

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA
BOARD OF CHIROPRACTIC
EXAMINERS

N.C. STATE BOARD OF)
CHIROPRACTIC EXAMINERS,)
Petitioner,)
v.)
MICHAEL FORTINI, D.C.,)
Respondent,)

**CONSENT ORDER
VOLUNTARY SURRENDER**

This CONSENT ORDER, made between the N.C. Board of Chiropractic Examiners (“Board”), acting through John Hammer, D.C., in his official capacity as the Board member who presided over the Board Disciplinary Review Committee’s (the “Committee”) Probable Cause Hearing on April 7, 2022 of Michael Fortini, D.C. (“Respondent”) (collectively “Parties”). The Parties agree, for the purposes of resolving a pending disciplinary action and potential hearing against Respondent to the following:

WITNESS THAT:

WHEREAS, Respondent holds a North Carolina Doctor of Chiropractic License, license number 3716, which was first issued on April 28, 2007, with an expiration date of December 31, 2022, and is currently active;

WHEREAS, Respondent is the Organizer and Registered Agent of Merrimon Chiropractic Inc. organized and registered to do business under the laws of the State of North Carolina, with its principal place of business at 338 Merrimon Avenue, Asheville, North Carolina;

WHEREAS, the Board received a complaint submitted by a seventeen year old minor patient (“Patient”) on March 7, 2022. The complaint alleged that Respondent became “overly touchy” with Patient since becoming Patient’s primary chiropractor. Patient reported that Respondent often made contact with Patient’s buttocks in ways unrelated to chiropractic care in the patient’s opinion. Patient also alleged in the complaint that a visit on March 1, 2022, Respondent put his hands under Patient’s shirt on the skin and that Respondent’s genitals made contact with Patient after the adjustment while in recovery position. Respondent denies the allegations of this Complaint;

WHEREAS, the Board staff investigated Patient’s allegations and compiled its findings into an Investigative Report;

WHEREAS, the Board’s Investigator issued an Investigative Report which concluded:

- A. In October 2013, based on previous reports to the Board, Respondent was required to have a female chiropractic assistant chaperone with him while treating female patients;
- B. Respondent and the Board entered an Informal Settlement Agreement ("ISA") in October 2019 based on allegations that demonstrated Respondent's lack of good moral character;
- C. The 2019 ISA required that Respondent pass the National Board of Chiropractic Examiners Ethics and Boundaries Exam;
- D. Under the terms of the ISA, Respondent was placed on a two-year probationary period with the Board which ended on October 2021;

WHEREAS, the Board's Investigator interviewed the Patient following the submission of the complaint and included the following in the Investigative Report:

- A. Patient reported to the Board Investigator that Respondent did not inform Patient prior to positioning his hand under Patient's shirt nor did Respondent explain the reasoning for doing so;
- B. Patient reported to the Board Investigator that Respondent spent a longer period of time leaned up against Patient following the adjustment than the previous treating chiropractor and longer than Patient felt necessary; and
- C. Patient reported to the Board Investigator that at the conclusion of the appointment, Patient felt uneasy with the adjustment and did not want to continue treatment with Respondent.

WHEREAS, during the Probable Cause Hearing on April 7, 2022, Respondent admitted to placing his hand under Patient's shirt without informing Patient of doing so or reason for doing so. Respondent further reported that his clinic has an open adjustment area based on previous allegations with the Board and that Respondent has a video camera in the adjustment area. Respondent expressly denies that he acted in a manner representing lewd or immoral conduct toward a patient and/or committed an act which demonstrates a lack of good moral character which would have been a basis for denying a license under N.C. Gen. Stat. § 90-143(b)(1), pursuant to N.C. Gen. Stat. § 90-154(b)(8) and (21). Respondent further contends that valid clinical reasons existed for all care provided to this Patient.

WHEREAS, Dr. Hammer, in his role as the Board member presiding over the Probable Cause hearing in the above-referenced matter, has determined that the allegations contained within Patient's complaint against Respondent, if proven at hearing, could constitute one or more violations of the statutes and regulations administered by the Board and, thus, warrant disciplinary action;

WHEREAS, the Parties wish to resolve and settle this matter without a contested case hearing and enter into this Consent Order.

NOW, THEREFORE, the Parties hereby agree and stipulate as follows:

I. Jurisdiction:

The Board is an occupational licensing board of the State of North Carolina, organized under N.C. Gen. Stat. § 90-139, *et. seq.* The Board has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 90-154 *et. seq.*, N.C. Gen. Stat. § 150B-1, *et. seq.*, and 21 N.C. Admin. Code 10 .0103, *et. seq.*

II. Identification of Licensee/Respondent:

Respondent practices at Merrimon Chiropractic Inc., 338 Merrimon Avenue, Asheville, North Carolina. Respondent holds North Carolina Doctor of Chiropractic License, license number 3716, which was first issued on April 28, 2007, with an expiration date of December 31, 2022, and is currently active.

III. Waiver of Rights:

In order to resolve this matter by Consent Order, Respondent agrees that the Board staff and counsel may discuss this Consent Order with Dr. Hammer in his role as the Presiding Board Member of this matter and any subcommittee that may be assigned to this matter *ex parte* whether or not the Board accepts this Consent Order as written.

IV. Stipulation to Facts:

The Parties stipulate to the following facts:

- A. On March 7, 2022, the Board received an emailed complaint against Respondent. The complaint identified the Complainant as a seventeen year old minor patient ("Patient").
- B. The complaint alleged that Respondent became "overly touchy" with Patient since becoming Patient's primary chiropractor. Patient alleged that Respondent often made contact with Patient's buttocks in ways unrelated to chiropractic care in the patient's opinion. Patient also alleged in the complaint that at a visit on March 1, 2022, Respondent put his hands under Patient's shirt on the skin and that Respondent's genitals made contact with Patient after the adjustment while in a recovery position. Respondent expressly denies that he acted in a manner representing lewd or immoral conduct toward a patient and/or committed an act which demonstrates a lack of good moral character which would have been a basis for denying a license under N.C. Gen. Stat. § 90-143(b)(1), pursuant to N.C. Gen. Stat. § 90-154(b)(8) and (21). Respondent further contends that valid clinical reasons existed for all care provided to this Patient.

C. Based on the allegation, Board staff initiated an investigation.

V. Stipulation to Applicable Sections of Law:

A. Respondent admits the allegations set forth in Paragraph IV.A.-D. above, including all subparts, if proven at hearing, could constitute violations of N.C. Gen. Stat. § 90-154(b)(8) and (21). If proven, these violations could constitute grounds for disciplinary action.

VI. Stipulation to Sanction:

In lieu of proceeding to a hearing, the Parties hereby enter into this Consent Order, whereby Respondent and the Board agree to the following terms:

- A. Respondent admits to the **Stipulation to Facts** above;
- B. Respondent's license will be surrendered on or before December 31, 2022. Respondent shall deliver his official license to the Board in person, or by U.S. Mail, Certified Mail, Return Receipt Requested, on or before January 1, 2023.
- C. Respondent shall immediately stop the practice of chiropractic in North Carolina on or before December 31, 2022, and shall notify active patients in a reasonable manner to permit continuity of care or allow patients to seek alternative providers.
- D. Within fifteen (15) days of the Effective Date of this Consent Order, Respondent shall provide a copy of the fully executed Consent Order to any other professional credentialing body with whom Respondent is currently credentialed and upon application for any subsequent professional credentials.
- E. Upon the Effective Date of this Consent Order, Respondent shall have a female employee of the practice present anytime Respondent treats or consults with female patients prior to the surrender of license date in VI.(B). Respondent agrees that he will stop providing adjustments to any patients, also beginning on the Effective Date of this Consent Order.
- F. Respondent shall comply with all ownership requirements of N.C. Gen. Stat. § 90-157.3.

VII. Effective Date:

The Effective Date of this Consent Order is the date on which it is signed by Dr. Hammer, or his designee.

VIII. Public Record:

The parties agree that this Consent Order is a public record, as required by N.C. Gen. Stat. § 132-1.3. As such, this agreement is admissible in future disciplinary proceedings.

Other related documents that are part of the investigative file and are trial preparation materials are not public records pursuant to N.C. Gen. Stat. § 132-1.9.

IX. Adverse Action Reporting:

The parties agree that this Consent Order contains an adverse action and, therefore, will be reported to the National Practitioners Data Bank ("the Data Bank") as follows:

Respondent's license is voluntarily surrendered with basis for action alleging lewd conduct towards a Patient and committing an act that shows lack of good moral character. A narrative description on the matter as follows: On March 7, 2022, the Board received a complaint which alleged that Respondent violated the Board's Practice Act and attendant rules. During a Probable Cause Hearing that was conducted on April 7, 2022, Respondent admitted to placing his hand under Patient's shirt without informing Patient of doing so or reason for doing so. Respondent contends that valid clinical reasons existed for all care provided. Probable Cause was found that if proven at hearing, the above allegations against Respondent, could constitute one or more violations of the statutes and regulations administered by the Board, and thus, warrant disciplinary action. A Notice of Hearing (N.C. Gen. Stat. § 150B-38) was issued to the Respondent, for a hearing to be conducted on July 22, 2022. An agreement was reached with the Board whereby Respondent would voluntarily surrender his license in lieu of proceeding to a disciplinary hearing.

X. Compliance with Consent Order:

- A. This Consent Order and its provisions are effective on the date of signature by the Board's Presiding Officer over this proceeding;
- B. Any modification of this Consent Order must be pre-approved in writing by the Board and signed by the Board President or his or her designee before it may be effective;
- C. Failure by Respondent to meet the terms of this Consent Order, either in substance or in timing, is a violation of N.C. Gen. Stat. § 90-154(a)(6);
- D. If during the term of this Consent Order, the Board staff receives evidence that Respondent violated any of the above conditions, the Board staff may schedule a Show Cause Hearing for a determination of the violations;
- E. Communications with Respondent regarding compliance with this Consent Order may occur between Board staff and Respondent.

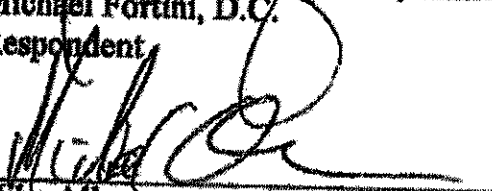
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WE CONSENT:



Michael Fortini, D.C.
Respondent


9/8/22
Date



Mike Allen
Counsel for
Respondent Batten
Lee


9-12-22
Date

4141 Parklake Avenue, Ste. 350
Raleigh, NC 27612
Phone: (919) 459-4292
E-mail: mallen@battenlee.com



John Hammer, D.C.
Presiding Member of Review
Committee

9/14/22
Date



Anna Baird Choi
A. Grant Simpkins
General Counsel for
Board Nichols, Choi &
Lee, PLLC
4700 Homewood Court, Suite 220
Raleigh, N.C. 27609
Phone: (919) 341-2636
Fax: (919) 647-4485
E-mail: grant@ncl-law.com

9/21/2022
Date