

**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF CHIROPRACTIC**

IN RE:)
JEFFREY D. WALLER, D.C.) Docket No: CH07-0403
License No. 006-0000901)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and Respondent, Jeffrey D. Waller, D.C., who stipulate and agree as follows:

Board Authority

1) The Vermont Board of Chiropractic has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Chiropractic Physicians pursuant to 3 V.S.A. §§129, 129a; 26 V.S.A. §§521, 527, 529, 541 and; the Board of Chiropractic Laws and Rules; and the Office of Professional Regulation's Rules.

Facts

2) Respondent, Jeffrey D. Waller, is a Chiropractic Physician holding license number 006-0000901 issued by the State of Vermont.

3) Respondent's license is currently suspended pursuant to a Stipulation and Consent Order entered on October 8, 2003. The Stipulation and Consent Order requires that the Respondent's license be suspended for a minimum period of three months and that at the end of that period, the Respondent may petition the Board for reinstatement with conditions if he is able to show, among other things, that he has been drug and alcohol free for the entire period of suspension. (Stipulation Paragraph 4(1)(e)). In addition, the Stipulation requires the Respondent to abstain from the consumption of alcohol during the period of suspension (Stipulation Paragraph 4(1)(a)). To date, the Respondent has not petitioned the Board for reinstatement (See Attachment A).

4) On or about January 6, 2004, Windsor Deputy Sheriff, David Brault of Windsor District Court in White River Junction, advised Investigator Steven Kennedy that on January 5, 2004, Deputy Brault had administered an Alco sensor test to the Respondent at the courthouse. The results of the test indicated that at 9:50 a.m. the Respondent had a BAC of .09.

5) In failing to remain drug and alcohol free during the entire period of suspension,

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the Respondent is in violation of the Stipulation and Consent Order entered on October 8, 2003.

Charges

6) The above acts, omissions and/or circumstances described above, constitute grounds for discipline because Respondent violated:

- (i) 3 V.S.A. §129a(a)(4) (Failing to comply with an order of the board or violating any term or condition of a license restricted by the board).

Understandings

7) Respondent understands that the Board of Chiropractic must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.

8) Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

9) Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.

10) Respondent voluntarily waives his right to charges and a contested hearing before the Board of Chiropractic.

11) Respondent agrees that the State has sufficient evidence for the Board to find that Respondent has engaged in unprofessional conduct and that the Order set forth below may be entered by the Board.

ORDER

Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because Respondent violated:

- (i) 3 V.S.A. §129a(a)(4) (Failing to comply with an order of the board or violating any term or condition of a license restricted by the board).

B. The Board of Chiropractic hereby **INDEFINITELY SUSPENDS** Respondent's chiropractic license. If the Respondent does apply for reinstatement in the future, he must demonstrate, to the satisfaction of the Board: (1) successful proof of rehabilitation for Respondent's alcohol addiction and (2) that the Respondent is capable of returning to competent practice and that he does not present a risk to the safety, health or welfare of his potential patients. If reinstated, his license will be conditioned and limited pursuant to the Laws of the State of Vermont and the Rules

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of this Board.

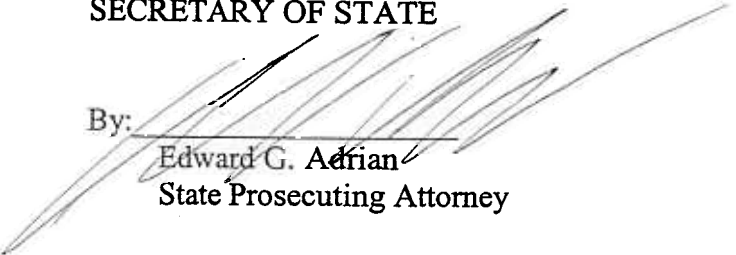
C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 3/23/04

By: 

Edward G. Adrian
State Prosecuting Attorney

JEFFREY D. WALLER
RESPONDENT

Dated: 3/2/04

By: Jeffrey D. Waller esq.

Jeffrey D.

APPROVED AS TO FORM:

RESPONDENT'S ATTORNEY

Dated: 3.18.04

By: John B. Webber

John B. Webber, Esq.

APPROVED AND SO ORDERED: VERMONT BOARD OF CHIROPRACTIC

Dated: 4/6/04

By: Sean P. Mahoney DC

Chairperson

Date of Entry: 4/12/04

ch.waller.stip

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**STATE OF VERMONT
BOARD OF CHIROPRACTIC**

IN RE:

JEFFREY D. WALLER D.C.

License No: 006-0000901

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Docket No. CH07-0403

STIPULATION AND CONSENT ORDER

The Respondent, Jeffrey D. Waller, and the State of Vermont, by and through its State Prosecuting Attorney, Edward G. Adrian, stipulate to the statements of Board Authority, Facts and Understandings set forth below and agree to the entry of the following Consent Order by the Vermont State Board of Chiropractic as a final order in this matter.

Board Authority

1. The Vermont Board of Chiropractic (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Chiropractic Physicians pursuant to 3 V.S.A. §§129, 129a, 814; 26 V.S.A. §§521, 527, 529, 541 and; the Board's and the Office of Professional Regulation's Rules.
2. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).
3. Conduct which evidences unfitness to practice chiropractic is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §541(b)(10).
4. Addiction to narcotics, habitual drunkenness or rendering professional services to a patient if the chiropractor is intoxicated or under the influence of drugs is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §541(b)(11).
5. Sexual harassment of a patient is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §541(b)(12).
6. Notwithstanding the provisions of 3 V.S.A § 129a(a)(10), In the course of practice, failure to use and exercise that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent chiropractor engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §541(b)(14).

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ATTACHMENT A

7. "The practice of chiropractic" means the diagnosis of human ailments and diseases related to subluxations, joint dysfunctions, neuromuscular and skeletal disorders for the purpose of their detection, correction or referral in order to restore and maintain health, without providing drugs or performing surgery; the use of physical and clinical examinations, conventional radiologic procedures and interpretation, as well as the use of diagnostic imaging read and interpreted by a person so licensed and clinical laboratory procedures to determine the propriety of a regimen of chiropractic care; adjunctive therapies approved by the board, by rule, to be used in conjunction with chiropractic treatment; and treatment by adjustment or manipulation of the spine or other joints and connected neuromusculoskeletal tissues and bodily articulations. 26 V.S.A. §521(3).

Facts

8. Respondent Jeffrey D. Wallar, is a Chiropractic Physician holding license number 006-0000901 issued by the State of Vermont. Respondent's license was first issued on or about December 18, 1991. Respondent's license was suspended by way of summary suspension on May 23, 2003 by the Board.
9. At all times relevant, Respondent practiced at his offices located in Springfield, Vermont.

Count I

10. Paragraphs 1-9 above are incorporated.
11. On or about April 9, 2003, the State alleges that the Respondent made inappropriate remarks of a sexual nature to an adult female patient while said patient was in Respondent's office for treatment. The Respondent does not admit to this allegation, but will not contest it for the purposes here.

Count II

12. On or about April 10, 2003, the State alleges that the Respondent made inappropriate remarks to another adult female patient while said patient was in Respondent's office for treatment. The Respondent does not admit to this allegation, but will not contest it for purposes here.

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Count III

13. On or about May 15, 2003, the State alleges that the Respondent told an Investigator from the Office of Professional Regulation that he was taking methadone as a pain reliever as prescribed by his personal medical physician. The State further alleges that the Respondent has had numerous methadone prescriptions, prescribed for the purposes of pain and not for any other purpose since at least April 24, 2001. The Respondent does not contest the State's allegations.
14. The May 15, 2003, meeting with the Investigator occurred at the offices of the Respondent in Springfield, Vermont at a time when he was seeing patients. The State alleges that during the interview process the OPR Investigator observed that the Respondent exhibited signs of intoxication including 1) the odor of intoxicants on Respondent's breath; 2) the Respondent's eyelids were heavy and droopy; and 3) the Respondent was sweating and his head nodded as he spoke. The State further alleges that the Respondent admitted to the Investigator that he had been drinking alcohol the night before and that he declined the offer to take a preliminary breath testing device (commonly referred to by the brand name "Alco-sensor") to be administered by the local police department. The Respondent does not contest the State's allegations.
15. On or about May 11, 2003, the State alleges that the Respondent was arrested for driving under the influence. The State further alleges that as a result of this incident, the Respondent gave a sample of this breath using a device called the "Datamaster". The State also alleges that the results of the Datamaster device indicated that the Respondent had a blood alcohol content of .264%. 23 V.S.A. § 1204(a)(2) permits the trier of fact to infer that a person is under the influence of an intoxicating beverage if their blood alcohol content at the time of operation of a motor vehicle is .080% or greater. As the Respondent is currently facing criminal prosecution for this arrest he does not admit this allegation, nor does he not contest this allegation, however for the limited purposes of this proceeding only the Respondent agrees that the Board may find that these allegations are enough to substantiate, by a preponderance of evidence that the State could meet its burden that the Respondent's actions constituted unprofessional conduct, if this matter were to go to a contested merits hearing.

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Charges

- D. 26 V.S.A. §541(b)(11) (Rendering professional services to a patient if the chiropractor is intoxicated).
- E. 26 V.S.A. §541(b)(12) (Sexual harassment of a patient).
- F. 26 V.S.A. §541(b)(14) (Notwithstanding the provisions of 3 V.S.A § 129a(a)(10), in the course of practice, failure to use and exercise that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent chiropractor engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred).
- G. The Respondent, while not admitting, does not contest that the State has evidence that unprofessional conduct occurred in these instances based on the allegations set forth above.
- H. Based on the above stipulation and on the above Findings and Conclusions of this Board, it is **ORDERED** follows:

- 1. The Respondent's license shall be suspended for a period of **THREE MONTHS** commencing on the date that this Order is signed and approved by the Board.

- a. During the three month suspension the Respondent must not consume or use alcohol or any regulated or illegal drugs. The exception is that the Respondent may take medication if prescribed by a physician for a valid medical purpose. The Respondent must inform the Board or its designee of the prescribing the physician and of the names of the medication so prescribed. For medication that is currently prescribed, the Respondent must notify the Board or its designee in writing within one (1) week of the date of entry of this Order. The Respondent must sign a release allowing the Board or its

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designee to obtain the medical records of the physician prescribing medication to the Respondent. If the Respondent is prescribed any new medication by any physician then he must notify the Board or its designee of the medication within forty-eight (48) hours of the medication being prescribed.

b. During the three month suspension the Respondent must engage in a course of alcohol treatment and counseling by a provider approved by the Board or its designee. The Respondent must submit to a regime of drug and alcohol screening and testing during this period of time. The Respondent must sign a release allowing the results of his drug and alcohol testing to be disclosed to the Board or its designee. The results of the testing must indicate that the Respondent has been totally drug and alcohol free for the entire three month period (with the exception of prescription medications as outlined above).

c. During the three month suspension period the Respondent shall undergo an extensive psychological evaluation. This evaluation shall be conducted by a mental health provider approved by the Board or its designee. The purpose of the psychological evaluation shall be to determine if the

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Respondent is capable of resuming his practice at the conclusion of the three month period.

- d. During the three month suspension period the Respondent shall undergo an extensive independent medical and physical evaluation. This examination shall be conducted by a health care provider approved by the Board or its designee. The purpose of this examination will be to determine the long term effects of the Respondent's methadone treatments for pain.
- e. At the end of the three month suspension, the Respondent may petition the Board for reinstatement of his license. In order to successfully petition for reinstatement the Respondent must show at a minimum that: 1) he has been completely drug and alcohol free for the entire three month period; 2) the results of the psychological evaluation indicate that he is mentally capable of resuming the practice of chiropractic and that he does not present a risk to the safety, health or welfare of his patients; and 3) the results of the medical and physical evaluation indicate that the Respondent does not present a risk to the safety, health or welfare of his patients.

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2. If the Respondent's license to practice is reinstated, it shall be
CONDITIONED for a period of three (3) years as follows:

- a. Respondent shall be required to undergo drug and alcohol counseling by a provider approved by the Board or its designee. The Respondent shall sign a release allowing the results of the counseling to be disclosed to the Board or its designee.
- b. Respondent shall be required to undergo mental health counseling by a mental health provider approved by the Board or its designee. The Respondent shall sign a release allowing the results of the counseling to be disclosed to the Board or its designee.
- c. The Respondent shall be required to notify the Board of any medication changes or additions prescribed by his physician, within forty-eight (48) hours of those changes or additions going into effect.
- d. All of the Respondent's treating professionals including his drug and alcohol counselor and his mental health provider, must file monthly reports of the Respondent's progress monthly for the first year that these conditions are in place. After the first year that these conditions are in place, the

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Respondent's treating professionals must file bi-monthly reports of the Respondent's progress.

- e. The Respondent may not treat female patients without supervision. Before the Respondent begins any treatment of female patients, he must file a supervision plan with the Board or its designee and this plan must be approved by the Board or its designee.
- f. The Respondent must complete a course or program on the topic of sexual harassment, approved in advance by the Board or its designee, within six months of his license reinstatement.
- g. If Respondent violates any of the above conditions or if any of the reports provided by the Respondent's treatment providers indicate that he presents a threat to the safety, health or welfare of his patients, that shall be grounds for further action by the Board.

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Understandings

- A. The parties understand that the terms of this Stipulation and Consent Order are contingent upon review and acceptance by the Board and that if the Board rejects any portion the entire Stipulation and Consent Order shall be null and void.
- B. Respondent waives any notification period and requests that this be heard at the next available Board meeting. Respondent specifically waives any claims that any disclosures made to the full Board during review of this agreement have prejudiced his rights to fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
- C. Respondent has read and reviewed this document fully and agrees that it contains the entire agreement between the parties.
- D. The Respondent shall bear all costs of complying with this consent order
- E. The Respondent is not under the influence of any drugs or alcohol at the time this document is being signed.
- The Respondent is in full control of his mental capacities at the time this document is being signed.
- G. This Stipulation and Consent Order is entered into voluntarily by Respondent after the opportunity to consult with legal counsel. Respondent has not been coerced by anyone into signing this Stipulation and Consent Order
- H. This Stipulation and Consent Order is matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. 1129(a).
- I. This Stipulation and Consent Order will remain part of the Respondent's licensing file and may be used in determining sanctions in future disciplinary matters

OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05601

AGREED TO:

Date: 8/29/03

Approved as to form
[Signature]
Respondent's attorney
John B. Webber, Esq.

BY: JEFFREY D. WALLER
RESPONDENT

[Signature]
Jeffrey D. Waller

AND BY:

9/2/03

ACCEPTED AND SO ORDERED:

Date: _____

Dated entered: 10/8/03

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BOARD OF CHIROPRACTIC

[Signature]
Chairperson



Processing Attorney
Office of
Professional Regulation
Montpelier, VT 05602

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