

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE ALASKA BOARD OF CHIROPRACTIC EXAMINERS**

In the Matter of )  
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AARON SHOEMAKER ) OAH No. 20-0787-CHI  
 ) Agency No. 2020-000442

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**DECISION**

**I. Introduction**

In May 2020, the Division of Corporations, Business and Professional Licensing (Division) began to receive complaints about erratic behavior by Fairbanks chiropractor Aaron Shoemaker. The complaints initially concerned Dr. Shoemaker’s public statements about his intention to violate state and local health pandemic-related mandates, and later concerned an array of bizarre and in some cases illegal behaviors. Additionally, in the course of its investigation, the Division learned that in 2018 an employee had accused Dr. Shoemaker of inappropriate sexual contact in the course of chiropractic treatment.

As Dr. Shoemaker’s erratic conduct escalated, the Board of Chiropractic Examiners issued an order summarily suspending his chiropractic license. The Division also filed an Accusation seeking revocation of or other discipline against the license. After a three-day hearing on the Division’s Accusation, this decision concludes that the facts of this case warrant revocation of Dr. Shoemaker’s chiropractic license.

**II. Factual and Procedural History**

*A. Factual Background*

Respondent Aaron Shoemaker completed his chiropractic education at Western States University in 2016 and became licensed in Alaska as a chiropractic physician in January 2017. When he first came to Alaska, Dr. Shoemaker initially joined an established Fairbanks practice with several other providers, but interpersonal conflicts with staff and other providers led to his departure from that practice in early 2018. He opened his own practice, Advanced Chiropractic, later that year.

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## 1. COVID mandates

The Division's first complaint about Dr. Shoemaker came in May 2020 and arose in the context of the global pandemic that had crossed into the United States and into Alaska in the few months prior.

On March 11, 2020, two and a half months after a similar declaration by the U.S. Secretary of Health and Social Services, Alaska Governor Mike Dunleavy declared a public health emergency. That Declaration provided for health mandates to be issued when deemed necessary by the Alaska Department of Health and Social Services, the Alaska Chief Medical Officer, and the Office of the Governor. A March 19 mandate (Mandate 005) ordered the temporary postponement of non-urgent, elective medical procedures. A March 20 mandate (Mandate 7.1) required the temporary cessation of an array of personal care services, including massage therapy, in the Fairbanks North Star Borough. A March 23 mandate (Mandate 009) expanded that prohibition statewide, as well as prohibiting related services such as Rolfing and acupuncture.

Health Mandate 015, issued April 15, 2020, allowed the resumption of low-risk, routine-type health care services, including chiropractic care, but required that providers "adhere to CDC safety and sanitation guidelines for health care providers." Expressly included was the requirement that chiropractors and clinical staff must wear a surgical mask while treating patients.<sup>1</sup>

## 2. Initial COVID-related complaint

Dr. Shoemaker was resistant to the idea of governmental mandates regarding COVID, which he did not (and does not) believe to be a serious threat. After Health Mandate 015 was announced, Dr. Shoemaker began announcing on social media and elsewhere that he would not comply with it. When the Alaska Chiropractic Society emailed members to inform them of the Health Mandate, Dr. Shoemaker responded by calling Society COO Sherri Ryan to ask what happens if he doesn't comply with the masking requirement.<sup>2</sup> Ms. Ryan describes Dr.

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<sup>1</sup> R. 402-413.

<sup>2</sup> This was Ms. Ryan's second call with Dr. Shoemaker about his noncompliance with health mandates. In an earlier conversation, she had called him after learning from a patient that his clinic was still performing massages after the issuance of Mandate 7.1.

Shoemaker as “combative” during their 15-minute call, and as being “very adamant that he wouldn’t wear a mask.”<sup>3</sup>

Dr. Shoemaker also made Facebook postings announcing he would not comply with the Health Mandate. In one post, he described himself as not wearing a mask at his clinic and hoping “Big Brother doesn’t find out,” but willing to bear the consequences of defying the Mandate:

Guys this is the least amount of freedom I have ever experienced. I can't leave the USA and apparently I can be finned a lot of money by our government if I don't wear a mask at my clinic. **I hope Big Brother doesn't find out I'm not wearing a mask at work. But if they do it's ok. I will stand behind my education and constitution. I will not wear a mask at Advanced Chiropractic** and please anyone offended by this statement remove yourself from my Facebook and feel free to call me an asshole as you leave.

If you're still reading this, you probably think I'm crazy but I consider many people on my FB account to be friends & some I have no idea who you even are. I request that if any of you have a problem addressing me as doctor, please remove yourself as my friend. Other than that, I'm ready to ditch this Corona STD. When can we party? When can life go back to normal?

I can handle disagreements but don't attack me or my profession!!<sup>4</sup>

Separately, in a lengthy comment on another user’s public Facebook post, Dr. Shoemaker wrote:

This is my opinion and belief which I am entitled to. I (believe) you do not get to choose when or how you die (unless you have the gun in your hand and pull the trigger). **If I spread Covid-19 and someone dies it is not my fault.** I don't wish death upon anyone. But it is not place to choose how or when anyone dies. Thus far in Fairbanks 2 people have died. My heart is broke for these two people..... But I am a doctor and a business man. I own the clinic with my name on the door. I also have student loans which I pay every month and on time to our tax payers. I usually pay more than then minimum amount. The lack of work ethics in this country concerns me. It seems like people would rather stay at home and get a government paycheck then actually earn it. This is a difference in opinion, please respect my different opinion and do be angry. I will not insult you for what you believe. If want to wear a mask on your face and jump up and down on one foot or practice voodoo. I really don't care. I love all of you and if any of you are looking for a good chiropractor look me up. I'm in

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<sup>3</sup> Ryan test.

<sup>4</sup> Ex. 2, p. 3 (emphasis added) (typos in original).

Fairbanks and I am actually a doctor. Peace and love people. I'm heading back to work now!<sup>5</sup>

Various licensees and members of the public contacted Ms. Ryan about these posts.<sup>6</sup> Ms. Ryan was concerned that these posts (and others that would follow in coming months) were “inflammatory for the profession” and did not represent appropriate professional speech “in the eyes of the Society.” She also felt that they “showed an increasingly escalating pattern of his erratic behavior,” and was concerned about his welfare. On May 4, 2020, Ms. Ryan submitted a complaint to the Division about Dr. Shoemaker’s public statements regarding his intent to defy the Health Mandate.<sup>7</sup>

### 3. Additional complaints about erratic behavior

Shortly after Ms. Ryan’s complaint, the Division received a complaint involving an early May altercation between Dr. Shoemaker and his then-landlords. Since moving to Fairbanks, Dr. Shoemaker had lived in a small studio apartment owned by another Fairbanks chiropractor and his partner. Their mid-May complaint to the Division described that, following a series of negative interactions, allegedly including him sending them threatening text messages, they had asked Dr. Shoemaker to vacate his apartment.

Prior to vacating the apartment, Dr. Shoemaker “defecated throughout the kitchen,” and left a note that read, “refer to me as Santa Claus or Dr. Shoemaker.”<sup>8</sup> The landlords contacted law enforcement and filed a complaint with the Division, expressing concern about Dr. Shoemaker’s mental health.<sup>9</sup>

Dr. Shoemaker, meanwhile, began living in his office, and his erratic behavior continued to escalate into the summer. At some point during this time, Dr. Shoemaker mailed his mother a bagel covered with his own feces.<sup>10</sup>

Dr. Shoemaker’s practice shared an office building with other entities, including the Fairbanks office of the Federal Bureau of Investigation. On June 26, an FBI employee emailed Division Investigator Jasmin Bautista about Dr. Shoemaker’s conduct and Facebook posts over the past several weeks. The email described Dr. Shoemaker as walking around outside the

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<sup>5</sup> Ex. 2, p. 5 (emphasis added) (typos in original).

<sup>6</sup> Ms. Ryan explained that members of the public frequently contact the Society with complaints out of a mistaken impression that they are the Board.

<sup>7</sup> Ex. 2.

<sup>8</sup> R. 418.

<sup>9</sup> Bautista test.; R. 418.

<sup>10</sup> Shoemaker test.

building openly smoking marijuana, acting “agitated, hostile, and aggressive” when confronted about it, and engaging in various harassing behavior towards the FBI office and security cameras, such as pounding on the door or windows, making obscene gestures at the security camera, and repeatedly ringing the doorbell and walking away.<sup>11</sup>

#### 4. Erratic and Abusive Social Media Postings

During this time, multiple people alerted the Division (and the Alaska Chiropractic Society) to offensive and concerning social media postings.<sup>12</sup> Those posts, some of which were eventually provided to the Division by various complainants or retrieved by the Division’s investigator from the public Advanced Chiropractic Fairbanks Facebook page, included the following:

(1) In response to a post reading: “I’ve never been here nor would I want to be! After seeing his comments on Facebook, he clearly lacks any compassion or any sort of professional demeanor. If you have any respect for yourself or others I would absolutely avoid this place at all costs!”, Dr. Shoemaker posted the following three responses from his personal Facebook account:

- This Dumb Bitch has never been treated by Dr. Shoemaker!
- This dumb bitch is talking shit to a man that pays taxes for her to sit on her ass with a face-mask.
- This Dumb Bitch has Dumb Bitch Friends too!!<sup>13</sup>

(2) In response to a post reading, “After seeing the abuse, harassment, and otherwise unprofessional behavior and responses made by Mr. Shoemaker, it is wise not to seek his ‘care’ as it has been made clear that he does not care for the safety and well-being of his clients,” another poster suggested that those concerned “should express [their] thoughts to the board regarding his blatant sexism, overt threats, name calling and overall unprofessional and awful behavior.” Dr. Shoemaker responded from the Advanced Chiropractic Facebook account, writing: “They can’t do anything about the 1<sup>st</sup> Amendment, it’s somewhat tied to the Constitution. Also, it’s Dr. CuNt Shoemaker ... CunT!!! Ha ha ha.”<sup>14</sup>

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<sup>11</sup> Bautista test.; R. 199.

<sup>12</sup> Bautista test.; Ryan test.

<sup>13</sup> Ex. 9, p. 1.

<sup>14</sup> Ex. 9, p. 2.

(3) In response to another post about unprofessional and disrespectful conduct, as well as the CDC guidelines, Dr. Shoemaker posted the same three comments as in paragraph (1), above – “This Dumb Bitch has never been treated by Dr. Shoemaker!;” “This dumb bitch is talking shit to a man that pays taxes for her to sit on her ass with a face-mask;” and “This Dumb Bitch has Dumb Bitch Friends too!!” – and added a fourth comment: “This dumb doesn’t realize that doctors don’t have ‘clients’!!!”<sup>15</sup>

(4) After another commenter discussed the possibility of reporting unprofessional conduct to the Board, Dr. Shoemaker responded under the Advanced Chiropractic Fairbanks account with: “Freedom of Speech, Bitches!!!”<sup>16</sup>

(5) After a series of commenters debated whether Dr. Shoemaker’s account had been hacked (as a possible explanation for the posts above), Dr. Shoemaker responded as follows through the Advanced Chiropractic Fairbanks Facebook account: “Seems like you’re the rude one ... It’s Dr. Shoemaker ASS-Hole!!! No one needs your opinion!”<sup>17</sup>

(6) In one post, Dr. Shoemaker refers to himself in the third person, writing (from the Alaska Chiropractic page): “Doesn’t matter what we think ... We have not killed anyone. Nor do we believe your SALVATIONS LyeZ in the FaCe Mask?!?!”<sup>18</sup>

(7) In response to a post that read: “After seeing Facebook post by a supposed practitioner, I am appalled and disgusted and as a cancer patient. Nasty, rude, unscientific and blatant sexism in that anti science post by the supposed Practitioner,” Dr. Shoemaker responded from his personal account: “This DumB-Bitch has never received patient care from Doctor Shoemaker or ADVANCED Alaska Chiropractic Society ... This post is un-professional!!!!” His later comment on the same post stated that “Dr. Shoemaker gives 0 FUCKS!!!”<sup>19</sup>

Multiple people reported concerns about these postings to the Division, as well as to the Alaska Chiropractic Society.

## 5. June 28 Arrest

Dr. Shoemaker’s escalating mental health troubles came to a head in the early morning hours of June 28, when he stole an asphalt roller/compactor from a construction staging area,

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<sup>15</sup> Ex. 9, pp. 3-4.

<sup>16</sup> Ex. 9, p. 4

<sup>17</sup> Ex. 9, p. 6.

<sup>18</sup> Ex. 9, p. 11 (reproduced as written).

<sup>19</sup> Ex. 9, pp. 9-10.

drove it over multiple road signs alongside the Richardson highway, got the vehicle stuck while trying to drive it into a pond, and wound up, himself, stuck in a dumpster. He also posted photos of these events to the Advanced Chiropractic Facebook page. Dr. Shoemaker was arrested and charged with felony theft (for taking the compactor) and criminal mischief (for damage to the road signs).<sup>20</sup>

6. Summer 2018: Sexual contact with employee/patient

It was only when the Division contacted FPD to obtain police reports associated with this incident that Division Investigators became aware of a July 2018 sexual assault report made against Dr. Shoemaker by one of his employees.<sup>21</sup> At that time, Dr. Shoemaker had several employees working for him as receptionists or massage therapists, and his practice was to offer “free chiropractic” as a “benefit” for staff.<sup>22</sup>

One employee, massage therapist C.M., had been working for Dr. Shoemaker for a few weeks and had a hip problem which Dr. Shoemaker was “treating” as part of that arrangement. By the time of the events at issue, Dr. Shoemaker had “worked on” C.M.’s hip – including chiropractic adjustments, e-stimulation, ultrasound, and manual therapy – between eight and ten times.

On July 12, 2018, Dr. Shoemaker adjusted C.M.’s hip, used ultrasound and electric stim on it, and then gave her a massage in the Advanced Chiropractic massage therapy room. At some point, the massage became sexual in nature and was terminated abruptly by C.M. The day after the massage, C.M. reported to the Fairbanks Police Department that Dr. Shoemaker had digitally penetrated her vagina during the massage.<sup>23</sup> When interviewed by police, Dr. Shoemaker denied penetrating C.M. but admitted that he “got really close” – so much so that if she mistakenly thought he had done so, her confusion would be understandable.<sup>24</sup>

It is undisputed that C.M. told Dr. Shoemaker she wanted him to stop what he was doing, that the massage then ended, and that C.M. then left the building. It is also undisputed that she and Dr. Shoemaker then exchanged text messages that day as follows:

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<sup>20</sup> Ex. 10, pp. 3-4

<sup>21</sup> Bautista; R. 421-422.

<sup>22</sup> Ex. 8.

<sup>23</sup> Thompson test.

<sup>24</sup> Ex. 8 (“I could see how being as close as I was, she might interpret that as, um, I don't know. It sounds like she's saying that I was inside. Um, I could see how being as close as I was, she might interpret that as, um, I don't know.”).

- After she left, C.M. texted Dr. Shoemaker: “Hey I didn’t want that .... I’m not going to tell anyone. But yeah, let’s just pretend that didn’t happen and not ever again. (2:13 p.m.) She then added: “I didn’t know that was going to happen and ... I feel bad.” (2:14 p.m.).
- He responded ten minutes after the first text: “Agh, I had no intentions of that happening either. I’m on board with not telling anyone and not letting it happen again.”
- After C.M. replied with “OK good,” Dr. Shoemaker wrote back: “You really are doing a great job here and I appreciate the work you’ve done and are doing ... Keep it up please!”
- C.M. immediately replied: “I also think I should resign. I’m sorry. It’s been hard working with my hip anyway. I can’t. I’m too nice ... and get taken advantage of.” (2:25 p.m.)
- Dr. Shoemaker then began asking C.M. to call him, which she resisted. He also asked her to return to the office to talk. She declined.
- After multiple texts in which he asked her to return or talk with him, C.M. texted: “No. I can’t look or talk to you. I just feel very violated...” (3:25 p.m.).
- Dr. Shoemaker responded that he was “really sorry!” and “not a bad guy,” told C.M. he “completely respect[s]” her, and asked her to “forgive [him]” so they could “move past this please.”
- Dr. Shoemaker continued to pressure C.M. to return to work and to forgive him, as well as asking her not to tell anyone what had happened.<sup>25</sup>

C.M. reported the incident to the police the day after it occurred. When interviewed by Fairbanks Police Department detectives, Dr. Shoemaker did not deny that the massage was sexual in nature, but denied penetrating C.M., stating he touched her “just before the point of penetration because like it was getting close.”<sup>26</sup> His initial description of the massage was as follows:

You know, it started getting more and more - uh, just to be honest, she was moaning a lot when I was - uh, getting stuff going, and get, found myself getting closer - and closer and kind of wanting that to happen. Which, uh, shouldn't happen. Should never happened\*\*\*\*. Um, and I kept asking her is this okay. Um, probably asked her in that, in that timeframe about four times, and each time I was getting closer, and closer and, uh, got

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<sup>25</sup> Ex. 3.

<sup>26</sup> Thompson test.; Ex. 8.



really close. I'm not gonna lie. I got really close. I was like are you okay. Is this okay? Like I thought it was progressing - um, and, uh, and she was like whoa. Hey, hold that, like no, that's not okay. I stopped, said I'm so sorry.<sup>27</sup>

He told detectives that his hands were “kind of on her left butt cheek and kind of left inner thigh,” and that from there he inched them closer to her genitals, asking 3-5 times, “every inch almost” if it was okay. He told Detectives, “I don’t think I was touching her vagina,” but “I was very close.” He also denied putting his fingers inside of her but said he “got close enough.” Later in the interview he described C.M. ending the massage “I’d say just before the point of penetration because like it was getting close. Like it was very close, I will not deny that. My fingers were not inside of her.”

Dr. Shoemaker acknowledged that his conduct with C.M. was “stupid” and “unprofessional,” and told the interviewing detectives that “this jeopardizes my career.”<sup>28</sup> However, he also offered that he “felt like she wanted it,” and that C.M. “does give off a vibe ... that it’s welcomed.”<sup>29</sup> He also characterized his conduct as part of a profession-wide weakness, telling the investigating detectives:

Well, to be honest as chiropractors, that is, um, a weakness we have as far as chiropractors get in trouble for doing exactly what I did. Uh, more often than other professions. Believe me, I've got several female patients that I could cross that barrier with.<sup>30</sup>

FPD detective Avery Thompson referred the case for prosecution. A year later, shortly before the case was presented to the grand jury, C.M. withdrew her complaint, reportedly telling the prosecutor “that she believed the massage she had been receiving was sexual in nature, and that she was okay with where the massage ‘was going.’”<sup>31</sup> As a result, criminal charges were not filed.

## 7. July-August 2020: Continued escalation

Once the Division learned of the 2018 allegation, it began investigating that event as well as the other complaints received about Dr. Shoemaker in the prior few months. Meanwhile, Dr.

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<sup>27</sup> Ex. 5, p. 3; Ex. 8.

<sup>28</sup> Ex. 8.

<sup>29</sup> Ex. 8 (“But she does give off a vibe, I’ll say, that it’s welcomed. And all I’m saying is that she has a way of coming across - that it’s welcomed.”). To illustrate this “vibe,” Dr. Shoemaker explained that C.M. had recently had an experience with a male patient propositioning her during a massage (to which she reportedly responded by asking to not have to work with that patient again).

<sup>30</sup> Ex. 8.

<sup>31</sup> Ex. C.

Shoemaker was released from custody on July 21, 2020, under supervision by the Pretrial Enforcement Division. His court-ordered conditions of release required him to participate in electronic monitoring and random urinalysis, to use no illegal drugs – expressly including marijuana – and to obey all court orders and all federal, state, and local laws.<sup>32</sup> However, Dr. Shoemaker continued to engage in escalating behavior and the Division continued to receive complaints about his concerning, erratic behavior.

On July 27, 2020, the Division received a complaint from counsel for BlueCross Premera that Dr. Shoemaker had been making abusive and threatening calls to insurers within the past few months. The complaint indicated that Dr. Shoemaker’s contacts with Premera concerned Premera’s attempt to collect a \$3,700 overpayment, and that Dr. Shoemaker had made “threats of a sexual nature” as well as “homophobic and religious slurs” in calls to Premera’s counsel and other employees.<sup>33</sup>

Dr. Shoemaker’s behavior continued to escalate. On August 18, he sent a bizarre and abusive email to the prosecutor involved in his criminal case, copying the Board as well as various U.S. Senate staffers on the email. The two men had been exchanging cordial scheduling emails the prior week, trying to arrange a time to meet at Dr. Shoemaker’s request.

After Dr. Shoemaker had last emailed one week earlier, the prosecutor apologized for his delayed response and asked if they could meet at 4:00 or 4:30 some day this week.<sup>34</sup> Dr. Shoemaker replied:

Doctor Fucking Storz,  
Yes; 4:30 sounds fucking perfect ASSHole! Can't wait to speak with you at your 4:30 convenience Big Brother! And don't you even think about being 1minute fucking late CUNT!!  
Do you understand Sir?  
We hope to talk a lot about teamwork and resolving issues kind of SCenaRi0 as we've been patiently waiting for you & people will be holding you accountable to this conversation & it will be recorded so bring your A Game! How many phone calls, fax's & e-mails have you literally

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<sup>32</sup> Ex. 10, pp. 5-6.

<sup>33</sup> Bautista test; R. 424. In early June, Dr. Shoemaker had contacted Ms. Ryan several times about problems he was having with insurance companies not paying his claims. Ryan test. Another provider contacted Ms. Ryan in mid-June to report a “troubling” 45-minute phone call with Dr. Shoemaker, stating that Dr. Shoemaker “clearly sounds unstable” and had “referenced taking an AK47 to Aetna to address his insurance issues.” Ryan test; R. 419.

<sup>34</sup> Ex. 11, p. 2 (“Dr. Shoemaker, I apologize for not emailing yesterday. I had forgotten that Monday was a day off work for me. What time works for you to conference call this week? later in the day works best for me. Four or 4:30pm.”).

missed from the Evil Dr. Shoemaker while he pays for your vacations to  
the mid-west dickhead!  
The Evil Dr. Shoemaker  
FUCK YOU!!!<sup>35</sup>

In addition to sending this message to the prosecutor, Dr. Shoemaker sent copies of the email to the Board of Chiropractic Examiners, three staffers in the office of Senator Lisa Murkowski, and another Fairbanks chiropractor.<sup>36</sup>

Around this time, Dr. Shoemaker made several concerning videos which he posted to Facebook or to YouTube and which depict him engaging in bizarre and sometimes threatening behavior. The same day that he sent the above email to the Board, Dr. Shoemaker posted to YouTube a video of himself calling and berating his commercial landlord. At the start of the call, Dr. Shoemaker announces he's calling to "warn" the landlord, stating: "I'm just giving you a warning. I'm giving you a few warnings. Are you listening?" He then begins yelling and swearing at the landlord – apparently for posting his cell phone number on a sign on the building door. He is loud, aggressive, and menacing throughout the conversation, and uses the word "fucking" – as in "my fucking personal cell phone number," "the fucking phone book," "the fucking door," "a lot of fucking problems, "I don't fucking care," "a fucking face mask," and "Fuck you, Dave. Fuck you." – in virtually every sentence.<sup>37</sup>

#### 8. Second arrest and subsequent videos

Meanwhile, by mid-August, Dr. Shoemaker's pretrial enforcement officer was frustrated with Dr. Shoemaker's attitude towards and compliance with his conditions of release, including the random UA requirement. He had also received a report on August 11 that Dr. Shoemaker had been seen smoking marijuana – a violation of his conditions – in the parking lot of his office building.

P.O. Antesberger scheduled Dr. Shoemaker for a UA on August 14. Dr. Shoemaker did not call in as he was required to do each day and did not report to take the August 14 UA. P.O. Antesberger had also received a report that Dr. Shoemaker was driving, which was a violation of his release conditions until he provided the Pretrial Enforcement Division with his license and

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<sup>35</sup> Ex. 11, pp. 1-2.

<sup>36</sup> Ex. 11, p. 1.

<sup>37</sup> Ex. 14.

registration information. P.O. Antesberger therefore elected to charge Dr. Shoemaker with violating his conditions of release.<sup>38</sup>

Because of Dr. Shoemaker's erratic behavior and known gun ownership, P.O. Antesberger brought back-up with him when he went to Dr. Shoemaker's building to confront him about the violations. Dr. Shoemaker attempted to flee when he saw P.O. Antesberger and required multiple officers to restrain and arrest him. He was charged with two counts of violating the conditions of his release. He was briefly remanded to Fairbanks Correctional Center before being released again.

In an August 21, 2020 video, posted to YouTube, Dr. Shoemaker videotapes himself calling and threatening P.O. Antesberger. The phone is on speaker and Dr. Shoemaker is holding a gun in each hand. He tells P.O. Antesberger, "Are you there, Eric? I just want to let you know that I fucking dare you to come into my fucking house again with an attempt to arrest me [cocks gun] because I will defend myself by the fucking constitution, motherfucker. You fuck yourself." When asked, "What does that mean, Dr. Shoemaker?", he responds: "That means whatever you fucking want it to mean."<sup>39</sup>

Another video posted to YouTube the following day shows Dr. Shoemaker in the Advanced Chiropractic office space. Only a black light is on. Dr. Shoemaker talks about himself in the third person and recounts his arrest and what he perceives as mistreatment by law enforcement. At various points he plays with two guns, and a mannequin. Referring to the gun, he says "you use this to protect yourself from the government." He makes threatening statements including that "our government should fear me," and, while showing and discussing his guns, states that "if the fucking government wants to beat down my fucking door and come after them, well then, fucking, they're going to get a lead sandwich." He also calls himself "a healer" and "a ninja," pronounces that "we're not crazy," and states that "if you keep fucking with me, you're going to get more shit."<sup>40</sup>

Finally, a lengthy video posted to YouTube on August 24, 2020 features Dr. Shoemaker again in the black-lit office space, this time wearing a bathrobe. He again displays and handles two guns, at one point showing one and saying "we'll protect ourself. We will actually do that."

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<sup>38</sup> Antesberger test., Ex. 10, pp. 8-10.

<sup>39</sup> Ex. 15

<sup>40</sup> Ex. 16.

He also says that he has an AK-47 and several other guns. He repeatedly refers to himself as “the Evil Dr. Shoemaker,” and describes himself as “in a mental psychosis right now.”<sup>41</sup>

#### 9. Final arrest and subsequent events

Dr. Shoemaker was ultimately arrested again in late August or early September 2020. He was initially involuntarily committed to Fairbanks Memorial Hospital and then transferred to the Alaska Psychiatric Institute.<sup>42</sup> Following a six-day hospitalization, he was held in DOC custody for two months. In late October 2020, Dr. Shoemaker was released from custody, under court-ordered conditions including his mother serving as his third-party custodian.

In December 2020, Dr. Shoemaker sought out a psychological evaluation from Kylie Gore-Hall, MS.<sup>43</sup> The scope of that evaluation was functional: to provide diagnostic impressions and recommendations for remedial interventions to improve Dr. Shoemaker’s current level of functioning. Ms. Gore-Hall did not evaluate Dr. Shoemaker’s competency to practice.

Ms. Gore-Hall found Dr. Shoemaker to be hard working and of apparently high-average intelligence, but also to have “a pattern of characterological traits with predominate impulsivity and authority problems as well as chronic expressions of anger.”<sup>44</sup>

While at the time of the assessment Dr. Shoemaker was “cooperative” and “fully oriented to date, time, location, and situation,” Ms. Gore-Hall observed that he “presented impairments to judgement and reasoning across some contexts, specifically related to norm-violating behaviors or the way in which others experienced his behavior.”<sup>45</sup> She found that these impairments in judgment and reasoning impacted his decisionmaking.<sup>46</sup> Ms. Gore-Hall also described Dr. Shoemaker’s responses as “suggestive of a broad lack of introspective awareness.”<sup>47</sup>

In terms of her recommendations – again, limited to improving overall functioning – Ms. Gore-Hall strongly recommended that Dr. Shoemaker “establish individual psychotherapy” to address the “concerns raised throughout [the] evaluation process.” Among other concerns, she noted that his elevated anger levels meant that “establishment of adaptive anger management

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<sup>41</sup> Ex. 17.

<sup>42</sup> See Ex. A, p. 6. No records from this period were submitted by either party.

<sup>43</sup> Ex. A; Gore-Hall testimony. Ms. Gore-Hall is currently a student in the Counseling Psychology doctoral program at Alaska Pacific University. She is a Licensed Professional Counselor and a Licensed Psychological Associate, and owns a 9-provider mental health center.

<sup>44</sup> Ex. A, p. 8.

<sup>45</sup> Ex. B, p. 7.

<sup>46</sup> Gore-Hall test.

<sup>47</sup> Ex. B, p. 7.

will be an important component of individual therapy.”<sup>48</sup> Ms. Gore-Hall also expressed the need for sobriety from impairing substances, noting Dr. Shoemaker’s “behavioral pattern of acting out, norm violating behaviors, and defensiveness which should be a focus of clinical attention.”<sup>49</sup>

Ms. Gore-Hall expressed the opinion that, with active treatment engagement, Dr. Shoemaker could be expected to cease “further disruptive or norm-violating behavior.”<sup>50</sup> However, if he did not pursue counseling, “we can expect to see the same sort of behaviors emerge with the onset of stress.”<sup>51</sup>

Ms. Gore-Hall recommended that, “following treatment engagement or as a component of the treatment process,” Dr. Shoemaker should be reevaluated “to determine the presence of characterological changes and confirm the absence of norm violating behavior,” which she described as necessary to confirm that Dr. Shoemaker “may be once more able to maintain professional obligations in a safe manner.”<sup>52</sup> (In her testimony, however, Ms. Gore-Hall reiterated that questions around Dr. Shoemaker’s fitness to practice – past, present, or future – were outside the scope of her evaluation).

Dr. Shoemaker remained on third-party supervised release into 2021. On March 4, 2021, he entered into guilty pleas on reduced charges to resolve his remaining criminal justice system involvement. Under a plea agreement, he pleaded guilty to Attempted Vehicle Theft 1, Criminal Mischief 4, and two counts of Violation of Conditions of Felony Release. For each of the primary offenses he was sentenced to two months flat time, concurrently, which amounted to time served.<sup>53</sup> For each of the violation of conditions counts, he was fined \$500.<sup>54</sup> Upon resolution of his criminal charges, Dr. Shoemaker left the country for Colombia, where his fiancé lives.

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<sup>48</sup> Ms. Gore-Hall also expressed concern that Dr. Shoemaker might lose interest in therapy “once situational changes occur,” and noted that “long term character changes are possible if he becomes engaged in the therapeutic process.” Ex. A, p. 14. As discussed further below, Dr. Shoemaker had stopped participating in therapy by the time of the hearing in this matter.

<sup>49</sup> Ex. A, p. 14. Ms. Gore-Hall found that Dr. Shoemaker’s profile of scores were insufficient to warrant a substance abuse disorder classification. But she also noted that Dr. Shoemaker engaged in “a distinct tendency toward avoiding self-disclosure” generally, including specifically that he “responded in a defensive manner which may have led to an understatement of any substance use problem.” Ex. A, pp. 8, 11.

<sup>50</sup> Ex. B.

<sup>51</sup> Gore-Hall test.

<sup>52</sup> Ex. A, p. 14.

<sup>53</sup> R. 360-361.

<sup>54</sup> R. 362.

## *B. Procedural History*

### 1. Summary Suspension

On September 14, 2020, the Board summary suspended Dr. Shoemaker's license, finding that him continuing to practice would present a "clear and immediate danger to public health and safety." The Order declared that Dr. Shoemaker's license "will remain suspended until such time as he can demonstrate to the Board that he is fit to practice in a manner consistent with public safety"

Dr. Shoemaker requested a hearing on the summary suspension order. While summary suspension proceedings may be expedited, Dr. Shoemaker, through counsel, agreed to a series of delays while he was incarcerated, and, later, while the parties worked on attempting to resolve the case.

### 2. Disciplinary Accusation

On October 16, 2020, the Division issued a Disciplinary Accusation in this matter. Dr. Shoemaker submitted a notice of defense, and it was agreed that proceedings on the summary suspension and the Accusation would be consolidated.<sup>55</sup>

After two amendments, the operative Accusation alleges eight counts for discipline against Dr. Shoemaker's license, in the following broad subject areas:

- Sexual misconduct: Sexual contact with a patient (Count I), attempted sexual contact with a patient (Count VII), partial, attempted, or actual removal of patient's underwear (Count VIII) in violation of minimal professional standards, the Code of Ethics, as physical abuse, as lewd or immoral conduct, and adversely affecting public health and welfare
- Fitness to practice: continuing or attempting to practice after becoming unfit (Count II)
- Health mandate violation: refusal to comply with health mandate in violation of minimal professional standards (Count III)
- Criminal convictions: conviction of crimes which affect his ability to practice competently and safely (Counts IV – VI)

Prior to the hearing, Dr. Shoemaker filed a motion to dismiss the Accusation in its entirety, arguing that all of the conduct at issue in the Accusation was protected speech for which he could not be disciplined. The motion was denied.

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<sup>55</sup> Order Scheduling Status Conference, Nov. 4, 2020.

The Division filed a motion for partial summary adjudication, arguing that as a matter of law Dr. Shoemaker's convictions were for crimes that affect his ability to practice competently and safely. That motion was denied in part, with an order holding that the convictions were established as a matter of law but that whether they affected his ability to practice was a question of fact.

### 3. Hearing

At Dr. Shoemaker's request, the parties agreed to have this licensing matter held in abeyance until his criminal charges were resolved.<sup>56</sup> After that matter was resolved, the parties requested further extensions of time while they attempted to resolve the case amicably. In July 2021, the Division asked for a status conference to set the matter on for hearing.<sup>57</sup> At a conference on August 4, the parties set the matter for an October hearing.<sup>58</sup>

The hearing on the Division's accusation was held on October 11, 12, and 13, 2021. The hearing was held by videoconference. Dr. Shoemaker was represented by Jason Weiner; the Division was represented by Assistant Attorney General Richard Moses. In addition to Dr. Shoemaker, testimony was taken from:

- Division Investigator Jasmin Bautista,
- Former FPD Detective Avery Thompson,
- Pretrial Enforcement Office Eric Antesberger,
- Alaska Chiropractic Society COO Sherri Ryan,
- Fairbanks chiropractor Dr. Warren Moore,
- Kylie Gore-Hall, MS, LPA, LPC,
- University of Western States President Joseph Brimhall, D. Chiro.,
- Two of Dr. Shoemaker's former patients, Bradford Bunnell and Stacy Boone-Grant, and
- Two personal friends, Melissa Pope and Aaron Rapp.<sup>59</sup>

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<sup>56</sup> Interim Order, January 21, 2021.

<sup>57</sup> Division's Request for a Status Conference, July 9, 2021.

<sup>58</sup> Scheduling Order, August 4, 2021.

<sup>59</sup> The testimony of Dr. Shoemaker's friends was not helpful. Mr. Raap was Dr. Shoemaker's employer at a tractor dealership for 4-5 years about 15 years ago. He testified that Dr. Shoemaker's behavior during summer 2020 was abnormal and out of character, and that Dr. Shoemaker has since returned to being "the same old Aaron." However, he is not a medical professional and knows nothing specific about the allegations in this case. Ms. Pope, who is also not a medical professional, believes that Dr. Shoemaker is smart, hardworking, and "so coherent." While she is "shocked" that the Division is seeking revocation in this case, she had minimal understanding of the underlying factual accusations in this case. She understands those concerns to be (1) "something about masking,"



In her testimony, Ms. Gore-Hall emphasized that her evaluation was limited in its purpose to identifying interventions that might assist Dr. Shoemaker to improve his overall functioning. She did not conduct assessments related to his fitness to return practice, and at hearing strongly disavowed any ability or intent to offer an opinion in these areas.

Dr. Shoemaker's own hearing testimony was notable for several reasons. The first was his demeanor (and statements) regarding some of the incidents giving rise to this case. As described in Ms. Gore-Hall's evaluation, Dr. Shoemaker still does not appear to acknowledge or appreciate the extent to which his "norm-violating" behavior was offensive or otherwise far outside the scope of acceptable conduct.

When asked about defecating in the middle of the rental apartment, his initial response was to point out that upon leaving he had left the apartment "otherwise spotless."<sup>60</sup> Additionally, he went on to try to justify his behavior, explaining that his reason for defecating in the middle of rental apartment was that he was mad at his landlord for kicking his (the landlord's) dog, conduct which he described as "unacceptable to [him]." His tone and demeanor throughout this testimony was striking for the undercurrent of aggression and self-righteousness, even now, 18 months later and in a professional licensing hearing. He also testified that his note advised his landlord, "I've seen you pick up your dog's mess, so now you can pick mine," but also suggested that, "once you're done cleaning this up, call me and we'll go grab a beer." Dr. Shoemaker allowed that in retrospect perhaps defecating in his apartment kitchen "wasn't a great joke," but he continued to justify it based on the landlord's alleged bad deed.

Relatedly, Dr. Shoemaker also attempted to justify his criminal activities with the asphalt roller/compactor by blaming the victim of his crime – the owner of the equipment he removed without permission from a construction staging area. He observed that the owner of the equipment created the opportunity for him to commit his crime by poorly securing the vehicle. At two different times in his testimony, he responded to questions about his actions by saying that "if you have a machine as expensive as a Ferrari, you shouldn't leave the keys in it."

A second notable revelation in Dr. Shoemaker's testimony is that he is not engaged in counseling as recommended by Ms. Gore-Hall. Despite the extreme, personally and

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and (2) that Dr. Shoemaker performed several chiropractic adjustments on "the girl he worked with," and "maybe he shouldn't have touched her or worked on her because she was a coworker." Additionally, she reports that Dr. Shoemaker was evaluated by a psychologist "who said he's pretty much fine."

<sup>60</sup> Shoemaker test.

professionally destructive mental health episode barely more than a year ago, and the professional recommendations he sought out and received less than a year ago, he has determined that therapy isn't for him. He testified that he doesn't find counseling particularly helpful, and prefers to "talk things out" with family and friends.

Lastly, respondent's testimony was notable in that it revealed that he has practiced as a chiropractor while his license has been under suspension by this Board. When asked by his attorney whether he had practiced since the summary suspension went into effect, he responded: "Not in the U.S.A." On cross-examination, he admitted that he had practiced for several months while in Colombia. He added that chiropractic "isn't legal in Colombia, but it isn't illegal either. It's kind of a grey area."

### **III. Discussion**

#### *A. Applicable Law*

Board disciplinary matters are governed by the Alaska Administrative Procedure Act, the centralized licensing provisions of AS 08.01, and by the Board's statutes and regulations.

Alaska Statute 08.01.075 identifies the range of disciplinary sanctions that the Board may take, singly or in combination, in exercising its disciplinary powers. These range from civil fines to permanent license revocation. Additionally, the Board summarily suspend a license where the Board finds that the licensee poses a clear and immediate danger to public health and safety.<sup>61</sup>

AS 08.20.170(a) sets out the bases upon which the Board can impose discipline on a licensee. Of relevance here, the Board may do so upon finding that the licensee:

- has been convicted, including a conviction based on a guilty plea or plea of nolo contendere, of (A) a felony or other crime that affects the person's ability to practice competently and safely[;]<sup>62</sup>
- failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board;<sup>63</sup>
- continued or attempted to practice after becoming unfit due to (A) professional incompetence; (B) addiction or severe dependency on alcohol or a drug that impairs the person's ability to practice safely; (C) physical or mental disability or an infectious or contagious disease;<sup>64</sup> or

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<sup>61</sup> AS 08.01.075(c).

<sup>62</sup> AS 08.20.170(a)(4).

<sup>63</sup> AS 08.20.170(a)(6).

<sup>64</sup> AS 08.20.170(a)(7).

- engaged in lewd or immoral conduct in connection with the delivery of professional service to patients[.]<sup>65</sup>

Alaska Statute 08.01.075(f) requires the Board to “seek consistency in the application of disciplinary sanctions.” If applicable, “[a] board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.”

Because the Division is seeking to impose discipline on Dr. Shoemaker’s license, the Division has the burden of proving, by a preponderance of the evidence, that Dr. Shoemaker committed the alleged violations.<sup>66</sup>

*B. Evidentiary issues*

During the hearing, counsel for Dr. Shoemaker raised numerous objections to evidence presented. When a hearing is held under the Administrative Procedure Act (APA), the technical rules of evidence applicable in civil or criminal court proceedings do not apply.

Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action.<sup>67</sup>

Additionally, “hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil finding.”<sup>68</sup>

In judicial proceedings, hearsay – out-of-court statements offered to prove the truth of the matter asserted in the statement – is not admissible unless it falls within an exception identified in the Rules of Evidence.<sup>69</sup> In administrative proceedings under the APA, hearsay that would be inadmissible in court is still admissible, although its use is restricted unless it is corroborated by other evidence.

During the course of the hearing, Dr. Shoemaker asserted hearsay objections to the admission of various out-of-court statements, including:

- Testimony from Sherri Ryan and Jasmin Bautista that they had received complaints from third parties about Dr. Shoemaker’s conduct;

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<sup>65</sup> AS 08.20.170(a)(4).

<sup>66</sup> AS 44.62.460(e)(1); *Odom v. State*, 421 P.3d 1, 7 (Alaska 2018).

<sup>67</sup> AS 44.62.460(d).

<sup>68</sup> AS 44.62.460(d). Statements that are admissible in court despite their hearsay qualities include excited utterances, statements of present sense impression, recorded recollections, and business records – as well as the absence of such records. *See* Alaska R. Evid. 803.

<sup>69</sup> *See* generally, Alaska R. Evid. 801-806.

- Testimony by Dr. Moore about staff complaints about Dr. Shoemaker;
- FPD records documenting interviews with C.M. and Dr. Shoemaker, as well as a recorded call between them;
- Text messages between C.M. and Dr. Shoemaker;
- Dr. Shoemaker’s social media statements and emails; and
- Dr. Shoemaker’s YouTube and Facebook videos.

As a threshold matter, statements made by and then offered against a party are not hearsay.<sup>70</sup> Thus, Dr. Shoemaker’s own statements to which his counsel objected are not hearsay, even if they were “offered to prove the truth of the matter asserted.” Another threshold issue is that many of the out-of-court statements offered at hearing were not offered to prove the truth of what was being asserted in the statement, but for some other purpose. For example, in a recorded phone call between Dr. Shoemaker and his landlord, the landlord’s statements – i.e. that if Dr. Shoemaker would give him a different phone number to use, he would post that instead of the cell phone number currently posted – are not being offered to prove that he would in fact take those actions. Rather, the landlord’s statements are admitted to show the effect on the listener – Dr. Shoemaker, who responded by yelling, cursing, and threatening.

Similarly, the printed Facebook pages with abusive statements made under Dr. Shoemaker’s or Advanced Chiropractic’s Facebook account are not offered to show whether the other commenters would or would not recommend Advanced Chiropractic. They are offered to show Dr. Shoemaker’s erratic and significantly norm-violative behavior.<sup>71</sup>

Other hearsay evidence was admitted within the residuum rule to supplement or explain non-hearsay or otherwise admissible evidence in the record. For example, Detective Thompson’s testimony about the report and statements made by C.M. about her encounter with Dr. Shoemaker was admitted to explain why the detectives took the steps they did in pursuing an investigation of that incident. Dr. Moore’s testimony about complaints by staff was admitted for the effect on the listener – specifically, to explain why Dr. Moore terminated or took steps to terminate Dr. Shoemaker’s employment at his clinic.

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<sup>70</sup> Alaska R. Evid. 801(d)(2).

<sup>71</sup> While a hyper-technical reading of the evidence rules would note that the Facebook posts are hearsay-within-hearsay, with the first level of hearsay being an “assertion” by Facebook that the statements were in fact made by Dr. Shoemaker, he has never asserted in this proceeding that these were anything else.

While the majority of Dr. Shoemaker’s hearsay objections were overruled, one notable exception is Exhibit 4, which was tentatively admitted at the end of the hearing. Upon further review, however, the exhibit – ostensibly a transcript of C.M.’s initial interview with detectives – has too many omissions and inconsistencies to be reliable or relied on in the conduct of serious affairs. While another informal transcript with similar shortcomings was admitted for limited purposes, that transcript was admitted alongside the actual recording, which could then be used to supplement the informal transcript. Because there is no such recording in the record to supplement the obviously incomplete Exhibit 4, the decision to admit that Exhibit 4 is rescinded, and the Exhibit was not relied on in this decision.

*C. Did the Division establish that the Summary Suspension was Warranted?*

This case began with the Board’s summary suspension of Dr. Shoemaker’s license in September 2020. AS 08.01.075(c) provides that “a board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety”<sup>72</sup>

To the extent the issue was not waived by the time of the hearing on the Accusation, the Division met its burden of demonstrating that summary suspension of Dr. Shoemaker’s license was appropriate in this case.<sup>73</sup>

At the time of the suspension, Dr. Shoemaker was engaged in actively and self-identified psychotic behavior. His late August videos depict someone who is patently unwell. He is seen and heard threatening to shoot law enforcement officers. In the months leading up to that point, he had engaged in a series of norm-violative behaviors inconsistent with the ability to safely and competently practice patient care. These included: two separate acts of “protest” or vandalism involving his own feces; stealing and “joy riding” in a construction vehicle; and lashing out verbally and in writing in a multitude of contexts including, at least, at strangers on social media, the Fairbanks Assistant District Attorney, insurance company representatives, his residential and commercial landlords, and his pretrial enforcement officer.

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<sup>72</sup> AS 08.01.075(c). The statute also provides that “A person is entitled to a hearing conducted by the office of administrative hearings (AS 44.64.010) to appeal the summary suspension within seven days after the order of suspension is issued.” Here, Dr. Shoemaker waived the expedited hearing.

<sup>73</sup> Dr. Shoemaker did not address the propriety of the summary suspension in either his pre- or post-hearing briefing. Nor did he indicate at hearing, through counsel or otherwise, that he was actively contesting that decision. However, the Division indicated that it had briefed the issue in an excess of caution and to ensure a fully developed record. It is addressed here for the same reasons.

The Board had ample justification to conclude that allowing Dr. Shoemaker to continue practicing under these circumstances presented a clear and immediate danger to public health. Accordingly, the decision to summarily suspend Dr. Shoemaker's license is upheld.

*D. Did the Division Prove that Dr. Shoemaker Violated Board Statutes and/or Regulations?*

A summary suspension itself is a stop-gap measure enabling a board to take emergency action to suspend a license before a hearing, and affording a licensee a highly expedited hearing on that summary measure. Prior OAH decisions have interpreted the statute's reference to a suspension imposed "before a final hearing is held" as contemplating a separate but related disciplinary proceeding to address any potential additional or longer-term disciplinary consequences beyond the suspension in place while that proceeding is underway. Here, shortly after the summary suspension went into effect, the Division filed an accompanying disciplinary Accusation seeking revocation of Dr. Shoemaker's license. The second issue to address in this decision is whether any of the counts in the Division's Accusation have merit. If they do, the decision must then address what discipline is appropriate.

1. Did the Division prove that Dr. Shoemaker engaged in or attempted sexual contact with a patient?

Counts I and VII of the Second Amended Accusation allege that Dr. Shoemaker engaged in or attempted sexual contact with a patient in violation of the Board's statutes and regulations. Count VIII makes a related claim that moving or removing C.M.'s underwear also violated these provisions. Each of these three claims alleges that the conduct identified violated an array of statutes and regulations – specifically:

- AS 08.20.170(a)(5) (conduct below minimum professional standards);
- 12 AAC 16.920(a)(15) (violating the Code of Ethics);
- AS 08.20.170(a)(8) and 12 AAC 16.930(a), (d) (lewd and immoral conduct); and
- 12 AAC 16.920(a)(7) (physically abusing a patient).

Dr. Shoemaker responds that C.M. was not his patient and that therefore the massage was a private encounter between consenting adults.

- a. C.M. was a patient of Dr. Shoemaker for purposes of their interactions in his practice's massage room.

As a threshold matter, there is no merit to Dr. Shoemaker's argument that C.M. was not "a patient" for purposes of these provisions. Seizing on the fact that the Board's statutes and

regulations do not expressly define the term “patient,” Dr. Shoemaker urges that C.M. was not his patient.

But while the Board’s statutes and regulations do not define patient, they define the terms surrounding licensees’ provision of chiropractic care to patients. The Board’s statutes define “chiropractic” to mean:

The clinical science of human health and disease that focuses on the detection, correction, and prevention of the subluxation complex and the employment of physiological therapeutic procedures preparatory to and complementary with the correction of the subluxation complex for the purpose of enhancing the body’s inherent recuperative powers, without the use of surgery or prescription drugs.

That definition expressly provides that “the primary therapeutic vehicle of chiropractic is chiropractic adjustment.”<sup>74</sup> The statute goes on to define “chiropractic adjustment” to mean

the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point of the anatomy for the express purpose of creating a desired angular movement in skeletal joint structures in order to eliminate or decrease interference with neural transmission and correct or attempt to correct subluxation complex.<sup>75</sup>

“Chiropractic core methodology, in turn, is defined as “the treatment and prevention of subluxation complex by chiropractic adjustment...”<sup>76</sup>

In short, chiropractors treat patients primarily by chiropractic adjustments, alongside other complementary treatments. Dr. Shoemaker provided chiropractic care to his employees as a benefit.<sup>77</sup> C.M. was an employee and received such treatments from Dr. Shoemaker as a benefit of her employment, with those treatments including not just massage but adjustments and other treatment modalities.

Dr. Shoemaker explained to FPD Detectives that he had treated her eight to ten times thus far, including one week where he had done so three or four times. This was normal, he explained, because “a person coming in for chiropractic treatment will oftentimes get three visits

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<sup>74</sup> AS 08.20.900(3).

<sup>75</sup> AS 08.20.900(4).

<sup>76</sup> AS 08.20.900(6) (“chiropractic core methodology” means the treatment and prevention of subluxation complex by chiropractic adjustment as indicated by a chiropractic diagnosis and includes the determination of contra-indications to chiropractic adjustment, the normal regimen and rehabilitation of the patient, and patient education procedures; chiropractic core methodology does not incorporate the use of prescription drugs, surgery, needle acupuncture, obstetrics, or x-rays used for therapeutic purposes”).

<sup>77</sup> Ex. 5, p. 8 (“Part of the benefits of working here is that one of the benefits that I can offer is free chiropractic.”).

a week starting out, and then taper them down. And so that is normal. Um, it was progressive in that sense.”

Other states have noted that whether an individual is a patient turns on the totality of the circumstances.<sup>78</sup> Here, Dr. Shoemaker testified that he had treated C.M. between eight and ten times. He performed adjustments on her hip, as well as treating her with ultrasound, e-stim, and manual therapy. The fact that he did not create a chart, take a full history, or charge for these services does not diminish the conclusion that Dr. Shoemaker provided patient care to C.M.<sup>79</sup>

The Board’s regulations identify as its objective “to foster professional standards consistent with the best interests of the public.”<sup>80</sup> Questions of licensees’ professionalism and professional obligations are viewed through the lens of that objective. It is in the best interests of the public to acknowledge the formation of a doctor-patient relationship under the circumstances described here, and there is a reasonable expectation that trained and licensed professionals will understand both the creation and the boundaries of such relationships. Certainly, the absence of precise statutory definitions neither obviates Dr. Shoemaker’s creation of a doctor-patient relationship with C.M., nor excuses his professed ignorance as to the nature of the relationship.

- b. Dr. Shoemaker’s sexual misconduct with C.M. violated the Board’s statutes and regulations.

The Board’s statutes and regulations, as well as the Code of Ethics, all prohibit sexual contact between chiropractors and their patients. The Code of Ethics explains that “sexual misconduct is a form of behavior that adversely affects the public welfare and harms patients individually and collectively. Sexual misconduct exploits the doctor-patient relationship and is a violation of the public trust.”<sup>81</sup> Alaska Statute 08.20.170(a)(8) authorizes the Board to impose discipline on a licensee who has “engaged in lewd or immoral conduct in connection with the delivery of professional service to patients.”<sup>82</sup> The Board’s regulations, at 12 AAC 16.930(a), prohibit licensees from engaging either in “lewd or immoral conduct in connection with the delivery of professional services to a patient” or in any sort of “sexual contact or ... romantic relationship with a patient.”<sup>83</sup>

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<sup>78</sup> See, e.g., *Gala v. Bd of Chiropractic Examiners*, --- P.3d ----, 2021 WL 3378658 (Ct. App. Oregon August 4, 2021).

<sup>79</sup> See Shoemaker Post-hearing brief, p. 3.

<sup>80</sup> 12 AAC 16.010(a).

<sup>81</sup> Code of Ethics, Tenet VI.

<sup>82</sup> AS 08.20.170(a)(8).

<sup>83</sup> 12 AAC 16.930(a) (“A licensee



Here, the evidence supports a finding of both “lewd or immoral conduct in connection with the delivery of professional services to a patient,” as well as the solicitation of sexual contact with a patient. At a minimum – even if the massage were somehow construed as being fully consensual *and* mutually intended to be separate from the physician-patient relationship – Dr. Shoemaker’s conduct would have constituted the solicitation of sexual contact with a patient in violation of 12 AAC 16.930(a) and the Code of Ethics. The Board’s regulations provide that patient consent is not a defense to a disciplinary action alleging a violation of this provision.<sup>84</sup> Nor is it a defense that the contact “occurs outside professional treatment sessions;”<sup>85</sup> or even “off of the premises regularly used by the licensee for the professional treatment of patients.”<sup>86</sup> Thus, even the most generous possible reading of the evidence would still support a finding that Dr. Shoemaker violated this provision.<sup>87</sup>

Moreover, no reasonable reading of the evidence supports a conclusion that the massage of C.M. happened outside of “the delivery of professional services to a patient.”<sup>88</sup> The massage occurred at his practice, in the massage therapy room, immediately after Dr. Shoemaker provided other treatments to C.M.’s hip. The evidence also supports the conclusion that Dr. Shoemaker engaged in at least attempted sexual contact and sexual misconduct with C.M., if not sexual contact itself.

The evidence supports a finding that there was more likely than not sexual contact. Sexual contact is not limited to sexual penetration, but also includes touching a patient’s genitals.<sup>89</sup> Here, evidence that supports a finding that Dr. Shoemaker more likely than not touched C.M.’s genitals. This evidence includes:

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may not engage in lewd or immoral conduct in connection with the delivery of professional services to a patient or solicit sexual contact or a romantic relationship with a patient.”).

<sup>84</sup> 12 AAC 16.930(c)(1).

<sup>85</sup> 12 AAC 16.930(c)(2).

<sup>86</sup> 12 AAC 16.930(c)(3).

<sup>87</sup> Troublingly, Dr. Shoemaker does not appear to acknowledge any problem with his conduct with C.M. other than possibly having been confused about whether she “wanted it.” His post-hearing brief focuses her alleged consent to a “massage that is sensual,” without ever acknowledging the inherent problems created by his having treated her on 8-10 occasions, and with no apparent consideration for the regulation providing that patient consent is not a defense to a disciplinary action under this section. *See* 12 AAC 16.930(c)(1).

<sup>88</sup> 12 AAC 16.930(d) (defining lewd or immoral conduct to include “sexual misconduct, sexual contact, or attempted sexual contact, with a patient outside the scope of generally accepted methods of examination or treatment of the patient during the time the patient is receiving professional treatment from the licensee.”).

<sup>89</sup> 12 AAC 16.930(e)(2). Dr. Shoemaker has not argued that his sexual touching of C.M. was “performed for the purpose of administering a recognized and lawful form of chiropractic examination or treatment that is reasonably adapted to promoting the physical or mental health of the person being treated.” 12 AAC 16.930(e)(2)(C)(ii).

- The text messages between C.M. and Dr. Shoemaker immediately after the massage, in which C.M. says, “hey I didn’t want that” and “if I knew I wouldn’t have let the massage happen,” asks to “just pretend that didn’t happen and not ever again,” and says “I just can’t look or talk to you. I just feel very violated.” In response, Dr. Shoemaker says, “I had no intentions of that happening either,” apologizes repeatedly, and refers to whatever happened as “this mistake of mine,” “a huge misunderstanding on my part,” and something that “I promise that won’t happen again.”<sup>90</sup>
- The recorded phone call in which they again both describe an event occurring – with C.M. asking “what brought that on,” and Dr. Shoemaker saying “it was more a spur of the moment thing,” that he thought she “wanted that,” and that he “stopped right away as soon as I realized that it wasn’t” something she wanted.<sup>91</sup>
- His various statements to FPD that he was “close enough” to have penetrated C.M., and also that he was so “close” to her vagina that he would understand if she had interpreted his touching as penetration.

A reasonable inference is that the massage was more intimate than Dr. Shoemaker admits, and that if it did not involve penetration per se, it involved Dr. Shoemaker touching C.M.’s genitals.

Even if there was no “sexual contact” (that is, penetration or touching of C.M.’s genitals) the evidence amply supports a finding of “attempted sexual contact.” The Board’s regulation defines attempted sexual contact as “engaging in conduct that constitutes a substantial step towards sexual contact.”<sup>92</sup> Here, Dr. Shoemaker’s own statements describe moving his hand closer and closer to C.M.’s vagina, asking her multiple times if what he was doing was okay. This conduct was a substantial step towards sexual contact.

The evidence also supports a finding of sexual misconduct – defined in the Board’s regulation “sexual misconduct” to mean “behavior, a gesture, or an expression that may reasonably be interpreted as seductive, sexually suggestive, or sexually demeaning to a patient.”<sup>93</sup> Dr. Shoemaker admitted to FPD that he behaved in a sexual manner towards C.M.

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<sup>90</sup> Ex. 3.

<sup>91</sup> Ex. 6, Ex. 7.

<sup>92</sup> 12 AAC 16.930(e)(1).

<sup>93</sup> 12 AAC 16.930(e)(3). Specifically identified examples include “disrobing or draping practice that is seductive [or] sexually suggestive[,] such as deliberately watching a patient dress or undress or failing to provide privacy for disrobing;” as well as “using the doctor-patient professional relationship with the patient to solicit sexual contact or a romantic relationship with the patient[.]” 12 AAC 16.930(e)(3)(C), (F). It is possible that Dr. Shoemaker’s actions of pulling down C.M.’s underwear occurred during the non-sexual portion of the massage. Even if that were so, he used the doctor-patient professional relationship to solicit sexual contact. He was giving

during the massage. He acknowledged that he had crossed a line, and (rightly) characterized his conduct as jeopardizing his career. There can be no doubt that the incident with C.M. meets the definition of sexual misconduct for purposes of the Board's regulations.

In short, the Division has met its burden of proving that Dr. Shoemaker engaged in lewd and immoral conduct as alleged in Counts I and VII of the Second Amended Accusation. This conduct is per se below the minimum standards of professional conduct, and a per se violation of the rules of ethics governing the profession.

2. Did the Division prove that Dr. Shoemaker violated AS 08.20.170(a)(7) (attempted continued practice after becoming unfit)?

AS 08.20.170 prohibits a licensee from continuing or attempting to practice after becoming unfit, whether due to "addiction or severe dependency on alcohol or a drug that impairs the person's ability to practice safely" (170(a)(7)(B)) or "physical or mental disability[.]" Count II of the Second Amended Accusation alleges, prior to the summary suspension, Dr. Shoemaker had continued or attempted to continue to practice after having become unfit.

Dr. Shoemaker has suggested that to prove this claim, the Division must prove that he actually saw specific patients at a specific point in time.<sup>94</sup> But the statute does not require this level of precision. The statute includes not only practicing but also "attempting to practice." Additionally, the Division is not required to prove the violation beyond a reasonable doubt, but rather, must prove it by a preponderance of the evidence.

Nor is it necessary to define with absolute precision the point at which Dr. Shoemaker became unfit to practice safely. In the circumstances of this case, it is sufficient to identify the period of time during which Dr. Shoemaker was more likely than not unfit to practice, and to determine whether he was more likely than not attempting to practice during that time.

Here, as described above, Dr. Shoemaker's mental health declined significantly during the late spring and summer of 2020. By late May, the Division and the Alaska Chiropractic Society were both receiving complaints about his erratic, profane, and unprofessional social

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C.M. a massage because of and by virtue of the doctor-patient professional relationship, and he used that massage to initiate sexual contact with C.M.

<sup>94</sup> Dr. Shoemaker's post-hearing briefing also argues that the Division cannot successfully pursue this claim without expert testimony about Dr. Shoemaker's fitness to practice. This is incorrect. The Board is amply capable of assessing Dr. Shoemaker's fitness, particularly under the circumstances of this case, where a proliferation of video evidence leaves so little to the imagination.

media posts. And by this time, he had engaged in at least his first norm-violative “protest” action involving his own feces.

A preponderance of the evidence supports a finding that Dr. Shoemaker was no longer fit to practice chiropractic medicine at this time. And a preponderance of evidence supports a finding that Dr. Shoemaker was continuing or attempting to practice during this period. He kept his practice open. He told Sherri Ryan he had more patients than he could schedule. He interfaced with insurance companies about patient coverage. Even as late as August, when he videotaped his profane, threatening call to his landlord, he discussed his patients coming into the building.

In short, the Division has met its burden of proving that Dr. Shoemaker continued or attempted to practice after becoming unfit.

3. Did the Division prove that Dr. Shoemaker violated 12 AAC 16.920 (“minimum professional standards”)?

Count III of the Second Amended Accusation alleges that Dr. Shoemaker violated minimum professional standards by refusing to wear a mask in violation of a state public health mandate. The Board’s regulations identify minimum professional standards for chiropractic care as “chiropractic care that may adversely affect the health and welfare of the public,” and specifically as including, *inter alia*, failing to adhere to the Code of Ethics of the American Chiropractic Association.<sup>95</sup> That Code provides that “Doctors of chiropractic should maintain the highest standards of professional and personal conduct, and should comply with all governmental jurisdictional rules and regulations.”<sup>96</sup>

Health Mandate 015 was implemented as part of Alaska’s response to a global pandemic. Chiropractors were expected and required to comply with it. Dr. Shoemaker announced publicly and privately that he would not do so.

- He told the C.O.O. of the Alaska Chiropractic Society that he would not comply with the Mandate.
- He made multiple statements on Facebook in which he identified himself as a licensee and announced he would not follow the Mandate.

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<sup>95</sup> 12 AAC 16.920(a)(15). The regulations also provide that “[i]t is the objective of the board to adhere to the Code of Ethics of the American Chiropractic Association or International Chiropractic Association as a basis for considering what comprises the duties and obligations of chiropractors to the public.” 12 AAC 16.010(b).

<sup>96</sup> Code, Ch. II

- Dr. Shoemaker also told his commercial landlord that he didn't intent to have his patients wear masks in the building, and posted a video of that statement on the internet. See Ex. 14 (“No. I’m fucking taking [the sign] down every time you put it up. Because if my patients come in and want to get treated, they’re not going to wear a fucking face mask.”).

In addition to announcing his opposition to the Mandate and his intent not to follow it, Dr. Shoemaker also announced that he was not following it, writing: “I hope Big Brother doesn't find out I'm not wearing a mask at work. But if they do it's ok. I will stand behind my education and constitution.”<sup>97</sup>

Dr. Shoemaker now argues that there is no evidence that he actually defied the Mandate, and that he cannot be punished for his speech. He is mistaken on both fronts. First, Dr. Shoemaker is not being disciplined for his speech per se. His speech is not the offending act but rather is evidence of his violation of the Code of Ethics. When he says, “I’m not wearing a mask at work,” this is evidence that he wasn’t wearing a mask at work. Because at the time he made that statement chiropractors were required by Health Mandate 015 to follow masking protocols, his statement is evidence that he violated the law. That violation subjects him to discipline by the Board.

As to the larger issue of the Board’s ability to regulate licensee speech, Dr. Shoemaker is also not correct that he has unlimited “free speech” rights to make statements that are at odds with the statutes and regulations governing his license. In deciding to enter a licensed profession, licensees enter into an agreement to abide by the rules governing that profession. Implicit in those rules are certain restrictions on speech including, at a minimum, not making public statements announcing their intent to violate the laws governing practice of the licensed profession. To conclude otherwise would lead to absurd results, allowing licensees to make an array of statements at odds with the requirements of their license. There can be little doubt that a surgeon would face discipline for announcing an intent to stop sterilizing medical instruments, or to only meet the standard of care when treating patients of a certain race. An attorney would face discipline for announcing an intent to submit perjured testimony, or to sign pleadings without regard to their veracity. And a chiropractor can properly face discipline when announcing his intent to violate public health laws put in place during a pandemic. In all of these

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<sup>97</sup> Ex. 2, p. 3.

examples, hypothetical and otherwise, the licensing Board has an interest in restricting such speech because when a licensee makes such statements, it denigrates public trust not only in the particular licensee but in the profession as a whole. Licensees accept certain restrictions on their speech – particularly as it relates to the practice of the licensed profession – when they choose to enter licensed professions. Holding otherwise would render the licensing entities toothless to enforce the professional standards with which they have been entrusted.

Here, however, it is not necessary to decide to what extent the Board can regulate speech alone, because, as noted at the outset, Dr. Shoemaker’s speech in this case is evidence of his actual violation of the Health Mandate. Despite Dr. Shoemaker’s apparent desire to be free from the consequences of his actions – *see* Ex. 9, p. 4 (“Freedom of Speech, Bitches!!!”) – the Board can and does require licensees to comply with the laws governing their practice. By parity of reasoning, a licensee can be disciplined for making statements that reflect violations of the statutes and regulations governing the profession.

Dr. Shoemaker’s self-serving claim now that he never violated the Mandate is not credible in the face of his contemporaneous statements that he was violating it, as well as his many other supporting statements regarding his intent to continue to do so. On a more likely than not basis, the evidence as a whole supports a finding that Dr. Shoemaker violated Health Mandate 015 and in doing so violated minimum professional standards as identified in the Code of Ethics.

4. Did the Division prove that Dr. Shoemaker violated AS 08.20.170(a)(4)(A) (“conviction of a crime that affects his ability to practice competently and safely”)?

Lastly, the Division argues that discipline is appropriate because of Dr. Shoemaker’s criminal convictions. The Board’s governing statutes authorize the Board to impose discipline on a licensee who has “been convicted, including a conviction based on a guilty plea or plea of nolo contendere, of a felony or other crime that affects the person's ability to practice competently and safely.”<sup>98</sup> The Division argues that Dr. Shoemaker’s convictions, while not felonies, implicate his ability to practice competently and safely. Dr. Shoemaker argues that this statutory provision is unconstitutionally vague and cannot be read to justify discipline in this case.

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<sup>98</sup> AS 08.20.170(a)(4)(A).

Most if not all Alaska professional licensing boards have statutory language authorizing discipline in the event of certain criminal convictions. Some boards' statutes identify specific crimes as automatically authorizing disciplinary action. Others identify specific categories of crimes, such as crimes of moral turpitude or, as here, felony convictions. But most boards also include a broader category along the lines found here, authorizing the Board to impose discipline if it finds the licensee has been convicted of a "crime that affects the person's ability to practice competently and safely."

The Alaska Supreme Court has observed that "criminal violations may bear on one's fitness to practice a particular profession, regardless of whether the violations are committed while the licensee performs professional duties."<sup>99</sup> Thus the availability of professional discipline for a criminal conviction does not turn on whether the criminal act was carried out in the course of a licensee's professional activities. Rather, the question is whether the underlying conduct implicates the licensee's fitness to practice.

The Alaska Supreme Court has also held that "a licensing board need not establish that there is a nexus between a crime involving moral turpitude and one's ability to carry out the professional duties to issue sanctions."<sup>100</sup> The Division argues that Dr. Shoemaker's conviction for attempted vehicle theft is for a crime of moral turpitude and therefore necessarily impacts his fitness to practice. Theft is unquestionably a morally turpitudinous crime, the Division posits, and a licensee who commits a crime of moral turpitude cannot be trusted to follow the Code of Ethics, which requires honest and ethical conduct with patients, insurers, the Board, and members of the public.

When the Division moved for summary adjudication on this issue, the motion was denied on the basis that whether Dr. Shoemaker's criminal conduct was morally turpitudinous or otherwise affected Dr. Shoemaker's fitness to practice was a question of fact. The evidence at hearing supports a finding that the crime was a crime of moral turpitude and affects Dr. Shoemaker's fitness to practice.

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<sup>99</sup> *Wendte v. State, Bd. of Real Est. Appraisers*, 70 P.3d 1089, 1092 (Alaska 2003).

<sup>100</sup> *Wendte*, 70 P3d at 1093 ("We hold here that there is a presumed logical nexus between any crime of moral turpitude and the ability to satisfy the ethical standards of the real estate appraisal profession."); *Kenai Peninsula Borough Board of Education v. Brown*, 691 P.2d 1034, 1041 (Alaska 1984) (a "finding that a crime involving moral turpitude has been committed raises at least a presumption that there is a nexus between the teacher's act and the teacher's fitness to teach."); *Toney v. Fairbanks North Star Borough Sch. Dist., Bd. of Educ.*, 881 P.2d 1112 (Alaska 1994) ("[I]t is well established that there need not be a separate showing of a nexus between the act or acts of moral turpitude and the [professional's] fitness or capacity to perform his duties.")

Dr. Shoemaker argues that his conduct wasn't really theft because he didn't intend to keep the asphalt roller. Dr. Shoemaker attempts to minimize his conduct in stealing the asphalt roller/compactor by calling it a "joyride," a term that harkens youthful indiscretion, rather than malice. "Joyride" or otherwise, Dr. Shoemaker unquestionably took what was not his, for his own purposes, and without regard for the interests of the rightful owner. This is not conduct that conforms to the expectations of trustworthiness inured to licensees by virtue of their membership in the profession.

Even more troublingly, for purposes of the Board's inquiry, is Dr. Shoemaker's repeated statements at hearing blaming the victim of his theft for "creating the opportunity" for him to take advantage of them. Twice during the hearing, he justified his crime by saying that if he owned "something more expensive than a Ferrari," he "wouldn't leave the keys in it." He also stated that he had never been a victim of auto theft himself because he takes reasonable steps to protect his car from being stolen.

These statements are striking for a number of reasons. It is striking that Dr. Shoemaker attempts to justify his misconduct by apportioning blame to his victim. He does not claim that these acts were the unfortunate byproduct of a psychotic episode which might be understood and forgiven now that that frightful episode has passed. Instead – and in testimony meant to demonstrate his fitness for practice – he blames his criminal conduct on the foolish victim for being less clever than he. It is striking that Dr. Shoemaker made these statements not in the heat of the moment or under the throes of a brief psychosis, but more than a year later, and in the calm and calculated moment of testifying about his professional fitness.

And it is striking that Dr. Shoemaker has made statements of this nature across multiple contexts to deflect the blame for his own misconduct. When interviewed by police investigating C.M.'s sexual assault allegations in 2018, he admitted that he had acted like "a dumbass" and "jeopardized [his] career," but he also justified his actions by saying that C.M. "gives off a vibe" of "wanting it."<sup>101</sup> When confronted at hearing about defecating in the middle of his rental apartment before moving out, he justified those actions by saying that landlord had mistreated a pet.<sup>102</sup> And when asked about stealing the construction equipment, he again justified his conduct by blaming his victim.

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<sup>101</sup> Ex. 8.

<sup>102</sup> Shoemaker test.



Inherent in the notion of competent and safe practice is the requirement that the licensee be trustworthy. As a general matter, “when professionals commit crimes involving moral turpitude their fitness to hold a position of trust is necessarily called into question.”<sup>103</sup> Dr. Shoemaker’s own statements about his criminal conduct reveal a predatory worldview that creates serious questions about his trustworthiness. As to the June 2020 convictions, the Division has met its burden of showing that these are crimes that affect Dr. Shoemaker’s ability to practice safely and competently.

The Division also argues that Dr. Shoemaker’s convictions for violating his conditions of release likewise affect his ability to practice safely and competently. This is a closer call, both because the conduct occurred even further into the apparent psychotic break, and because the crimes are not as inherently trust based. However, failing to follow one’s court-ordered conditions of release implicates an unwillingness or inability to follow the rules to which one knows one is subject. In Dr. Shoemaker’s case, that inability or unwillingness is seen not only with regard to his probation conditions, but also with regard to two different Health Mandates. In both instances, he decided to pick and choose which parts of the law to follow, or whether he should have to follow them at all.

It is also troubling that Dr. Shoemaker attempted to deny at hearing what his conditions were and whether he had violated them. As a matter of law, his violations are established by his guilty pleas. As a factual matter, his denials are not credible, and cast further doubt on his trustworthiness. The Division has therefore met its burden of showing that under the facts of this case, the convictions for violating conditions of release are for crimes that affect Dr. Shoemaker’s ability to practice safely and competently.

*E. What Sanction, if any, is Appropriate?*

The Division having satisfied its burden of proving violations as described above, the Board must determine what level of discipline is appropriate under the circumstances of this case.

The Board’s ability to impose discipline arises from AS 08.10.075, “Disciplinary powers of boards,” which provides:

- A board may take the following disciplinary actions, singly or in combination:
- (1) permanently revoke a license;
  - (2) suspend a license for a specified period;

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<sup>103</sup> *Wendte*, 70 P.3d at 1093.

- (3) censure or reprimand a licensee;
- (4) impose limitations or conditions on the professional practice of a licensee;
- (5) require a licensee to submit to peer review;
- (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (8) impose a civil fine not to exceed \$5,000.<sup>104</sup>

Subsection (f) of the same statute requires that, “[a] board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.”

The Division urges that the facts of this case warrant the revocation of Dr. Shoemaker’s license. Dr. Shoemaker insists that he has already paid a sufficient price by having his license suspended since September 2020. He says that he made some mistakes during a stressful time, but nothing that would justify revocation, a proposed penalty he views as “absurd” under the facts of this case.

This Board has little published precedent in terms of past discipline, and none arising out of disputed hearings before OAH. The Board has accepted voluntary surrenders of licensure from providers facing criminal charges, but has never previously revoked a license outside the context of a voluntary surrender.

The fact that the Board has never previously revoked a license does not prohibit it from doing so here. The consistency in discipline provision of AS 08.10.075(f) does not mean that a board can only impose discipline that it has previously imposed. Rather, it means that a board must seek consistency in sanctions between licensees who have committed similar conduct. And if the Board elects to significantly depart from prior precedent in a case involving similar facts, it must explain the decision to do so.

That requirement does not apply here, however, because there are no prior Board cases – whether resolved through consent agreements or otherwise – that present “similar facts” to this one. This case is notable because of the scope of behaviors – sexual misconduct, willfully violating a Health Mandate, practicing while unfit, and criminal conduct – and the fact that some

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<sup>104</sup> AS 08.10.075(a).

of the conduct took place years before the conduct that arose during an apparent mental health episode.<sup>105</sup>

In his testimony, Dr. Shoemaker showed little remorse for his conduct, and even less insight. In multiple contexts, he has justified his misdeeds by blaming others. He committed sexual misconduct because his patient “gives off a vibe.” He defecated in the middle of a rental apartment because he cares deeply about animal welfare – and he left the apartment “otherwise spotless.” He stole a construction vehicle but wouldn’t have done so if the owner hadn’t left it there, creating the opportunity. In the meantime, he declines to engage in counseling (despite an evaluation concluding that counseling would be imperative to avoid a relapse of the very behavioral/mental health concerns that gave rise to this case.

It is noteworthy, too, that Dr. Shoemaker continued to practice – albeit in Colombia – while his license was under summary suspension by this Board. The Division and the Administrative Law Judge agreed to Dr. Shoemaker’s request to postpone proceedings in this matter because his license was suspended, ameliorating any concerns about a threat to public safety and welfare that might arguably be occasioned by the delay. The revelation at hearing that Dr. Shoemaker was practicing during part of this time only underscores his lack of insight into his misconduct and his unfitness for licensure.

Dr. Shoemaker’s main arguments against revocation are that his conduct wasn’t that serious, and that he has invested a lot of time and money into becoming a chiropractor. As to the first issue, his underestimation of the seriousness of his conduct only underscores questions about his fitness to practice. As to the second issue, this claim has no logical merit. All licensees have put time, energy, and money into becoming licensed. If this were a defense, the Board would have no disciplinary authority. Professional licensing schemes accept as a given that licensees have put time, effort, and money into becoming licensed. Nonetheless, they are still required to follow the statutes and regulations, including the Code of Ethics, governing the profession. Indeed, having so invested of themselves to become eligible for licensure, it is expected that licensees will take appropriate care to follow the rules governing their continued

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<sup>105</sup> Dr. Shoemaker points to discipline imposed by the Medical Board in a case that also involved a high-profile mental health related incident, arguing that because that provider did not ultimately lose his license, Dr. Shoemaker should likewise retain his. Among the many distinguishing features of this matter, however, that case was resolved through mediation and not through a contested hearing, that case did not include allegations of sexual misconduct, let alone with a patient, and that case did not involve this Board, so this Board is not bound by it. Regardless, however, the factual differences between the two cases are numerous.

licensure. In any event, it is not a defense to a licensure action that one has invested the time and money to obtain a license.

Dr. Shoemaker engaged in multiple acts inconsistent with his professional ethical obligations – including sexual misconduct with a patient, continuing to practice after becoming profoundly unfit to do so, and committing several crimes that demonstrated his lack of regard for the rights of others and his obligation to follow the law – and continues to show little insight into the wrongful nature of his conduct. The totality of circumstances overwhelmingly supports revocation of his license.<sup>106</sup>

#### **IV. Conclusion**

The Division met its burden of showing that totality of the circumstances in this case warrants revocation of Dr. Shoemaker’s chiropractic license. Dr. Shoemaker’s attempts at hearing to justify or blame others for his wrongful acts – whether in sexual misconduct with a patient, stealing construction equipment, threatening law enforcement officers, or engaging in feces-related vandalism – underscore his unfitness for licensure. Because the interests of the public and the profession are best served by revocation of Dr. Shoemaker’s license, Chiropractic Physician License 118940 is hereby REVOKED.

Dated: November 9, 2021

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

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<sup>106</sup> Dr. Shoemaker should note that the Administrative Procedure Act provides a way forward, even after revocation, to seek reinstatement. AS 44.62.550. In the circumstances of this case, such an effort would presumably require demonstration of rehabilitation, including meaningful acceptance of wrongdoing and significant commitment to and engagement in appropriate mental health treatment, in order to show fitness to practice.

## Adoption

The ALASKA BOARD OF CHIROPRACTIC EXAMINERS adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 3rd day of February, 2022.

By: Signed  
Signature  
Dr. John Lloyd  
Name  
Board Member  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]