

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of
Scott K. Fredin, D.C.
License No. 003156

STIPULATION AND ORDER

WHEREAS, on or about May 6, 2003, the Minnesota Board of Chiropractic Examiners ("Board"), by its Complaint Panel ("Panel"), initiated the above-captioned matter by serving upon Scott K. Fredin, D.C. ("Respondent") a document entitled "Notice of Conference with Complaint Panel" ("Notice");

WHEREAS, Respondent and his attorney met with the Panel on June 19, 2003, to discuss the allegations set forth in the Notice.

WHEREAS, based on their discussions, the parties wish to resolve this matter without the necessity and expense of a contested case hearing or other proceedings by entering into this Stipulation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Respondent and the Panel as follows:

A. During all times material herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice chiropractic in Minnesota.

B. Respondent expressly waives formal hearing and any and all other procedures before the Board to which he might otherwise be entitled by law relative to all facts and conclusions set forth in paragraph D hereof.

C. If the Board in its discretion does not approve this Stipulation, it shall be deemed withdrawn and of no evidentiary value and shall not be introduced or relied on by either party hereto; except that Respondent agrees that, should the Board reject this Stipulation and if the matter proceeds to hearing or is the subject of litigation, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.

D. Respondent does not contest the statements hereinafter following and grants that the Board may, for purposes of its proceedings relating to this Stipulation, consider the following as true:

1. Respondent's date of birth is January 7, 1969. He graduated from Northwestern College of Chiropractic (now Northwestern Health Sciences University) in 1993 and was licensed by the Board the following year. Respondent is licensed in no other state.

2. Respondent has been the sole owner of Owatonna Back and Neck Clinic ("clinic") in Owatonna, Minnesota, since 1995.

3. Respondent engaged in unprofessional conduct by engaging in conduct with patient #1 that was sexual or may reasonably be interpreted by the patient as sexual, as follows:

a. Respondent first saw patient #1 (female - DOB: 12/16/79) on June 30, 2000. From July 17, 2000 through January 15, 2001, Respondent provided chiropractic treatment to patient #1 for injuries related to a July 15, 2000, motor vehicle accident. On August 28, 2002, patient #1 returned to Respondent's clinic complaining of shoulder and lower back pain. Respondent's travel card for patient #1 documents some nine office visits from August 28 through October 4, 2002.

b. On October 8, 2002, Respondent was arrested by the Owatonna Police Department. The criminal complaint against Respondent included substantially the following information and allegations:

1) On Friday, October 4, 2002, Respondent saw patient #1 for a scheduled appointment. At this session Respondent suggested to patient #1 that she come to the clinic for another appointment the next day, Saturday, October 5, 2002. When patient #1 arrived at the clinic on October 5, she soon learned she was alone with Respondent in the clinic.

2) On October 5, 2002, after treatment of patient #1's shoulder, Respondent began treating her hips and asked patient #1 to change into shorts. After Respondent returned to the treatment room, Respondent treated patient #1's right hip and patient #1 suddenly felt Respondent's right hand move to her inner thigh. Respondent then moved his hand under the shorts and under patient #1's underwear and began massaging near the top of her clitoris area. Patient #1 asked Respondent to stop and said again, "No, please stop." Respondent told patient #1 to "just lay back, close your eyes and relax." When patient #1 tried to sit up, Respondent moved his left hand to the back of her neck and penetrated her vagina with one of the fingers of his right hand, inserting his finger the entire length of his finger inside her vagina. Patient #1 again began to sit up and stated, "Please stop, I need to go home." Respondent then grabbed the back of patient #1's neck, held it tightly and inserted a second finger full length into her vagina. Respondent stood up suddenly, withdrawing his fingers, and stated, "I'm sorry." Respondent then left the room. Patient #1 left the clinic shortly thereafter. After leaving the clinic, patient #1 reported Respondent's conduct of penetrating her vagina digitally during a treatment session to the Owatonna Police Department.

3) On Sunday, October 6, 2002, patient #1 called Respondent. The call was tape recorded. Patient #1 told Respondent she felt uncomfortable about what happened during her treatment session the previous day. Respondent stated to patient #1, "how about if I apologize" and "I promise that doesn't go on again." Respondent added that he was sorry for everything. Patient #1 told Respondent that he had crossed the line and you stated, "Uh huh, I know that. How about I make it right by being a good friend."

4) On Monday, October 7, 2002, patient #1 received three calls to her residence from the Owatonna Back and Neck Clinic. Patient #1 then called Respondent. The call

was tape recorded. Respondent acknowledged he had been calling patient #1. Patient #1 stated she was uncomfortable and could not sleep because of what happened on Saturday. Respondent stated, "I made a lapse in judgment, it wasn't o.k." Patient #1 stated to Respondent, "you penetrated me." Respondent stated, "and I was wrong, very wrong, more wrong than I can ever imagine." Patient #1 stated she was hurt. Respondent stated, "you trusted me" and "it will never, ever, ever, ever, ever, ever happen again. . . . I made a lapse in judgment at the period of time that I hurt you and now its time for us to take a look at it, realize that it was a mistake, and go on." Patient #1 stated she felt sick to her stomach and that she felt very hurt and was a wreck. Respondent stated, "I could lose my license; I don't know why I did it; I've never done anything like this, tell me what to do." Respondent told patient #1 he could counsel her. Patient #1 stated she already had a counselor and felt she needed to tell him about the incident. Respondent stated, "[C]an I ask a favor, don't tell them, cause otherwise I'm gonna lose my license and have to find another job."

5) The October 8, 2002, criminal complaint listed two counts of criminal sexual conduct against Respondent for his conduct with patient #1, as follows:

Count 1: Criminal Sexual Conduct in the Third Degree
In Violation Of [Minn. Stat. §] 609.344 Subd 1 (k)

On or about October 5, 2002, within the County of Steele, defendant engaged in sexual penetration with another person and the actor accomplished the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose.

Count 2: Criminal Sexual Conduct in the Fifth Degree
In Violation Of [Minn. Stat. §] 609.3451 Subd. 1 (1)

On or about October 5, 2002, within the County of Steele, the defendant engaged in nonconsensual sexual contact.

c. Respondent admits to having engaged in sexual contact with patient #1, but denies penetration, by any means, of patient #1.

4. Respondent is alleged to have engaged in unprofessional conduct by engaging in conduct with patient #2 that was sexual or may reasonably be interpreted by the patient as sexual, as follows:

a. Respondent first saw patient #2 (female - DOB 3/8/83) on May 3, 2001, for complaints of back pain. Respondent's progress notes and travel card for patient #2 document some ten office visits from May 3 through June 29, 2001.

b. On July 2, 2001, patient #2 went to the Steele County Women's Resource Center and spoke with the sexual assault coordinator. Patient #2 reported inappropriate sexual conduct by Respondent toward her.

c. On October 22, 2002, a second criminal complaint was issued against Respondent. The criminal complaint states that patient #2 met with police on October 10 and 17, 2002, and alleged Respondent had sexually assaulted her during the summer of 2001. The complaint includes substantially the following allegations and information:

1) At about 5:00 p.m. on or about October 29, 2001, patient #2 was driven by a friend to Respondent's clinic for an appointment with Respondent. Respondent told the friend she could leave because Respondent would give patient #2 a ride home. When Respondent came into the treatment room, Respondent told patient #2 to unbutton and unzip her jeans. While patient #2 was lying on her back Respondent took her hand and placed it on Respondent's private area. Patient #2 pulled her hand away from Respondent's grasp. Respondent then put his hand near patient #2's vaginal area and asked, "does it hurt here?" Respondent progressively moved his hand lower into her private area; whereupon she got up, zipped and buttoned her jeans and said, "I think I'm fine." When patient #2 attempted to

leave the treatment room Respondent said, "don't I get a hug" and "you should make your appointment around this time again, so I can give you a ride."

2) Respondent gave patient #2 a ride home after the appointment described above. Respondent asked patient #2 a number of personal questions about her boyfriend and what she did with her boyfriend. When Respondent arrived at patient #2's home and she attempted to get out of his vehicle, Respondent asked for a hug and then hugged patient #2 and attempted to kiss her.

3) Patient #2 told police investigators of another incident during a treatment session with Respondent that occurred approximately one week prior to her June 29, 2001, visit. On that occasion, patient #2 was lying on her stomach and Respondent moved his hand inside her jeans and underneath her underpants. Respondent began rubbing patient #2's buttocks and stated, "just close your eyes and relax."

4) The criminal complaint listed four counts of criminal sexual conduct against Respondent for his conduct with patient #2, as follows:

Count 1: Criminal Sexual Conduct in the Fourth Degree
In Violation Of: [Minn. Stat. §] 609.345 Subd. 1 (k) & Subd. 3

On or about late June 2001, within the County of Steele, defendant accomplished the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose, to-wit: touching buttocks

Count 2: Criminal Sexual Conduct in the Fifth Degree
In Violation Of: [Minn. Stat. §] 609.3451

On or about late June 2001, within the County of Steele, the defendant did intentionally touch the immediate area of the buttocks.

Count 3: Criminal Sexual Conduct in the Fourth Degree
In Violation Of: [Minn. Stat. §] 609.345 Subd. 1 (k) & Subd. 3

On or about June 29, 2001, within the County of Steele, defendant accomplished the sexual contact by means of deception or false

representation that the contact is for a bona fide medical purpose, to-wit: touching vagina

Count 4: Criminal Sexual Conduct in the Fifth Degree
In Violation Of: [Minn. Stat. §] 609.3451

On or about June 29, 2001, within the County of Steele, the defendant did intentionally touch the immediate area of intimate parts, to-wit: vagina.

d. Respondent denies having engaged in sexual contact with patient #2.

5. Respondent engaged in unprofessional conduct by engaging in conduct with patient #3 that was sexual or may reasonably be interpreted by the patient as sexual, as follows:

a. On October 28, 2002, a third criminal complaint was issued against Respondent. The criminal complaint stated that patient #3 met with police on October 23, 2002, and reported Respondent sexually assaulted her during a chiropractic appointment that occurred some time during late fall through winter of 2000 to 2001.

b. Respondent's clinic records document that he saw patient #3 (female - DOB 7/4/81) on only one occasion, February 23, 2001, for complaints of upper and lower neck pain and back pain.

c. The criminal complaint regarding patient #3 included substantially the following allegations and information:

1) At the beginning of the treatment session, Respondent told patient #3 to put on a pair of shorts, telling her he wanted to give her a hip adjustment. Patient #3 thought this was odd since she was not complaining of hip problems. After patient #3 changed into the shorts and was lying on her back on the treatment table, Respondent began to rub and massage her outer hips and suddenly began rubbing and massaging the inner thighs of both of patient #3's legs. Respondent moved his hands towards patient #3's vagina under her

panties and then touched the outside of her vagina with both hands. Patient #3 pulled away and got off the treatment table, stating she had to get back to work. Respondent asked patient #3 for a hug and approached patient #3 and gave her a firm hug, pressing himself against her body. Patient #3 felt Respondent's erect penis pressed against her stomach.

2) The criminal complaint lists two counts of criminal sexual conduct against Respondent for his conduct with patient #3, as follows:

Count 1: Criminal Sexual Conduct in the Fourth Degree
In Violation Of: [Minn. Stat. §] 609.345 Subd. 1 (k) & Subd. 3

On or about February 23, 2001, within the County of Steele, defendant accomplished the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose, to-wit: touching vagina

Count 2: Criminal Sexual Conduct in the Fifth Degree
In Violation Of: [Minn. Stat. §] 609.3451 Subd. (1) & (2)

On or about February 23, 2001, within the County of Steele, the defendant did intentionally touch the immediate area of the vagina.

d. Respondent telephoned patient #3 the day after the appointment and apologized for his conduct. Respondent offered patient #3 a free adjustment if she would come back to the clinic.

e. Respondent admits having engaged in sexual contact with patient #3.

6. Respondent has allegedly engaged in additional unprofessional, unethical, or deleterious conduct, including the following:

a. Respondent treated patient #4 (female) for low back pain with right leg sciatica for about three to four weeks in about August to September 2001. On each visit there was only dim light in the treatment room. On one or more occasions after the chiropractic adjustment, Respondent unbuttoned and unzipped patient #4's pants to massage and apply lotion

to her tailbone area. The following occurred during and after patient #4's last visit to Respondent:

1) After Respondent adjusted patient #4's neck and lower back, he asked her to change into shorts. Respondent then had patient #4 lie on her back while he sat on a stool next to the right side of the exam table. Respondent bent patient #4's knee and moved her leg until it was lying in Respondent's lap, then slid his right hand up underneath patient #4's shorts and began to massage the area next to her pubic bone. Patient #4 became tense and afraid. Respondent told patient #4 to close her eyes and relax and continued to massage the area next to her pubic bone. Patient #4 did not return to Respondent's clinic after this appointment. Patient #4 later learned she had a large disc herniation that required surgery.

2) For approximately eight months patient #4 continued to be bothered by Respondent's inappropriate touching of her. Patient #4 called Respondent and told him that his conduct in touching her pubic area was inappropriate and she wanted the money she paid to Respondent returned. Respondent refunded approximately \$420-\$450 to patient #4. Patient #4 received the refund approximately one week before Respondent was arrested and charged with criminal sexual conduct with patient #1.

b. In 1997 and 1998, patient #5 was a patient of chiropractor #1, an independent contractor at the clinic. Respondent and patient #5 met when she came to the clinic for her chiropractic appointments. The following occurred with regard to patient #5:

1) Sometime in 1999, Respondent and patient #5 were at a local bar where Respondent approached patient #5 and attempted to touch, kiss and put his arms around her. Respondent made lewd comments to patient #5 and propositioned her. When patient #5, her husband and friends went to her home from the bar, Respondent followed them

and entered the home uninvited. Patient #5's husband escorted Respondent out of the house. The following day, Respondent called patient #5 several times. Patient #5 told Respondent she was married and did not appreciate his calls.

2) Approximately two days after the incidents in the bar, patient #5 was home alone in an upstairs room working at her computer when Respondent parked in her driveway and entered her home uninvited and unannounced. Respondent surprised patient #5 on the staircase, grabbed her by the shoulders and demanded oral sex. Patient #5 struggled with Respondent until he left when she threatened to tell Respondent's wife and stated her husband was coming home. Over the next few days, Respondent continued to telephone patient #5 and demand oral sex.

c. Respondent denies having engaged in sexual contact with patients #4 and #5.

7. On September 24, 2003, Respondent pled guilty in Steele County District Court, Owatonna, Minnesota, to two counts of criminal sexual conduct in the fourth degree relative to patients #1 and #3.

8. Pursuant to Minnesota Statutes, section 148.10, subdivision 1 (a) (11) and (e) (2) (2002), the Board may revoke the license of a chiropractor for engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual. The Board may also revoke the license of a chiropractor for the conviction during the previous five years of a felony reasonably related to the practice of chiropractic. Minn. Stat. § 148.10, subd. 1 (5) (2002).

E. NOW, THEREFORE, IT IS FURTHER STIPULATED AND AGREED that upon this Stipulation, and without further notice or additional proceedings, the Board may, in its discretion, adopt and implement the following Order:

1. Respondent's license to practice chiropractic in Minnesota is hereby **REVOKED**. Effective immediately and until further order of the Board, Respondent shall not:

a. Engage in any act or practice in this state by which chiropractic is defined under Minnesota Statutes, section 148.01 (2002) and Minnesota Rules 2500.0100, subpart 9b (2001), or any other act or practice which may be undertaken in this state only by licensed health personnel or by the lawful delegates, assistants, technicians or aides of such personnel;

b. Advertise, use any of the terms or letters "Doctor of Chiropractic," "Chiropractor," "D.C." or otherwise hold himself out in any manner as being authorized to practice chiropractic in Minnesota.

2. Within ten (10) days of the date of this Order, Respondent shall surrender his license wall certificate and current license renewal card to the Board. The certificate and card shall be mailed or delivered to the Minnesota Board of Chiropractic Examiners, c/o Larry A. Spicer, D.C., Suite 300, 2829 University Avenue S.E., Minneapolis, Minnesota 55414.

3. Respondent may petition the Board for license reinstatement not earlier than five (5) years from the date of this Order, provided he has fully complied with the following conditions:

a. Respondent shall submit a certified check, cashier's check or money order to the Board in the amount of \$12,000 (twelve thousand dollars) to offset a portion of the Board's expenses in this matter. The check or money order shall be made payable to the "Minnesota Board of Chiropractic Examiners."

b. Not earlier than twelve (12) months prior to the submission of any petition for license reinstatement, Respondent shall take and pass the Special Purposes

Examination in Chiropractic ("SPEC") with a score of at least 375. Respondent shall be responsible for all costs associated with the SPEC examination and any reexamination(s).

c. Respondent shall participate in and successfully complete or achieve an unconditional rating from the Professional/Problem Based Ethics ("ProBE") program offered by The Ethics Group, LLC, 89 Summit Avenue, Suite 185, Summit, New Jersey. All costs associated with the ProBE program shall be paid by Respondent.

d. Respondent shall undergo a mental health evaluation performed by a licensed psychologist or psychiatrist who is approved in advance by the Panel and shall comply with all of the evaluator's recommendations for further mental health evaluation and/or treatment. Respondent shall execute releases authorizing the Board to receive reports and records from the evaluator and any treatment provider and to discuss Respondent's case with and provide data and information to such persons. Respondent shall be responsible for all costs associated with the evaluation and any recommended further evaluation and/or treatment.

e. Respondent shall undergo a chemical dependency evaluation performed by a licensed health professional who is approved in advance by the Panel and shall comply with all of the evaluator's recommendations for further evaluation and/or treatment. Respondent shall execute releases authorizing the Board to receive reports and records from the evaluator and any treatment provider and to discuss Respondent's case with and provide information to such persons. Respondent shall be responsible for all costs associated with the evaluation and any recommended further evaluation and/or treatment.

f. Respondent shall fulfill all Board continuing education requirements applicable to chiropractors licensed continuously from the date of this Order to the date of his submission of any petition for license reinstatement, and obtain an additional ten (10)

hours of Board recognized and approved continuing education for each intervening renewal year;
and

g. Respondent shall pay the fee required under Minnesota Rule 2500.1100 for the renewal of his license.

4. Any petition for reinstatement shall be in writing and shall include:

a. An affidavit from Respondent stating or listing:

1) Whether he has fully abided by the prohibitions set forth under paragraph 1.a-b;

2) His current mailing address and telephone number;

3) Where and with whom he intends to practice chiropractic in the event his petition for reinstatement is granted; and

4) The nature and status of any criminal charges pending against Respondent and the status of his compliance with the sentence imposed in connection with any conviction arising from the charges referenced in paragraph D.7;

b. Evidence of Respondent's compliance with each of the conditions of paragraph 3.a-g; and

c. A report from the psychologist or psychiatrist approved in accordance with paragraph 3.d. The report shall verify that the evaluator received and reviewed this Stipulation and Order and shall include or address Respondent's diagnosis, treatment history and treatment plan, if any, and prognosis. In connection with the prognosis, the report shall include an express statement whether if reinstated Respondent can reasonably be expected to practice chiropractic without engaging in sexual conduct with any person to whom he provides chiropractic care, subject to paragraph 5. If practice restrictions, limitations or conditions in

addition to those referenced under paragraph 5 are indicated to prevent sexual conduct with patients or to address other conditions or circumstances, the report shall so state and explain.

5. The Board shall consider any petition submitted in accordance with paragraph 4 at its first regular meeting after the petition's receipt, provided:

a. The Board receives the petition at least 30 days before the meeting;
and

b. Respondent first meets with the Panel and executes a written agreement, in addition to the instant Stipulation and Order, which shall authorize the Board's imposition of such conditions and restrictions upon any reinstated license as the Board reasonably deems necessary to protect the public and to prevent the recurrence of the conduct described in paragraph D. 3-6 or similar conduct. Such conditions and restrictions shall include but need not be limited to the following or reasonably similar provisions:

- 1) Probation with the Board for up to four (4) years;
- 2) Practice supervision by a licensed chiropractor approved in advance by the Panel, group practice requirements, and/or the documented presence of a third person adult at all times Respondent treats female patients;
- 3) If mental health, chemical dependency and/or other impairment treatment is indicated by the evaluations required under paragraph 3.d-e, monitoring of such treatment by the Health Professionals Services Program or a like organization or entity;
- 4) Periodic reports to the Board concerning any criminal probation;
- 5) Periodic meetings with the Panel or its designee; and

6) The establishment of summary suspension or revocation procedures for any violation of the agreement.

6. In the event the Board denies a petition for reinstatement, Respondent shall not again petition for a period of six (6) months from the date of the denial; except that Respondent may not petition for one (1) year if the denial is based on evidence that Respondent practiced chiropractic at any time while his license was revoked or otherwise violated any of the prohibitions set forth in paragraph 1.

7. The Board shall grant a petition submitted in accordance with paragraphs 3-5 if Respondent first executes the agreement described under paragraph 5 and if it determines that that the preponderance of all information received indicates that Respondent:

- a. Has refrained from practice or any other violation of paragraph 1 during the period of the revocation of his license;
- b. Has provided wholly truthful information in his reinstatement petition and has otherwise complied with all reinstatement requirements as specified above;
- c. Has completed or is successfully pursuing, at his own expense, any mental health, chemical dependency and/or other impairment treatment and any additional evaluations indicated pursuant to the evaluations required under paragraph 3.d-e;
- d. Has completed or is satisfactorily complying with all terms of any criminal probation; and
- e. Is physically, mentally and emotionally capable of practicing chiropractic in a professional manner, with reasonable skill and safety to the public, and is unlikely again to engage in behavior like that described in paragraph D.3-6.

The burden of proof shall be upon Respondent to demonstrate that he has successfully addressed the causes of his misconduct and that the foregoing criteria for reinstatement have been met.

F. IT IS FURTHER STIPULATED AND AGREED that Respondent has voluntarily entered into this Stipulation without threat or promise by the Board or any of its members, employees or agents, and after consultation with and advice from Respondent's counsel.

G. Nothing herein shall preclude the Board from seeking injunctive relief against Respondent and/or from referring the matter to criminal law enforcement authorities if at any time subsequent to the date of this Order and prior to any license reinstatement under paragraph E.7 Respondent practices or represents himself as being authorized to practice chiropractic in this state.

H. This Stipulation shall not in any way limit or affect the authority of the Board to initiate contested case proceedings against Respondent on the basis of any act, conduct or omission of Respondent occurring before or after the date of this Order which is not related to the facts, circumstances or requirements referenced herein; nor shall this Stipulation and Order in any way limit or affect the authority of the Board to temporarily suspend Respondent's license under Minnesota Statutes, section 148.10, subdivision 4, should Respondent's license first be reinstated under paragraph E.7. Likewise, nothing herein shall preclude the Board from initiating disciplinary action against Respondent at any time for the violation of a lawful order of the Board should he fail to provide wholly truthful information in connection with any reinstatement petition submitted under paragraph E or relative to any other report or information required under this Stipulation and Order.

I. Respondent hereby knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General, the State of Minnesota and their agents, employees and representatives which may otherwise be available to Respondent under the Americans With Disabilities Act and the Minnesota Human Rights Act relative to the action taken or authorized against Respondent's chiropractic license under this Stipulation.

J. Any appropriate court may, upon application of the Board, enter an order enforcing any or all of the terms of this Stipulation.

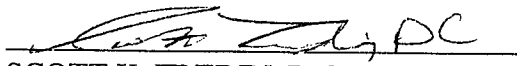
K. This Stipulation, including the accompanying Board Order, is a public document.


L. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

For the Panel:

Dated: 9/24, 2003

Dated: September 24, 2003

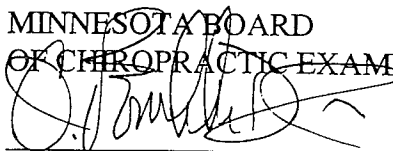

SCOTT K. FREDIN, D.C.
Respondent


LARRY A. SPICER, D.C.
Board Executive Director

ORDER

Upon consideration of the foregoing Stipulation and all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of the Stipulation are approved and adopted by the Board and Respondent's license is Revoked, effective this 2nd day of Oct 2003 2003.

MINNESOTA BOARD
OF CHIROPRACTIC EXAMINERS
By: 
GARY R. PENNEBAKER, D.C.
President