

BEFORE THE
OFFICE OF ALLIED HEALTH PROFESSIONALS
PHYSICAL THERAPY GOVERNING BOARD
CONCORD NH 03301

In the Matter of:

Stephen E. Chinetti, PTI
License No. 571
(Adjudicatory Proceeding)

Docket # 02-03

DECISION AND ORDER

Before the New Hampshire Physical Therapy Governing Board is an adjudicatory proceeding involving a disciplinary action and pending emergency license suspension regarding Stephen E. Chinetti, PTI, (the Respondent).

BACKGROUND INFORMATION

On May 13, 2002, the New Hampshire Physical Therapy Governing Board ("the Board") received a written complaint from N.C. regarding alleged professional misconduct of Stephen Chinetti, a licensed physical therapist, toward N.C.'s minor daughter, Patient A. An investigation of the matter provided the Board with further information regarding this matter.

On May 29, 2002, pursuant to RSA 338-F:26 and 541-A:30, III, the Board ordered the temporary emergency license suspension of Stephen Chinetti, PTI, based upon its finding that Stephen Chinetti's continued practice as a physical therapist posed an imminent danger to life or health and provided notice to Mr. Chinetti of the Board's decision along with notice of a hearing to be held within ten working days of the Order, or June 10, 2002, pursuant to RSA 541-A:30, III and Ahp. 206.15 (f). See Order of Emergency License Suspension and Notice of Hearing, in In the matter of Stephen Chinetti, dated May 29, 2002. The factual basis for the Board's action was provided in its Order of Emergency License Suspension.

Upon the licensee's request for a continuance and with the licensee's agreement that the license suspension continue pending the Board's final decision, the Board continued the hearing to June 17, 2002.

On June 14, 2002, the Board issued to Mr. Chinetti an Addendum to Order of Emergency License Suspension and Notice of Hearing regarding additional professional misconduct allegations concerning Stephen Chinetti toward another female minor, Patient B, which information had recently been brought to the Board's attention. The Board found that the information it had received regarding this matter warranted the ongoing temporary suspension of Mr. Chinetti's physical therapy license pending a hearing as to whether

permanent or temporary disciplinary sanctions should be imposed. See Addendum to Order of Emergency License Suspension and Notice of Hearing, in In the matter of Stephen Chinetti, dated June 14, 2002.

On June 17, 2002, a hearing was held before the Board at the Office of Allied Health Professionals to determine whether sanctions should be imposed against Stephen Chinetti, PTI, pursuant to RSA 328-F.

Mr. Chinetti was represented by counsel, Attorney Mark Giarrusso. Counsel for the Respondent indicated his willingness to proceed with matters relating to both the original notice and the addendum notice.

The Respondent, Stephen Chinetti, through his counsel, declined to testify and further stated that if called to testify by the administrative prosecutor, Mr. Chinetti would decline to answer all questions, based upon his Fifth Amendment privilege.

The Board considered all of the testimony presented and all the exhibits entered. The Board heard the following testimony.

N. C., mother of Patient A, testified that after her 16 year old daughter (" Patient A") injured her knee playing sports, she received a referral for physical therapy services. On April 22, 2002, she brought Patient A. for an initial visit and treatment with Stephen Chinetti. N.C. noted that Mr. Chinetti had his own office, at which there was no receptionist, and there were no other patients in the waiting area. During the visit, Mr. Chinetti emphasized to Patient A that it was vital for her getting back to sports that she do as he instructed. N.C. described that at one point she was present in the examining room with the Respondent and her daughter, who was on the examining table. After a few words, and as Mr. Chinetti began to return to working with Patient A, he grabbed her daughter's ankles and pulled her into position with a good amount of speed and force. The motion was abrupt and sudden, unannounced, and unexplained. N.C. was stunned by this action of Mr. Chinetti, which came across to her as a power play. N.C. did not stay in the room for the rest of the treatment.

On the way home after this first visit, Patient A expressed personal discomfort with Mr. Chinetti and his style of interacting. N.C. explained to her daughter that there must be physical contact during physical therapy. During this conversation, Patient A told her mother that that Mr. Chinetti spanked her three times during the treatment. N.C. felt, at that time, that Mr. Chinetti was not toning down his treatment style, as one would for a young female athlete.

Patient A went alone to her second physical therapy visit with Mr. Chinetti. Upon her return home, Patient A was very upset. She related that Mr. Chinetti had lifted her shirt, exposing part of her bra. Additionally, she told her mother that Mr. Chinetti had asked her if her belly button was pierced and stated that she had a great butt for a tattoo. Following this discussion, N.C. agreed that her daughter would return some weights to Mr. Chinetti, but not stay for another treatment.

Thereafter, Patient A sought to do this. Upon Patient A's return home from dropping off the weights with Mr. Chinetti, she told her mother that Mr. Chinetti made her stay for another session and that she was scared to try to leave. Her daughter related conversations with Mr. Chinetti that included inappropriate sexual content, that he spoke about oral sex, asked whether Patient A had pierced nipples, stated that he liked to flip nipple rings with his tongue and asked Patient A about her personal relationships and how far she had gone with her boyfriend. N.C. stated that while her daughter was speaking to her about these events, her daughter acted scared, confused and angry. Thereafter, N.C. and her husband made the decision to refer the matter to the appropriate regulatory agency. After getting the address of the Board from Patient A's school athletic trainer, N.C. sent a letter of complaint to the Board.

Patient A testified that the following events took place. During her first visit to Mr. Chinetti, he took her into a private examining room. At one point, he closed the door to the waiting room where her mother was seated saying that he need to speak alone with Patient A. After he closed the door, a discussion ensued. During this discussion, Mr. Chinetti told Patient A that he was very important to her, that she needed him to get back into sports, and that she should not schedule things on his time; or "bullshit" him. While he was telling her this, he was pressing his forehead to her forehead.

At the completion of the discussion, he pulled his forehead away from hers. After this, Patient A stated Mr. Chinetti engaged in small talk, which increasingly became more personal, including his talking about body piercings and tattoos. During these and other discussions during the three sessions, Patient A described Mr. Chinetti as being in her personal space including hovering with his face close to hers, and standing between her legs while she sitting on the table. She also noted that during the first session, he unexpectedly grabbed her legs and pulled her down the table. At times, Patient A described Mr. Chinetti as "standing closer than a boyfriend would stand." On several occasions, he would physically reposition her body on the table without warning. Her assessment of his behavior from the first visit was that he was not professional at all. Patient A testified that she did not tell her mother all the details of the first visit, as playing lacrosse was extremely important to Patient A and she thought that she had no choice but to return for more treatment with Mr. Chinetti to continue playing the sport.

During the second visit, she testified, after doing some leg lifts, the rest of the session consisted of talking to Mr. Chinetti. The topics of conversation which Mr. Chinetti covered with her included tattoos and body piercings again, nipple piercing, tongue piercing, and the effect of tongue piercings on oral sexual pleasure. The specific nature of these conversations grossed the teenager out and made her uncomfortable.

During the discussion about tattoos, Mr. Chinetti stated that he would sign a permission form for her to get a tattoo, if he could, because he knew a tattoo would look really good on her. He stated that he had pictures on his computer of clients or friends with tattoos that he would show to her. Before Mr. Chinetti showed Patient A pictures on his computer, he warned her that she might see inappropriate pictures of women, like topless

women during racing week. He then showed her a computer picture of a girl with a tattoo across her lower back. At this time, Mr. Chinetti was sitting in his chair. He pulled Patient A between his open legs, and pulled down her pants, exposing her upper buttocks. As he was rubbing his hand across her skin in that area, Mr. Chinetti told the teenager that she had a nice body and a tattoo would look good there. He then advised her not to get it too low and put his hand further down.

Patient A testified that she was not sure how to stop the Respondent's conduct and that she did not know what to say to Mr. Chinetti. She did not know what would happen if she tried to leave. Also, she did not know what to do, because she wanted to return to lacrosse and thought treatment with Mr. Chinetti was necessary to achieve this.

During the second visit, Mr. Chinetti encouraged Patient A to discuss intimate details about her relationship with her boyfriend. He asked how far they had gone about oral sex and intercourse, and whether and when her friends had started sexual activity, including oral sex, and if her friends had ever had one-night stands.

At one point while she was on the treatment table, Mr. Chinetti pulled up her shirt, exposing her sports bra and belly button ring. He then made comments that she had a sexy belly button ring and a sexy stomach. A little later, he asked her to turn on to her stomach. While she was lying on her stomach, he pulled up her shirt, pulled down her shorts a little and stuck his bare hand down her pants with his hand touching her skin. He grabbed her buttocks and told her it was nice and hard.

Patient A further testified that during this visit Mr. Chinetti told her that he loved being in bed with women that have pierced nipples, as he liked to flick them with his tongue. Mr. Chinetti described the type of woman he found attractive, as having brown hair and brown eyes, which made her feel strange as she had brown hair and eyes. While he was stroking Patient A's arm and looking into her eyes, he told the young woman that he was a touchy-feely guy in bed. She testified she was out of her comfort zone. She estimated between one to one and one-half hours of time elapsed for this visit. As she left the physical therapist's office, Mr. Chinetti told Patient A that he felt like they had connected and he had found a friend and hugged her. His hugging her was unwelcome and caught her off-guard.

Following this session and further discussion with her mother, it was agreed that Patient A would return the weights, but not have further treatment. On the third appointment, Patient A intended to return weights. However, Mr. Chinetti had her come in and do some exercises. While she was doing the exercises, Mr. Chinetti took pictures of her without her permission. He first explained that he wanted to show the pictures to friends. He then stated that he wanted to show the pictures to clients to show them how to do the exercises. Mr. Chinetti took numerous pictures from different angles and posed her with a stuffed animal in some shots. After this, another person came into the outer office, who Mr. Chinetti described as a "retard." Mr. Chinetti showed her pictures of this person, even though she said she was not interested in seeing the photos. Mr. Chinetti stated that one day he had told the man that there was a monster who would eat him, unless the monster could

not see him, so the man put a sheet over his head. Mr. Chinetti showed her the picture of the man whom he had described as retarded, with a sheet over his head.

Later, while Patient A was doing a stepping up and down exercise, she testified that Mr. Chinetti grabbed her by the hips, faced her away from him, and pulled up her shirt. When she pulled her shirt back down and asked "what are you doing," he hesitated and sort of stuttered "making sure your hips are working." She was at his office about a half-hour on that occasion.

Patient A felt shook up, confused, and angry about these events, and states that she now has trust issues with men.

Donald Vandal, an investigator for the New Hampshire Department of Justice, assigned to the Administrative Prosecutions Unit, testified regarding his interactions with Mr. Chinetti. While serving him with a subpoena for records on May 17th, 2002. Mr. Chinetti asked the reason for the subpoena. The two discussed the allegations raised regarding Patient A. Both parties took notes during the conversation. Upon being questioned by Mr. Chinetti as to whether the conversation was being secretly audiotaped, Mr. Vandal assured Mr. Chinetti that the conversation was not being recorded. Mr. Vandal informed Mr. Chinetti that this was not a criminal investigation, but was being performed on behalf of the licensing board.

Mr. Vandal testified in the course of the conversation, Mr. Chinetti was unable to recall if the injury to Patient A was to the knee or to the ankle. The Respondent stated that he could not refer to his notes as he had sent them off to his billing agent, and the notes were not on the premises to refer to. However, when asked, Mr. Chinetti could describe what she was wearing during her visits.

Mr. Vandal testified that Mr. Chinetti acknowledged that there may have been some sexually explicit conversations between Patient A and himself, but claimed that his comments were only in response to questions Patient A directed to him. He further asserted that she had concerns about sexually related issues, which she could not discuss with her parents. Further, he wished to caution her about the prevalence of disease with free sex, needles and tattoos. Mr. Chinetti admitted that he had told patient A that oral sex was not as great as reputed to be with tongue piercings, but in the above context, and with a caution against obtaining a tongue piercing.

When Mr. Vandal asked Mr. Chinetti about his comments to Patient A, regarding her belly button ring and touching parts of her body, Mr. Chinetti stated that he could not recall that she had any body piercing and denied touching her body. Mr. Chinetti subsequently stated that on one occasion he might have poked her gently in the stomach area. While he denied there were any inappropriate photographs on his office computer, he indicated there might be a photo of a biker lady with a tattoo on her breast on the computer, but that she was not actually exposed. He also indicated he had a photo of a lady with tattoo on her lower back. Mr. Chinetti indicated that he showed this picture to Patient A. He indicated that he traced a line along the small of her back in the same area that Patient A indicated in regards

to getting a tattoo. He stated that contrary to her assertion, Patient A agreed to allow him to take photographs for the purpose of showing her exercise routine. After she viewed the photographs, he deleted them from his camera. He denied intent to send photos to friends or put them on the Internet.

Mr. Chinetti also denied that he placed his forehead on Patient A's forehead. He stated that he may have leaned down slightly to get her attention and may have been a foot or so away from her. He did not recall positioning his body between her legs while she was sitting on the table. When asked if while Patient A was doing a stepping up and down exercise, he had pulled up her shirt and Patient A had pointedly asked "what are you doing," he responded that he was checking to make sure her hips were working properly.

When asked about someone coming into his practice while Patient A was present, Mr. Chinetti stated that, as a means to defend himself from her allegations in the third visit, he had somebody else present in the office. When asked if this was the same friend that he took pictures of with the sheet hanging over his head, he said yes.

When asked about other incidences of physical contact with Patient A, he responded "from knee to neck, front or back," he had never touched her, the only touch being on her shoulder or while shaking hands.

When asked why this girl would lodge a complaint against him, he did not have an answer. Mr. Chinetti further informed the Investigator that he was withholding some information relevant to the allegation and this information would come out if there were a public hearing. He indicated a two-fold purpose for this: first, to protect the reputation of Patient A, and second, to use it at the hearing. Mr. Chinetti stated that he had three regrets regarding Patient A: that she ever entered his office; that he ever spoke to her of anything beyond her injured knee; and that he was having to go through this, when had no interest in Patient A whatsoever, whether fanciful or real.

Regarding the second allegation of patient misconduct, testimony was provided by C.B., mother of Patient B, a fifteen year old girl, and Patient B.

C.B. testified that her fifteen year old daughter was experiencing difficulty with her knee and thus needed physical therapy. Around December 21, 2001, she brought Patient B to Mr. Chinetti for a first visit. On the first visit, she chose to go into the examining room with her daughter. However, at one point during that visit, her daughter left the room with Mr. Chinetti to bring C.B.'s check to the front room for processing. C.B., who has MS, walks with a cane and is slow in moving. C.B. joined them in the reception area five minutes or so later, after which they left the office, with C.B. leaving first, as it took her longer to walk.

C.B. testified that in the car after the first appointment, her daughter stated that Mr. Chinetti was touchy-feely. Her daughter stated that he had put his forehead to her forehead, hugged her, and held her hand. Her daughter indicated to C.B. that she was very

uncomfortable with Mr. Chinetti after this visit. They agreed that during the next visit, C.B. would not leave Patient B. alone with Mr. Chinetti.

At the second appointment, Mr. Chinetti said she did not have to come in. However, she did. As the session was ending, C.B. needed to use the ladies room and so left the room. Following the second appointment, her daughter related that while her mother was in the restroom, Mr. Chinetti again had placed his forehead against hers. She also stated that he tugged on her belt and poked her in the belly and that when her mother came back, all this stopped. Her daughter was visibly bothered. C.B. agreed to stick with Patient B on the next visit, which would be the last visit no matter what.

During the third visit, Mr. Chinetti stated that he wanted to take Patient B to the hallway on the stairs to show her an exercise. "Mom, you don't have to come," he told C.B. C.B. informed Mr. Chinetti that she would accompany them. During the last visit, C.B. observed Mr. Chinetti placing his hands over her daughter's hands, and her daughter pulled her hands away. In response to being told that this was the last appointment and that the mother would call to say how Patient B was doing, Mr. Chinetti stated no, he wanted Patient B to call him, not the mother.

C.B. testified that she was contacted on May 30th, by a detective from the Derry Police Department, and eventually was contacted by Investigator Vandal of the Attorney General's office and presented information as it related to the situation involving her daughter.

Patient B testified that she had hurt her knee as a result of dance activities and required physical therapy. At the first visit, Mr. Chinetti gave her mom the choice of staying or going to her car. She chose to stay and accompany her daughter during the treatment. During the visit, Patient B was asked to perform a stretch, lying on her back on a treatment table and bringing her right knee to her right shoulder. At that point, without warning or explanation, Mr. Chinetti straddled her left leg and pushed her right leg up further. However, Patient B did not feel that he needed to straddle her, that he could have assisted the stretch while standing beside her. His action made her feel uncomfortable.

At the end of the appointment, while her mom stayed in the treatment room, Patient B went with Mr. Chinetti to the front room with the check. While walking to the front office with Mr. Chinetti took Patient B's hand in his and held it for a about five seconds. In the front office, he put his forehead against her forehead, and poked her in the stomach while commenting that a lot of pretty girls went to a particular high school, whose logo was on the sweatshirt she was wearing. After the end of the visit, her mom left for the car first and Patient B was left alone with Mr. Chinetti who hugged her, which made her uncomfortable.

During the second appointment, Mr. Chinetti again suggested that her mother could wait outside. Her mother again declined and accompanied her daughter. There were no incidents until her mom left the room to use the ladies room. When left alone with the teenager, Mr. Chinetti stood between Patient B's legs, put his forehead to her forehead, and put his hands on her thighs. He commented on her rings, asked her whether they were from

her boyfriend or family members. He asked to examine the jewelry more closely, so Patient B offered her hand. He asked if she had a boyfriend or went on dates. This exchange made her feel awkward.

Patient B reflected on the differences in Mr. Chinetti's professional behavior between when her mother was in the room and when she was absent and noted that as soon as her mother left the room, the Respondent came closer and got more personal. Patient B also testified that Mr. Chinetti poked her in stomach said "good job" and pulled on her belt buckle. As she backed away and went to walk past him to the door, he grabbed at the back of her hip hugger pants with his thumb on the outside of her jeans and with his hand on the inside of her pants between her pants and underwear on her buttocks area. She broke away from his grasp and joined her mother, who was in the waiting room. At this point, she felt emotionally drained, upset and angry. She stated that she felt unclean and took a shower when she got home.

During the third appointment, again, Mr. Chinetti told Patient B's mom that she did not have to stay in the room, and again her mom declined. During this visit while riding the bicycle, he positioned himself in front of Patient B and placed his hands on top of hers. She responded by pulling her hands away. He tried a second time to put his hands on hers and she responded by pulling her hands away before he could make contact. She was instructed to do a step up/down exercise, using a stepstool. When she stated that she could use a set of stairs at home for this exercise, Mr. Chinetti indicated that he wanted to make sure she could do it right on the stairs and thus they needed to go to the stairs in his building, which were outside of his office proper. When her mom arose to accompany them, Mr. Chinetti tried to discourage her, but she stated that she wanted to go with them. Patient B stated that at this point Mr. Chinetti's demeanor changed from happy to disgusted. She observed that the stepping exercise performed on the outside stairs was just like what she had been doing in the office. At the end of the appointment, her mother stated that she would call Mr. Chinetti about further appointments, and Mr. Chinetti said no, he wanted the teenager (Patient B) to call him.

Exhibits considered by the board were

Exhibit 1: Stiles Physical Therapy office notes regarding Patient A dated April 22, 2002, April 24, 2002, and April 26, 2002. Exhibit 2: Eagle Tribune newspaper articles June 4, 2002. Exhibit 3: Manchester Union Leader newspaper article dated June 6, 2002. The Board notes that Exhibits 2 and 3 were admitted as to the dates that the matter received press coverage, but not as to their substantive content

FINDINGS OF FACT

Stephen Chinetti was issued a license to practice physical therapy in the State of New Hampshire on December 3, 1981. He was issued license # 0571. Mr. Chinetti was practicing physical therapy at Stiles Physical Therapy in Salem New Hampshire until May 29, 2002.

On May 13, 2002, the Board received a complaint from the parent ("N.C.") of Patient A (sixteen year old female), which indicated that Mr. Chinetti had engaged in professional misconduct in the course of providing physical therapy to Patient A during the week of April 21, 2002.

An investigation was conducted and a Report of Investigation was provided to the Board. Based on information provided in the complaint and Report of Investigation, the Board issued an Order of Emergency License Suspension and Notice of Hearing on May 29, 2002, which was hand delivered to Mr. Chinetti on May 29, 2002 by a representative of the Attorney General's office.

The hearing regarding the above was scheduled for Monday, June 10, 2002. Mr. Chinetti requested a continuance, which request was granted and the matter was rescheduled for June 17, 2002.

Thereafter, a second Report of Investigation was received by the Board on June 14, 2002 with information concerning an additional allegation of misconduct by Mr. Chinetti toward Patient B (a fifteen-year-old female). Based upon the new information received, the Board issued an Addendum Order of Emergency License Suspension and Notice of Hearing on June 14, 2002.

On June 17, 2002 a hearing was held before the Board regarding the matters addressed in the Order and Addendum to the Order and more particularly to determine whether Mr. Chinetti had engaged in professional misconduct, as alleged, and, if so, to determine, whether and to what extent, Mr. Chinetti should be subject to one or more of the disciplinary sanctions authorized by RSA 328-F:23, V.

The Board heard testimony of Patient A; N.C., the mother of Patient A.; Patient B; C.B., the mother of patient B; and Investigator Vandal of the Attorney General's Office, Administrative Prosecutions Unit. The Board found the witnesses to be credible and consistent. As previously noted, the Respondent, Stephen Chinetti, through his counsel, declined to testify asserting a Fifth Amendment privilege.

Patient A, a sixteen year old female, sought physical therapy services from Stephen Chinetti, a physical therapist, to treat an injury to her knee on three occasions from approximately April 21 through April 27, 2002. Her mother, N.C., accompanied patient A to Mr. Chinetti's office on the first visit, but remained in the waiting room with one exception. On the second and third occasions, Patient A went to Mr. Chinetti's office alone.

During the three visits, Mr. Chinetti engaged in sexually explicit and other inappropriate and unprofessional conversation with the sixteen-year-old patient. He further encouraged Patient A to discuss sexually related issues with him. On these various occasions, he talked to the young woman about tattoos, body piercing, oral sex, intercourse, and other inappropriately sexually charged topics.

He commented on or sought to discuss the young woman's body asking "what parts of your body are pierced?" "are you planning on getting any tattoos? And, if so, where?" "are your nipples pierced?" He told her that she was "attractive," that "you have a nice body," "a tattoo would look really good on you," "I would sign [the permission slip for a tattoo] for you, if I could". He remarked about her body "that's such a sexy belly button ring," how sexy her stomach was, and that her "butt was nice and hard."

Mr. Chinetti asked the girl about her personal relationships and those of her friends, asking questions such as "when did your friends start doing sexual things like oral sex?" "how far have your friends gone?" "have your friends ever had one-night flings?" And on one occasion he asked for the name of the particular friend whose behavior was discussed. He asked Patient A "how far have you gone with your boyfriend?"

He commented on his personal preferences "tongue piercings don't make much of a difference for oral sex," and "I love to be in bed with a woman with nipple rings, because I love to flick them with my tongue." He told Patient A that he found the most attractive women to be those with dark hair and eyes, which were characteristics that she possessed.

The above verbal conduct by Mr. Chinetti was unprofessional conduct in violation of RSA 328-F:23, IV (d), (h) and (k), as it was unprofessional conduct in the practice of the profession, involved repeated violation of the laws and rules governing the practice of physical therapy, and demonstrated a significant failure to adhere to the standards of ethics governing the profession. The above described conduct further constituted sexual harassment under RSA 328-F:23, IV (n), as Mr. Chinetti's words were of a sexual nature and were also intended to encourage his 16 year old patient to engage in sexually explicit discussions.

Additionally, Mr. Chinetti engaged in unprofessional conduct through his acts of touching Patient A at numerous times in a manner that was not intended to serve the purpose of physical therapy. Additionally, at certain points, Mr. Chinetti physically handled the patient without explanation or warning, and which appeared to be designed to exert force and authority over the patient. This was unprofessional as well. Mr. Chinetti's conduct was unprofessional, repeatedly violated the laws and rules governing the practice of physical therapy, and demonstrated a significant failure to adhere to the stand of ethics governing the profession. During the first visit Mr. Chinetti slapped Patient A on the buttocks several times. During that visit and on later visits, Mr. Chinetti physically repositioned patient A without warning. He roughly pulled her by the ankles on the first visit, without warning or physical direction.

During the second visit, Mr. Chinetti's physical conduct became more severe. While Patient A was on her back on the examining table, he pulled up Patient A's shirt so that her bra was exposed and pushed down on her stomach. Later, while she was on her stomach, Mr. Chinetti pulled her shirt up and the back of her pants down, stuck his hand down her

pants, and grabbed her buttocks. While doing so, he said she had a “nice hard butt.” Also while she was on the table, Mr. Chinetti squeezed and rubbed her arm, while stating that he was a “touchy-feely kind of guy in bed.” Later, during that visit, while showing her a picture of a woman with a tattoo on his computer to Patient A, he pulled her between his legs, pushed her shirt up and pants down, and then placed his hand against the skin of her lower back or upper buttocks, tracing the area where he felt a tattoo would look good on the young woman. He then suggested but “don’t get it too low” and brought his hand lower down her backside. As she left the session, Mr. Chinetti hugged her.

The above described behavior by Mr. Chinetti was unprofessional conduct in violation of RSA 328-F:23, IV (d), (h) and (k), as it was unprofessional conduct in the practice of the profession, involved repeated violation of the laws and rules governing the practice of physical therapy, and demonstrated a significant failure to adhere to the standards of ethics governing the profession.

As noted, such touching did not serve the function or the purpose of physical therapy. They were of a sexual nature, appeared to be for Mr. Chinetti’s personal gratification, and occurred while Mr. Chinetti was engaging in sexually related discussions. The above physical behavior by Mr. Chinetti constituted sexual harassment under RSA 328-F:23, IV (n).

During Patient A’s third visit, against the wishes of the minor patient and without seeking the permission of her parents, Mr. Chinetti took photographs of the young woman in various poses. The Respondent offered Patient A several odd explanations for his behavior. At first, he stated that he wanted to show them to his friends, then that he wanted to show them to other clients to demonstrate the exercises.

During the hearing, the Board heard evidence that Mr. Chinetti also used photography in an unprofessional manner regarding another person. Mr. Chinetti explained that after telling the other person who apparently had a mental disability, that he had to cover himself to prevent being eaten by monsters or aliens, the man had covered himself with a sheet, in which pose Mr. Chinetti photographed him. Mr. Chinetti displayed this photograph to Patient A in a manner that was mocking and disrespectful toward the man. Investigator Vandal observed that Mr. Chinetti acknowledged that he had shown this photograph to Patient A.

Mr. Chinetti’s taking photographs of Patient A and his displaying the photograph of the unnamed man to Patient A was unprofessional conduct in violation of RSA 328-F:28, IV (d).

Patient B, a fifteen-year-old female, sought physical therapy services from Stephen Chinetti to treat an injured knee. She was seen by Mr. Chinetti on three occasions: December 21, 2001, December 28, 2001, and January 2, 2002. Patient B was accompanied by her mother at each appointment.

During these visits, at points during which Patient B's mother was briefly out of his presence, Mr. Chinetti inappropriately touched Patient B in a manner which was not intended to serve the function or purposes of physical therapy and which appeared to be for his personal gratification. During the first visit, Mr. Chinetti touched the teenager by taking hold of her hand. He then pressed his forehead against the girl's forehead and poked her in the stomach, while commenting on pretty girls' attending the high school, whose logo was on her sweatshirt.

During the second visit, Mr. Chinetti placed himself between her legs while the patient was on the examining table, again pressed his forehead against hers, and then put his hands on her thighs. While engaged in this conduct, he asked the teenager personal questions regarding her jewelry and about whether she went on dates with boyfriends. Later, during that visit, Mr. Chinetti poked her in the stomach again, saying good job, and pulled on the front of belt buckle. He also grabbed the back of her pants, placing his hand inside her jeans against her underwear in the upper buttocks area. During the third visit, Patient B's mother clung to her side at all times.

Mr. Chinetti's conduct of touching Patient B, a fifteen year old patient in the above described manner was unprofessional conduct within the meaning of RSA 328-F: 23, IV, (d), (h) and (k), as it was unprofessional conduct in the practice of the profession, involved repeated violation of the laws and rules governing the practice of physical therapy, and demonstrated a significant failure to adhere to the standards of ethics governing the profession.

Mr. Chinetti's above described conduct also constituted sexual harassment in violation of RSA 238-F:23, IV (n) of a fifteen year old female patient, as Mr. Chinetti engaged in physical conduct of a sexual nature, touching the minor patient on her abdominal and buttocks region or the clothing covering that area of her body, while making inappropriate personal comments and/or asking personal questions.

RULINGS OF LAW

Under the provision of RSA 328-F:26, "in cases involving imminent danger to life or health, the governing board may order suspension of a license pending hearing for a period of no more than 120 days. A licensee may be allowed additional time to prepare for a hearing, but any additional time for preparation shall result in an extension of license suspension commensurate with the additional time extended." Ahp 206.15 (e), further provides "[w]hen the governing board receives information indicating that a licensee has engaged in or is likely to engage in professional misconduct which poses an immediate danger to life or health, the board shall issue an order pursuant to RSA 541-A:30, III, . . . and

immediately suspends the license . . .” Pursuant to Ahp. 206.15 (f) the licensee may continue the hearing upon the licensee’s agreement “to continue the suspension period pending issuance of the governing board’s final decision,” which request, under Ahp 205.04, will extend the board’s decision making period.

Pursuant to RSA 328-F:23, IV, the Board may take disciplinary action against any person licensed by it upon finding that the person “(d) has engaged in dishonest or unprofessional conduct . . .,” “(h) has willfully or repeatedly violated any provision of this chapter or any substantive rule of the board,” “(k) has failed to adhere to the recognized standards of ethics of their profession,” or “(n) has engaged in sexual misconduct. Sexual misconduct includes engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while an allied health professional/patient relationship exists; or sexual harassment which includes making sexual advances, requesting sexual favors, and engaging in other verbal conduct or physical contact of a sexual nature.” See also Ahp.501.01.

Under Principles 1, 2, 3, 4, and 9 of the Code of Ethics of the American Physical Therapy Association, 1. A physical therapist shall respect the rights and dignity of all individuals and shall provide compassionate care; 2. A physical therapist shall act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy; 3. A physical therapist shall comply with laws and regulations governing physical therapy and shall strive to effect changes that benefit patients/clients; 4. A physical therapist shall exercise sound professional judgement; and. 9, A physical therapist shall protect the public and the profession from unethical, incompetent, and illegal acts.

DISCUSSION AND CONCLUSIONS

Based on the testimony of Patient A and Patient B, Investigator Don Vandal, and N.C. and C.B., the mothers of Patients A and B, the Board concludes that Mr. Chinetti engaged in unprofessional conduct in violation of RSA 328-F:23, IV (d), (h), (k), and (n).

The Board heard similarities in the testimonies of Patient A and Patient B, which included the following: Mr. Chinetti pressed his forehead against the foreheads of the two patients. Inappropriately and without any purpose related to physical therapy, he touched the buttocks and abdominal region of both teenagers; Mr. Chinetti encroached on the fifteen and sixteen year olds’ personal space and touched them while making inappropriate personal and sometimes sexual comments or asking personal questions.

Mr. Chinetti’s behavior differed sharply from times when a parent was present to chaperone and those times when the patient was alone with him. He maintained a professional demeanor for, the most part, when an adult was present. However, if the parent was either absent or out of the room, Mr. Chinetti almost immediately engaged in inappropriate and increasingly intrusive conduct that included both verbal and physical conduct of a sexual nature toward his young patients. Further, Mr. Chinetti sought to

increase the likelihood that the teenager(s) would be left alone with him, by encouraging the mother of patient B, who chose to stay with her daughter during the physical therapy sessions, to instead leave the girl alone with him.

When Mr. Chinetti was interviewed by Investigator Vandal about the allegations concerning Patient A, his various explanations were inconsistent. For example, Mr. Chinetti claimed that he did not touch Patient A between her neck and knees, front to back, yet admitted running his hand along the small of her back and checking her hips by touching them during exercise and stated that he may have gently poked her in the abdomen. He denied touching foreheads at all. However, both patients, who had not met prior to the Board's hearing, described in their testimony their experience of Mr. Chinetti's pressing his forehead to theirs, as memorable, awkward and intrusive. Mr. Chinetti further stated that he could not recall Patient A's injury, yet was able to describe her clothing. He professed to have respect for Patient A, but continually referred to her by her last name only. He acknowledged discussing sexually related issues, including oral sex with Patient A, but he claimed the discussions were only so that he could respond to the sixteen-year-old's intimate sexual questions directed to the Respondent, a middle-aged man and virtual stranger to the patient. Although Mr. Chinetti admitted he took pictures of the young woman, he denied that he had said he was going to show them to his friends or to other patients. The pictures, he asserted, were only a temporary device to show the patient proper technique. However, Mr. Chinetti acknowledged showing a picture of another person with a sheet over his head to Patient A, which picture served no therapeutic purpose. Further, Mr. Chinetti had not sought parental permission for taking photographs of the minor patient.

All of these factors together appear to demonstrate a pattern of Mr. Chinetti's exercising both verbal and physical control over Patient A and Patient B. This was done through his attempts to isolate the minor from the parent, his exerting physical force on the patients' bodies without forewarning them, breaching their personal space while making personal and intrusive remarks, his engaging in and encouraging Patient A to engage in conversations of an increasingly sexual nature, and his engaging in inappropriate physical touching with both young women. Mr. Chinetti's verbal conduct toward Patient A and his physical conduct toward the two female teenage patients, violated professional standards and ethical boundaries in violation of RSA 328-F:23, IV (d), (h), (k), and (n). Moreover, when looking at the time period between the incidents described by patients A and B, the nature of Mr. Chinetti's professional misconduct seems to have become accelerated and more aggressive. These unprofessional behaviors exploited, intimidated and betrayed the basic trust of the therapist/client relationship. His responsibility as a licensed physical therapist is to respect the professional boundaries in all client relationships. This responsibility is magnified when minors are involved.

Therefore it is the consensus of the Board in their obligation to safeguard the consumer from unethical, unprofessional conduct that Mr. Chinetti repeatedly violated recognized standards of ethical and professional conduct, as described above.

ORDER

THEREFORE, IT IS ORDERED by the Board that, pursuant to RSA328-F:23, V, the license of the Respondent, Stephen E. Chinetti to practice physical therapy in the State of New Hampshire, shall be revoked from the date of this order, beginning September 5, 2002; and,

IT IS FURTHER ORDERED, that Stephen E. Chinetti pay an administrative fine of \$2,000.00 to the Board no later than 90 calendar days from the date of this order; and

IT IS FURTHER ORDERED, that Mr. Chinetti may reapply for licensure after a period of five years from the date of this order, upon the condition, that he demonstrates that he has fully complied with each of the following terms and conditions to the satisfaction of the Board:

the Respondent has been evaluated by a psychiatrist or licensed psychologist with particular experience in treating practitioners who have been involved in sexual misconduct;

the Respondent has participated in counseling or other treatment from a psychiatrist or licensed psychologist at the frequency recommended by that professional, and for a duration of at least a 1-year period or until established goals are met;

the treating psychiatrist or licensed psychologist has performed a second written evaluation of the Respondent from the date of motion which details the progress made by the Respondent, which evaluation satisfies the Board that it is appropriate to permit the Respondent to practice physical therapy pursuant to other conditions further specified herein;

the Respondent has completed all New Hampshire continuing physical therapy education requirements during the revoked period;

the Respondent has completed an additional 15 hours of continuing education in medical ethics relevant to patient exploitation issues;

the Respondent has engaged in no further professional misconduct or other sexual, or physical misconduct toward others since the date of this order;

the Respondent pays the administrative fine on a timely basis; and

that upon the Board finding that the Respondent has fully demonstrated his compliance with the above terms and conditions and that it is otherwise appropriate to issue a license to the Respondent, such license issued will be restricted for an additional three-year period during which the Respondent is prohibited from treating minors; and

the Respondent will not be the lone practitioner on site during treatment hours; and

the Respondent will not provide supervision to any physical therapist assistant or to any physical therapist on an interim license; and

the respondent shall provide a copy of this Order to all licensed healthcare professionals, including licensed healthcare assistants whom he may employ, or with whom he may be employed or otherwise professionally affiliated; and

the Respondent shall obtain written acknowledgement of receipt of such order from all licensed healthcare professionals, including licensed healthcare assistants, whom he may employ, or with whom he may be employed or otherwise professionally affiliated.

IT IS FURTHER ORDERED, that the Respondent's failure to comply with any of the conditions imposed by this Order or the violation of any federal, state or local physical therapist-related law or regulations or rule during the three-year period of restricted license, should such restricted license be granted, shall result in the immediate suspension of the Respondent's license to practice physical therapy in the State of New Hampshire for the three year period , after notice and opportunity for hearing, and shall also constitute a basis for further disciplinary action against the licensee; and

IT IS FURTHER ORDERED that any exhibits, which contain patient records or reveal patient identities, shall be kept sealed and otherwise confidential to the extent necessary to avoid revealing the identity of the patient(s) involved.

BY ORDER OF THE BOARD* /

Dated: 9-3 - 2002


Margaret M. Donohue, PT, Chairperson
Physical Therapy Governing Board
Office of Allied Health Professionals

*Board members Luanne Udell, Elizabeth Cary, Judy Cote, and Chair Margaret Donohue, Hearing Officer, heard this case. Board member Ann Greiner was recused as she assisted with the investigation.