsel Frank Gray. Prosecuting attorney for the Board was attorney M. Jackson Nichols. Dr. Erik Madsen (“Licensee”) was present and represented by attorney Dale Curriden.

Prior to the hearing and pursuant to the State Ethics Act, the Presiding Officer reminded the Board that any Board member having an actual or perceived conflict of interest or any preexisting knowledge of the case must state such conflict and recuse himself or herself from the matter. No conflicts were noted.

With the consent and agreement of the parties, the Board recessed after presentation of all evidence on December 13, 2019 and deliberated by telephone conference call on December 16, 2019.

**JURISDICTION**

The Board is an occupational licensing board of the State of North Carolina, organized under the provisions of N.C. Gen. Stat. § 90-139 *et seq.* and has jurisdiction over this matter pursuant to the provisions of N.C. Gen. Stat. § 90-139, *et seq.*, Chapter 150B of the North Carolina General Statutes, and the Board’s duly-enacted rules, 21 N.C. Admin. Code Chapter 10 .0102 *et seq.*

### **PROCEDURAL HISTORY OF THE CASE**

In November 2019, two complaints were filed against Licensee. Copies of the complaints were mailed to the Licensee. Licensee's counsel, in response to a request from the Board staff, provided the patient records of both complainants. These records were sent to an expert witness retained by the Board, Dr. Anthony Hamm, for review. The Board issued an Order of Summary Suspension and Notice of Hearing that was served on the Licensee

Based upon the testimony and evidence presented and after considering the arguments of counsel, the Board makes the following:

### **FINDINGS OF FACT**

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted to it in Article 8, Chapter 90 of the North Carolina General Statutes.
2. Licensee is the holder of North Carolina Doctor of Chiropractic License Number 3208, which was first issued on August 5, 2003 and expires on February 6, 2020. He is in the private practice of chiropractic in Franklin, North Carolina. He is a solo practitioner doing business as Mountain View Chiropractic and Wellness Center.
3. On or about November 15, 2019, the Board received a complaint from a patient with initials AB-A alleging that Licensee had engaged in improper touching of her genital area during her treatment for chiropractic services on or about November 13, 2019. (Board Ex. 1)
4. On or about November 16, 2019, the Board received a complaint from a patient with initials AA alleging that Licensee had engaged in improper touching of her genital area and breasts during her treatment for chiropractic services on or about November 8, 2019. (Board Ex. 2)
5. Copies of the complaints were mailed to the Licensee by the Board staff and were received by Respondent by Federal Express. (Board Ex. 3 & 6)
6. Upon receiving these complaints, the Board Investigator, Lisa Hick-Jones, conducted an investigation, including telephone interviews with both complainants. The Board's investigator prepared an Investigative Report. (Board Ex. 3)
7. Based on the complaints and the Board's investigation, the Board issued an Order of Summary Suspension and Notice of Hearing, which was duly served on the Licensee. The Hearing was scheduled for Friday, December 13, 2019. (Board Exs. 14 and 15)

8. Patient AB-A is a licensed massage therapist. (Tr. Pg. 19, li 18-21) She visited the Licensee for chiropractic treatment on November 13, 2019. It was her second visit that month. (Tr. Pg. 25) During the course of treatment, Licensee inappropriately exposed the patient's genital area without draping and used a percussor (Vibracussor) in a way that made the patient feel uncomfortable.
9. During the course of her treatment by Licensee, "he was using the vibrating machine" and "...pushing on my stomach." (Tr. Pg. 27. li. 3-4) After that while he was using two fingers "...in the crease of my leg and my vagina... and was pushing." (Tr. Pg. 27, li. 11-18)
10. Licensee did not fully explain what treatment he would provide. (Tr. Pg. 29, li. 9-18) Patient AB-A did not consent to the treatments that he performed. (Tr. 29, li. 24-25; pg. 30, li. 1-5)
11. During the course of this treatment, Patient AB-A was not draped, and there was no other staff member present in the treatment room. (Tr. Pg. 29, li. 19-23)
12. Patient AB-A complained that the treatment was "not right". Licensee apologized and did not charge Patient AB-A for the visit. Patient AB-A subsequently filed her complaint with the Board.
13. Patient AA is a registered nurse. (Tr. Pg. 77, li. 1-5) She visited the Licensee for chiropractic treatment on November 8, 2019. During the course of treatment, Licensee inappropriately exposed the patient's genital area without draping and used a percussor (Vibracussor) in such a way that made the patient feel uncomfortable. Licensee also directed Patient AA to pull up her bra so he could palpate the area around her breasts.
14. During the course of this treatment, Patient AA was not draped, and there was no other staff member present in the treatment room.
15. Patient AA returned for a visit on November 13, 2019. She scheduled a third visit but did not keep the appointment.
16. After Patient AA's second visit, Patient AA discussed the treatment she received with a family member, with her supervising nurse at work, and with a relative of Patient AB-A. Tr. Pp. 90-91. Patient AA determined in hindsight that Licensee's treatment of her was inappropriate and subsequently filed her complaint with the Board.

17. Licensee's medical records for both patients AB-A and AA do not describe the treatment provided to either patient; neither do the records describe a treatment plan for either patient. There is minimal documentation of a physical examination. There is no documentation of a clinical correlation of examination findings with the treatment suggested or provided. There is no documentation of written or verbal consent to the treatments performed.

18. By consent, Dr. Anthony Hamm was accepted as an expert witness for the Board for the purpose of evaluating Licensee's compliance – or lack thereof, as the case may be – with the Board's statutes and regulations for patient record-keeping. Also, the parties consented to the introduction of Dr. Hamm's expert witness report. (Board Ex. 11)

19. At the December 13, 2019 hearing, the following witnesses were called to testify on behalf of the Board staff:

- a. Patient AB-A
- b. Patient AA (by videoconference)
- c. Lisa Hicks-Jones, Board investigator
- d. Dr. Anthony Hamm, expert witness report accepted by consent

20. At the December 13, 2019 hearing, the following witnesses were called to testify on behalf of the Licensee:

- a. Kaysea Crouse
- b. Mary Ann Ingram
- c. Lori Jean Newkirk
- d. Erik R. Madsen, D.C.

21. At the hearing, the Licensee testified that he was aware of his Constitutional right against self-incrimination, and that he was appearing voluntarily and was not under subpoena.

22. At the hearing, by Stipulation, the parties agreed that criminal charges for alleged misdemeanor sexual battery and misdemeanor assault on a female have been filed in Macon County, NC, arising out of the same allegations that are at issue in this action. The parties further stipulated that there has not been a trial or conviction with respect to any of the aforementioned charges and that Dr. Madsen is entitled, under the Fourth, Sixth and Fourteenth Amendments to the United States Constitution, to the presumption of innocence. (Tr. Pg. 9-10)

23. At the hearing, the following exhibits were presented and admitted into evidence without objection on behalf of the Board staff:

Exhibit No. Description

1. Complaint Form submitted by AB-A against Erik Madsen, D.C. (Mountain View Chiropractic and Wellness Center) (REDACTED)
2. Complaint Form submitted by AA against Erik Madsen, D.C. (Mountain View Chiropractic and Wellness Center) (REDACTED)
3. Final Confidential Investigative Report of Lisa Hicks-Jones, Case No. 2019- 34 (without Exhibits)
4. North Carolina General Statutes
  - a. N.C. Gen. Stat § 90-154;
  - b. N.C. Gen. Stat § 90.154.2; and
  - c. c. N.C. Gen. Stat § 90.143(b)(1)
5. Investigation Notification letter (dated 11/18/2019) from the Board to Erik Madsen, D.C.
6. Fed Ex Delivery Receipt of Investigation Notification Letters from the Board office to Erik Madsen, D.C.
7. Stipulation
8. Letters of Representation from the Van Winkle Law Firm (REDACTED)
9. Mountain View Chiropractic and Wellness Center's patient records for ABA (REDACTED)
10. Mountain View Chiropractic and Wellness Center's patient records for AA (REDACTED)
11. Dr. Anthony Hamm's audit report of Mountain View Chiropractic and Wellness Center's patient records for ABA (REDACTED)
12. Dr. Anthony Hamm's audit report of Mountain View Chiropractic and Wellness Center's patient records for AA (REDACTED)
13. Not Admitted
14. Order for Summary Suspension and Notice of Hearing to Dr. Erik Madsen
15. Fed Ex and USPS Return Receipts of Delivery of Order for Summary Suspension and Notice of Hearing to Erik Madsen, D.C. at both home and office address
16. Application and Licensure File of Erik R. Madsen to N.C. Board of Chiropractic Examiners
17. Continuing Education Summary

24. At the hearing, the following exhibits 1 through 8, and 11, 12 and 13 were presented and admitted into evidence without objection on behalf of the Licensee. Licensee's Exhibits 9, 10, 14, 15, 16, 17 and 18 were admitted for the limited purpose of corroboration.

Exhibit No.   Description

1.      Patient AA Treatment Records
2.      Patient AA Treatment Narrative
3.      Patient AB-A Treatment Records
4.      Patient AB-A Treatment Narrative
5.      John W. Brimhall, D.C., Seminar Materials
6.      Applied Kinesiology Text
7.      Touch for Health Text
8.      Touch for Health Flip Chart
9.      Kevin Baker, D.C. Character Reference Letter
10.     Richard Branton Character Reference Letter
11.     Kaysea Crowe Character Reference Letter
12.     MaryAnn Ingram Character Reference Letter
13.     Marsha Ann Luczak Character Reference Letter
14.     Mary Miller Character Reference Letter
15.     Lori J. Newkirk Character Reference Letter
16.     Jeffrey Runken Character Reference Letter
17.     Michaella Runken Character Reference Letter
18.     Kenneth Suggs, D.C. Character Reference Letter

Based on the foregoing Findings of Fact, the Board enters the following Conclusions of Law:

**CONCLUSIONS OF LAW**

1.      The Order of Summary Suspension and Notice of Hearing were properly served on Licensee in accordance with N.C. Gen. Stat. § 150B-38 and § 150B-3. This matter was properly before the Board, and the Board has jurisdiction over Licensee and the subject matter of this case.

2. Pursuant to the provisions of N.C. Gen. Stat. § 90-154 and G.S. Chapter 150B, the Board is vested with the power and authority to revoke or suspend a license to practice chiropractic and impose such other conditions and restrictions on a licensee as it deems fit and proper in furtherance of its duty to protect the public.

3. Licensee has violated the provisions of Article 8 of G.S. Chapter 90 and grounds exist under North Carolina law for the Board to revoke or suspend his license to practice chiropractic and invoke other such disciplinary measures against a licensee as it deems fit and proper.

4. Licensee has rendered professional service to patients that does not conform to the standards of acceptable care in violation of N.C. Gen. Stat. §§ 90-154 (7) and 90-154.3, in that Licensee inappropriately required patients' genital areas to be exposed without draping, and used a Vibracussor in such a way that made the patients feel uncomfortable.

5. Licensee has rendered professional service to patients that does not conform to the standards of acceptable care in violation of N.C. Gen. Stat. §§ 90-154 (7) and 90-154.3, in that Licensee used poor judgment by treating patient breast area and genital area, without the patient being draped, and without another staff member present in the treatment room

6. Licensee has rendered professional service to patients that does not conform to the standards of acceptable care in violation of N.C. Gen. Stat. §. 90-154 (7) and 90-154.3, in that Licensee's patient records were incomplete, deficient and below the standards of care in chiropractic practice.

7. Because Licensee testified that he was aware of his Constitutional right against self-incrimination, and that he was appearing voluntarily and was not under subpoena, his waiver of his constitutional right was informed and voluntary.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board enters the following:

### **FINAL AGENCY DECISION**

1. The Suspension of the N.C. Doctor of Chiropractic License of Dr. Erik R. Madsen (License Number 208) is upheld, and the Suspension is continued unless and until such time as Dr. Madsen has complied with the following:

- A. Licensee shall, at his expense, take and pass the Ethics and Boundaries Essay Examination administered by Ethics and Boundaries Assessment Services, LLC (<http://www.ebas.org/Files/EBASExamInfoBrochure.pdf>), to include the following three components of such exam: Boundary Violations, Professional Standards, and Unprofessional Conduct. Successful completion of the Ethics and Boundaries Essay Examination as set forth in this paragraph shall be a precondition of Licensee's licensure reinstatement.
  - B. Successful completion of a Board-approved course in patient treatment documentation and record keeping, with a minimum of 6 hours of training.
2. Upon completion of the courses listed above, Licensee may appear before the Board and apply for re-licensure.
  3. In accordance with Section 1921(a)(1)(A) of the Social Security Act [42 U.S.C. 1396r-2], the Board shall report this suspension to the National Practitioner Data Bank.
  4. Under NC Gen. Stat. § 150B-45, Licensee has thirty (30) days from the date Licensee receives this Final Agency Decision to file a Petition for Judicial Review. Licensee must file that Petition in the County where Licensee resides or in Wake County Superior Court. Since this is an administrative appeal, no additional evidence will be taken. A Superior Court Judge will review the Final Agency Decision to determine whether there were any legal errors in the Final Agency Decision.

This Final Agency Decision is issued this the 15th day of January 2020.

ss/Kevin Sharp, D.C.  
Kevin Sharp, D.C.  
Board President and Presiding Chair, North  
Carolina Board of Chiropractic Examiners



**CERTIFICATE OF SERVICE**

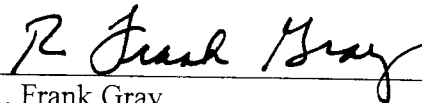
THIS IS TO CERTIFY that the undersigned has this date served the foregoing Final Decision and Order upon Licensee identified in this Order by placing a copy of the same in a postpaid, properly addressed wrapper in a post office or other official depository under the exclusive care and custody of the United States Postal Service, electronic correspondence or by other method of delivery as authorized by the North Carolina Rules of Civil Procedure and properly addressed to counsel for Licensee at the address below.

Dale Curriden, Attorney-at-Law  
Counsel to the Licensee  
Van Winkle Law Firm  
11 North Market Street  
Asheville, NC 28801

With a copy to:  
M. Jackson Nichols  
Nichols, Choi and Lee, PLLC  
Counsel to the Board  
4700 Homewood Court, Suite 220  
Raleigh, NC 27609

And to:  
Tom Sullivan, Executive Director  
NC State Board of Chiropractic Examiners  
6070 Six Forks Rd. Ste. L  
Raleigh, NC 27609

This the 15<sup>th</sup> day of January 2020.



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