

PC

8-28-03

Final Order No. DOH-04-0594-FDF-MOA
FILED DATE - 5/27/04
Department of Health
By: Nicole Singler
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE**

**DEPARTMENT OF HEALTH, BOARD OF
CHIROPRACTIC MEDICINE**

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Petitioner,

vs.

**DOAH CASE NO. 03-0946PL
DOH CASE NO. 02-14197**

CHARLES LEROY MITZELFELD, D. C.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the Board of Chiropractic Medicine (Board) pursuant to section 120.569 and section 120.57(1), Florida Statutes, on February 27, 2004, in Ft. Lauderdale, Florida, for the purpose of considering the attached Administrative Law Judge's Recommended Order. Petitioner was represented by Assistant Attorney General Christine Thorson while Respondent was present and represented by Steven Marc Slep, Esquire. On May 21, 2004, in Orlando, Florida, the Board gave further consideration to the penalty portion of the Recommended Order. At the May meeting, Petitioner was represented by Assistant Attorney General Brian Stabley and Respondent was again represented by Steven Marc Slep, Esquire.

Upon review and consideration of the Recommended Order and after a review of the available record in this case including the pleadings and documents submitted by the parties and Respondent's Exceptions to Recommended Order (attached hereto as Exhibit A), the Board arrived at the following findings of fact and conclusions of law:

EXCEPTIONS TO RECOMMENDED ORDER

1. Respondent filed exceptions to specified paragraphs and endnotes in the Recommended Order.

2. The Board considered and voted to reject each of the exceptions filed by Respondent.

FINDINGS OF FACT

3. The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein.

CONCLUSIONS OF LAW

4. The Board has jurisdiction of this matter pursuant to sections 120.569 and 120.57(1), and chapter 460, Florida Statutes.

5. The conclusions of law set forth in the Recommended Order are consistent with the findings and are approved, adopted, and incorporated herein.

PENALTY RECOMMENDATION

6. The Board considered the penalty recommendation and the list of mitigating factors found by the Administrative Law Judge at paragraph 58.

7. Based on the complainant's invitations to Respondent and willing participation in activities of a sexual nature, the Board found many examples of further mitigating circumstances throughout the transcript including the complainant's testimony at page 66 (Agenda Book page 150) lines 5-24; page 70 (Agenda Book page 154) lines 10-17; page 71 (Agenda Book page 155) lines 5-14; and page 72 (Agenda Book page 156) lines 7-8.

8. The Board determined that although Respondent demonstrated very poor judgment, portions of the recommended penalty are too harsh and are unnecessary for the

protection of the public. These included suspension of Respondent's license and a requirement that a third person be present in the room during Respondent's examinations and treatment of female patients for a minimum of 10 years.

ADMINISTRATIVE COSTS

9. Respondent was served with a Motion for Costs with attached affidavits regarding the investigative and legal costs expended for the prosecution of the case. Prior to May 27, 2004, Respondent filed an objection and request for a hearing on the Motion for Costs.

10. Following the penalty portion of the discussion, the Board heard from the parties and concluded that, regardless of earlier concerns about the amount of costs involved in the investigation and prosecution of the case, the costs submitted and supported by Petitioner's affidavits were reasonable even if Respondent would have preferred a more detailed cost breakdown report.

11. The Board denied Respondent's request for a further hearing regarding the administrative costs for the purpose of cross-examining the prosecutor who was unable to be present and the paralegal who worked on the case.

WHEREFORE,


IT IS HEREBY ORDERED AND ADJUDGED that the appropriate penalty for the violation set forth in the Administrative Complaint is two years of probation during which time a third person must be in the room whenever Respondent is examining or treating a female patient, and a fine of \$1,000 to be paid within 30 days of the filing of the Final Order. Additionally, Respondent must take and pass the National Board of Chiropractic Examiners

Ethics and Boundaries Examination. Respondent must take the examination within 6 months of the filing of the Final Order. Finally, Respondent shall pay administrative costs of \$14,188.72 within two years from the filing of the Final Order. The fine and cost amounts, payable to the Department of Health, shall be mailed to Department of Health, Board of Chiropractic Medicine, BMS/Client Services Unit, Compliance Officer, P.O. Box 6320, Tallahassee, Florida 32314-6320.

This Final Order shall take effect upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 24 day of May, 2004.

BOARD OF CHIROPRACTIC MEDICINE



Joe Baker, Jr., Board Executive Director for
Wayne C. Wolfson, D.C., Board Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to: Larry J. Sartin, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Steven M. Slepkin, Esquire, Magnolia Center I, Suite 102, 1203 Governor's Square Blvd., Tallahassee, Florida 32301; and by interoffice mail to Assistant Attorney General Christine Thorson, Attorney General's Office, The Capitol, PL-01, Tallahassee, Florida 32399-1050, and Donna Erlich, Assistant General Counsel, Department of Health, Prather Building, Tallahassee, Florida this 27 day of May, 2004.

Erica S. Perino

Deputy Agency Clerk