

BEFORE THE BOARD OF CHIROPRACTORS
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2012-CHI-LIC-12 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 280-2014
TREATMENT OF THE LICENSE OF)	
REESE R. RIGGIN,)	
Chiropractor, License No. 1181.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division of the Department of Labor and Industry seeks sanctions be imposed on the chiropractor license of Dr. Reese Riggin based upon the allegation that he engaged in conduct defined under Admin. R. Mont. 24.126.2301(b) and (r) as unprofessional conduct. Prior to hearing, Dr. Riggin filed a motion for summary judgment and motions in limine, all of which were denied.

Hearing Officer Caroline A. Holien convened a contested case hearing in this matter on February 24 and February 25, 2014. The department was represented by Kevin G. Maki and Michael L. Fanning. Attorney Steve Reida represented Dr. Riggin.

The parties requested that certain witnesses be referred to by their initials in the transcript of the proceeding and the decision. Accordingly, the witnesses identified by the parties at hearing will be addressed in this decision by their initials.

Dr. Reese Riggin, K.F., B.B., A.F., L.W., P.H., Alexa Smith, John Smith, Belinda Clark, Heidi Kaufman, Compliance Specialist, Jennifer Billman, Licensing Specialist, Dr. Vincent Maddio, D.C., Dr. Gilles LaMarche, D.C., Natalie Riggin, Jamie Czech, and Julia Champenois all presented sworn testimony. All the witnesses were excluded upon the request of the parties. The parties stipulated to the admission of the transcript of Louise Smith's deposition taken on December 18, 2013.

The parties stipulated to the admission of department Exhibits 2, 3, 5, 6, 14, and 15 and Dr. Riggin's Exhibits A, B, C, E, F, G, I, J, and K. Department Exhibits 10, 11, 16A, 16B, and 20 were admitted at the time of hearing. Riggin's Exhibits A, C, H-1, H-2, and O-1 were also admitted at the time of hearing. Riggin's Exhibit G was withdrawn and not admitted.

Department Exhibits 2, 6, and 10 were sealed, as were Riggin's Exhibits A, C, F, H1, and H2, based upon a finding the information contained in those documents included personal information in which the subjects' rights to privacy outweighed the public's right to access that information.

The parties agreed to provide post-hearing briefs, the last of which were received April 23, 2014. The case was deemed submitted upon receipt of the final brief. Based upon the evidence adduced at the hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and recommended decision.

II. ISSUE

Whether disciplinary action should be taken against the license of Reese R. Riggin, under the provisions of Mont. Code Ann. § 37-1-136, and, if so, the proper discipline to be taken.

III. FINDINGS OF FACT

1. At all times material to this complaint, Dr. Reese Riggin has been licensed by the Montana Board of Chiropractors (Board) to practice as a chiropractor, holding Montana License No. 1181.

2. The Board previously denied Dr. Riggin a full license in 2007. On February 13, 2008, the Board Chair signed a Final Order granting Dr. Riggin a license that was on probation for one year. Dr. Riggin was required to practice under the supervision of another licensed health professional and have another person in the room when examining or administering chiropractic treatment to female patients.

3. Dr. Riggin was previously licensed as a chiropractor by the State of Idaho. The Idaho State Board of Chiropractic Physicians (Idaho State Board) revoked Dr. Riggin's license in 1997 after finding he had violated the Chiropractic Practice Act. The Idaho State Board made the finding that Dr. Riggin had "worked on M.O.'s lower back and M.O. stated that he went down the back of her pant and 'rubbed my butt' under her underwear, massaging her buttocks" It also found that Dr. Riggin massaged M.O.'s chest and ran his hands over her breasts and nipples during her fourth and final treatment.

4. The Idaho State Board also made the finding that Dr. Riggin massaged J.M.'s back and the top of her buttocks . . ." [w]hen he massaged her buttocks, he massaged under her underwear to the bottom of her shorts, although he had not previously done that in the first three appointments." It was also found Dr. Riggin touched the sides of J.M.'s breasts, massaged her upper neck, and ran his hands over her breasts and nipples. The Idaho State Board later denied Dr. Riggin's request to reinstate his license.

5. Dr. Riggin's wife, Natalie Riggin, is the sole shareholder of a corporation that owns Big Sky Chiropractic located in Great Falls, Montana. Dr. Riggin is the managing employee for Big Sky Chiropractic and the sole chiropractor at the practice. Dr. Riggin expects employees to strictly adhere to the employer's policies and procedures. Dr. Riggin typically dates and retains copies of the documents he receives during the course of business, including greeting cards received from employees.

6. Dr. Riggin is a graduate of Parker College of Chiropractic and is a devoted follower of the Parker Principles, which stress the importance of living a service oriented personal and professional life. The Parker Principles encourage chiropractors to connect to their patients on a personal level, which may include hugging and inquiring about issues affecting the patient in their personal life. A motto often used by followers of the Parker Principles is "lather love lavishly."

7. The Parker Principles encourage chiropractic staff members to undergo chiropractic treatment so they understand and can communicate the benefits of receiving regular chiropractic care.

8. Dr. Riggin uses excerpts of a handbook entitled "Fearless Chiropractic," which includes the statement: ". . . it is necessary that you be under regular chiropractic care. Your personal chiropractic care is therefore complimentary and a job benefit. You will receive the same quality of care as any patient."

9. K.F. is a 25-year-old woman, who worked as a chiropractic assistant for Big Sky Chiropractic from March 2009 through September 20, 2010. K.F.'s duties included answering the phone, scheduling patients, processing insurance forms, and other clerical duties as assigned. K.F. rarely assisted Dr. Riggin in providing care to patients. K.F. understood she was required to receive chiropractic treatment from Dr. Riggin as part of her employment at Big Sky Chiropractic.

10. K.F. sought employment at Big Sky Chiropractic, because it would give her bonus points in her application to physical therapy school. K.F. was working at completing her prerequisite course work for physical therapy school at the time of her

employment with Big Sky Chiropractic. K.F. discussed her aspiration to become a physical therapist with Dr. Riggin prior to being offered the position. K.F. was initially denied admission into physical therapy school. K.F. subsequently obtained an Associates of Applied Science from the College of Technology in Great Falls, Montana. K.F. is currently licensed by the State of Montana as a Physical Therapist.

11. K.F.'s work day at Big Sky Chiropractic typically ran from 8:00 a.m. to 6:00 p.m. Dr. Riggin usually saw his last patient for the day between 5:00 p.m. and 5:30 p.m. Natalie Riggin did not work a set schedule at the practice but was usually in the office three days per week. K.F. and Dr. Riggin typically worked alone at the end of the business day.

12. On March 4, 2009, K.F. filled out new patient information, which included signing a statement that she read Big Sky Chiropractic's informed consent and payment policy. The informed consent explained the possible risks associated with receiving chiropractic treatment and indicated that the undersigned understood the described risk and consented to treatment. K.F. also provided a summary of her medical history, which included information about burns that she had sustained along the outside of her right leg and torso at the age of four and her subsequent physical therapy and skin grafts. K.F. also reported regular neck and back pain, as well as headaches and dizziness. Dr. Riggin conducted an initial examination of K.F. approximately one week after the start of her employment.

13. From March 16, 2009 through September 22, 2009, K.F. received approximately 36 treatments from Dr. Riggin. K.F.'s treatment sessions were typically held at the end of the business day when no other staff members were present. Dr. Riggin also treated K.F. during the business day if another patient cancelled. K.F. was not required to include herself on the patient schedule prior to receiving treatment from Dr. Riggin.

14. Dr. Riggin used an activator tool and adjusted K.F. over her clothing during her initial treatments. Each session lasted between 10 and 15 minutes, which was the typical length of other patients' treatment sessions. K.F. did not experience any benefit as a result of these treatments but did not feel uncomfortable while receiving the treatment.

15. K.F. began to feel uncomfortable during the treatment sessions approximately three to five months into her employment. Dr. Riggin used a trigger point technique on K.F. at one point that "started on [her] low back and then it turned, progressively over time, it turned into like massage type of procedure" Hrg. Transcript. Vol. 1, 45:18-21. Dr. Riggin progressed beyond K.F.'s lower back until he touched her buttocks. Dr. Riggin massaged K.F.'s buttocks on 15 to 20

different occasions during sessions that lasted between 15 and 30 minutes. Dr. Riggin also provided treatment to K.F. for her neck, which progressed to his massaging her breasts under her shirt and bra for “minutes.” K.F. did not ask for or seek this type of touching from Riggin. K.F. did not express discomfort at Dr. Riggin’s touching because she was scared.

16. In June 2009, Dr. Riggin began administering burn scar treatment to K.F., which included massaging the affected areas in an attempt to make the area less stiff and promote healing. K.F. initially resisted Dr. Riggin’s repeated requests to attempt burn scar treatment on her scars, which were more than 15 years old at that time. K.F.’s scars extend from her right upper to mid-thigh down past her right knee. The scars extend to a bit toward the inner thigh and down the back of the thigh. The scars on K.F.’s torso begin on her lower torso near her navel and up to her mid-body below her right breast. Dr. Riggin had never before attempted burn scar treatment. K.F. ultimately relented and received approximately seven burn scar treatments from Dr. Riggin.

17. Dr. Riggin’s burn scar treatment escalated to his massaging K.F.’s right breast and her vagina. Dr. Riggin massaged K.F.’s vagina between five and 10 times under her underwear. Dr. Riggin used his finger to penetrate K.F.’s vagina on one occasion in May or June 2010. K.F. told her sister, A.F., about what had happened shortly after the first incident. K.F. appeared to her sister to be upset and hysterical when she first reported what had happened. K.F. did not report the situation to law enforcement, despite A.F.’s encouragement, because she was scared and embarrassed. K.F. continued working for Dr. Riggin despite her discomfort with his conduct because she felt “trapped” due to her financial situation and desire to get into the physical therapy program.

18. Dr. Riggin again used his finger to penetrate K.F.’s vagina in late July 2010. K.F. stopped accepting chiropractic treatment from Dr. Riggin altogether after the final incident.

19. Dr. Riggin initially maintained Subjective, Objective, Assessment and Plan (SOAP) notes as part of K.F.’s treatment record. Dr. Riggin changed to using a travel card, which was a simpler form of a treatment record. Dr. Riggin then moved onto maintaining treatment records on a computer that was located in a room near the examination rooms. Dr. Riggin lost, without explanation, K.F.’s treatment card. K.F. never observed Dr. Riggin preparing treatment notes during her care. K.F. never saw a patient file under her name with the other patient files that she was required to pull for Dr. Riggin.

20. The treatment record for K.F. that Dr. Riggin did produce for the department included some inconsistencies. For example, a SOAP note treatment record for June 1, 2009 contains no information. Many of the entries in K.F.'s treatment record are illegible and include conflicting dates.

21. Dr. Riggin made several comments to K.F. during her employment regarding her personal relationships, such as asking if she "put out" on a first date. Dr. Riggin also commented about his sexual activities to K.F. Dr. Riggin made unwanted visits to K.F.'s home and appeared uninvited to one of her softball games. In February 2010, Dr. Riggin advised K.F. that he would talk to her landlord, who was a personal friend of his, about evicting her if he ever saw her boyfriend's vehicle parked overnight in her driveway. K.F. complained to a friend's father during this period that she was uncomfortable with Dr. Riggin's hugging her. Dr. Riggin also grabbed K.F.'s buttocks while at work and claimed it was an accident.

22. K.F. referred several friends and family members to Dr. Riggin during her employment. K.F. referred people to Dr. Riggin's practice due to his promise of giving her a bonus if she referred a certain number of people to his practice.

23. Dr. Riggin prohibited employees from using their cell phone while at work. On March 31, 2010 and September 15, 2010, K.F. received warnings for violating Dr. Riggin's no cell phone policy at work. On September 15, 2010, Dr. Riggin observed K.F. texting her mother at the end of the day. Dr. Riggin suspended K.F. without pay the next day. Dr. Riggin had not exacted such a severe punishment on any other employee for similar behavior.

24. On or about September 21, 2010, K.F. informed Dr. Riggin she was quitting effective immediately. K.F.'s mother accompanied her to the office to collect her belongings after K.F. told her mother about the previous incidents with Dr. Riggin.

25. B.B. is a 25-year-old woman who worked as a chiropractic assistant for Big Sky Chiropractic from July 2011 through November 2011. B.B. holds a four-year degree from Eastern Washington University.

26. B.B. understood she was required to receive chiropractic treatment from Dr. Riggin as part of her employment with Big Sky Chiropractic.

27. Dr. Riggin initially used an activator tool and a TENS unit while providing chiropractic treatment to the neck and back of B.B. Dr. Riggin began touching B.B. on her lower back that felt more like a massage. Dr. Riggin eventually touched B.B.'s buttocks under her clothing in a "massage-like motion." Dr. Riggin

stopped asking B.B. if she was experiencing any pain during the treatments he administered or whether she consented to him touching her in certain areas.

28. Dr. Riggin touched B.B.'s breast beneath her shirt on one occasion while commenting on how padded her bra was. On one occasion, Dr. Riggin unhooked B.B.'s bra without asking her permission or advising her that he was going to be doing that during a treatment session. During B.B.'s final treatment, Dr. Riggin touched the sides of her breasts and ran his hands over her breasts and nipples.

29. Dr. Riggin made comments to B.B. about her dating activities and his own sexual activities that made her feel uncomfortable. Dr. Riggin also commented on B.B.'s attire and her former employment at Victoria's Secret. Dr. Riggin, at one point, touched B.B.'s buttocks in the office, apologized and said he forgot where he was and that he always does that to his wife.

30. B.B. referred people to Dr. Riggin's office during her employment based upon his promise that she would receive a bonus if she referred a certain number of people to his practice.

31. B.B. did not report her concerns about Dr. Riggin because she was scared that it was her fault it had happened. B.B. quit because she felt the situation had crossed the line and she was not comfortable working in Dr. Riggin's office due to his inappropriate conduct.

32. In December 2011, B.B. spoke to P.H., who had been a patient of Dr. Riggin's for approximately five years, about her experiences with Dr. Riggin. P.H. contacted K.F., who she suspected had experienced similar issues while working for Dr. Riggin. P.H. had noticed K.F.'s interactions with Dr. Riggin appeared to be more strained at the end of her employment. P.H. had also noticed there was a high turnover with Dr. Riggin's chiropractic assistants. P.H. put K.F. and B.B. in contact with one another after learning B.B. had left her job after a short period of time.

33. In January 2012, K.F. filed a complaint against Dr. Riggin with the Board after learning of B.B.'s experiences with Dr. Riggin.

34. Dr. Gilles LaMarche has been a chiropractor for 25 years and has been a teacher at Parker Chiropractic Seminars since the late 1980's. Dr. LaMarche's background, training, and education in chiropractic medicine established his expertise in the area. Dr. LaMarche has also edited two editions of the Parker System for Professional Services. Dr. LaMarche testified hugging is a part of the Parker Approach and "lather love lavishly" is a Parker Principle that is important to a patient's healing process. Dr. LaMarche conceded the concept of unconditional love,

as contemplated under the Parker Principles, does not constitute a basis for a chiropractor to touch a patient's breasts or vagina without a legitimate chiropractic purpose. Dr. LaMarche conceded that such conduct is inappropriate and outside of the generally accepted standards of practice.

35. Dr. Vincent J. Maddio, D.C., a Montana licensed chiropractor, testified in this matter that it is inappropriate, outside of the generally accepted standards of practice and without chiropractic purpose, for a chiropractor to touch a patient's breasts and touch a patient's vagina. Dr. Maddio testified that intravaginal adjustments are not permitted in the State of Montana. Dr. Maddio has maintained a chiropractic practice in Helena, Montana, for approximately 23 years and is familiar with the terms of professional conduct for chiropractors in the State of Montana. Dr. Maddio's background, training, and education in chiropractic medicine established his expertise in the area.

36. Compliance Specialist Heidi Kaufman testified the Board employs a progressive system of discipline. The Board considers the nature of the complaint and the existence of previous discipline to determine the nature and type of sanction to impose upon the licensee found to have engaged in unprofessional conduct.

IV. DISCUSSION¹

Dr. Riggin filed a motion in limine prior to hearing requesting that evidence related to the revocation of his Idaho chiropractic license and the testimony of B.B. be excluded on the grounds that the evidence was not relevant or probative of the matter before the Hearing Officer and that the evidence was unduly prejudicial. The Hearing Officer denied Dr. Riggin's motion in limine on the basis that it appeared the evidence related to the Idaho revocation was relevant as to what type of sanctions, if any, should be imposed. The Hearing Officer also denied the motion in limine related to B.B.'s testimony on the basis that it was too early in the proceedings to determine the relevancy or scope of B.B.'s testimony.

A. Evidence regarding the Idaho revocation is admissible.

Evidence is relevant if it has any tendency to make the existence of any fact of consequence more or less probable. Mont. R. Evid. 401. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity,

¹Statements of fact in these conclusions of law are hereby incorporated by reference to supplement the findings of fact. Coffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

or absence of mistake or accident. Mont. R. Evid. 404(b). Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Mont. R. Evid. 403.

The Montana Supreme Court addressed the admissibility of “other acts” evidence in *State v. Dist. Ct. 18th Jud. Dist.*, 358 Mont. 325, 246 P.3d 415. The court found that Mont. R. Evid. 404(b) does not provide a general bar to evidence of other crimes, wrongs, or acts; rather it prohibits a theory of admissibility while clarifying when evidence is admissible. *Id.* at 345. The court noted, “. . . the trial court should carefully analyze whether the evidence in question is relevant for a purpose that does not involve drawing an impermissible inference of action in conformity with character.” *Id.* at 349. Remoteness in time remains an important relevancy consideration whether other alleged acts are admissible. *Id.*

Dr. Riggin argues the admission of “other acts” evidence, specifically evidence related to the Idaho revocation, would cause the Hearing Officer to conclude “bad act equals bad person equals guilty person.” *Id.* at 345. The department argues the evidence was not offered for the purpose of proving a character trait. The department contends the evidence was offered to demonstrate “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

The Idaho State Board of Chiropractic Physicians revoked Dr. Riggin’s license in 1997, which was approximately 12 years prior to K.F. beginning work for Big Sky Chiropractic. The remoteness in time of the Idaho revocation to K.F.’s allegations, which were made to the Board in January 2012 - 15 months after her separation from Big Sky Chiropractic - is significant. The Hearing Officer is unable to find that the facts underlying the Idaho revocation is probative as to whether Dr. Riggin engaged in unprofessional conduct in his treatment of K.F. The department argued that the evidence related to the allegations that led to the Idaho revocation could potentially prove opportunity, plan, intent, and preparation on the part of Dr. Riggin. However, the passage of more than 13 years between the two events renders the evidence less than probative of the issue of whether Dr. Riggin engaged in unprofessional conduct holding a chiropractor’s license issued by the State of Montana more than 13 years later. As such, the evidence related to the Idaho revocation has been accorded less evidentiary weight than the sworn testimony of the witnesses who appeared at hearing in the instant case in determining whether Dr. Riggin engaged in unprofessional conduct in regards to his treatment of K.F.

However, the evidence, while not relevant to the issue of whether Dr. Riggin engaged in unprofessional conduct in the instant case, is relevant as to what sanctions, if any, should be applied. The Hearing Officer is required under Mont. Code Ann. §§ 37-1-308 and 37-1-312 and the Montana Administrative Procedures Act (MAPA) to determine in a contested case hearing if unprofessional conduct occurred, and, if so, what sanction should be imposed under Mont. Code Ann. § 37-1-312(1). Bifurcation of the adjudicatory and sanction proceedings before the Hearing Officer is not required under those provisions of law. Given the Board is free to impose progressive discipline upon the licensee, the evidence related to the previous revocation of Dr. Riggin's license is relevant and is, therefore, admissible.

B. B.B.'s testimony is admissible.

Dr. Riggin offered similar arguments regarding the admissibility of B.B.'s testimony. Both B.B. and K.F. appeared at hearing and offered sworn testimony regarding the events leading to their respective separations from Big Sky Chiropractic. B.B.'s testimony regarding "other acts" is relevant, as it pertains to Dr. Riggin's conduct in the workplace. Further, B.B.'s testimony is probative as to the allegations made by K.F., because it shows, as the department contends, opportunity, plan, intent, and preparation on the part of Dr. Riggin. B.B.'s testimony corroborated K.F.'s testimony as to Dr. Riggin's approach to establishing a therapeutic relationship with a young female employee prior to engaging in sexually charged behavior that caused the employee/patient to feel uncomfortable, violated, and embarrassed. Further, the testimony of K.F. and B.B. were similar enough as to show Dr. Riggin engaged in a course of conduct intended to afford him the opportunity to engage in inappropriate and offensive conduct toward young female employees/patients. Both B.B. and K.F. testified they understood they were required to submit to treatment by Dr. Riggin. Further, both women were subjected to the same or similar conduct by Dr. Riggin in a treatment setting.

Neither B.B. nor K.F. appeared to have a personal relationship that would lend itself to a finding that the two women colluded and fabricated a story intended to harm Dr. Riggin's professional standing. Given B.B. appears not to have filed a complaint against Dr. Riggin or had any personal contact with him after her separation from employment, it would appear she has little to nothing to gain in testifying at the administrative hearing. B.B.'s testimony is deemed credible and relevant as to whether Dr. Riggin engaged in the same or similar conduct with K.F.

C. K.F.'s testimony is deemed credible.

Dr. Riggin argued K.F.'s allegations against him were motivated by anger at being placed on an unpaid suspension as a result of her violating his cell phone

policy. Dr. Riggin argued K.F.'s allegations were also motivated by her failing to get into a physical therapy training program due to her not having received a letter of recommendation from Dr. Riggin.

K.F. ultimately completed her training and obtained her license as a Physical Therapist in the State of Montana. K.F.'s failure to obtain employment in a medical office is not sufficient to show she had a long held desire to harm Dr. Riggin. In fact, there is no evidence in the record to suggest K.F. stood to benefit from the Board taking action on Dr. Riggin's license. There is also no evidence showing Dr. Riggin and K.F. had any type of illicit relationship that would have prompted her to act as a "scorned woman" so many months later.

It appears K.F. is a young woman who was sexually assaulted by Dr. Riggin in the guise of his providing therapeutic treatment. While K.F. was obviously an employee of Dr. Riggin at the time the conduct occurred, she was also his patient to whom he owed a duty to act in a manner in accordance with the rules of professional conduct governing his profession. K.F. testified that she came forward after becoming concerned after learning another young woman had been subjected to similar treatment at the hands of Dr. Riggin. K.F.'s testimony, which was sincere and forthright, is deemed credible particularly in the context of B.B.'s testimony, that included sufficiently similar allegations as to corroborate K.F.'s testimony and bolster its credibility. Given the direct and detailed testimony of K.F. and the corroborating testimony of B.B. and K.F.'s family and friends, her testimony that Dr. Riggin made sexual comments to her and sexually assaulted her while receiving chiropractic treatment from Dr. Riggin is deemed more credible than the denials of Dr. Riggin.

Dr. Riggin's testimony was often self serving and contradictory. For instance, Dr. Riggin testified he typically dated and retained a copy of every document he received during the course of business, such as greeting cards and thank you notes he received from his staff. Dr. Riggin testified that he dutifully completed patients' treatment records while providing treatment or shortly thereafter. Yet, Dr. Riggin offered no credible explanation as to how he lost K.F.'s treatment card; nor could he provide a plausible explanation as to why the treatment records he could locate for K.F. included illegible or missing information.

Dr. Riggin's denial that he required all employees to submit to chiropractic treatment is also not credible given that he used portions of a handbook that explicitly stated all employees were required to submit to chiropractic treatment. It makes little sense, given his apparent pride in his attention to detail, that such an item would evade his notice. Further, given Dr. LaMarche's testimony that the Parker Principles encourage chiropractic staff members to submit to chiropractic treatment in an effort to educate patients and promote regular chiropractic care, it is

not credible that a man, who was as devoted to the Parker Principles as Dr. Riggin appears to be, did not require employees to submit to chiropractic treatment from him as a part of their continued employment with Big Sky Chiropractic.

D. Revocation of Dr. Riggin's license is an appropriate sanction.

Compliance Specialist Heidi Kaufman testified the Board employs a progressive system of discipline. The Board considers the nature of the complaint and the existence of previous discipline to determine the nature and type of sanction to impose upon the licensee found to have engaged in unprofessional conduct.

In determining an appropriate administrative sanction under Mont. Code Ann. § 37-1-312(1), an administrative board must "first consider the sanctions . . . necessary to protect or compensate the public" and only then may "consider and include . . . requirements designed to rehabilitate the licensee or licensee applicant." Mont. Code Ann. § 37-1-312(2).

It is undisputed Dr. Riggin previously had his chiropractic license revoked for engaging in the same or similar conduct that gave rise to K.F.'s complaint almost 13 years later. It is also undisputed Dr. Riggin received a license from the State of Montana, after his initial attempt to gain licensure was denied by the Board, contingent upon his completing one year of probation and having a witness present when he examined or administered treatment to female patients.

Given the seriousness of K.F.'s allegations and the inappropriate actions on Dr. Riggin's license, it appears that rehabilitation is no longer an appropriate goal in the treatment of Dr. Riggin's license. It is particularly troubling to the Hearing Officer that Dr. Riggin's conduct occurred not only in the course of K.F.'s employment but in his treatment of her as a patient. The Board's previous decision to allow Dr. Riggin to receive a probationary license and to require supervision when treating or examining female patients was insufficient to correct Dr. Riggin's behavior. It appears to the Hearing Officer that any sanction less than revocation would not be effective in protecting the health and safety of the public. Therefore, it is the Hearing Officer's recommendation that Dr. Riggin's chiropractic license be revoked immediately.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. The Board is empowered to bring disciplinary action against a licensed chiropractor for unprofessional conduct. Mont. Code Ann. 37-1-307; 37-1-312.

2. The department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; Ulrich v. State ex rel. Board of Funeral Service, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Proof of a particular mental state is never an element of proof of unprofessional conduct.

A licensee may be found to have violated a provision of § 37-1-315 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently. Mont. Code Ann § 37-1-320.

4. Unprofessional conduct is defined as . . . “engaging in or soliciting sexual relations with a patient, sexual misconduct either verbal or physical, sexual contact, sexual exploitation, or a sex offense, as defined in Mont. Code Ann. § 45-2-101, when such act or solicitation is related to the practice of chiropractic.” Admin. R. Mont. 24.126.2301(1)(b).

5. Unprofessional conduct also includes failing to keep adequate patient records that are legible and contain at a minimum:

- (i) date of service;
- (ii) pertinent history;
- (iii) relevant symptomology;
- (iv) physical findings;
- (v) results of diagnostic tests;
- (vi) clinical assessment;
- (vii) treatment procedures; and
- (viii) patient progress.

Admin. R. Mont. 24.126.2301(r).

6. Dr. Riggin engaged in unprofessional conduct by making comments of a sexual nature to K.F. and touching K.F.’s buttocks, breasts, and vagina under the guise of providing chiropractic care. Dr. Riggin also engaged in unprofessional conduct by failing to keep adequate patient records that are legible and meet the minimum requirements of Admin. R. Mont. 24.126.2301(r).

7. Dr. Riggin’s conduct is a breach of the professional standards required of chiropractors practicing in the State of Montana and warrants discipline under the

rules and laws of the State of Montana, including Mont. Code Ann. §§ 37-1-307, 37-1-309, 37-1-312, and 37-1-316.

8. The Board has a range of disciplinary options available upon proof of a violation. A sanction may be imposed only after first considering sanctions that are necessary to protect and compensate the public. Only after such a determination may the Board consider and include in the order any requirements designed to rehabilitate the licensee. Mont. Code. Ann. § 37-1-312.

9. The severe sanction of revocation is appropriate in this case based upon previous efforts at rehabilitation proving unsuccessful and the seriousness of the conduct alleged by K.F.

VI. RECOMMENDED ORDER

1. The license of Reese R. Riggin, D.C. should be revoked immediately in an effort to protect the public. Mont. Code. Ann. § 37-1-312.

2. Reese R. Riggin, D.C. shall surrender his license within 24 hours of receiving this notification. Mont. Code. Ann. § 37-1-312(4).

3. Reese R. Riggin, D.C. must reapply for licensure, as authorized under Mont. Code. Ann. § 37-1-314, in the event he chooses to petition the Board for reinstatement of his revoked license.

Dated this 23rd day of May, 2014.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.