

IN THE MATTER OF

*

BEFORE THE STATE BOARD

ASHER A. RODRIGUEZ, D.C.

*

OF CHIROPRACTIC

Respondent

*

EXAMINERS

License Number: 01655

*

Case Number: 3-55C

* * * * *

FINAL OPINION AND ORDER

Pursuant to Md. Code Ann., Health Occ. (“H.O.”) § 3-315 (a) and Maryland Code of Regulations (COMAR) 10.43.02.07, The Maryland State Board of Chiropractic Examiners (the “Board”) hereby renders the following final decision and order:

I. INTRODUCTION

The events at issue in this case took place between December of 1995 and January of 1996. During these two months, Patient A¹ stayed with Dr. Rodriguez and his family for about three weeks. During her stay, Dr. Rodriguez treated Patient A’s allergies. During this same visit, Patient A claims that Dr. Rodriguez molested her on several different occasions. At the time, Patient A was fifteen years old.

In 2003, Dr Rodriguez was charged with child abuse, second-degree rape, second-degree attempted rape, under the common law, and third-degree sexual offense. In a well publicized trial, Dr. Rodriguez was acquitted of all criminal charges related to this matter. It was a direct result of the publicity surrounding Dr. Rodriguez’s criminal trial that started the Board’s own independent investigation of the case. This investigation spawned the administrative charges that are the subject of this order.

¹ In order to protect patient privacy and the confidentiality of health care records, patient names are not revealed in this Order.

II. PROCEDURAL HISTORY

On March 22, 2004, the Maryland Board of Chiropractic Examiners ("the Board") charged Dr. Rodriguez with violating the Maryland Health Occupations Code and its implementing regulations. Specifically, the Board charged Dr. Rodriguez with:

- (1) [U]nethical conduct of the practice of chiropractic in violation of Md. Health Occ. Code Ann. § 3-313 (8);
- (2) Violat[ing] any rule or regulation adopted by the Board in violation of Md. Health Occ. Code Ann. § 3-313 (19);
- (3) Behav[ing] immorally in the practice of chiropractic in violation of Md. Health Occ. Code Ann. § 3-313 (20);
- (4) Commit[ing] an act of unprofessional conduct in the practice of chiropractic in violation of Md. Health Occ. Code Ann. § 3-313 (21)...

The Board further charged Dr. Rodriguez with violating of its Code of Ethics, Code of Md. Regs. tit. 10, § 43.14 (January 9, 2000). Specifically the Board charged Dr. Rodriguez with violating the following subsections:

.03 Standards of Practice.

A. A chiropractor and chiropractic assistant shall concern themselves primarily with the welfare of the patient.

C. A chiropractor and chiropractic assistant shall:

- (2) Be professional in conduct, with honesty, integrity, self-respect, and fairness;
- (5) At all times respect the patient's dignity, autonomy, and privacy;

D. A chiropractor and chiropractic assistant may not:

- (2) Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful, or involves moral turpitude.

Following the filing of charges, a pre-hearing conference took place during which the

parties exchanged witness lists and documents, and motion and responses were to be filed with respect to evidentiary matters. This matter was scheduled to be heard before the Board on February 10, 2005. On this date, Dr. Rodriguez moved to exclude the State's expert witness. Dr. Rodriguez's motion to exclude was granted because the State had not complied with the applicable rules of procedure. However, the hearing could not go forward due to technical difficulties. Subsequent to the initial hearing date in 2005, the State moved to amend the charges against Dr. Rodriguez. The Board denied this motion.

As a preliminary matter, Dr. Rodriguez moved to exclude the testimony of Officer Marcy Schwartz. Dr. Rodriguez objected to her testimony stating that he did not have adequate notice that she would be testifying for the State and that her testimony was irrelevant and redundant. The Board overrode Dr. Rodriguez's objections, but limited Officer Schwartz testimony to material already covered in Dr. Rodriguez's criminal trial. Dr. Rodriguez had adequate notice of the substance of her testimony provided in the transcript of her previous testimony, which Dr. Rodriguez agreed to be admitted into evidence. In hindsight, Officer Schwartz testimony was largely redundant, but her testimony in person did afford Dr. Rodriguez the opportunity to cross-examine her again, this time before the Board.

The State moved to exclude an affidavit, proffered by Dr. Rodriguez, from a witness that was unavailable to testify before the Board. Dr. Rodriguez was unable to have the witness available in person or by telephone. Accordingly, Dr. Rodriguez procured an affidavit from this witness. The Board ruled that this affidavit would be admitted and the State's motion to exclude was denied.

A full evidentiary hearing took place before a quorum of the Board on September 14, 2006. Three witnesses testified for the State: Marcy Schwartz, Baltimore County Police Officer,

Patient A, a former patient of Dr. Rodriguez and Patient B, also a former patient of Dr. Rodriguez. Dr. Rodriguez, a licensed chiropractor, was represented by counsel throughout the proceedings. Dr. Rodriguez testified on his own behalf and in addition presented the following witnesses on his behalf: Ms. Tisha Rodriguez, Dr. Rodriguez's wife; Dr. Loretta Friedman, an expert in Directional Non-Force Technique ("DNFT") chiropractic; and Patient C, a patient of Dr. Rodriguez's and a fact witness. Seven exhibits, labeled 1 through 7, were admitted on behalf of Dr. Rodriguez. Eleven documents, numbered 1, 3A, 3B, 3C, 3D, 4A, 4B, 5, 6A, 6B, and 6C, as listed on the "State's Exhibit List" attached to those documents, were also admitted into evidence as State's exhibits numbers 1 through 6.

II. SYNOPSIS OF WITNESS TESTIMONY

The State's first witness was Officer Marcy Schwartz. Officer Schwartz stated that she received a call from Patient A in 2003. During this phone conversation, Patient A reported that Dr. Rodriguez raped her in December of 1993. Patient A claimed that Dr. Rodriguez touched her inappropriately on several occasions and attempted to have intercourse with her. Tr. at 46. During the course of her investigation, Officer Schwartz interviewed Dr. Rodriguez about Patient A's accusations. Dr. Rodriguez denied that he had ever touched Patient A inappropriately or tried to have intercourse. At first, Dr. Rodriguez stated that the allegations couldn't be true because he always had another adult present when he treated minors. Later, Dr. Rodriguez admitted that he might have treated Patient A without another adult present in the room.

The State's second witness was Patient B. Patient B testified via telephone before the Board. Patient B testified that she had stayed with Dr. Rodriguez and received chiropractic treatment. Patient B was a traveling minister and Dr. Rodriguez agreed to let her stay in his home during her mission in Baltimore. Her stay and treatment began in June of 1998, at the time

she was twenty one years old. During one of these treatment sessions, Dr. Rodriguez placed his hands on her breasts in a manner that made her uncomfortable. Patient B testified that both of her breasts were exposed at the same time during her treatment. Tr. at 90.

Patient B reported her concerns to Dr. Rodriguez's wife and was told that it was a normal part of the particular form of chiropractic care practiced by Dr. Rodriguez. Apparently this explanation satisfied her concerns because Patient B never filed a complaint with the Board or the police. Patient B only became involved in this matter because Patient A gave her name to Office Marcy Schwartz.

The State's final witness was Patient A. Patient A testified via telephone before the Board. Patient A's testimony began with a description of how she came to stay with Dr. Rodriguez. In the fall of 1995, Patient A was living with her parents in Ohio. Patient A and Dr. Rodriguez both belong to the same religious organization, "The Truth". Patient A's family and Dr. Rodriguez's in-laws lived very near each other in Ohio were members of the same church and were quite good friends. Patient A met Dr. Rodriguez through his in-laws in Ohio.

When Dr. Rodriguez would visit Ohio, he would treat his in-laws, Patient A and her family for free. Tr. at 120. Dr. Rodriguez concedes that this treatment was performed without having any license to practice chiropractic in Ohio. Patient A's parents were quite impressed with Dr. Rodriguez's skill as a chiropractor. According to Patient A, her parents thought that Dr. Rodriguez hung the moon. Tr. at 160.

During a visit in the fall of 1995, Dr. Rodriguez told Patient A's parents that he had treatment for Patient A's persistent allergy problems. Dr. Rodriguez told Patient A's parents that they would not have to pay for his services, but that Patient A would have stay with him for a number of weeks to complete the treatment. The inducement of free treatment for their daughter

from such a great young chiropractor was too good an offer for Patient A's parents to pass up. Because of the families friendship and similar religious beliefs, Patient A's parents were quite comfortable sending their daughter to stay with Dr. Rodriguez for treatment of her allergies during her winter break in 1995. Tr. at 115.

Patient A stayed with Dr. Rodriguez for two or three weeks during this period. She did some work at Dr. Rodriguez's office and received intensive treatment for her allergies. Dr. Rodriguez told Patient A's parents that he would be able to more effectively treat her allergies, if she would stay with him. *Id.* Dr. Rodriguez also treated Patient A for an injury to her lower back.

Patient A testified that Dr. Rodriguez repeatedly "molested" her during this visit in 1995. Tr. at 129. This molestation included fondling her breasts and vagina. Tr. at 130. Patient A stated that Dr. Rodriguez attempted to have intercourse with her on three different occasions during this visit. Tr. at 131. Patient A stated that Dr. Rodriguez fondled her at his home and at his office during treatment sessions. Patient A stated that Dr. Rodriguez fondled her in his car on several different occasions.

Initially, Patient A did not tell anyone about the abuse she suffered at the hands of Dr. Rodriguez. She did not tell her parents, the police or anyone else. She stated that she was scared and did not know what to do. Tr. at 138. Patient A was afraid of what of the rift that her allegations would cause in her church and in her family. A year or two after the incident, Patient A told her then boyfriend (and later husband) that she had been molested by Dr. Rodriguez and that she had trouble being intimate with anyone. *Id.*

Patient A testified that in 2003, she and her husband went to see a fertility specialist in order to conceive a child. The doctor could not find a physical cause for the couple's fertility

problems. The doctor asked if Patient A or her husband had any psychological problems or history of abuse that might be at the root of the problem. At this, Patient A broke down and told the doctor about the details of her relationship with Dr. Rodriguez. Tr. 139 – 141. Her doctor told her that he was duty bound to report this incident to the authorities in Maryland. The doctor told her that it would be better for all parties if she just reported this incident herself. As a result of her doctor's encouragement, Patient A reported this incident to the Baltimore County Police.

Dr. Rodriguez's first witness was Tisha Rodriguez, his wife. Ms. Rodriguez contradicted a great deal of Patient A's testimony. Ms. Rodriguez denied that Patient A was ever alone with Dr. Rodriguez in his car. Tr. at 235. She stated that Patient A did no work at Dr. Rodriguez's office and that she did not believe that her husband had ever touched her inappropriately. Ms. Rodriguez pointed out that Patient claimed to have been treated by Dr. Rodriguez on a particular Wednesday, but that Dr. Rodriguez never works on Wednesdays.

Ms. Rodriguez described Patient A as a "happy well-adjusted teenager" who gave no outward signs of suffering any abuse. Tr. at 238. Instead, Ms. Rodriguez recalls that Patient was flirtatious with her husband during the visit and was quite happy to extend her stay beyond the two weeks initially scheduled. Tr. at 240. Ms. Rodriguez stated that Patient A was not at all reluctant to be treated by Dr. Rodriguez. Tr. at 242. Ms. Rodriguez recalled being surprised at how infrequently Patient A called her parents during her visit. Ms. Rodriguez stated that Patient A had free access to the phone in her house, but that she rarely used the phone to call her parents. Tr. at 238.

The Board did not find Ms. Rodriguez's testimony to be particularly credible. Ms. Rodriguez's tone scarcely wavered during her testimony. She seemed disconnected from the substance of her testimony. The Board found that her tone and presence undermined her

credibility.

Dr. Loretta Friedman testified on behalf of Dr. Rodriguez. Dr. Friedman is a chiropractor and was admitted as an expert in DNFT. Dr. Rodriguez uses DNFT in his practice. Dr. Friedman testified that Dr. Rodriguez's treatment of Patient B was in keeping with proper DNFT techniques. In her opinion, Dr. Rodriguez's anterior adjustment of Patient B was a proper application of DNFT. Dr. Friedman stated that is improper for both of a patient's breasts to be exposed during an anterior adjustment. It is proper to expose one, then the other. The State presented no expert witness on this subject. Because there was no testimony from an expert on behalf of the State the Board accepts Dr. Friedman's testimony and expert opinion at face value.

Next, Dr. Rodriguez called Patient C to testify. Patient C is not a member of the Truth and is an adult female. Patient C stated that she has been a patient of Dr. Rodriguez from the day he opened his practice. She stated that she was pleased with Dr. Rodriguez's chiropractic treatment. Patient C was treated by Dr. Rodriguez at least once a week during between December 19, 1995 and January 9, 1996 (roughly the dates of Patient A's visit). She had a back injury that needed a lot of work during this time. Patient C recalled speaking at length with Patient A about religion and other topics. Patient C remembers Patient A as happy and not at all threatened or upset with Dr. Rodriguez. Tr. at 461 – 462.

Dr. Rodriguez took the stand and presented his side of the story. Dr. Rodriguez has been a licensed Chiropractor in this State since 1994. Dr. Rodriguez owns his own practice in Perry Hall, where he has an unblemished disciplinary record with the Board. Dr. Rodriguez denies ever touching Patient A in sexual manner. Dr. Rodriguez denies ever attempting to have intercourse with Patient A. His testimony matched his wife's earlier statements and description of events. Dr. Rodriguez stated that Patient A voluntarily extended her visit with his family and

continued to receive treatment from him after the events in question.

The Board found that Dr. Rodriguez's testimony was not credible. Dr. Rodriguez's demeanor and facial expressions imparted a disdain for the proceedings. At several points, he rolled his eyes in response to relevant questions from counsel and the Board.

Despite some inconsistencies in Patient A's version of the facts, the Board found her testimony to be quite credible. The Board believes that Dr. Rodriguez inappropriately touched Patient A. Patient A's testimony at the criminal trial and before the Board was consistent. Patient A's testimony and actions lead one to believe that she may not have objected to Dr. Rodriguez's advances at the time. However, at the time of the events at issue in this matter, Patient A was fifteen years old and both a guest and patient of Dr. Rodriguez.

III. FINDINGS OF FACT

After considering the entire record in this case, including the testimony and exhibits entered into evidence at the hearing, and the arguments of counsel, the Board finds the following facts.

1. At all times relevant to the charges herein, Dr. Rodriguez was licensed to practice chiropractic in the State of Maryland. Dr. Rodriguez was first licensed on January 3, 1994.
2. At all times relevant hereto, Dr. Rodriguez practiced under the name of Specific Chiropractic in Perry Hall, Maryland in Baltimore County.
3. Patient A stayed with Dr. Rodriguez and his family for around three weeks in December 1995 and January 1996. The purpose of the visit was for Patient A to receive chiropractic treatment. Dr. Rodriguez had assured her parents that he could treat her allergies, if Patient A came to live with him and his family. The treatment proposed was to be and was in fact, chiropractic treatment in his office as well as "lifestyle" and diet treatment to be accomplished within Dr.

Rodriguez's home.

4. At the time of her visit, Patient A was fifteen years old.

5. During her stay, Dr. Rodriguez treated Patient A for allergies and a lower back injury.

This treatment was not always monitored by chaperone.

6. In the course of this treatment, Dr. Rodriguez made Patient A get undressed and get on his examination table in office, whereupon he touched her breast and vagina, including fondling her vaginal area with his fingers, without any legitimate chiropractic purpose.

7. Dr. Rodriguez also inappropriately touched Patient A's breast and vagina while she resided at his home, without any legitimate chiropractic purpose.

8. With respect to Patient B, the evidence is insufficient to find that Dr. Rodriguez violated the standard of care.

IV. CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that Dr. Rodriguez's actions with regard to Patient A constitute a violation of H.O. § 3-313 (20), by behaving immorally in the practice of chiropractic and H.O. § 3-313 (21), by committing acts of unprofessional conduct in the practice of chiropractic.² Dr. Rodriguez used his license to practice chiropractic as a means to inappropriately touch Patient A, who was fifteen years old at the time. By any definition, Dr. Rodriguez's actions were both immoral and unprofessional. Dr. Rodriguez's conduct was "in the practice of chiropractic" because it took place at Dr. Rodriguez's office during the course of treatment. In addition, Patient A's visit with Dr. Rodriguez was premised on the fact that she

² Because Dr. Rodriguez's conduct falls so squarely within the parameters of sections 3-313(20) and (21) the Board does not need to reach the issue of whether or not Dr. Rodriguez's actions also constituted violations of sections 3-313(8) or 3-313(19). The Board notes that the question of whether the same conduct violated additional parts of the Act would not have any effect the Board's decision or sanction imposed.

was to receive intensive treatment from him, including certain treatment at his home, over the course of several weeks.

V. SANCTION

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 22nd day of February, 2007, by a majority of a quorum of the Board,

ORDERED that effective thirty days from the date of this order, Dr. Rodriguez's license to practice chiropractic is hereby SUSPENDED for six months. Concurrently, Dr. Rodriguez is placed on PROBATION for two years, subject to the following conditions:

1. Within 180 days of the date this order is executed, Dr. Rodriguez shall take and pass, the Board's Jurisprudence Examination, bearing responsibility for scheduling coordination with the Board and examination fees;
2. Within 180 days of the date this order is executed, Dr. Rodriguez shall take and pass the National Chiropractic Board of Examiners ('NCBE') Boundaries/Ethics program and examination, bearing responsibility for scheduling coordination with the NCBE, paying all costs/ fees and submitting a certificate of satisfactory completion to the Board's Executive Director;
3. Within 180 days of the date this order is executed, Dr. Rodriguez shall take and complete a Board-pre-approved ethics course, bearing responsibility for scheduling coordination with the instructor, paying all costs/fees and submitting a certificate of satisfactory completion to the Board's Executive Director;

4. Within 180 days, Dr. Rodriguez shall reimburse the Board for all hearing costs incurred by the Board in the amount of \$3,287.00; and be it further
5. During the course of his probation, Dr. Rodriguez will be mentored, by a Board approved mentor, who will provide quarterly reports to the Board; Dr Rodriguez shall bear responsibility for scheduling coordination with the mentor, paying all fees associated with this condition and submitting quarterly mentor reports to the Board Executive Director

ORDERED that should the Board receive a report that Dr. Rodriguez practice is a threat to the public health, welfare and safety, the Board may take immediate action against Dr. Rodriguez, including suspension or revocation, providing notice and an opportunity to be heard are provided to Dr. Rodriguez in a reasonable time thereafter. Should Dr. Rodriguez violate the terms of this Order, after providing Dr. Rodriguez with notice and an opportunity for a hearing, the Board may take further disciplinary action against Dr. Rodriguez, including suspension or revocation. Any violation of the terms of this Order shall constitute unprofessional conduct in addition to any applicable grounds under the Act. The burden of proof for any action brought against Dr. Rodriguez as a result of a breach of the terms of this Order shall be on Dr. Rodriguez to demonstrate compliance with the Order; and it is further

ORDERED that Dr. Rodriguez shall practice in accordance with the laws and regulations governing the practice of chiropractic in Maryland; and be it further

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-611 et seq. and that it shall be forthwith reported to appropriate data bases and disseminated in the Board website and newsletter

FEB 22 2007

Date



Dr. Marc Gamerman, D.C.

President

Maryland State Board of Chiropractic
Examiners

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Findings of Fact, Conclusion s of Law and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure. If Dr. Rodriguez files an appeal, the Board is a party and should be served with the court's process. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.