



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. BDS 04789-20

**IN THE MATTER OF THE SUSPENSION OR
REVOCAION OF THE LICENSE OF
ARCHER IRBY, DC.**

Michelle F. Mikelberg, Deputy Attorney General, for Petitioner Matthew J. Platkin, Acting Attorney General of New Jersey, attorneys)

Brian Neary, Esq., for Respondent

Record Closed: April 13, 2022

Decided: April 27, 2022

BEFORE: **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner alleges, in its Verified Complaint and Order to Show Cause, both dated August 17, 2016, sexual misconduct by respondent professional licensee against patients in violation of N.J.S.A. 45:1-22(d), (f) and (h), and seeks the revocation or suspension of respondent's license. Respondent filed its Answer thereto on September 15, 2016.

The matter was transmitted to the Office of Administrative Law (OAL) as a contested matter on April 2, 2020.

A prehearing conference was held on June 16, 2020, and a prehearing Order was entered the same date.

Petitioner filed a Motion to Amend the Verified Complaint with the OAL on March 19, 2021. Respondent filed no response thereto. Said motion was granted by Order of the undersigned dated May 12, 2021. The Amended Verified Complaint submitted was deemed filed as of the date of said Order. Respondent did not file an Answer to the Amended Verified Complaint.

The hearing was held on June 9, 2021, June 11, 2021, June 21, 2021, June 23, 2021, June 25, 2021, July 9, 2021, August 26, 2021 and September 24, 2021.

The record remained opened to afford counsel the opportunity to obtain the transcript of the hearing and to submit simultaneous closing briefs. Briefs were due on March 31, 2022. Petitioner's post hearing brief, dated March 30, 2022, was received April 1, 2022. Respondent's post hearing brief, dated April 11, 2022, was received April 14, 2022. Petitioner was afforded the opportunity to submit a reply brief as Respondent's brief was late and had the benefit of having Petitioner's brief, notwithstanding that briefs were to be submitted simultaneously. Petitioner declined the opportunity to submit a reply brief by letter dated April 13, 2022. Accordingly, the record was closed on April 13, 2022.

ISSUE

Whether there is preponderance of the relevant and credible evidence to support the allegations in the Amended Verified Complaint that Respondent violated N.J.S.A. 45:1-21(c),(d),(e),(f) and (h), and, if so, what the appropriate penalty should be.

SUMMARY OF RELEVANT TESTIMONY

Petitioner's Case

S.I. testified as follows:

She is employed as an executive in the television industry. She knows the Respondent as he was her chiropractor.

She began seeing Respondent as he had experienced numbness on the bottom of her foot. Her primary care doctor recommended Respondent. She first saw Respondent in 2013. Respondent worked mostly on Ms. Irish's neck, shoulders arms and back. Appointments lasted approximately one-half hour.

She stopped seeing Respondent in 2014 as she was feeling better. Her issues resolved and she saw no reason to continue treatment. During this time in her treatment Respondent acted professionally. He was friendly. Sometimes he would greet her with a hug.

S.I. returned to treatment with Respondent in June of 2016. Her neck had seized up waiting in line at the airport. She experienced excruciating pain. At her first appointment Respondent sent her for an MRI.

S.I. then reviewed photographs of Respondent's office and described its layout.

On July 27, 2016, she had an evening appointment (around 6:00 p.m.) with Respondent. Respondent directed S.I. to the acupuncturist where she treated. Afterward Respondent directed her to a treatment room. Normally, she would start treatment face down. This time Respondent directed her to lay face up. Treatment began with her neck and shoulders and arm stretching. She described this as "familiar and the same."

Respondent then told her she had tightness in her pectoral muscles and began to massage the top of her breast. Respondent told her he knew it was uncomfortable. He began to rub the top and side of her breast for approximately ten minutes. The treatment then ended. She described it as "uncomfortable". She assumed this was part of her treatment.

S.I. returned for treatment on Saturday, July 30, 2016 at 9:00 a.m. She went into the treatment room and was instructed to lay head up on the table. Respondent began on her neck, shoulders and arms, as he did at the last treatment. He then again began massaging her breast. He again apologized stating "I know this is uncomfortable, I'm sorry". All the while he is talking of other things. Respondent then jumped up as he heard someone enter. He went to speak with that person and told S.I. "don't move". After speaking with the person Respondent returned. She thought Respondent took one-half hour to return. He left again for about five minutes to speak with the other person. Respondent began moving his hand under her sports bra. He said "I need to get in here". He was touching everything except the nipple. He told her that her pectorals were the problem. She felt uncomfortable. She rationalized the treatment. At one point Respondent said "lift up to me". She notice he was no longer talking, but breathing heavily. He then pulled down her sports bra and she felt his mouth on her nipple. Ms. Irish jumped off the table. She grabbed her bag and left.

Respondent followed her and said he was sorry and asked her to come back. She noticed a woman in the hallway on her way out. She decided not to go to her car in the parking lot as she did not want to be alone. She started walking down Grand Avenue. She just wanted to get away from him. He continued to follow her. He said "let me talk to you. I don't know what happened. That's never happened to me before." S.I. told Respondent to leave her alone. She dialed 911 and told them she would come to the police station. She arrived after 10:00 a.m.

She began to recount her experience to the police when her telephone rang. It was from Irby Spine Care. The officer asked her to put the call on speaker. Respondent asked her to come to the office with her husband to talk. She screamed at Respondent for a couple of minutes when the officer signaled for her to hang up, which she does. Respondent called again. She did not answer at the direction of the officer. A couple of minutes later Respondent called again. She then received a text message which said the office is closed for the day and she could pick up her car. She responded to the text by saying she was returning to the office and "can we talk". This was at the direction of the officer. Respondent did not respond to this message.

S.I. left the police station sometime around 3:30-4:00 p.m., picked up her daughters at her mother's house and returned home. She then had a group chat with three of her best friends. After the chat one friend told her to retell her story on video so as to preserve it.

She filed a civil suit against Respondent in October or November 2019. The lawsuit also names Respondent's wife, who is also a chiropractor and practiced with Respondent. Respondent's wife was named in the lawsuit upon advice from her attorney.

She saw Respondent regularly during 2014. She also saw Respondent's physical therapist. Her appointments were every two or three weeks. She would initial a sign in sheet when she arrived for an appointment. Her complaints were neck and shoulder pain that radiated down her shoulders and hands. Treatment was successful.

In 2016 her first treatment was June 28. She had not seen Respondent since 2014. She never saw Dr. Randi Irby, Respondent's wife during 2014. She never asked to see a female doctor in 2014.

Respondent did not explain a treatment called SOT. He did not explain that treatment would differ from previous treatment.

She denied stating that she had pectoral tightness (during 2016 treatment). Rather, it was Respondent who told her that.

Prior to July 30, 2016, Respondent had been professional and friendly.

S.I. has seen chiropractors in the past, prior to seeing Respondent. She had never received treatment as she had received on July 27 and 30, 2016. She did not complain when Respondent massaged her breast during the July 27, 2016 appointment. She did not speak to her husband about it.

During the treatment on July 30, 2016 there were people present in the office.

She never told Respondent she was not comfortable with being head up on the table.

Respondent was friendly and would give her a hug. He was also talkative.

When Respondent touched her breast area he did inform her first "I gotta get in here".

When Respondent called her after she left his office on July 30, 2016 she did not inform him she was in the police station.

Respondent never informed her of the need to remove an article of clothing.

P.H. testified as follows:

She has lived in Englewood since 1990. She is a retired science teacher. She taught in the Englewood school system. She knows Respondent as he was her chiropractor. She met Respondent at the Community Baptist Church.

She began seeing Respondent around 2009. She had back and neck problems resulting from an automobile accident. P.H. stated that at ninety-nine percent of her visits she saw Respondent. Once in a while she saw Respondent's wife. During treatments Respondent would adjust her. She described Respondent as "very professional." She also described his treatment as "he did a very good job."

In 2009 she experienced a billing issue regarding manipulation under anesthesia (MUA). There was a bill for four thousand dollars. Her husband spoke to Respondent about the bill. The billing issue was resolved and she did not have to make any payment.

P.H. recalled an incident that occurred on October 2, 2012 around four o'clock. She described it as "devastating". Respondent was adjusting her neck while she was lying face up. At the end of this he cupped his hand on her breasts over her clothing.

He had never done that before. Respondent said nothing to her and she said nothing to him. She stated she was in shock. She left the office as fast as she could.

She never had any issues with pain in her breasts.

When she arrived she told her husband what happened. She did not go to the police at this time. Her husband went to the Community Baptist Church, a large church in the community, and spoke with the minister and others.

Afterwards, in 2016, Respondent was at the school where she worked. It was career day. His name was listed for the event. She did not see him that day. She spoke with another teacher about Respondent being at the school and wondered if she should advise the principal. The person she spoke with last name is Sheridan.

Later she received a telephone call from E.W. who informed her she experienced the same thing with Respondent. E.W. advised P.H. that she was going to the police. P.H and E.W. set a date to meet at the Englewood Police station. The date was January 29, 2016.

When she began seeing Respondent for treatment she saw him at least twice per week. At the time she trusted him enough to permit Respondent to perform a manipulation under anesthesia.

Prior to the incident she did not feel uncomfortable treating with Respondent.

During treatments Respondent would tell her how to position herself. He did not tell her what body part would be treated. Sometime she would be treated face up on the treatment table. Sometime it would be face down.

During the time she was being treated by Respondent she would see him at the Community Baptist Church. She was always treated on the same table in the same room, except for the day of the incident. That day it was a different room. She did not inquire as to why it was a different room.

On the date of the incident (October 2, 2012) after Respondent had cupped her breasts she stated she had an out of body experience. She did not report this to the police until 2016. She and E.W. appeared at the Englewood Police station on July 29, 2016 and spoke with a detective from the Bergen Count Prosecutor's Office and an Englewood Police Department detective. She recalled her statement being recorded. She did not use the term "cupping" when she explained what happened to the police. She also did not use this word when she testified at Respondent's criminal trial. Respondent had his hands on her breasts for a matter of seconds and did not speak to her. Other than when Respondent touched her breasts P.H. had no other complaints about him. There was never a conversation with Respondent that her pectoral muscles might have caused her neck problems.

From 2012 until 2016 she did not see Respondent at church. She had no contact with him.

E.W. was a colleague who taught at her school and also a friend. They would eat lunch together. On career day at the school she did not see Respondent, only his name. She was concerned he was at the school. She termed him a "predator". She told the first teacher she saw. She also spoke with the assistant principal. She then went about the rest of her day.

After career day E.W. telephoned P.H. and informed her she had two experiences with Respondent. The telephone call occurred on July 27, 2016. Prior to the telephone call P.H. was not aware that E.W. treated with Respondent. It was during the telephone conversation that the two agreed to go to the police.

P.H. had treated with other chiropractors. They never touched her breasts.

E.W. testified as follows:

She is a teacher and teaches middle school math and science. In 2016 she taught at the Janis Dimus Middle School in Englewood. She taught there for fourteen years.

She knows Respondent, having first saw him at career day at the school in 2016. She became a patient after that. Prior to seeing Respondent, she had been going to chiropractors since she was nineteen or twenty.

Respondent treated E.W. for a variety of issues, including her back and neck. She was also treated for TMJ, which required Respondent to place his fingers in the soft palate in her mouth. Treatment included her collarbone, shoulders, back, hips and cranial. Respondent mostly used his hands. He also had a small machine that produced a pulse. She got a good deal of relief from Respondent's treatment.

She described Respondent as "jokey" and very casual. At some point the nature of the joking changed, and included sexual innuendo. It made her feel uncomfortable, but she laughed it off.

At one point he had his hands in her mouth and stated she had no gag reflex. She interpreted this as sexual innuendo. Another time he had his hands in her cleavage and winked at her and said "don't kiss and tell". On that same day he place his hands on her breasts. She felt uncomfortable. She told her husband. She stated "it felt weird". She did not say anything to Respondent that day. This appointment was July 20, 2016.

Her next appointment was July 27, 2016, a Wednesday. It was her anniversary. There were other people in the office upon her arrival, but she thinks they all left. During the session Respondent worked on her ribs, collarbone, which seemed appropriate. He started moving closer to her breast until he was on most of her breast, except the nipple. She thought this weird, but pushed it out of her mind as something sexual. He was also working on her mouth and said "oh, are you ready for the real thing?", which he had also said at the treatment on July 20, 2016. She turned around and saw his penis out of the top of his pants. She said "no", but otherwise ignored this. He continued the treatment. She was scared. She was alone with him. She did not want to escalate anything and acted like everything was normal. When Respondent finished they walked to the front door. He hugged her and she left. The hug was very typical. From the time she saw his penis to the time she left was maybe five minutes.

When she got to her car she called her friend, Samantha Sheridan, as Samantha also saw Respondent. Ms. Sheridan was also a teacher at the middle school. Samantha told E.W she had no similar experience. Samantha told her about P.H., so E.W. called P.H. She and P.H planned to go to the police on July 29, 2016. P.H. and E.W. were friendly.

When E.W. treated with Respondent sometimes she saw his wife as a nutritionist and also the acupuncturist.

She confirmed that Respondent was jokey, his manner was casual, and that he engaged in banter with her.

When Respondent worked on her TMJ he placed his fingers in her mouth. She did not find that uncomfortable. She found the manipulation uncomfortable.

She confirmed that Respondent touched her breasts. She stated that it was unusual when he had his hands in her cleavage. No other chiropractor had ever done that. She confirmed that Respondent's treatment provided her with relief. She did not think touching her breasts was part of it. She confirmed that Respondent said "don't kiss and tell" when he touched her cleavage.

She recalled giving a statement to the police when she and P.H. went. She made more than one trip to the Englewood Police Department. The first day she made a written statement. There was another day when she spoke with a detective from the Bergen County Prosecutor's Office.

After the appointment where Respondent touched her breasts she did not apprise his wife of it. She did tell her husband. She returned to see Respondent one week later. She went back as Respondent was helping her. She had never been able to feel that much relief. She wanted to be able to feel better. She did not say anything to Respondent about what had happened at the prior appointment.

At the appointment of July 27, 2016, Respondent again touched her breasts, saying: “and this was much more – more”. She did not tell Respondent to stop. During the time he was working on her TMJ at this visit Respondent said to Ms. Harmon: “are you ready for the real thing?” She looked back and saw his penis out. She said “no”. She looked away and does not know if he returned his penis to his pants. She did tell the police that he put his penis back in his pants. After the incident she did not go to the police. Then she and P.H. agreed to go to the police. She spoke with her husband when he came home. Respondent did not tell E.W. he would be touching her breasts at either the July 20th or July 27th appointments. No other chiropractor had touched her breasts.

M.H. testified as follows:

She is a high school health and physical education teacher. She knows Respondent as he used to treat her for spinal injuries. She met Respondent at a function at the Community Baptist Church. Her pastor introduced her to Respondent and his wife. She had seen a chiropractor before meeting Respondent.

She went for a consultation with Respondent. They discussed what he saw externally and that he wanted to send her for x-rays. She went for the x-ray and provided it to Respondent. That meeting was uncomfortable. Respondent spoke of what he saw on the x-ray and commented “so, I’m sure you have painful sex from behind.” This caught her off guard. She decided to see him for treatment as her pastor introduced them, and he was an African American male and she wanted to support black owned business. She began treatment in 2009. Her insurance did not cover the service. She took out a medical loan. She received treatment two to three times per week. Respondent worked on her full spine: cervical, thoracic and lumbar. He also did stretching of the neck and some massaging. She found his services helpful.

Respondent also treated her two year old daughter and her seventeen year old son. He did not charge her for those services.

At some point she stopped seeing Respondent as the funds from the medical loan were exhausted. Respondent had permitted M.S. to continue to receive treatment at no cost. Respondent advised M.S. that his wife was not happy with that arrangement. She would see him after hours. Respondent allowed her to come in for emergency purposes.

The last time she saw Respondent at his office things were a little different. The room was dimly lit and there was a scented candle smell. Respondent asked her to disrobe, other than her panties and bra. He had never asked this before. Prior she would remove her top only, leaving on her bra. Respondent explained to her that he had a new topical oil to try. She laid face down on the table and Respondent began to massage her lower back. This was atypical as her tension is in her upper back, shoulders and neck. He continued the massage, and prior to having her turn over he unlatched her bra. He had never done that before. When she turned over he began to massage her breasts. It was a little uncomfortable. She heard a belt buckle. She turned over and his penis was out of his pants and right at her face. It brushed against her cheek and the bottom of her ear. She sat up startled. She asked him why he would do that. Respondent stammered in response. She quickly got dressed and left. She did not go to the police as she was embarrassed.

She did return to Irby Spine Care to pick up a letter for he son that was needed for his school. M.S. called the office and spoke with the receptionist to arrange for the letter. She did not see Respondent when she picked up the letter. She may have seen him and his wife at Church once or twice. She changed the service she attended. The services she received from Respondent were in 2012.

She did speak of the incident with one person, Zeek Mowatt, who is one of the ushers at the Church. In 2016 Mr. Mowatt called her to advise that Respondent had been arrested and that she should go to the police. She did not go to the police for a couple of months.

She recalled speaking with a female detective from the Bergen County Prosecutor's Office. She also recalled speaking with another female person from the Bergen County Prosecutor's Office. This was in 2017.

She was aware that a criminal matter against Respondent was brought by the Bergen County Prosecutor's Office. She was not aware that the charges filed regarding her allegation were dismissed. She was advised that her matter would be tried separately. M.S. also stated that Ms. Mikelberg advised her that the criminal case was dismissed and this matter was regarding Respondent's license so he could not practice chiropractic medicine. She also stated that the Bergen County Prosecutor's Office told her they were not bringing the case because there wasn't enough evidence. This was in 2017.

M.S. had received prior chiropractic treatment in 2004 or 2005. She stopped seeing the chiropractor as her PIP funds had run out.

Respondent would speak of his family during treatments.

M.S. treated with Respondent from 2009 to 2011. She saw him mostly twice per week, sometimes a third time. She saw Respondent's wife Randi just about every visit. When her coverage ran out Respondent continued to treat her, but not regularly.

Respondent did not inform her until sometime in 2011 that her coverage had run out.

The incident with Respondent occurred sometime in the Spring of 2012. She had called Respondent to set up treatment. She did not report the incident to law enforcement until November 2016.

She thinks she told Mr. Mowatt of the incident at the end of 2012 or the beginning of 2013. Between 2013 and 2016 she remained friendly with Mr. Mowatt. The only other time she spoke with Mr. Mowatt about the incident is when he called her to let her know that there was a case against Respondent. She did not go to the police until

about two months after Mr. Mowatt told her Respondent had been arrested. She hesitated as her son respected Respondent as an African American professional.

She was unaware if Mr. Mowatt was a patient of Respondent. From the end of 2018 through 2019 she had a business relationship with Mr. Mowatt.

Her previous chiropractor never asked her disrobe. He never massaged her breasts.

The Bergen County Prosecutor's Office did not use the word dismiss regarding her complaint against Respondent. The Assistant Prosecutor explained to her that because of an intimate relationship with Mr. Mowatt her case would be tried separately. She was told they would get back to her. She never received a call.

Dean Curtis testified as an expert in chiropractic medicine as follows:

Dr. Curtis prepared an expert report regarding this matter. He reviewed various documents including patient pain drawings, patient demographic data, insurance documents, diagnostic testing results, physician consultation reports, physical therapy notes, physical therapy prescriptions, chiropractic office notes, acupuncture notes, manipulation while under anesthesia reports, surgical center reports, patient sign in sheets and the Attorney General's complaint against Dr. Irby.

He had not previously heard of Dr. Irby prior to being contacted by the Attorney General's Office.

Dr. Curtis is familiar with the New Jersey Chiropractic Board's regulations. Dr. Curtis described record keeping requirements and why they are important. It provides a complete picture so that when someone reads the record they understand what is wrong with the patient and what the doctor found during the examination, and what the doctor did and why.

He described chiropractic as an alternative healthcare discipline that focuses on the treatment of mechanical distortions in the musculoskeletal system, predominantly of the spine. Primarily chiropractors treat the spine, but can also treat any ancillary part of the body, such as the shoulders, the elbows, the hips, and the knees. Basically, any musculoskeletal area where there is some kind of dysfunction.

Dr. Curtis described the difference between massage and chiropractic medicine. He further described diagnostic method and treatment plans. He described adjustments and the method for same.

No chiropractic treatment requires a patient to completely disrobe.

It is possible that pectoral minor and pectoral major muscles can have dysfunction that require treatment. In his practice he treats very few pectoral minor and pectoral major problems. The treatment of pectoral muscles requires no contact with soft breast tissue or the nipple.

Dr. Curtis reviewed the P.H.'s records from October 2, 2012, from Respondent. He never treated P.H. He noted that Respondent's diagnoses were neck pain, lumbar and sacral subluxations, and sciatica. Her symptoms that date were neck pain, level two out of ten; low back pain following exercise class; shoulder pain. The treatment plan stated P.H. was apprehensive to have her neck adjusted. Due to the apprehension Respondent was to use the activator, an instrument type of adjusting her neck and midback. There was also to be SOT on her low back. On that date Respondent did the activator treatment. He did heat therapy, electric muscle stimulation, therapeutic exercise and lumbar traction. Base upon the diagnosis and the physical findings there would be no treatment necessary for the pectoral muscles. He stated that no contact with the breast would be necessary.

Dr. Curtis then explained how a stretch of T1 and T2 are done. The patient would be lying on her back. There would be no inadvertent breast contact. There was no documentation in P.H.'s records for October 2, 2012 to reflect that Respondent performed a stretch of the T1-T2 area.

Dr. Curtis also reviewed the insurance claim for this date. The codes contained therein do not relate to pectoral work.

It would never be clinically appropriate for a chiropractor to cup a breast or place a hand over a patient's nipple. There was no documentation in P.H.'s record regarding manual breast treatment.

Dr. Curtis then reviewed Respondent's records for E.W., which he felt were very minimal. He never treated E.W.

E.W.'s complaints on July 20, 2016 were chronic pain in her whole back from her neck to her low back, ongoing for twenty years. She rated the pain as eight out of ten. She had radicular pain in both arms. She had TMJ. She did not complain of pain in her chest area or pectoral muscles on either July 20, 2016 or July 27, 2016. On July 20, 2016 Respondent had two diagnoses: cervical subluxation and TMJ dysfunction. Neither of the diagnoses require contact with the patient's pectoral muscles. None of the techniques documented would require breast contact.

The diagnoses for July 27, 2016 were the same as on July 20, 2016. There is no record that Respondent performed scapular release in the T1-T2 area. The insurance claim form for July 20, 2016 were for three level spinal manipulation and spinal traction. The insurance claim form for July 27, 2016 notes that there was an additional claim for therapeutic exercise. There was no claim for scapular release or soft tissue treatment.

Dr. Curtis reviewed the records for S.I., concentrating on July 27 and July 30, 2016. For July 27, 2016, S.I. complained of neck pain that radiated into her shoulder and chest, mid back pain, and tingling and numbness in her hands. Respondent's diagnoses were cervical brachial syndrome; cervical subluxation; adhesive capsulitis of the shoulder; low back pain; and, lumbar subluxation. None of these diagnoses involve the pectoral muscles. Respondent, pursuant to his records, performed myofascial release to the shoulder, LATS, T6 with pectoralis and scapular release. Dr. Curtis then described the techniques for myofascial release. No contact with the breast is needed for these techniques. Dr. Curtis could not explain why Respondent performed

myofascial release in the T6 area as there was no clinical rationale in his records. There is no record that Respondent did any type of treatment to the breast tissue. The insurance claim for July 27, 2016 were for spinal manipulation, mechanical traction, and therapeutic exercise. No soft tissue treatment was billed.

S.I.'s complaints on July 30, 2016 were neck pain, bilateral shoulder pain that radiates to her chest and mid back, and tingling and numbness in her hands. Respondent's diagnoses were the same as July 27, 2016. Treatments for July 27 looked to be the same as that of July 27, 2016. None required contact with the patient's breasts. There is no documentation in the record that Respondent performed a brachial plexus release or an anterior dorsal adjustment on S.I. on July 30, 2016. There was nothing in the record that Respondent had contact with S.I.'s breasts.

After reviewing the records for M.S. Dr. Curtis prepared a supplemental report. He never treated M.S. The records for M.S. started on May 14, 2009 and ended on May 4, 2011. That there is no record for the date of M.S.'s allegation of misconduct for the Spring of 2012 would not be with typical standard of care. Regardless of whether the treatment is billed or free a record has to be kept. As there was no record Dr. Curtis based his opinion on the certification M.S. gave to the authorities. He considered her previous treatment records. Her records indicate diagnoses of thoracic pain and lumbar pain. The only treatment he could document was decompression. There was nothing in her records to indicate a pectoral massage was necessary.

There is no clinical reason to touch a patient's nipple or soft breast tissue.

There are no chiropractic techniques that risk a practitioner's face or mouth making contact with a patient's chest area.

Dr. Curtis has testified many times previously in court in personal injury cases regarding individuals he has treated. He once testified in a malpractice proceeding. This is the first time he has testified in a disciplinary proceeding. He did not treat any of the individuals mentioned in the reports he prepared for this matter. Prior to this

proceeding he had never been involved in the review of an administrative complaint against a chiropractor as a witness.

His job in this matter is not to determine if Respondent did or did not do what is alleged. His job was to determine, if the alleged things happened, would that be normal. His report says it is not normal.

He was not aware that Respondent had been charged criminally initially. He did become aware of it at some point during the course of his review of the matter.

SOT is sacral occipital technique. It is a chiropractic technique primarily using pelvic blocking and manual treatments to the skull and occipital region. Dr. Curtis is not an SOT practitioner. He does not practice CAT3. P.H.'s treatment was SOT.

Respondent had two diagnoses for E.W: cervical subluxation and TMJ dysfunction. E.W. also had fibro myalgia. Dr. Curtis described this condition. He went on to review Respondent's medical records for E.W. He noted that Respondent did not document the TMJ diagnosis, other than the patient stating it. E.W.'s records indicate SOT technique.

In his practice Dr. Curtis bills for every procedure that is performed.

Dr. Curtis then reviewed the medical records for M.S. He prepared a supplemental report regarding her matter. Respondent used the SOT technique for M.S.. He did not review her statement given to the Bergen County Prosecutor's Office. She alleges Respondent acted inappropriately towards her in Spring of 2012. Respondent's records indicate her last treatment was May 4, 2011. His opinion that the touching of M.S was inappropriate is based upon her certification. He did review Respondent's records of his treatment of M.S.

Respondent's Case

Archer Irby, Respondent, testified as follows:

He is a licensed chiropractor in the States of New Jersey and New York. His New Jersey license is suspended pending the outcome of this matter. He practices Sacro Occipital Technique (SOT). Dr. Irby went on to describe SOT.

Dr. Irby reviewed his records for M.S. He first saw M.S. on May 11, 2009. He then went on to describe his diagnoses for M.S. and the type of treatment he used. He stated M.S. abused his office. He stated that she had a twelve month care contract and exceeded that. His wife was upset by this. His wife handled the financial matters for the practice. Dr. Irby denied the allegations against him made by M.S. He did not allow patients when the office is closed.

Dr. Irby then reviewed his records for P.H. He met her and her husband, together with his wife Randi at a tent service in Mackay Park in Englewood. The event was sponsored by the Community Baptist Church. P.H. became a patient. Dr. Irby described his diagnoses and treatment for P.H. He stated there was a controversy regarding billing for manipulation under anesthesia treatment. He denied the allegations made by P.H.

Dr. Irby went on to review his records for E.W. She met his wife Randi at **Dismus** Elementary School on career day. He did not meet her that day. He reviewed his diagnoses and treatment for E.W., which included treatment for TMJ. He noted in his records that E.W. commented she liked gagging. He noted it as it was inappropriate and made him uncomfortable. He denied touching her breast and stating "don't kiss and tell" to E.W. on July 20, 2016. He further denied E.W.'s allegation as to what she said occurred on July 27, 2016.

Dr. Irby reviewed his records for S.I. S.I. was referred to his office by her medical doctor. He treated her from May 2014 to December 2014. She returned for treatment in June 2016. He went over his diagnoses for S.I. and his treatment. He denied the allegations by S.I. When S.I. walked out of his office he followed. He told her to calm down. He called her first from his office, then from his cell phone. He called her from his cell to tell her he was leaving the office so she could pick up her car. He did not

want her to “get her car locked up with” the landlord. He was then arrested. He provided a statement to the police that day.

He denied any improper touching of the four women who made allegations against him.

The four women all lied. They lied when they spoke with the police. They lied in the criminal trial and they lied in this proceeding.

Dr. Irby stated it was important to keep accurate notes.

Dr. Irby continued to treat M.S. after the medical loan was spent. He treated her up to fourteen times afterward. He maintained he did not treat M.S. beyond the last entry in her records. He extended her courtesies after her medical loan ran out. When he did discharge her she was very upset.

Regarding P.H., Dr. Irby called her allegation “false”. She and her husband were angry over a billing issue regarding manipulation under anesthesia. That was in 2009. P.H. continued to go to Irby Spine Care until October 2012. The billing issue was ultimately resolved. Dr. Irby stated that P.H. did not require treatment after October 2, 2012 as her “symptoms ... did not quantify at that time to continue treatment.”

E.W. was his patient from June through July 2016. E.W. had several health conditions, including TMJ. He had no billing issue or disagreement with her. He denies being sexually inappropriate with E.W., or making sexually explicit comments to her. Dr. Irby said E.W. made inappropriate comments to him, and that it made him feel uncomfortable. This he did not put in his notes. When questioned by the police about E.W. Dr. Irby never told them she made inappropriate comments.

Dr. Irby treated S.I. in 2013 and 2014 for neck pain. S.I. returned for treatment in June 2016. He stated he performed trigger point therapy and stretching on her breast tissue. Dr. Irby stated he did not tell the police on July 30, 2016 that he touched S.I.’s nipple. He further stated that he told the police that he informed his patients exactly

what he would be doing. In his records for July 30, 2016, he wrote that S.I. felt uncomfortable during a scapula/pect stretch due to awkward position. He wrote “discontinued adjustment”. He stated he misspoke to the police when he said “Yeah” when questioned if his mouth touched S.I.’s nipple. He denied moving the sports bra of S.I.

Carey Skorski testified as an expert in chiropractic medicine as follows:

Dr. Skorski is qualified in SOT. He explained SOT in some detail. He prepared a report for the present matter. He reviewed Respondent’s notes as well as the complaints against Respondent. He reviewed the report by Dr. Curtis. He also reviewed the Sacro Occipital Research Society International (SORSI) SOT manual. He reviewed N.J.A.C. as it relates to chiropractic.

Dr. Skorski reviewed Respondent’s records for P.H. P.H.’s treatment included SOT, an activator and MUA. Dr. Skorski opined that Respondent provided an acceptable standard of care to P.H.

Dr. Skorski then reviewed Respondent’s records for E.W. He noted Respondent’s diagnoses and his treatment of E.W. He explained the types of treatment provided to E.W., which included SOT. Noting Respondent’s note regarding comments made by E.W., Dr. Skorski stated he would change TMJ treatment to outside the jaw, such as the activator technique. He opined that Respondent’s treatment of E.W. was appropriate.

Next Dr. Skorski reviewed Respondent’s records for S.I. He noted her complaints, Respondent’s diagnoses and treatment, which included SOT. He described how to treat a complaint regarding the pectoral minor muscle. In reviewing Respondent’s treatment of S.I. on July 30, 2016 he opined it would not be physically possible for S.I.’s allegation for that date to happen. He opined that Respondent’s course of treatment for S.I. was correct.

Dr. Skorski then reviewed Respondent's records for M.S. He noted that the records reflect that M.S. wasn't compliant with the treatment plan. Her treatment included SOT.

Dr. Skorski agreed that record keeping is important. That he was taught the SOAP (Subjective, Objective, Assessment and Plan) method. Type of techniques used should be noted. He did not review Respondent's statement to the police. He did have a conversation with Respondent as to how he performs anterior dorsal adjustments. He was aware that Respondent is accused of groping women's breasts. He is also aware that Respondent is alleged to have placed his mouth on the breast of S.I. He is also aware that E.S. and M.S. accused Respondent of exposing his penis. There is no treatment that involves touching a patient's nipples. He stated in his written report that Respondent's patients were informed of possible incidental body contact based upon his reading of Respondent's policy and consent to treatment form. Upon reviewing the form he stated "well, it's understood" when it was pointed out that the words "incidental body contact" do not appear in the SOAP notes.

Exposing one's penis is not part of any chiropractic care.

Regarding E.W., there is nothing in her records to indicate that Respondent palpated her breasts on July 20 and 27, 2016.

Dr. Skorski stated regarding SOT, "Well, like I said before, it's understood when you use SOT technique that that's what needs to be done. So, as the doctor, if I put down I'm using SOT, then I know that I'm going to relieve the muscle tension all around that part of the body, whether it's the neck, or the shoulder, or the upper body.

"So you don't have to put exactly which muscle was, you, where there was mild spasm, because it's part of the technique itself."

Moving onto the records for S.I. Dr. Skorski noted that Respondent's notes do not say anything about massaging breasts for the dates of July 27, 2016 and July 30, 2016.

Dr. Skorski stated that a record must be kept even if the treatment was free. In looking at the records for M.S., Dr. Skorski noted that the treatment was decompression therapy. He did not note any other therapy for M.S. He read the Attorney General's complaint that M.S. alleges that Respondent asked her to disrobe at her last appointment in Spring 2012. It is not necessary to disrobe to perform lumbar decompression therapy. It is also not necessary to unlatch a woman's bra. Palpating a patient's pectoral muscles would not be a part of lumbar decompression therapy.

Dr. Skorski admitted that Respondent did some coverage work for him 2016, which he did not disclose in his report.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I find S.I. credible. She was direct in her answers. There was no hesitation in responses. There was nothing in her demeanor that indicated she was less than honest. Further, under very skillful, strong cross examination she did not waiver from her direct testimony.

I also find P.H. credible. She too answered questions directly and without hesitation. She gave no indication she was not being truthful. She too held up extremely well under the same expert cross examination.

E.W. was straightforward in her responses. I found her responsive and direct. She was clear as to what she said. She did not waiver under excellent cross examination by a skilled practitioner.

M.S. too was credible. She related her experiences with Respondent clearly. There was no hesitation. She too was subject to skilled cross examination and did not waiver.

Dr. Dean Curtis testified as an expert in chiropractic. I find him credible. He readily admitted that he is not a practitioner of SOT. However, I did not find that to detract from his overall credibility as it relates to standard of care. His testimony was professional and without bias. He simply answered the questions posed of him.

The respondent Archer Irby was not credible. He was at times pompous, condescending, non-responsive and argumentative, to use but a few adjectives. Mostly he was not responsive and argumentative. More than several times during the course of his cross examination I was compelled to admonish him to answer the questions posed and not argue with counsel. His responses at time made little sense. He seemed to rely upon his use of SOT as the answer to anything he was alleged to have done. Also, his statement to the police differed in many respects from his testimony at the hearing. His blanket denials of any wrongdoing ring hollow. Frankly, I mostly did not believe his testimony.

The testimony of Dr. Carey Skorski, who testified as an expert in chiropractic, was problematic. He was often evasive and non-responsive. He seemed to form his answers to explain away what Respondent allegedly did as part of treatment. On cross examination he rarely answered a question as posed. Rather, he seemed to search to explain certain treatments that did not mention anything about the breast or pectoral area as, in fact, being just that. He read into Dr. Irby's records that which seemed to fit Dr. Irby's testimony. Further, he opined in his report that Dr. Irby conformed to "the highest moral standards and professional manner both in and out of his office in the treatment of these alleged victims and to the public." However, he simply did not know that. Further, he failed to reveal, apparently to anyone, that Dr. Irby had covered his office for a few days in 2016. I found him not believable as his testimony related to what happened between Dr. Irby and the four women who made allegations. I further find him not believable as to his testimony that Dr. Irby's records do show that he was treating the pectoral area of three of the four women, as they clearly do not.¹

FINDINGS OF FACT

1. Respondent is a chiropractor, licensed in New York and New Jersey. Currently his license to practice in New Jersey is suspended pending the outcome of these proceedings.
2. Respondent maintained an office for the practice of chiropractic medicine called Irby Spine Care located at 115 Grand Avenue, Englewood, New Jersey. Respondent's wife, Dr. Randi Irby, was also associated with the practice.
3. S.I. was a patient of Respondent, and first saw him for treatment in 2013. She stopped seeing Respondent in 2014 as she felt better. (P-6)
4. In June 2016 she returned to Respondent's practice as her neck seized up.
5. She went to an appointment with Respondent on July 27, 2016 at approximately 6:00 p.m. First she saw the acupuncturist.

¹ In his review of the records for M.S., Dr. Skorski noted that it did not reference any pectoral treatment.

6. When she saw Respondent after the acupuncturist he had her lie face up. He told her she had tightness and started to massage the top of her breast. It made her uncomfortable.

7. She returned for another visit on July 30, 2016 at 9:00 a.m., a Saturday. He had her lay on her back and began manipulating her neck, shoulders and arms. He then began to massage the top and side of her breast. She did not have any pain or medical issues with her chest. At one point he left the room for about one-half hour. Upon his return he was positioned behind her. He began to rub her breast, one breast at a time. This made her uncomfortable. He then pulled her sports bra down and she felt his mouth on her nipple. She jumped off the table and proceeded to leave. Respondent followed her and apologized.

8. She walked to the police station in Englewood and left her car at Respondent's office. She gave a statement to the police. At the police station Respondent called her three times. She answered the first, but not the next two at the direction of the police.

9. Respondent's records regarding the treatment of S.I. on July 27, 2016, do not support the physical contact with S.I.'s breast. (P-1, AG-004)

10. Respondent's records regarding the treatment of S.I. on July 30, 2016, show no clinical basis to justify treatment of soft tissue that would require skin on skin contact with S.I.'s breast tissue and nipples. (P-1, AG-005)

11. P.H. was a patient of Respondent, and began treating with him in 2009. (P-4).

12. In 2009 there was a billing issue regarding MUA performed by Respondent. The billing issue was resolved. (P-4, AG-0019)

13. P.H. continued to see Respondent until her last appointment on October 2, 2016. At the end of the treatment Respondent cupped his hands over her breasts and they remained there for several seconds. After speaking with her husband and members of her church she decided not to report this to the police.

14. Thereafter, P.H. did report the matter to the police after speaking with E.W., who called her after and advised that Respondent was inappropriate with her as well. P.H. and E.W. decided to meet two days later at the Englewood Police Department.

15. Respondent's records for P.H. do not have documentation that manual breast tissue treatment was performed. There is no clinical justification for any treatment to have been provided in the region of P.H.'s breasts. (P-1, AG-0002)

16. E.W. was a patient of Respondent. (P-5) She met Randi Irby, Respondent's wife at a career day at the school in which she taught. Respondent treated her for a variety of complaints, including TMJ, which required Respondent to insert his hands into E.W.'s mouth for manipulation. She has "so much relief" for his treatment.

17. On July 20, 2016, during a treatment Respondent made inappropriate remarks about her gag reflex. He also made sexually suggestive remarks. During this appointment Respondent placed his hands on her breasts and pushed down. This made her uncomfortable and she told her husband. She returned for treatment on July 27, 2016 after convincing herself to do so.

18. At the July 27, 2016 appointment Respondent massaged her breasts. She thought this weird. She had no other chiropractor ever touch her breasts. Respondent then said "are you ready for the real thing?". She turned around and saw Respondent's penis sticking out of his pants. She was scared and decided not to confront Respondent. After she left Respondent's office she called her friend who was also a patient. That friend told her about P.H.'s encounter with Respondent. E.W. then called P.H. and they decided to go to the police.

19. Respondent's records for E.W. do not support or indicate that manual therapy was performed on her breasts. The records have no clinical justification for contacting E.W.'s breasts. Any touching of the breast would not be a generally accepted technique to treat the diagnosis of E.W. (P-1, AG-0003)

20. M.S. was a patient of Respondent. She began treating with him in 2009. (P-7) She procured a medical loan to pay for treatment as her insurance did not cover her chiropractic care. In 2011 Respondent advised her that her medical loan was spent, but he continued to treat her at no cost. This continued through the Spring of 2012.

21. During her initial consultation with Respondent he remarked about her breast implants, and stated "I'm sure you have painful sex from behind." This made her uncomfortable, but she decided to use his services as he was introduced to her by her pastor and she wanted to support black owned business.

22. The comments made to M.S. at the initial consultation were a gross deviation from the standard of care. (P-2, AG-0007)

23. At the last visit to Respondent's office in the Spring of 2012 Respondent had M.S. disrobe except for panties and bra. During this session Respondent unlatched her bra and began to massage her breasts. She heard a belt buckle and turned to see his penis out of his pants. His penis brushed against her face. M.S. sat up quickly, put on her clothes and left. She did not immediately report this to the police. She first told a friend, who later advised her that Respondent had been arrested for similar acts. It was then she decided to report his incident to the police.

24. There are no treatment records for the Spring 2012 incident. The last record is dated May 4, 2011. (P-7, AG-0479 and P-2, AG-0007)

25. There was no clinical rationale for M.S. to disrobe. (P-2, AG-0007)

26. The contact with the breasts of S.I., P.H., E.W. and M.S. were not proper chiropractic treatment. (P-1 and P-2)

27. Respondent exposing himself to E.W. and M.S. is contrary to the standard of care that should be provided by a chiropractor. (P-1 and P-2)

LEGAL ANALYSIS AND CONCLUSION

The Petitioner, the State Board of Chiropractic, carries the burden of proof in the instant matter. That burden is by a preponderance of the credible and relevant evidence. See In re Polk, 90 N.J. 550, 560 (1982). In the matter herein Petitioner has more than shouldered this burden.

The Amended Verified Complaint alleges that Respondent violated N.J.S.A. 45:1-21(c),(d),(e),(f) and (h), the provisions of which states:

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense that has a direct or substantial relationship to the activity regulated by the board or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's health, safety, or welfare, provided that the board shall make this determination in a manner consistent with section 2 of [P.L.2021, c.81 \(C.45:1-21.5\)](#). For the purposes of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board.

The preponderance of the credible and relevant evidence in this matter clearly demonstrates that Respondent's actions were violative of N.J.S.A. 45:1-21(c),(d),(e),(f) and (h), as follows:

As to (c), Respondent engaged in acts (inappropriate touching of patients' breast and exposing his genitalia and making inappropriate sexual comments) that constitute gross malpractice.

As to (d), Respondent engaged in repeated acts of malpractice on at least six occasions, when he inappropriately touched the breasts of his patients and exposed his genitalia to two patients and making inappropriate sexual comments)

As to (e), Respondent engaged in acts that constitute professional misconduct when he inappropriately touched the breasts of his patients and exposed his genitalia to two patients and making inappropriate sexual comments

As to (f), Respondent engaged in acts that would constitute a violation of N.J.S.A. 2C:14-3(b). See N.J.S.A. 2C:14-2(c)(1).

As to (h), Respondent failed to comply with N.J.A.C. 13:33E-2.3(c) and (e) in that he engage in inappropriate sexual contact of patients without their consent, and engaged in inappropriate sexual discussion of an intimate nature.

N.J.S.A. 45:1-25 states as follows:

a. Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation and shall be deemed a second or subsequent violation under the following circumstances:

(1) an administrative or court order has been entered in a prior, separate and independent proceeding;

(2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or

(3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

The within matter is entirely decided based upon the credibility of the witnesses presented. It is, if you will, a classic he said – she said scenario. I found all four witnesses who experienced inappropriate behavior from Respondent credible. They did not alter their statements. They held up quite well under excellent cross examination. The imputed motives for reporting that Respondent acted inappropriately fell flat, and were entirely unconvincing. I do not doubt what any of them said.

Opposite of their testimony we have the testimony of Respondent. His testimony was almost entirely not believable. He justified his actions as they relate to touching his patients breasts as attributable to his use of SOT, as if it was somehow responsible for his actions. He was evasive, combative, non-responsive, argumentative and arrogant. At times his testimony contradicted that what he told the police, which he characterized as misspeaking. I have a difficult time in believing much of what he said. I do not believe his blanket denial of any wrongdoing.

Then there is the battle of the competing expert witnesses. I found Dr. Curtis very credible. He went about his report, and his testimony, in a professional manner. He did not try to tailor his comments to fit the Board's version of events. In fact, in his report, he states clearly that much of Respondent's treatments were correct. He did not have a horse in the race.

Contrast that with the report and testimony of Dr. Skorski. Dr. Skorski clearly had a horse in the race: Dr. Archer Irby. His report makes conclusions as to Respondent's moral character. His testimony was evasive. He seemed to the undersigned to be clearly trying to spin his answers to make Respondent's actions seem justifiable. I could not accept his testimony as credible.

Based upon the foregoing I **CONCLUDE** that the license of Archer Irby, D.C. should be revoked.

The Amended Verified Complaint seeks the imposition of civil penalties for each count pursuant to N.J.S.A. 45:1-25; requiring Respondent to pay costs, including investigative costs, attorney's fees and costs, expert and fact witness fees and costs, costs of trial, and transcript costs, pursuant to N.J.S.A. 45:1-24; and, ordering such other costs as the Board of Chiropractic shall deem just and appropriate under the circumstances.

ORDER

It is **ORDERED** that the chiropractic license of Archer Irby, D.C. is hereby **REVOKED**; and,

It is further **ORDERED** that the Respondent pay civil penalties in the total amount of \$70,000, constituting a civil penalty of \$10,000 for his actions towards S.I., constituting a first violation, and a civil penalty of \$20,000 each for his actions towards P.H., E.W. and M.S., constituting a second, third and fourth violation; and,

It is further **ORDERED** that request in the Amended Verified Complaint for Respondent to pay costs, including investigative costs, attorney's fees and costs, expert and fact witness fees and costs, costs of trial, and transcript costs, pursuant to N.J.S.A. 45:1-24, is **GRANTED**, subject to verification of the same to be submitted to the Board of Chiropractic Examiners.

I hereby **FILE** my initial decision with the **BOARD OF CHIROPRACTIC EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF CHIROPRACTIC EXAMINERS**, which by law is authorized to make a final decision in this matter. If the Board of Chiropractic Examiners does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR, BOARD OF CHIROPRACTIC EXAMINERS, PO Box 45004, Newark, New Jersey 07101**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 27, 2022



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

S.I.
P.H.
E.W.
M.S.
Dean Curtis, D.C.

For Respondent:

Archer Irby, D.C., Respondent
Carey Skorski, D.C.

List of Exhibits

For Petitioner:

P-1 Dean Curtis, D.C., expert report
P-2 Dean Curtis, D.C., expert report addendum
P-3 Dean Curtis, C.V.
P-4 Certified treatment record for P.H.
P-5 Certified treatment record for E.W.
P-6 Certified treatment record for S.I.
P-7 Certified treatment record for M.S.
P-8 Certified treatment record for T.S.
P-9 a through p Photographs of S.I.
P-10 a through q exterior and interior photographs of Respondent's office
P-11 Transcript of interview of Respondent with DAG Christopher Salloum
P-11a Video of interview of Respondent with DAG Christopher Salloum
P-12 Redacted billing records for P.H.
P-13 Redacted billing records for E.W.
P-14 Redacted billing records for S.I.

For Respondent:

R-1 Carey Skorski, D.C., expert report

Joint Exhibits:

J-1 SOT manual