

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE SYSTEMS BRANCH
BOARD OF EXAMINERS FOR PHYSICAL THERAPISTS

In re: Jay Kain, R.P.T.

Petition No. 2007-1113-014-005

CONSENT ORDER

WHEREAS, Jay Kain, R.P.T. of Great Barrington, Massachusetts (hereinafter "respondent") has been issued license number 002675 to practice as a physical therapist by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 376 of the General Statutes of Connecticut, as amended; and,

WHEREAS, the respondent admits that:

1. On June 29, 2007, after a hearing, the Massachusetts Board Of Registration Of Allied Health Professions (hereinafter, "Massachusetts Board") found that he committed various boundary violations and violated the ethical codes of the profession of physical therapy, and ordered that respondent's license be suspended for three years, and stayed the suspension subject to various conditions. Respondent denied all allegations of wrongdoing in the Massachusetts Board action, and continues to deny all allegations of wrongdoing.
2. The above described conduct constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-73a(2).

WHEREAS, respondent does not practice in Connecticut and is currently in compliance with all conditions imposed by the Massachusetts Board.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter and agrees that for purposes of this or any future proceedings before the Board Of

Examiners for Physical Therapists (hereinafter "the Board"), this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20-73a of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 20-73a of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent's license shall be placed on probation until the completion of his three-year period of discipline under the Massachusetts Board Order. During said period of probation, so long as respondent has no practice in Connecticut, the sole terms and condition of his probation under this Consent Order shall be a quarterly report from the Massachusetts Board that he has complied with all terms and conditions of its Order. A copy of the Massachusetts Board Final Decision And Order is attached as Appendix A.
3. During the period of probation, respondent's license is restricted such that he must give the Department not less than ninety (90) days advance written notice of his intent to practice as a physical therapist in Connecticut. Respondent may not commence any such practice without prior approval by the Department. In any such practice in Connecticut, respondent must (a) practice only in an office that is not in any person's home, and (b) must have an adult female chaperone present whenever he provides physical therapy to any female patient, and must maintain a log that documents the chaperone's presence at such times, and must also document the presence of the chaperone in each such patient's treatment notes.. Respondent must provide a copy of the ^{log}~~ST~~ to the Department quarterly.
4. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation

410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308

5. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.
6. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.
7. Respondent shall pay all costs necessary to comply with this Consent Order.
8. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:
 - a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
 - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
 - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 8.a. above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, he shall be entitled to a hearing before the Board which shall make a final determination of the disciplinary action to be taken.
 - e. Evidence presented to the Board by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.

9. In the event respondent violates any term of this Consent Order, respondent agrees immediately to refrain from practicing as a physical therapist, upon request by the Department, with notice to the Board, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent stipulates that failure to cooperate with the Department's investigation shall constitute an admission that his conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).
10. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license before the Board.
11. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Practitioner Licensing and Investigations Section of the Healthcare Systems Branch of the Department.
12. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted and ordered by the Board.
13. Respondent understands this Consent Order is a public document. Further, respondent understands that unless the only discipline imposed by this Consent Order is a civil penalty, this action will be reported to the National Practitioner Data Bank.
14. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.

15. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.
16. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.
17. Respondent permits a representative of the Legal Office of the Healthcare Systems Branch to present this Consent Order and the factual basis for this Consent Order to the Board. Respondent understands that the Board has complete and final discretion as to whether this executed Consent Order is approved or accepted.
18. Respondent has the right to consult with an attorney prior to signing this document.
19. The purpose of this agreement is to resolve the pending administrative matter and is not intended to affect any claim of civil liability. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.

I, Jay Kain, R.P.T., have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

Jay Kain
Jay Kain, R.P.T.

Subscribed and sworn to before me this 6th day of June 2008.

LISA M. CAUL
NOTARY PUBLIC
My Commission Expires May 7, 2010

Lisa M. Caul
Notary Public or person authorized
by law to administer an oath or affirmation

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 27th day of June 2008, it is hereby accepted.

Jennifer Filippone
Jennifer Filippone, Section Chief
Practitioner Licensing and Investigations
Healthcare Systems Branch

The above Consent Order having been presented to the duly appointed agent of the Physical Therapy Board on the 10th day of July 2008, it is hereby ordered and accepted.

Mary Lou Sanders
Board Of Examiners For Physical Therapists

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
OF ALLIED HEALTH
PROFESSIONS

_____)
In the Matter of)
Jay Kain)
License Nos. 4319 PT)
344 AT)
_____)

Docket Nos. AH-03-007
AH-05-025

BOARD'S FINAL DECISION AND ORDER

Introduction

The Massachusetts Board of Registration of Allied Health Professions ("Board") initiated a formal adjudicatory proceeding on April 26, 2004 by issuing an Order to Show Cause ("Order") to Jay Kain ("Respondent"), a physical therapist and athletic trainer licensed by the Board (License Nos. 4319-PT and 344-AT). The Order directed the Respondent to appear and show cause why his license to practice should not be suspended or revoked for failing to practice in a manner required by Massachusetts General Laws c. 112, § 61, and Board regulations at 259 CMR 5.00. The Respondent filed an answer ("Answer") to the Order on May 21, 2004. The Board issued a second Order to Show Cause on June 6, 2005 (the "Second Order"). The Respondent filed an Answer to the Second Order on July 5, 2005. On September 21, 2005, the Board consolidated the Order and the Second Order for hearing. A formal adjudicatory hearing was held before Administrative Hearings Counsel Irene Carr, Esq., who acted as the Presiding Officer, as delegated by the Board pursuant to M.G.L. c. 30A, §§10 and 11 and 801 CMR 1.01 *et seq.* on November 15, 16, and 17, 2005, and March 13, 14, 15, and 16, 2006. The Respondent was present and represented by Michael T. Kogut, Esq. James Read,

Esq. and Leslie Alexander, Esq. were prosecuting counsel. Also present was Board member Kathleen Barnes. On January 12, 2007, Prosecuting Counsel filed its Proposed Findings of Fact and Rulings of Law ("Prosecution's Brief"). Respondent filed his Post- Hearing Memorandum, followed by his Supplement to Post-Hearing Memorandum on January 30, 2007 (collectively, "Respondent's Brief"). On May 18, 2007, pursuant to the requirements of 801 CMR 1.01(11) (c), the Administrative Hearings Counsel filed and served on the parties a tentative decision (the "Tentative Decision"). On June 19, 2007, Prosecuting Counsel filed Objections to Board's Tentative Decision ("Prosecution's Objections"). On June 19, 2007, Respondent filed Respondent's Response and Objections to Tentative Decision ("Respondent's Response and Objections").

Board's Consideration of Objections to Tentative Decision

In his Response and Objections, Respondent simply renews his requests for findings of fact and rulings of law originally set forth in his Supplement to Post-Hearing Memorandum. The vast majority of the requested findings of fact were included in the three hundred and eighty-six findings in the Tentative Decision. To the extent certain requested findings were not included, the Board hereby modifies its Tentative Decision to include as facts the following numbered requests: 33-51; 67-70; 85; 106-118. After a review of the record, the Board declines to make the rulings of law requested by Respondent because they are not supported by the evidence.

In its Objections, Prosecution asks the Board to correct what it describes as inaccurate findings of fact, specifically number 173 and 200. After reviewing the transcript, the Board agrees with the prosecution's position that fact 173 is inaccurate and deletes number 173 and modifies number 200 to reflect that KS's testimony did not coincide with the schedule of treatment dates for two occasions.

In addition, both Respondent and Prosecution ask the Board to make credibility findings with respect to the testimony of Respondent and K.S. regarding whether any sexual activity, consensual or otherwise, occurred. The Board is confronted with a classic case of "he said, she said." When faced with this situation to the degree that it presents itself in this case, the Board usually makes a determination of the credibility of the two witnesses. However, the Board is unable to do so in this matter. K.S.'s testimony reflected a true belief that the events of sexual conduct that she was describing to the Board were events that actually happened. Similarly, the respondent's testimony was adamant in its denial and reflected a true belief that the alleged sexual events did not occur. Faced with this dilemma, the Board must look to the record in its entirety to see if there is any corroborating evidence to either support or disprove the allegation. This matter is complicated because there is no independent corroboration in the form of witness reports or any other evidence on which the Board could rely in making a determination as to credibility.

Prosecution maintains that the boundary violations that were found in the Tentative Decision support the allegations that the sexual acts took place. Prosecution contends that because Respondent's actions in inviting K.S. to a barbecue at his house, allowing K.S. to stay overnight in his house and meeting K.S. for dinner in Pittsburg were found to violate board regulations, that the finding of those boundary violations in and of themselves are evidence to support the allegations of sexual activity. This is a conceptual leap that the Board is unwilling to make. There must be other evidence to support such serious allegations as sexual misconduct by the Respondent. Respondent argues that the layout of the building where Respondent's physical therapy practice takes place and the testimony of [REDACTED] is evidence to support the denial by Respondent of any sexual activity. There is evidence in the record to find that these activities may have taken place, but there is

equal evidence to find that they did not. There is simply no corroborating evidence to support either finding.

Nonetheless, the record is replete with evidence of boundary violations by the Respondent that in all probability led to the filing by K.S. of these allegations against the Respondent. The Board in its regulations seeks to protect both the patients and the practitioners in the allied health professions. The totality of the Respondent's method of practice leaves him open to the type of allegations that arose in this case. The Board is deeply concerned and disturbed by the Respondent's particular type of practice that includes activities that could be construed by a patient as intimate and that cross boundaries, both physical and emotional, placing both parties at risk. Testimony revealed that the Respondent's practice routinely involves touching a patient, talking to the patient about her sex life and her relationships with men, discussing her emotional life, kissing a patient, socializing with a patient and overall, creating an unprofessional relationship. These behaviors could lead to confusion in a patient's mind such that she would perceive that relationship as intimate, not therapeutic.

The Board considered the record, including the Tentative Decision, the Objections and the Response and Objections. Except as modified herein, the Board adopts the Tentative Decision and hereby issues its Final Decision and Order.

Allegations in the Order

The allegations in the Order are summarized as follows:

1. That from September 2000 to March 2002 Respondent rendered physical therapy treatment to patient K.S.
2. That from July 2001 to March 2002 Respondent engaged in an inappropriate sexual relationship with patient K.S. including inappropriate personal and sexual comments, kissing fondling,

inappropriate touching and various sexual acts. Many of these activities took place during Respondent's treatment of patient K.S.

3. That on March 5, 2002, Respondent raped patient K.S., i.e., forced the patient to have non-consensual sexual intercourse with him.

4. That from December of 2000 to April of 2002, Respondent rendered physical therapy treatment to patient SG.

5. That during his treatment of patient SG, Respondent required SG to unnecessarily disrobe and inappropriately touched the patient.

6. That in September of 2001, Respondent referred SG for further treatment with MS and allowed MS to follow a treatment plan that MS was not qualified to follow.

7. That in January 2002, Respondent told patient SG that if she wanted more treatment she would have to come to his home.

8. That during the period between 1997 and 1999, Respondent engaged in a sexual relationship with MS at the same time that Respondent was rendering physical therapy treatment to her.

The Order further set forth the various regulations and statutes that the alleged conduct violated: 259 CMR 5.05(1), the Code of Ethics of the American Physical Therapy Association ("APTA"), the Guide for Professional Conduct (the "Guide"), M.G.L. c. 112 § 23K, 23K (f) and M.G.L. c. 112 § 61.

Paragraphs 4-8 in the Order were dismissed at the March 13, 2006 hearing day.

Allegations in the Second Order

1. That from November 2003 through May 2004, A.C. came to Respondent's office for physical therapy for severe arm pain.

2. That in November 2003, Respondent told A.C. "You are a highly sexual person. You really like sex."

3. That during physical therapy sessions, Respondent repeatedly made comments to A.C. suggesting that she was sexually attracted to him.

4. That on April 13, 2004, as the physical therapy session was ending, Respondent suddenly kissed A.C. on the lips.

The Second Order further set forth the various regulations and statutes that the alleged conduct violated: 259 CMR 5.05(1), the Code of Ethics of the American Physical Therapy Association ("APTA"), the Guide, M.G.L. c. 112 § 23K, 23K (f), M.G.L. c. 112 § 23B and M.G.L. c. 112 § 61.

The following witnesses presented evidence at the hearing.

A. Prosecution witnesses:

1. A.C.
2. K.S.
3. [REDACTED]

B. Respondent's witnesses:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. Respondent

Exhibits

The following exhibits were introduced into evidence.

1. Order to Show Cause for Docket No. AH-03-007, dated April 26, 2004
2. Respondent Jay Kain's Answer to the Order to Show Cause, dated May 21, 2004
3. Order to Show Cause for Docket No. AH-05-025, dated June 6, 2005

4. Respondent Jay Kain's Answer to the Order to Show Cause, dated July 5, 2005
5. Board's record of standing for Respondent Jay Kain's Physical Therapist License
6. Board's record of standing for Respondent Jay Kain's Athletic Trainer License
7. Complaint form dated July 30, 2002, filed by K.S., and accompanying documents
8. Complaint form dated February 16, 2005, filed by A.C., and accompanying statement
9. Respondent's treatment records for K.S.
10. Respondent's billing records for K.S.
11. Respondent's treatment plan for K.S., dated April 9, 2001, and addressed to [REDACTED] ("[REDACTED]"), PT
12. Respondent's treatment records for A.C.
13. Respondent's billing records for A.C.
14. Curriculum Vitae of [REDACTED], PT, MPH, CCS
15. Concert Program from "Oh What a Night!" performance on Friday, September 28, and Saturday, September 29, 2001
16. Statement of K.S. to Great Barrington Police, dated August 12, 2002
17. Undated notes
18. K.S. notes on yellow pages (10)
19. Code of Ethics of APTA
20. APTA Guide for Professional Conduct
21. Ethics and Judicial Committee Opinion from APTA

22. ██████████ C.V.
23. Business card and website
24. Jay Kain, P.T., Inc. minutes
25. Photo album made by K.S.
26. Birthday card
27. Thomas Giammatteo C.V.
28. J. Kain C.V.
29. Respondent's letters from patients, friends and associates
30. Photo main room (frame #19)
31. Photo from treatment room (#18)
32. Inside treatment room
33. Straight view from the door
34. Patient communication sheet
35. Redacted schedule, book page
36. Integrative Manual Therapy (vol. 4)
37. Copy of handwritten statement of K.S., dated May 26, 2002.

Findings of Fact

The following facts were established by a preponderance of the evidence.

K.S.

1. K.S. lives in Pittsburgh, PA. (K.S. Testimony, Day Two, Page 105)
2. K.S. has a tenth grade education because she gave birth to her daughter when she was sixteen. She did not marry the father. (K.S. Testimony, Day Two, Page 105)

3. K.S. is employed as a cashier at Foodland, but has been on medical leave since March of 1997. (K.S. Testimony, Day Two, Page 105)
4. K.S. was divorced from her third husband in July 2005. (K.S. Testimony, Day Four, Page 11)
5. K.S. met the Respondent through a physical therapist named [REDACTED]. (K.S. Testimony, Day Two, Page 105)
6. K.S. started physical therapy with Respondent on September 25, 2000. (K.S. Testimony, Day Two, Page 105; Exhibits 9, 10)
7. When she began physical therapy with Respondent, K.S. suffered from sacroiliac instability, which caused her pain in her lower back, hips, groin, and legs. (K.S. Testimony, Day Two, Pages 105-06)
8. When she began physical therapy with Respondent, K.S. was in pain all the time, and her pain level was between eight and ten on a scale of ten. (K.S. Testimony, Day Two, Page 106)
9. K.S. had been experiencing pain since 1985. (K.S. Testimony, Day Two, Page 107)
10. K.S.'s pain made it difficult for her to sit, stand, lie in bed, get up, and go to work, all of which affected her ability to function on a daily basis. (K.S. Testimony, Day Two, Page 108)
11. K.S.'s pain also affected her relationship with her husband because she had severe pain associated with sexual intercourse. (K.S. Testimony, Day Two, Page 108)
12. K.S.'s pain created difficulty with social engagements, problems with pain at work and problems at home with her family. (K.S. Testimony, Day Two, Page 108)
13. K.S.'s orthopedic surgeon, Dr. [REDACTED], whom she began seeing in July 1997, discussed with her the possibility of having surgery for her condition. The surgery would be invasive and require a lot of rehabilitation, and Dr. [REDACTED] told her that her condition could worsen as a result of the surgery and that he could not guarantee that it would reduce her pain. (K.S. Testimony, Day Two, Page 109-11)
14. Prior to this time she had sought treatment with several medical

practitioners, one of whom was a chiropractor she saw on a regular basis. (K.S. Testimony, Day Two, Page 107)

15. During that time her pain was not improving; it was getting worse. (K.S. Testimony, Day Two, Page 108)
16. K.S. also saw a psychologist for treatment for her emotional problems. (K.S. Testimony, Day Two, Page 109)
17. Dr. ██████ referred K.S. to physical therapist ██████ in 1997. (K.S. Testimony, Day Two, Page 111)
18. K.S.'s therapy with ██████ was different from that with prior therapists because she used manual techniques such as trigger point therapy, myofascial releases, strain conversant techniques and visceral work. (K.S. Testimony, Day Two, Page 112)
19. ██████ told K.S. that whole body healing involved emotional, physical, psychological and spiritual components to heal the body. (K.S. Testimony, Day Two, Page 114)
20. K.S. became very close friends with ██████, her physical therapist. They shared a lot about themselves with each other and about relationships. K.S. felt that ██████ was like a sister to her. She drew up a will leaving her house to ██████ so that ██████ could open her own physical therapy center. (K.S. Testimony, Day Two, Pages 115-16)
21. She cannot remember when her relationship with ██████ became a close friendship; she can not give a date. (K.S. Testimony, Day Three, Page 66)
22. She cannot recall if it was before she started treatment with the Respondent. (K.S. Testimony, Day Three, Page 66)
23. K.S. also developed a very close relationship with ██████ mother. (K.S. Testimony, Day Two, Page 115)
24. After she had been treating with ██████ for two years she had reached a plateau in her progress where her pain was somewhat improved so she sought out other practitioners. (K.S. Testimony, Day Two, Page 119)
25. She treated with Dr. ██████ an osteopathic physician until January 2000. (K.S. Testimony, Day Two, Page 120)

26. She was also seeing Dr. [REDACTED] at the Pain Management Center, Dr. [REDACTED], a chiropractor and Dr. [REDACTED]. (K.S. Testimony, Day Three, Page 55)
27. [REDACTED] told K.S. that Respondent used advanced physical therapy techniques that might be able to help her. [REDACTED] had been attending classes and seminars at Respondent's office and she discussed K.S.'s situation with him and he suggested that [REDACTED] bring K.S. to him for treatment. (K.S. Testimony, Day Two, Pages 121-122)
28. [REDACTED] was a patient of Respondent who had treated her on her pancreas for juvenile diabetes. (K.S. Testimony, Day Two, Page 123)
29. [REDACTED] was willing to travel from Pittsburgh, Pennsylvania, to Great Barrington, Massachusetts, and to make financial arrangements for treatment with Respondent because she trusted [REDACTED] opinion that Respondent's advanced therapy could help improve her condition. (K.S. Testimony, Day Two, Page 122)
30. K.S. filled out a medical history form at the beginning of her treatment with the Respondent and checked off that decreased concentration and attention were constant. (K.S. Testimony, Day Three, Page 69)
31. At K.S.'s initial treatment sessions in December 2000, Respondent's demeanor was very professional. (K.S. Testimony, Day Two, Pages 124, 125)
32. Approximately eight days after her first treatment she was in an automobile accident and suffered whiplash so she had much more pain. (K.S. Testimony, Day Two, Page 124)
33. K.S. testified that her first visit with Respondent was in December 2000, but later testified that after that visit, on October 4, she was in an accident and that she went back to Respondent in December of 2000. (K.S. Testimony, Day Two, Pages 122-125)
34. At the time of her first visit to Respondent, K.S. was also seeing Dr. [REDACTED] an acupuncturist, as well as Dr. [REDACTED] and her psychologist. (K.S. Testimony, Day Two, Page 126)
35. At [REDACTED] suggestion, K.S. called Respondent in February 2001 to ask him about the surgery that she had discussed with Dr. [REDACTED]. (K.S. Testimony, Day Two, Pages 127-28)

36. Respondent advised K.S. against having surgery and asked her to commit to ten hours of physical therapy with him to see if he could help her progress. (K.S. Testimony, Day Two, Page 128)
37. K.S. testified that on March 23, 2001, she went out for dinner in Pittsburgh with Respondent, [REDACTED], and another patient. (K.S. Testimony, Day Two, Page 130)
38. K.S. testified that at that dinner, Respondent asked K.S. who was the man in her life and that this question made her uncomfortable. (K.S. Testimony, Day Two, Page 131)
39. K.S. discussed with Dr. [REDACTED] her decision to continue physical therapy rather than have surgery, and Dr. [REDACTED] supported that decision. (K.S. Testimony, Day Two, Page 132)
40. K.S. next traveled to Great Barrington for treatment with Respondent on April 9 and 10, 2001. (K.S. Testimony, Day 32; Jay Kain Testimony, Day Seven, Pages 120-21; Exhibits 9, 10)
41. K.S. testified that during her treatment sessions in April 2001, Respondent asked K.S. what she wanted and what she needed, and she told him that she needed to get better and live a happy, normal life. She testified that Respondent asked her the question again and asked her to stay out of her head and go into her heart. K.S. testified that she said she just needs a hug and he hugged her. (K.S. Testimony, Day Two, Page 133)
42. K.S. testified that Respondent told her that he needed to know what she wanted and what she needed in order to help her get well. (K.S. Testimony, Day Two, Page 135)
43. On April 9, 2001, Respondent addressed progress notes regarding K.S. to Skedde, and he signed the progress notes, "Love ya, Jay." (Exhibit 11)
44. K.S.'s physical condition improved significantly after her physical therapy sessions with Respondent in April 2001. She felt that Respondent had done a great job, and she was anxious to go back for more treatments. (K.S. Testimony, Day Two, Page 136)
45. K.S. traveled to Great Barrington for more treatment with Respondent in June 2001. (K.S. Testimony, Day Two, Pages 136-37; Jay Kain Testimony, Day Seven, Page 121; Exhibits 9, 10)

46. During a treatment session in June 2001, K.S. told Respondent that her pain levels were lower and that she was very happy with the work that he had done with her in April 2001. (K.S. Testimony, Day Two, Page 137)
47. K.S. testified that during a treatment session in June 2001, Respondent asked K.S. if she had ever touched herself sexually, and he suggested that she may want to purchase objects to help her with her sexuality. K.S. was uncomfortable with his suggestion. (K.S. Testimony, Day Two, Pages 137-38)
48. K.S. testified that during the treatment session referenced in June 2001, Respondent suggested to K.S. that she have intercourse with her husband to see if the physical therapy had improved her condition, which had previously caused pain during intercourse. K.S. told Respondent that she did not believe that she could have sexual relations with her husband because she feared that it would jeopardize their trial reconciliation. (K.S. Testimony, Day Two, Pages 138-39)
49. K.S. testified that during the treatment session in June 2001, Respondent kissed K.S. and started to lift her shirt, that she pulled her shirt back down and that Respondent told her that no one would walk into the office because everyone that entered the office must knock first. K.S. testified that Respondent proceeded to move her shirt back up to her neck, remove part of her bra, and kiss her on her breasts. (K.S. Testimony, Day Two, Page 142)
50. K.S. testified that during the treatment session in June 2001, while Respondent was kissing K.S., he took her hand and put it on his pelvis, and he said to her that he would enjoy lying naked with her and holding her. (K.S. Testimony, Day Two, Page 144)
51. K.S. testified that during the treatment session in June 2001, Respondent unzipped his pants and removed his penis from his pants and touched himself. (K.S. Testimony, Day Two, Page 145)
52. K.S. testified that at that point everything happened very quickly and K.S. found that she had her mouth on the Respondent's penis and had given him oral sex. (K.S. Testimony, Day Two, Page 145)
53. When asked how she felt about this while she was doing it, K.S. testified that she had hormones that were just raging, they were uncontrollable and she had no idea where it was coming from. (K.S. Testimony, Day Two, Page 146)

54. Respondent did not ask K.S. to give him oral sex. (K.S. Testimony, Day Two, Page 146)
55. K.S. testified that after she performed oral sex on Respondent at the treatment session in June 2001, Respondent said that it was unexpected but that he was not complaining. (K.S. Testimony, Day Two, Page 146)
56. K.S. testified that after she had performed oral sex on Respondent at the treatment session in June 2001, she paid her bill at the window and made another appointment for her next treatment. (K.S. Testimony, Day Two, Page 147)
57. K.S. testified that she made an appointment for a later visit with Respondent after the treatment session in June 2001 because she trusted Respondent and ██████████ and she believed that the "emotional component" of her physical therapy was part of her treatment and would help her get well. (K.S. Testimony, Day Two, Pages 147-48)
58. K.S. testified that during her treatment sessions, the doors to the treatment room were closed and the blinds on the windows were mostly closed to keep the sunlight from making the treatment room too warm. (K.S. Testimony, Day Two, Pages 143-44)
59. Respondent testified that there are times when the blinds in the treatment room of his office are closed to keep the sunlight from heating up the room. (Jay Kain Testimony, Day Seven, Pages 199-200)
60. K.S. testified that shortly after the treatment session in June 2001, Respondent phoned K.S. and asked whether she and ██████████ could meet him at the Pittsburgh Airport while he had a layover there. She testified that she did not tell ██████████ that the Respondent had asked if she wanted to meet him at the airport. She testified that she decided to meet him by herself. She testified that Respondent and she had breakfast together at an airport restaurant. (K.S. Testimony, Day Two, Pages 148-52)
61. K.S. testified that she was concerned about returning to Respondent for more treatment after the treatment session in June, but she decided to do so because she discussed it with ██████████ who assured her that it would be safe for her to go back to Respondent because ██████████ would go with her. (K.S. Testimony, Day Two, Pages 155-56)

62. K.S. testified that Respondent contacted her throughout the month of June to find out how she was doing but she can not remember what they talked about in those conversations. (K.S. Testimony, Day Two, Page 152)
63. K.S. next traveled to Great Barrington for more treatment with Respondent in July 2001 with [REDACTED]. (K.S. Testimony, Day Two, Page 156; Jay Kain Testimony, Day Seven, Pages 121-22; Exhibits 9, 10)
64. K.S. testified that during a treatment session in July 2001, Respondent and [REDACTED] simultaneously treated K.S.. (K.S. Testimony, Day Two, Page 157)
65. K.S. testified that at the treatment session in July 2001, Respondent again asked K.S. what she needed and wanted. She responded that she needed to get well and she wanted to live a normal life. (K.S. Testimony, Day Two, Page 157)
66. K.S. testified that at the treatment session in July 2001, Respondent gave K.S. a pillow, and then he and [REDACTED] left the room. K.S. held the pillow and cried until Respondent and [REDACTED] came back into the room. (K.S. Testimony, Day Two, Pages 157-58)
67. K.S. testified that at the treatment session in July 2001, Respondent told K.S. that she needed to do "emotional work" in order to get better and that she needed to deal with her traumas and life experiences in order to get well. (K.S. Testimony, Day Two, Pages 158-59)
68. K.S. testified that at the treatment session in July 2001, Respondent invited K.S. and [REDACTED] to a barbeque at his home. They attended the barbeque at Respondent's home and met his wife and children. (K.S. Testimony, Day Two, Pages 159-60)
69. Respondent testified that he thinks that it is appropriate for a current patient to have a meal at the residence of a treating therapist, and that he has many current patients come over to his house. (Jay Kain Testimony, Day Seven, Pages 186-87)
70. Within three or four days after she returned home to Pittsburgh after her treatment sessions with Respondent in July 2001, K.S. collapsed while out for a walk. She then spoke to Respondent on

the phone, and he told her that he could treat her the following week. (K.S. Testimony, Day Two, Pages 163-64)

71. K.S. testified that Respondent offered to have K.S. stay at his home in July 2001 so that she would have to pay only for physical therapy and not for a hotel room. K.S. accepted his offer. (K.S. Testimony, Day Two, Pages 164-65)
72. Respondent testified that he invited K.S. to stay in his home. (Jay Kain Testimony, Day Seven, Page 145)
73. Respondent's wife testified that K.S. stayed overnight in her and Respondent's home sometime after the barbeque in July 2001. (Deborah Kain Testimony, Day Seven, Pages 24, 44)
74. K.S. testified that when K.S. arrived for her stay at Respondent's home in July 2001, Respondent's wife asked her if she would like to take their daughters to a local swimming pool. K.S. took the Respondent's daughters to the pool, where she swam with them and talked to them about school and summer vacation. (K.S. Testimony, Day Two, Pages 165-66)
75. K.S. testified that while staying at Respondent's home in July 2001, she had dinner at Respondent's home with Respondent, his wife, and his children. (K.S. Testimony, Day Two, Page 167)
76. K.S. testified that Respondent treated K.S. in his home on the evening she was staying in his home in July 2001 and that Respondent's wife was in the room where Respondent treated K.S.. (K.S. Testimony, Day Two, Pages 167-68)
77. K.S. testified that Respondent behaved professionally toward K.S. while his family was present. (K.S. Testimony, Day Two, Page 169)
78. Respondent's wife testified that Respondent provides treatment to friends in the living room of his home. (Deborah Kain Testimony, Day Seven, Page 67)
79. Respondent's wife believed that K.S. was a family friend. (Deborah Kain Testimony, Day Seven, Page 63)
80. K.S. testified that while staying in Respondent's home in July 2001, she spent the night alone in Respondent's daughter's bedroom while Respondent's daughter slept elsewhere. (K.S. Testimony, Day Two, Page 169)

81. K.S. testified that while staying at Respondent's home in July 2001, K.S. had breakfast in Respondent's home with Respondent, his wife, and his children. (K.S. Testimony, Day Two, Pages 169-70)
82. K.S. testified that while she was staying at his home in July 2001, Respondent told K.S. that he would treat her at his home in the morning because he was waiting for someone to come to his home and he was unable to leave. (K.S. Testimony, Day Two, Page 170)
83. K.S. testified that in July 2001, Respondent treated K.S. in his home without his family or anyone else present. (K.S. Testimony, Day Two, Page 170)
84. K.S. testified that during the treatment at Respondent's home in July 2001, Respondent kissed K.S. and she kissed him back. (K.S. Testimony, Day Two, Page 170)
85. K.S. testified that after Respondent kissed K.S. during the treatment session at Respondent's home in July 2001, she told him that she did not feel comfortable and she wanted it to stop. (K.S. Testimony, Day Two, Page 171)
86. K.S. testified that during the treatment session at Respondent's home in July 2001, Respondent told K.S. that they were not going to have sex unless they were going to have sex together with . (K.S. Testimony, Day Two, Page 171)
87. K.S. testified that after the treatment session at Respondent's home in July 2001, Respondent treated K.S. at his office on July 26, 2001, where she performed oral sex on him. (K.S. Testimony, Day Two, Page 172; Exhibits 9, 10)
88. Respondent did not ask K.S. to perform oral sex. (K.S. Testimony, Day Two, Page 172)
89. K.S. testified that she cannot describe how it happened that she performed oral sex on the Respondent. (K.S. Testimony, Day Two, Page 172)
90. Respondent's treatment and billing records for K.S. indicate that he treated her on July 16 and 17, 2001, and then again on July 26, 2001. (Jay Kain Testimony, Day Seven, Pages 121-22; Exhibits 9, 10)

91. After K.S. stayed at Respondent's home with Respondent and his family in July 2001, she kept in email contact with Respondent's daughter. (K.S. Testimony, Day Two, Page 173)
92. Respondent's daughter gave K.S. her email address so that they could keep in touch. (K.S. Testimony, Day Two, Pages 173-74, Day Four, Page 126)
93. K.S. testified that she discussed with Respondent the fact that she was in touch by email with his daughter. (K.S. Testimony, Day Two, Page 174, Day Four, Page 127)
94. While K.S. was a patient of Respondent's, Respondent's wife knew that K.S. took their teenage daughter shopping and to a swimming pool, and this was okay with Respondent's wife because she thought K.S. was a friend. Respondent's wife also knew that their daughter was corresponding with K.S. by email. (Deborah Kain Testimony, Day Seven, Pages 41-43, 54-55)
95. Respondent's wife does not know whether or not Respondent knew that K.S. was going shopping with his daughter and taking her to a swimming pool. (Deborah Kain Testimony, Day Seven, Page 63)
96. Respondent's wife did not tell him that K.S. was taking their daughter shopping and to a swimming pool. (Deborah Kain Testimony, Day Seven, Pages 56, 63)
97. K.S. testified that during treatment sessions with K.S., Respondent discussed a lot about his personal life and his family. (K.S. Testimony, Day Two, Page 175)
98. K.S. testified that during a treatment session, Respondent told K.S. that his wife had gone through early menopause. (K.S. Testimony, Day Two, Page 175)
99. After her treatment sessions with Respondent in July 2001, K.S. went back to Dr. [REDACTED], who was in full support of her continuing physical therapy with both Respondent and [REDACTED]. (K.S. Testimony, Day Two, Pages 176-77)
100. K.S. testified that in 2001, she did not tell Dr. [REDACTED] that she had a sexual relationship with Respondent because she was afraid that if she did, then she would have to stop physical therapy with both Respondent and [REDACTED]. She was in fear of abandonment. (K.S. Testimony, Day Two, Page 177)

101. K.S. went back for further treatment with Respondent after July 2001 because her treatment was ongoing and she was making progress, and because ██████████ depended on notes she received from Respondent while treating K.S. in Pittsburgh. (K.S. Testimony, Day Two, Page 178)
102. On Saturday, September 29, 2001, K.S. traveled to Great Barrington with ██████████ for more treatment with Respondent. (K.S. Testimony, Day Two, Page 178)
103. K.S. testified that after K.S. and ██████████ arrived in Great Barrington on September 29, 2001, Respondent called them at their hotel and invited them to attend a concert with him and his family. (K.S. Testimony, Day Two, Page 178)
104. K.S. attended the concert with Respondent and his family on Saturday, September 29, 2001, and she saved the program as a memento. (K.S. Testimony, Day Two, Page 179; Exhibit 15)
105. On Sunday, September 30, 2001, Respondent treated K.S. at his office. (K.S. Testimony, Day Two, Pages 181-82)
106. During the treatment session on September 30, 2001, K.S. thanked Respondent for being a caring man, and she told him that she was grateful for his help and treatment. (K.S. Testimony, Day Two, Pages 181-82)
107. In September 2001, K.S. felt that Respondent was "the only thing that was really keeping [her] going," and that he was the only person in her life with whom she felt a sense of stability. (K.S. Testimony, Day Two, Page 182)
108. Respondent treated K.S. on October 1, 2001, with ██████████ present. (K.S. Testimony, Day Two, Page 183; Jay Kain Testimony, Day Seven, Page 122; Exhibits 9, 10)
109. K.S. testified that during the treatment session on October 1, 2001, Respondent asked whether or not K.S. and ██████████ would consider his previous offer of a "threesome." (K.S. Testimony, Day Two, Pages 183-84)
110. K.S. testified that when ██████████ left the room during the October treatment session, Respondent kissed K.S. on the forehead. (K.S. Testimony, Day Two, Page 185)

K.S. does not remember what happened at her day of treatment on October 2. (K.S. Testimony, Day Two, Page 185)

111. K.S. testified that after a treatment session in October 2001, Respondent kissed both [REDACTED] and K.S. passionately and intimately. (K.S. Testimony, Day Two, Pages 185-86)
112. K.S. traveled to Great Barrington for more treatment with Respondent in November 2001 with her husband. She testified that she did not tell her husband about her relationship with the Respondent. (K.S. Testimony, Day Two, Page 186; Jay Kain Testimony, Day Seven, Pages 122-23; Exhibits 9, 10)
113. K.S. testified that during a treatment session in November 2001, Respondent told her that he was seeing a psychologist and was afraid to find out whether he hated women. (K.S. Testimony, Day Two, Page 189)
114. K.S. testified that during a treatment session in November 2001, about an hour or so before it was time to go home, K.S. performed oral sex on Respondent, wrote her payment check and scheduled her next appointment. (K.S. Testimony, Day Two, Page 189)
115. Respondent did not tell K.S. that he wanted her to perform oral sex on him. (K.S. Testimony, Day Two, Page 190)
116. K.S. testified that she told the Respondent that she did not feel that it was appropriate to have a sexual relationship in the treatment room during her treatment and that she was uncomfortable with it and that Respondent responded that the relationship was part of her healing process. (K.S. Testimony, Day Two, Pages 190-91)
117. K.S. traveled to Great Barrington for more treatment with Respondent in December 2001 because her treatment was ongoing and [REDACTED] was unable to treat her without guidance from Respondent. (K.S. Testimony, Day Two, Pages 191-92; Jay Kain Testimony, Day Seven, Pages 123-24; Exhibits 9, 10)
118. At a treatment session in December 2001, K.S. told Respondent that she did not feel that she was making any more advanced progress in her physical therapy, but Respondent told her that she was. (K.S. Testimony, Day Two, Pages 192-93)

119. K.S. testified that at a treatment session in December 2001, K.S. performed oral sex on Respondent about an hour before leaving the office. (K.S. Testimony, Day Two, Page 194)
120. K.S. testified that she can not recall why she performed oral sex on him that day. (K.S. Testimony, Day Two, Page 195)
121. K.S. testified that after her treatment with Respondent in December 2001, K.S. felt that she did not want to continue her physical therapy and sexual relationship with Respondent. (K.S. Testimony, Day Two, Pages 195-96)
122. On Christmas Eve day December 2001, K.S. called Respondent at home and told him that she was in a lot of pain and that she was considering ending her physical therapy with him. (K.S. Testimony, Day Two, Page 197)
123. In December 2001, both Respondent and ██████ encouraged K.S. to return to Respondent for more physical therapy in order to get the treatment she needed and that ██████ was not able to provide. (K.S. Testimony, Day Two, Pages 196-98)
124. In early 2002, K.S. was regularly seeing psychologist Dr. ██████. She testified that she did not tell Dr. ██████ that she had a sexual relationship with Respondent because she was ashamed and because she was afraid that she would have to stop her physical therapy in both Massachusetts with Respondent and in Pittsburgh with ██████. (K.S. Testimony, Day Two, Pages 198-99)
125. In early 2002, K.S. believed that Respondent and ██████ were the only people that could help her and keep her going. (K.S. Testimony, Day Two, Page 199)
126. K.S. traveled to Great Barrington for more treatment with Respondent on Super Bowl weekend in January 2002 with ██████ who was also a patient of Respondent. (K.S. Testimony, Day Two, Pages 199-200; Jay Kain Testimony, Day Seven, Page 124; Exhibits 9, 10)
127. K.S. testified that when she went for treatment with the Respondent at his office that night she told ██████ that she was meeting the Respondent's daughter ██████ and having dinner with her, rather than that she was going to the Respondent's office. (K.S. Testimony, Page 202)

128. K.S. testified that in January 2002, she went for treatment with Respondent in his office shortly after 6:00 in the evening, and Respondent did not turn on the lights in the office. (K.S. Testimony, Day Two, Page 202)
129. K.S. testified that at the treatment session in January 2002, K.S. told Respondent that she was out of money and did not believe in his treatment any longer, and that she was not going to continue with it. (K.S. Testimony, Day Two, Page 203)
130. K.S. testified that at the treatment session in January 2002, Respondent told K.S. that she was making progress and asked her to continue treatment with him for at least two more days. He told her that she could pay for treatment at a later time or that he would take a loss for continuing her therapy. (K.S. Testimony, Day Two, Pages 203-04)
131. K.S. testified that at the treatment session in January 2002, Respondent told K.S. that if she did not continue physical therapy with him then her condition would spiral. (K.S. Testimony, Day Two, Page 204)
132. K.S. testified that at the treatment session in January 2002, Respondent took K.S. by the hand, placed her on his lap, and hugged her and they both kissed. (K.S. Testimony, Day Two, Page 204)
133. K.S. testified that at the treatment session in January 2002, Respondent removed K.S.'s pants and underwear, and he performed oral sex on her and that she then she performed oral sex on him (K.S. Testimony, Day Two, Pages 204-05)
134. K.S. testified that at the treatment session in January 2002, K.S. performed oral sex on Respondent because she believed that if she allowed the sexual activity to continue, then she would receive good treatment from Respondent during the next two days of physical therapy. (K.S. Testimony, Day Two, Page 205)
135. K.S. testified that she believed that Respondent had control over whether she got better or worse. (K.S. Testimony, Day Two, Page 205)
136. After treating with Respondent in January 2002, K.S. returned home to Pittsburgh and was in severe pain. (K.S. Testimony, Day Two, Pages 215-16)

137. In early 2002, Dr. ██████ again suggested surgery to K.S., but she told him that she still wanted to spend a little more time on physical therapy. She asked him for medication for the pain but he declined to give her medication. (K.S. Testimony, Day Two, Page 217)
138. In early 2002, K.S. did not want to go back to Respondent for treatment, but ██████ was unable to relieve her pain and told her that she needed to go back to Respondent. (K.S. Testimony, Day Two, Pages 218-19)
139. K.S. traveled to Great Barrington for more treatment with Respondent in March 2002. (K.S. Testimony, Day Two, Pages 219-20; Jay Kain Testimony, Day Seven Pages 124-25; Exhibits 9, 10)
140. On March 4, 2002, K.S. was treated by other therapists on Respondent's staff for eleven hours, and then Respondent treated her that evening. (K.S. Testimony, Day Two, Pages 220-21)
141. Respondent testified that that on March 4, 2002, he began treating K.S. at 7:30 pm even though his office closed at that time. (Jay Kain Testimony, Day Seven, Page 124)
142. K.S. testified that during the treatment session on March 4, 2002, K.S. was suffering severe pain and felt physically and emotionally drained. (K.S. Testimony, Day Two, Pages 221-22)
143. K.S. testified that during the treatment session on March 4, 2002, Respondent had a difficult time getting K.S.'s pain under control, and she told him that she was exhausted. (K.S. Testimony, Day Two, Pages 222-23)
144. K.S. testified that during the treatment session in March 2002, Respondent tried to remove K.S.'s sweatshirt and started trying to remove his own clothes, and he kissed her and had his hands all over her. (K.S. Testimony, Day Two, Page 224)
145. K.S. testified that she returned to Respondent's office for treatment on March 5, 2002, because she was still in severe pain and felt that she needed some relief of her symptoms before she could drive home to Pittsburgh. (K.S. Testimony, Day Two, Page 226)
146. K.S. testified that on March 5, 2002, she was treated by other therapists on Respondent's staff for ten or eleven hours, and then Respondent treated her that evening. (K.S. Testimony, Day Two, Pages 226-27)

147. Respondent testified that on March 5, 2002, he was in his office with K.S. after 8:00 pm even though his office closed at 7:30 pm. (Jay Kain Testimony, Day Seven, Page 125)
148. Respondent testified that he and K.S. were the only two people at his office when he treated her at night. (Jay Kain Testimony, Day Seven, Page 190)
149. K.S. testified that during the treatment session on March 5, 2002, Respondent treated K.S. briefly and then removed her clothes and his own clothes. (K.S. Testimony, Day Two, Page 227-28)
150. K.S. testified that during the treatment session on March 5, 2002, she had a severe headache and felt very tired and weak. She testified that Respondent turned down the lights in the treatment room because of her headache. (K.S. Testimony, Day Two, Page 228)
151. K.S. testified that during the treatment session on March 5, 2002, Respondent sat down on a chair and leaned her body toward his waist and his pelvis. (K.S. Testimony, Day Two, Pages 228-29)
152. K.S. testified that during the treatment session on March 5, 2002, she told Respondent that her neck was in severe pain and she could not perform oral sex on him. (K.S. Testimony, Day Two, Page 229)
153. K.S. testified that during the treatment session on March 5, 2002, she turned away from Respondent and looked for her clothes in the dark treatment room. She testified that as she bent over to reach for her clothes on the floor, Respondent placed his hands on her hips and pulled her to him. (K.S. Testimony, Day Two, Page 229)
154. K.S. testified that during the treatment session on March 5, 2002, Respondent inserted his penis into K.S.'s vagina. She testified that she pulled away, and he pulled her back. She testified that she told him her neck was hurting and asked him to stop. (K.S. Testimony, Day Two, Pages 229-30)
155. K.S. testified that during the treatment session on March 5, 2002, Respondent pulled K.S. back to him and briefly had intercourse with her a second time. She testified that she did not fight him the second time because she was too tired and too weak. (K.S. Testimony, Day Two, Page 230)

156. K.S. testified that she can not recall whether Respondent said anything to her during this time. (K.S. Testimony, Day Two, Page 230)
157. K.S. testified that she went back to the hotel and was suffering from low back pain, pain in her hip, pain in her spine, her neck, ear pain and trouble swallowing. (K.S. Testimony, Day Two, Page 233)
158. K.S. testified that on March 6, 2002, she returned to Respondent's office for treatment with [REDACTED], another physical therapist, because she did not feel that she could go home in the condition that she was in physically. She did not spend any time alone with Respondent that day. (K.S. Testimony, Day Two, Pages 233-34)
159. While K.S. was driving home to Pittsburg after this treatment, she received a speeding ticket so stayed in a hotel on the highway. (K.S. Testimony, Day Two, Page 237)
160. Respondent testified that he did not see K.S. on March 6, 2002. (Jay Kain Testimony, Day Seven, Page 125)
161. K.S. did not return to Respondent for treatment after her visit in March of 2002 but she did call him. (K.S. Testimony, Day Two, Page 238)
162. K.S. testified that at some time after March of 2002, she told her friend [REDACTED], her psychologist [REDACTED], and her physicians [REDACTED] and [REDACTED] that Respondent had raped her on March 5, 2002. She testified that at her psychologist's suggestion, she sought counseling at an organization called Pittsburgh Action Against Rape. (K.S. Testimony, Day Two, Pages 238-40)
163. K.S. testified that after she told them about her sexual contact with Respondent, her doctors advised her to stop her physical therapy with both Respondent and [REDACTED], and she did so. (K.S. Testimony, Day Two, Pages 240-41)
164. K.S. testified that after she told people about her sexual contact with Respondent, K.S. felt devastated and suicidal. At home she had Demoral, Valium, and Armorthyroid to treat all her problems. (K.S. Testimony, Day Two, Pages 241-43)
165. K.S. testified that after she told her psychologist about her sexual relationship with Respondent, her psychologist suggested that she

write down as much as she could possibly remember about what had happened while it was fresh in her mind. (K.S. Testimony, Day Two, Page 243)

166. K.S. testified that she began writing down all her memories related to her relationship with Respondent in late May of 2002, and she completed her written notes within several weeks. (K.S. Testimony, Day Two, Pages 243-44; Exhibit 37)
167. K.S. does not have the original of the notes about her memories because the police department kept them. (K.S. Testimony, Day Three, Page 9)
168. K.S. does not remember when she gave the notes to the Prosecution. (K.S. Testimony, Day Three, Page 9)
169. K.S. testified that the first complaint she filed with the Board was disregarded. (K.S. Testimony, Day Three, Page 11)
170. K.S. cannot recall whether she created the notes after the first complaint was disregarded. (K.S. Testimony, Day Three, Page 11)
171. K.S. does not recall signing or dating the complaint to the Board. (K.S. Testimony, Day Three, page 17)
172. K.S. testified that she has short term memory loss. (K.S. Testimony, Day Three, page 20)
173. K.S. testified that she asked the Prosecutor if the investigator Ann Driscoll was going to testify because she felt there was a conflict of interest and she did not want Ann Driscoll involved. (K.S. Testimony, Day Three, page 40)
174. K.S. testified that she was not under the influence of alcohol when she wrote the notes. (K.S. Testimony, Day Four, Pages 124-25)
175. K.S. reviewed the notes before testifying in order to refresh her memory of which events took place on which treatments dates. Nevertheless, she did not always remember exact dates of treatment during her testimony. (K.S. Testimony, Day Three, Page 50, Day Four, Page 132)
176. On July 30, 2002, K.S. filed a complaint with the Board against Respondent. (Exhibit 7)

177. On August 12, 2002, K.S. reported to the Great Barrington Police that Respondent had raped her. She testified that she made the report in August because she waited until she felt physically well enough to travel back to Great Barrington. (K.S. Testimony, Day Two, Pages 245-46; Exhibit 16)
178. She testified before the Grand Jury but the Grand Jury did not indict the Respondent. (K.S. Testimony, Day Two, Page 250)
179. K.S. testified that she has never been diagnosed with any memory problems by anyone other than her osteopathic physician, who told her that she had short-term memory loss. (K.S. Testimony, Day Four, Page 125)
180. K.S. did not examine her medical records from any of her medical practitioners because she trusted the practitioners. (K.S. Testimony, Day Four, Pages 128-29)
181. In responding to and answering questions on both direct and cross-examination, K.S. took upward to twelve, seventeen and even 25 seconds to reply after the question was completed. (K.S. Testimony, Day 2, Day 3 and Day 4).

Respondent

182. The Board issued to the Respondent a license to practice as a physical therapist in the Commonwealth of Massachusetts, License No. 4319. The Board also issued to the Respondent a license to practice as an athletic trainer in the Commonwealth of Massachusetts, License No. 344. (Exhibits 1, 2)
183. Respondent is also licensed to practice physical therapy in the states of Connecticut, New York and New Mexico. (Kain Testimony, Day 7, Page 82)
184. Jay Kain Physical Therapy specializes in sports medicine and manual therapy and has two full time therapists. (Transcript, March 16, 2006, p.78)
185. Respondent has lived in Great Barrington, Massachusetts with his wife and three children for 21 years. (Kain Testimony, Day 7, Page 68)
186. Respondent has a bachelor of science in physical education from Springfield College from which he graduated in 1978 and a bachelor of science in physical therapy from Quinnipiac College.

He completed his masters thesis on the effects of external stabilization on abdominal strength during isometric knee extension. (Kain Testimony, Day 7, Pages 71-72)

187. Respondent spends four days at week at the office and travels to New York City to work two days at the Centers of Integrated Manual Therapy. (Kain Testimony, Day 7, Page 79)
188. Respondent has treated professional athletes, semi-pro athletes, musicians, a Middle East prime minister and Hollywood luminaries. (Kain Testimony, Pages 86-87)
189. The Respondent's business has between 130 and 160 client visits per week. (Kain Testimony, Day 7, Page 79)
190. Until the last couple of years, Respondent spent 20 to 25 weekends a year teaching or taking courses. (Kain Testimony, Day 7, Page 81)
191. Respondent testified that Physical Therapists are not required to maintain continuing education units. (Kain Testimony, Day 7, Page 81)
192. Respondent has been to between 150 to 200 continuing education courses during his career. (Kain Testimony, Day 7, Page 91)
193. Respondent is the dean of the Connecticut School of Integrated Manual Therapy which is a private occupational school certified by the state of Connecticut. He spends three to four hours a week in that position. (Kain Testimony, Day 7, Page 99)
194. Respondent is very involved in his community doing athletic training for the high school, working on Monday nights at the BerK.S.hire Community Center, volunteering with the Visiting Nurse Association, among other things. (Kain Testimony, Day 7, Page 100)
195. Respondent has written and co-authored many articles in various journals and has published a book on connective tissue myofascial release. (Kain Testimony, Day 7, Page 101)
196. The use of the word integrative to describe Respondent's physical therapy practice means that instead of just focusing on the musculoskeletal system of the body, just the nerves, muscles and bones, the practitioner takes into account all of the systems of the body. (Kain Testimony, Day 7, Pages 106, 107)

197. When a person comes to his office with a fractured finger Respondent will look at the whole arm all the way to the spine; he will ask the patient about various aspects of her life, the stressors in her life because these factors could affect how well the patient heals. (Kain Testimony, Day 7, Pages 108)
198. K.S.'s referral to Respondent was made by ██████████ as primary therapist and ██████████ ██████████ and Respondent had conversations about her coming because ██████████ was not having success in treating K.S.'s pain. (Kain Testimony, Day 7, Pages 110, 1112)
199. Respondent adamantly denies K.S.'s allegations of any sexual contact and does not feel there was any inappropriate treatment with respect to K.S.. (Kain Testimony, Day 7, Pages 117, 118)
200. Respondent's office keeps the schedule for patients and therapists on a Medisoft program which shows all the appointments and treatments with K.S. The testimony of K.S. regarding her dates of treatment for two dates does not coincide with the printed dates of treatment. (Kain Testimony, Day 7, Pages 119-125)
201. Respondent was aware at K.S.'s first visit that ██████████ had treated her and that she had received hundreds of hours of treatment so it was his feeling that she needed more hands on treatment. (Kain Testimony, Day 7, Page 127)
202. K.S. reported to him on the first day that she had constant sexual dysfunction. (Kain Testimony, Day 7, Page 127)
203. Hands on therapy means that he has his hands on feet, knees, groins, buttocks, stomachs, chests, breasts, necks, face, backs, spines all the time with chronic pain patients. (Kain Testimony, Day 7, Page 129)
204. During her course of treatment, K.S. was seen by two or three other therapists at Jay Kain Therapy. (Kain Testimony, Day 7, Page 132)
205. K.S. did not register any complaints about inappropriate conduct of the Respondent to these other therapists. (Kain Testimony, Day 7, Page 132)
206. Respondent testified that he did not ever treat K.S. at his home. (Kain Testimony, Day 7, Page 133)

207. Respondent testified that it would not be possible for the conduct alleged by K.S. to have occurred because he is the senior therapist with up to seven other therapists who may be seeking his guidance during treatment sessions he may be conducting. People are constantly walking by his treatment room. (Kain Testimony, Day 7, Page 137)
208. On April 9, 2001, K.S. had an appointment at 11:00 for an hour that was followed by Respondent's lunch from 12:00 to 12:30. K.S. was seen again at 3:00 until 5:00. At 5:00 Respondent had another patient. (Kain Testimony, Day 7, page 120).
209. On April 10, 2001, K.S. was seen at 9:30 in the morning. Respondent was with patients before her. K.S. was seen from 9:30 to 12:00. Respondent had an hour lunch, saw another patient until 1:30 and then saw K.S. from 1:30 to 3:00. Respondent had another patient from 3:00 to 4:30. (Kain Testimony, Day 7, page 121).
210. On June 4, 2001, K.S. was seen at 8:00 in the morning. She was seen until 12:00. Respondent had a patient from 12:00 to 12:30 and had lunch. From 1:30 to 2:30 K.S. was seen again, and Respondent had four patients after that treatment. (Kain Testimony, Day 7, page 121).
211. On June 5, 2001, K.S. was seen at 8:00 in the morning from 8:00 until 10:00. Respondent had two other patients, and K.S. was seen from 11:00 to 12:00. Respondent saw another hour of a patient and had lunch. (Kain Testimony, Day 7, page 121).
212. On July 16, 2001, K.S. was seen again at 8:00 in the morning until noon. Respondent had another patient after her, then a lunch meeting. (Kain Testimony, Day 7, page 121).
213. On July 17, 2001, K.S. was seen at 8:00 in the morning until noon. Respondent had lunch and then patients until 4:30. (Kain Testimony, Day 7, page 121-122).
214. On July 26, 2001, K.S. was again the 8:00 patient seen until noon, and then Respondent had lunch for an hour. K.S. was seen from 1:00 to 3:00. Respondent had no other patients after that. The office was open until 6:30. (Kain Testimony, Day 7, page 122).
215. On October 1, 2001, K.S. was seen again at 8:00 until 11:00. Respondent saw another patient, had a lunch meeting with another person, one more patient and then K.S. was seen from

3:00 to 4:30. Respondent had a patient at 4:30. (Kain Testimony, Day 7, page 122).

216. On October 2, 2001 K.S. was the 8:00 patient, from eight to eleven. Respondent had two other patients and then had lunch. Respondent treated another patient from 1:00 to 3:00. K.S. was seen from 3:00 to 4:30. The office was open until 6:30 that evening. (Kain Testimony, Day 7, page 122).
217. On October 3, 2001, K.S. was again the first patient at 8:00 until 11:30. Respondent had an hour lunch and then patients for the rest of the afternoon. (Kain Testimony, Day 7, page 122).
218. On November 5, 2001, K.S. was again the first patient from 8:00 to 10:00. Respondent had another patient for a half an hour, 10:00 to 10:30, then K.S. was seen from 10:30 to 12:00. Respondent had an hour lunch. K.S. was seen from 1:00 to 4:00 and Respondent had a patient after that. (Kain Testimony, Day 7, pages 122-123).
219. On November 6, 2001, K.S. was Respondent's first patient again, 8:00 to 9:30. Respondent was with another patient from 9:30 to 10:00. K.S. was seen from 10:30 to noon and then 12:30 to 2:00. The office was open until 5:00 that day. (Kain Testimony, Day 7, page 123).
220. On December 10, 2001, K.S. was the 8:00 patient, 8:00 to 9:00. Respondent saw another patient at 9:30 to noon. Respondent had an hour lunch, and he saw K.S. from 1:00 to 3:00. Respondent had two additional patients until 4:30. (Kain Testimony, Day 7, page 123).
221. On December 11, 2001, K.S. was seen from 8:00 to 1:00. Then, Respondent had a meeting with his office manager and a dentist appointment outside the office. (Kain Testimony, Day 7, page 123).
222. On December 12, 2001, K.S. was seen from 8:00 until 9:30. There were two patients between, 11:00 to 12:00, that was all for the day. (Kain Testimony, Day 7, page 123-124).
223. On January 28, 2002, K.S. was the 8:00 to 9:00 patient. Respondent had two different patients between. She was the 10:00 to 12:00 patient. Respondent had an hour lunch and treated K.S. from 1:00 to 3:00 or 3:30. Respondent had a patient after that. (Kain Testimony, Day 7, page 124).

224. On January 29, 2002 K.S. was the 8:00 patient from 8:00 to 9:30. Respondent treated another patient, from 10:30 to 2:00. (Kain Testimony, Day 7, page 124).
225. On March 4, 2002 K.S. was the 11:00 to 12:00 patient. K.S. was seen at 7:30 that evening for one- half hour. K.S. treated with other therapists in this process. The office was open until 7:30 that evening. (Kain Testimony, Day 7, page 124-125).
226. On March 5, 2001, K.S. was seen from 11:00 to 12:00. Respondent treated patients before K.S. K.S. was treated again late that day for half an hour. (Kain Testimony, Day 7, page 125).
227. The main room where Respondent does treatments is six feet from the front desk where patients check in. Beyond it is another treatment room, then an open treatment room with curtains and then the staff room. There is a parking lot right outside the window of his office. (Kain Testimony, Day 7, Pages 137- 139)
228. After treatment, the patients at Jay Kain Physical Therapy go to the front desk and check with the receptionist and then leave. (Kain Testimony, Day Seven, page 143).
229. No member of the office staff ever related to Respondent that after any particular treatment, that they made certain observations about K.S. or that K.S. had complaints. (Kain Testimony, Day Seven, page 143-144).
230. K.S. never complained about treatment or that she was ever abused or harassed. (Kain Testimony, Day Seven, page 143-144).
231. No complaints were ever registered to staff at Respondent Physical Therapy by K.S during her entire treatment regimen.(Kain Testimony, Day Seven, page 144).
232. Respondent never gave a statement to the Great Barrington police. He spoke to the investigating officer for two minutes. He never testified. He was never charged with a crime. (Kain Testimony, Day 7, Page 147)
233. Respondent testified that it would not have been unusual for K.S. to give Respondent a hug when she made progress in her treatment, for example when she had slept well for the first time in three years. (Kain Testimony, Day 7, Page 160)

234. Respondent testified that he was not sexually attracted to K.S. and he had no reason to believe she was sexually attracted to him. (Kain Testimony, Day 7, Page 160)
235. Respondent testified that when K.S. became his patient, he knew that she had suffered abuse by her husbands. (Jay Kain Testimony, Day Seven, Pages 194-95)
236. Respondent testified that patients put their trust in him. (Jay Kain Testimony, Day Seven, Page 185)
237. Respondent testified that he was alone with both K.S. and A.C. during some of the times that he rendered treatment to them. (Jay Kain Testimony, Day Seven, Page 190)
238. Respondent testified that he was not aware that K.S. had an e-mail relationship with his daughter or that K.S. took his daughter shopping. (Kain Testimony, Day 7, Page 171)
239. The Respondent has not had a complaint filed against him before. (Kain Testimony, Day 7, Pages 164-165)
240. Respondent testified that he did not meet K.S. at the airport in Pittsburgh. He testified that he went to dinner with [REDACTED] and K.S. in Pittsburgh at the request of [REDACTED]. (Kain Testimony, Day 7, Page 190)
241. The Massachusetts Board of Registration for Physical Therapists does not require the use of chaperones in the treatment rooms. (Kain Testimony, Day 7, Page 193)
242. [REDACTED] and [REDACTED] the parents of a patient with severe ulcerated colitis believe Respondent to be of good and professional reputation and character. (Ex. 29.).
243. [REDACTED], a world known ethics [REDACTED] and long term patient of Respondent's believes Respondent to be of good and professional reputation and character. (Ex. 29.).
244. [REDACTED], a patient with a chronic back problem believes Respondent to be of good and professional reputation and character. (Ex. 29.).
245. [REDACTED] P.T., I.M.T.C., who works with the Connecticut School of Integrated Manual Therapy believes Respondent to be of good and professional reputation and character. (Ex. 29.).

246. [REDACTED], a long term patient with a very severe and debilitated bilateral knee condition, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
247. [REDACTED], a patient that with fibromyalgia believes Respondent to be of good and professional reputation and character. (Ex. 29.).
248. [REDACTED], a former patient from Northampton believes Respondent to be of good and professional reputation and character. (Ex. 29.).
249. Susan Charlwood, P.T., MSW, a colleague from Rhode Island who has referred multiple patients to Respondent, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
250. Ronald G. Rossetti, President and CEO of Northeast Seminars, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
251. Dr. Lizabeth Gregg, President of Westbrook University and cardio-thoracic and emergency room, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
252. [REDACTED] R.P.T., therapist and patient from New Hampshire, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
253. Ayelet G. Weiselfish, P.T., I.M.T.C., Sharon Weiselfish's daughter and colleague at IMT, believes Respondent to be of good and professional reputation and character. (Ex. 29.).
254. [REDACTED] the parents of a little boy, Austin, who essentially was left by the system after severe heart surgery believe Respondent to be of good and professional reputation and character. (Ex. 29.).

Deborah Kain

255. Deborah Kain has been married to the Respondent for twenty-three years. (Deborah Kain Testimony, Day Seven, Page 6)
256. Deborah Kain has a bachelor of fine arts and a masters from the Hartford Art School. (Deborah Kain Testimony, Day Seven, Page 7)

257. Deborah Kain is a part time school teacher and has been for sixteen years. (Deborah Kain Testimony, Day Seven, Page 8)
258. Deborah Kain is the secretary of the Berkshire Hills Regional School Committee. (Deborah Kain Testimony, Day Seven, Page 11)
259. Deborah Kain is the chief operations officer of Jay Kain Physical Therapy where she performs HIPAA compliance and does the advertising and office administration, usually for fifteen hours a week. (Deborah Kain Testimony, Day Seven, Page 15)
260. Deborah Kain was in shock when the Respondent told her about the complaints to the Board against him from K.S.. She couldn't believe it was the same person because she had come to know K.S. very well. (Deborah Kain Testimony, Day Seven, Page 22)
261. Deborah Kain came to know K.S. through the office because she would walk back and forth in the corridor and would see K.S. when she was being treated. She invited K.S. to a barbecue at her house along with [REDACTED] because they had traveled together from Pittsburgh. (Deborah Kain Testimony, Day Seven, Pages 24-27)
262. At the barbecue K.S. asked Deborah Kain how she felt about the Respondent working long hours, teaching and traveling. (Deborah Kain Testimony, Day Seven, Pages 31-33)
263. Deborah Kain saw K.S. many times at the office and when she came to her house to pick up her daughter [REDACTED]. When K.S. came to town she would call [REDACTED] and take her shopping. (Deborah Kain Testimony, Day Seven, Pages 38, 42)
264. K.S. made Deborah Kain a craft photograph album and presented it to her with a big hug. Deborah Kain was very touched. (Deborah Kain Testimony, Day Seven, Page 39)
265. During this time, Deborah Kain felt that K.S. was a friend of hers. (Deborah Kain Testimony, Day Seven, Page 43)
266. K.S. sent the Respondent's daughter [REDACTED] a birthday card through the mail. (Deborah Kain Testimony, Day Seven, Page 46)
267. When K.S. told Deborah Kain at the office that she was having money problems, Deborah Kain offered her basement bedroom for her to stay overnight. The offer was made to K.S. through the Respondent. K.S. did not stay in the daughter's bedroom. K.S. left

a post it the following morning that said "Debbie, thank you so much." (Deborah Kain Testimony, Day Seven, Pages 48, 49)

268. Deborah Kain explained K.S.'s complaint against the Respondent to her daughter by saying "she developed a crush on Daddy and is saying some things." (Deborah Kain Testimony, Day Seven, Page 49)
269. Respondent's wife testified that she was not present during all of the treatment rendered by Respondent to K.S. or to A.C. (Deborah Kain Testimony, Day Seven, Pages 64, 66)
270. After K.S. phoned Respondent at home requesting treatment, Respondent went to his office in the evening after the office had closed for an unscheduled appointment with K.S.. Respondent's wife was not present at all during that treatment session. (Deborah Kain Testimony, Day Seven, Pages 50-52, 64)
271. Deborah Kain thinks it would be impossible for the allegations made by K.S. to have occurred in the office because people go in and out of rooms all the time; the walls are paper thin; when doors are closed people knock and then walk right in. (Deborah Kain Testimony, Day Seven, Page 57)
272. If Deborah Kain had reason to believe K.S.'s allegations against her husband she would have been out the door and not testifying at the hearing. (Deborah Kain Testimony, Day Seven, Page 58)

A.C.

273. A.C. is a graduate student living in Flagstaff, Arizona. She graduated from Smith College in Northampton, MA. (A.C. Testimony, Day One, page 74)
274. A.C. took a leave of absence from college for one semester because she had some viral illness that was never diagnosed despite her consulting with many doctors. (A.C. Testimony, Day One, page 78)
275. During this time she also briefly consulted with a psychiatrist because she was very depressed and was sick and frustrated that no one could diagnose her illness. (A.C. Testimony, Day One, page 85)
276. When she was in high school she had a concussion from an accident during swing dancing. (A.C. Testimony, Day One, Page 87)

277. One day after she had returned to college in spring 2002, she woke up and was in extreme pain in her arms. (A.C. Testimony, Day One, page 85)
278. She consulted with a doctor who diagnosed her with carpal tunnel syndrome and recommended she see a physical therapist. (A.C. Testimony, Day One, page 93)
279. She did not agree with that diagnosis because she had pain up to her shoulders and with carpal tunnel that pain only goes up to the forearm and she told the doctor she thought it was wrong. (A.C. Testimony, Day One, page 100)
280. She does not remember whether or not she went to the college health services before consulting the doctor in Connecticut. (A.C. Testimony, Day One, page 95)
281. From the day she woke up in pain she was unable to take notes in class and could not lift her arms to feed herself. (A.C. Testimony, Day One, page 97)
282. When she went to the physical therapist recommended by her doctor, he told her that she had thoracic outlet syndrome. She had heard of that condition because her father had it. (A.C. Testimony, Day One, pages 111-112)
283. She reads medical literature and has had speculations about what is going on with her body. (A.C. Testimony, Day One, Page 112)
284. She speculated that she might have thoracic outlet syndrome after reading and discussing it with her father. (A.C. Testimony, Day One, Page 113)
285. The physical therapist she was seeing was in Madison, Connecticut, but she doesn't remember if she had a car then. Her boyfriend drove her from Northampton, Massachusetts to Madison, Connecticut. (A.C. Testimony, Day One, page 118)
286. The summer after she started physical therapy treatments, she went to Thailand for a month and missed her physical therapy treatments. (A.C. Testimony, Day One, page 120)
287. Either at the end of the spring semester or the beginning of the fall semester, she began treating at Advanced Therapeutics in Florence, Massachusetts. (A.C. Testimony, Day One, page 127)

288. She is not sure whether she went there for therapy once a week or twice a week. (A.C. Testimony, Day One, page 134)
289. After being in treatment there for a year she was frustrated with their treatment because she was still in pain and when she discussed this with them, they told her that there was nothing more they could do for her and told her about Jay Kain. (A.C. Testimony, Day One, page 144)
290. While she was in treatment with Advanced Therapeutics she was also seeing Dr. Cherniak because the physical therapy was not working and she wanted to try other options. Her sister had gone to Dr. Cherniak. Dr. Cherniak did not reduce her pain (A.C. Testimony, Day One, page 148)
291. Respondent began treating A.C. in November of 2003 for severe chronic pain in her arms and shoulders caused by thoracic outlet syndrome. (A.C. Testimony, Day One, Page 11; Exhibits 12, 13)
292. When she began treatment with the Respondent she told him she was taking Unisaid, a thyroid medication prescribed by her endocrinologist and Prozac prescribed by her internist for PMS. (A.C. Testimony, Day One, page 156)
293. When she began physical therapy with Respondent, A.C. was in severe pain and was unable to write, type, drive, or eat without a lot of pain. (A.C. Testimony, Day One, Page 12)
294. Before she began physical therapy with Respondent, A.C. had been treated by several other physical therapists and medical practitioners who had failed to reduce her pain. (A.C. Testimony, Day One, Pages 12-13)
295. Before she began physical therapy with Respondent, A.C. was treated by a group of physical therapists near Smith College, where she was a student. (A.C. Testimony, Day One, Page 13)
296. Those physical therapists told A.C. that they could not do anything more to help her, and they referred her to Respondent because he was the only person who could help her and he was her "last hope." (A.C. Testimony, Day One, Pages 14, 147)
297. A.C.'s boyfriend drove her from Northampton to Great Barrington for her appointments with the Respondent. (A.C. Testimony, Day One, page 15)

298. Her boyfriend and Respondent would greet each other when Respondent came to the waiting room to get A.C.. (A.C. Testimony, Day One, page 16)
299. Respondent explained to A.C. that his approach to physical therapy had to do with emotions and that emotions were manifested in the physical body, often by pain and that a patient's belief system could affect the pain. (A.C. Testimony, Day One, page 16)
300. Respondent told A.C. that her pain was related to her belief system and that her pain wasn't getting any better because she did not love herself. (A.C. Testimony, Day One, page 17)
301. Respondent's approach to physical therapy was very different from any other physical therapists or doctors she had seen. (A.C. Testimony, Day One, pages 17-18)
302. She was curious about his ideas about the relationship between physical problems and emotional problems and asked him a lot of questions about the process and whether there were books she could read. (A.C. Testimony, Day One, page 18)
303. A.C. testified that Respondent told her that the other physical therapists on his staff were not as good as he was and would not help her as much, so she tried to schedule her appointments with Respondent only. (A.C. Testimony, Day One, Page 15)
304. A.C. testified that Respondent told her that the pain in her arms was related to a problem with her belief system and to self-love, and that the reason her arms were not getting better was that she did not love herself. (A.C. Testimony, Day One, Pages 16-17)
305. Respondent used metaphors to explain her pain such as saying that she was using her arms to fight something such as a fight with a person. (A.C. Testimony, Day One, Page 26)
306. A.C. testified that throughout their treatment sessions, Respondent told her that she needed to learn to love herself. On one occasion, he gave her a pillow and told her to hug it and pretend it was herself as a way to practice self-love. (A.C. Testimony, Day One, Pages 35-36)

307. Respondent testified that he has had patients hug a pillow and that he used this practice with A.C. (Jay Kain Testimony, Day Seven, Page 181)
308. After beginning physical therapy with Respondent, A.C. began to experience a reduction in her pain, and she felt hopeful for the first time in a long time. (A.C. Testimony, Day One, Pages 21-22)
309. A.C. testified that during treatment, Respondent told her that she had deep and powerful eyes, and that he could see a lot inside her eyes. (A.C. Testimony, Day One, Page 22)
310. A.C. testified that there was an ongoing theme throughout the therapy that Respondent could read her mind and that he could tell what kind of person she was and he asked her a lot of questions about her emotional well being. (A.C. Testimony, Day One, Page 24)
311. A.C. testified that Respondent told her that she was a very powerful person and a very sexual person. (A.C. Testimony, Day One, Page 24)
312. A.C. testified that when Respondent said she was a highly sexual person she responded "yes" because it was her instinct to tell the truth. (A.C. Testimony, Day One, page 25)
313. A.C. testified that after Respondent made the comments about her sexuality, she did not really think about it because the therapy was working. (A.C. Testimony, Day One, page 27)
314. A.C. testified that Respondent told her that her boyfriend was a pushover and that he was not strong enough or good enough for her. (A.C. Testimony, Day One, Page 29)
315. A.C. testified that Respondent asked her about her sexual relationship with her boyfriend, and that made her extremely uncomfortable but she thought there was some point to the questions because he was her physical therapist. (A.C. Testimony, Day One, Pages 30, 32)
316. A.C. testified that after Respondent made comments that made her uncomfortable, she thought about not going back to him for physical therapy, but she felt desperate to get better, and Respondent was the first physical therapist who had reduced her pain at all. She felt that continuing physical therapy with Respondent was the only hope she had to get better and that she

not have any choice but to continue treatment with Respondent. (A.C. Testimony, Day One, Pages 33, 43-44)

317. A.C. testified that around December of 2003, she told Respondent that she had gotten sudden severe pain in her mid-thoracic spine, and Respondent told her that was related to old emotional issues because such issues are stored in that area of the body and she told him that the pain had started when she had seen her aunt with whom she had a rocky relationship. (A.C. Testimony, Day One, Page 35)
318. Respondent testified that he can touch a patient's body to find out if the patient has emotional problems. (Jay Kain Testimony, Day Seven, Page 183)
319. A.C. testified that during treatment sessions with her, Respondent often volunteered personal information about himself, including that one of his parents was abusive, that his relationship with his wife was rocky, and that he had been diagnosed with cancer and diabetes. (A.C. Testimony, Day One, Pages 36-37)
320. A.C. testified that after she graduated from college in January of 2004, she told Respondent that she was staying in the area partly because of her boyfriend and partly to see Respondent. Respondent then acted very melodramatic "Oh, to see me?", and A.C. clarified that she was staying to continue physical therapy. Respondent told her, "That's not what you said...No, you said you wanted to see me." This conversation made her very uncomfortable. (A.C. Testimony, Day One, Page 40, 42-43)
321. A.C. considered finding another physical therapist and discussed it with her mother and her boyfriend, but she felt that she was running out of options because she had been to so many practitioners who did not reduce her pain. (A.C. Testimony, Day One, Pages 44-45)
322. A.C. testified that in about January of 2004, she told Respondent that something he had said to her at a previous session had made her uncomfortable and that she had talked to her boyfriend about it. A.C. testified that Respondent then became very angry that she had discussed it with her boyfriend, and he raised his voice and said, "Not again, not again, not again. I don't believe this is happening again." (A.C. Testimony, Day One, Pages 47-48, Day Two, Page 47)

323. A.C. testified that Respondent asked her why she had told her boyfriend that she was uncomfortable with something Respondent had said to her, and Respondent asked her, "Why have you been talking to people about what goes on in here?" (A.C. Testimony, Day Two, Pages 52-53)
324. A.C. testified that Respondent told her not to talk to her boyfriend or other people about what happened in their therapy sessions. (A.C. Testimony, Day One, Page 48, Day Two, Pages 47, 53)
325. A.C. testified that Respondent told her that if she did not talk to him about her "issues," then she would not get 100% better but would only get 60% or 70% better. (A.C. Testimony, Day One, Page 49)
326. A.C. testified that Respondent told her that she would not get better until she knew what she really wanted, and he repeatedly asked her what she wanted. She testified that when she said that she wanted to get better and be out of pain, he said, "No, that's not what you're thinking," and he asked her what she was really thinking. She testified that he told her, "You don't have to worry about what I'll think when you respond," which made her think that he was setting her up to say something embarrassing. (A.C. Testimony, Day One, Pages 27-28, 53, 55, Day Two, 73)
327. A.C. testified that when she asked Respondent when he thought she would get better, he told her that it was contingent on whether or not she answered the question of what she really wanted, and that she would not get better until she knew what she wanted and said what she wanted. (A.C. Testimony, Day One, Pages 55-56)
328. Once during a treatment session, when Respondent asked [REDACTED] A.C. what she really wanted, she said that she wanted to kiss him. A.C. testified that Respondent then said to her, "You know if I didn't have a wife..." (A.C. Testimony, Day One, Page 60)
329. Respondent's treatment record for A.C. does not document that she said she wanted to kiss him or what he said and did in response. (Exhibit 12)
330. A.C. had a treatment session with Respondent on or around her birthday in April of 2004. At the end of the treatment session, Respondent said "Happy birthday" and then leaned forward and kissed her on the lips. (A.C. Testimony, Day One, Pages 61-63)

331. Respondent testified that he kissed A.C. on the lips. He testified, "[W]hat happened was my eyes were closed and I turned and her face turned, and it must have turned exactly the same way and it ended up being a peck on her lips." (Jay Kain Testimony, Day Seven, Page 166)
332. Respondent testified that he did not document the kiss anywhere in his treatment notes and that he did not notify anyone else at his physical therapy business or file an incident report about it. (Jay Kain Testimony, Day Seven, Page 191; Exhibit 12)
333. When incident reports are filed at Respondent's office, the business manager brings the incident report to either Respondent or his wife to deal with the problem. (Jay Kain Testimony, Day Seven, Page 191)
334. A.C. testified that when she returned for another treatment session after Respondent kissed her, she did not feel comfortable discussing what had happened with Respondent because there was a male high school student observing their session. (A.C. Testimony, Day One, Pages 65-66)
335. A.C. testified that she stopped treatment with Respondent before she was 100% better because she was disturbed that he had kissed her. (A.C. Testimony, Day One, Pages 67-68)
336. A.C. alleged in her complaint to the Board that she stopped treatment with the Respondent in April 2004, but her treatment actually continued through May 12, 2004. (A.C. Testimony, Day One, Page 57)
337. A.C. does not remember being in treatment with the Respondent on two dates in May, but it is possible that she was there in the month of May. (A.C. Testimony, Day Two, Page 62)
338. Respondent told A.C. that if she used her insurance to pay for treatment, then she was wasting her time because he had to take notes while she was there. (A.C. Testimony, Day Two, Pages 50, 87-88)
339. A.C. moved from Massachusetts in May 2004 and filed a complaint with the Board in February 2005. (A.C. Testimony, Day One, page 68)

340. After A.C. moved to Arizona the car she was riding in was struck by a car and she experienced back pain so she went to two chiropractors. (A.C. Testimony, Day Two page 78)
341. A.C. testified that she told them that a former physical therapist had made sexual comments to her and they told her she should file a complaint with the Board. (A.C. Testimony, Day Two, Page 78)
342. During part of the time of her treatment with the Respondent, A.C. was taking Neurontin for pain which also made her sleepy. (A.C. Testimony, Day One, Page 71)
343. Respondent testified that he never told A.C. that she was a very sexual person and that he never discussed personal information with her. (Kain Testimony, Day 7, Page 156)
344. At the end of treatment on the day of A.C.'s birthday Respondent did kiss A.C.. When he saw that it startled her he immediately apologized. (Kain Testimony, Day 7, Page 165)
345. The treatment notes kept by the office show that A.C. returned three times for additional treatment after her birthday in April. (Kain Testimony, Day 7, Page 167)

Prosecution's Expert Testimony

346. Patricia Mehan ("Mehan") is a physical therapist licensed to practice in Massachusetts. She has been licensed for twenty years. (Mehan Testimony, Day Five, Page 5)
347. Mehan graduated from Northeastern University and has a masters in Public Health from Boston University. She is a clinical consultant for the Patient Handling and Movement Company. (Mehan Testimony, Day Five, Pages 5-7)
348. Mehan is familiar with the American Physical Therapy Association Guide for Professional Conduct and is familiar with the regulations of the Allied Health Board. (Mehan Testimony, Day Five, pages 8-9)
349. Mehan testified that a physical therapist has a duty based on his knowledge and preparation and experience and training to evaluate the patient and to treat the patient for the conditions that he finds apparent; develop a treatment plan and intervention,

develop goals along with the patient that they are in agreement with and then work to ameliorate those impairments. (Mechan Testimony, Day Five, page 10)

350. Mechan testified that a physical therapist has a duty to be sensitive to the patient's issues and be able to establish professional boundaries so that it doesn't appear that any personal relationship is influencing their treatment or care. (Mechan Testimony, Day Five, page 11)
351. Mechan testified that when a patient discloses sexual dysfunction issues in the initial evaluation, the physical therapist would establish that problem or impairment as a secondary issue. It would be appropriate to follow up on the symptoms. (Mechan Testimony, Day Five, page 13)
352. Mechan testified that the physical therapist should not engage in any kind of personal relationship with a patient because boundaries can get crossed, the patient is in a vulnerable state and has to place her trust in the physical therapist. (Mechan Testimony, Day Five, page 13)
353. It does not fall within the accepted range of practice in the physical therapy profession for physical therapists to have any sexual contact with patients, whether consensual or non-consensual. (Mechan Testimony, Day Five, Page 11)
354. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to ask a patient if she ever touches herself sexually because it would not have any bearing on the delivery of care. (Mechan Testimony, Day Five, Page 13)
355. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to suggest to a patient that she purchase objects to help her with her sexuality. (Mechan Testimony, Day Five, Pages 13-14)
356. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to have a patient stay in his home with him and his family. (Mechan Testimony, Day Five, Page 16)
357. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to treat a patient in his home unless the physical therapist had an established practice

setting at his residence, which would be separate from his family's private space. (Mechan Testimony, Day Five, Pages 16-17)

358. If a physical therapist learns that a patient is corresponding by email with his young daughter, he should let the patient know that it is not appropriate for her to correspond with a member of his family. (Mechan Testimony, Day Five, Pages 21-22)
359. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to invite or allow a current patient to have a meal at his home or to attend a concert with him and his family because it violates professional boundaries. (Mechan Testimony, Day Five, Pages 18-19)
360. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to kiss a patient on the lips or on the forehead. (Mechan Testimony, Day Five, Pages 14-15)
361. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to share with a patient information about his own visits to a psychologist. (Mechan Testimony, Day Five, Pages 27-28)
362. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to tell a patient that sexual contact with the physical therapist is part of the healing process. (Mechan Testimony, Day Five, Page 12)
363. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to tell a patient that the pain in her arms is related to her self-love. (Mechan Testimony, Day Five, Pages 25-26)
364. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to give a patient a pillow and tell her to hug it as a way to practice self-love. (Mechan Testimony, Day Five, Page 26)
365. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to tell a patient that she has deep eyes and that he can tell a lot about her by looking into her eyes, that she is a very sexual person, or that her boyfriend is a pushover or is not good enough for her. (Mechan Testimony, Day Five, Pages 23-25)

366. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to talk to a patient about his own marriage or his relationship with his parents. (Mechan Testimony, Day Five, Page 26)
367. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to tell a patient not to talk to any other people about what happened during certain treatment sessions. (Mechan Testimony, Day Five, Pages 28-29)
368. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to tell a patient that if she will not discuss personal issues, then she will not get one hundred percent better. (Mechan Testimony, Day Five, Page 29)
369. If a physical therapist believes that a patient has emotional problems that are impeding the physical therapy, then the physical therapist should make sure that the patient is receiving appropriate mental health care referrals because mental health treatment is outside the scope of the practice of physical therapy. (Mechan Testimony, Day Five, Pages 29-30)
370. Patients can sometimes develop attachments to the therapist and exhibit romantic feelings to the therapist. (Mechan Testimony, Day Five, Page 19)
371. If a patient tells a physical therapist that she wants to kiss him, the physical therapist should let the patient know that that is not appropriate. (Mechan Testimony, Day Five, Page 22)
372. If a patient expresses romantic or sexual interest in a physical therapist, the physical therapist should let the patient know that such interest is not appropriate and that the physical therapist cannot return those feelings. If the therapist's effort to reestablish the appropriate boundaries is unsuccessful, then the therapist should help the patient find another therapist. (Mechan Testimony, Day Five, Pages 19-21)
373. If a patient expresses romantic or sexual interest in a physical therapist, the therapist should document that fact in the patient's record and should also document what the therapist said and did in response. (Mechan Testimony, Day Five, Page 21)
374. Patients often come to physical therapists in a vulnerable state, and physical therapists are required to act in a trustworthy

manner toward patients and not to exploit them. (Mechan Testimony, Day Five, Pages 10-11)

375. Physical therapists have a duty to establish professional boundaries with patients so that a personal relationship with a patient does not influence or appear to influence their treatment or care. (Mechan Testimony, Day Five, Page 11)
376. It does not fall within the accepted range of practice in the physical therapy profession for a physical therapist to engage in any kind of personal relationship, romantic or otherwise, with a patient because it crosses professional boundaries. (Mechan Testimony, Day Five, Page 15)
377. The Guide for Professional Conduct for Physical Therapists is intended to serve physical therapists in interpreting the Code of Ethics. (Mechan Testimony, Day Five, Page 116)
378. During the process of exam and evaluation the physical therapist may elicit significant personal information, including private, perhaps intimate aspects of the patient's life. (Mechan Testimony, Day Five, Page 127)
379. As a result of these communications, some patients may develop a degree of affection for their physical therapist. (Mechan Testimony, Day Five, Page 128)

Respondent's Expert Testimony
Giammatteo

380. Thomas Giammatteo ("Giammatteo") is a doctor of chiropractic medicine and is a licensed physical therapist in Massachusetts and approximately twelve other states. (Giammatteo Testimony, Day Six, Page 17)
381. Giammatteo's business is called Desert Life Health Associates which is a multi-disciplinary clinic located in Bloomfield, Ct. Its specialty is integrated manual therapy. The members of the practice include medical doctors, naturopaths, chiropractors, physical therapists and massage therapists. (Giammatteo Testimony, Day Six, Page 19)
382. Giammatteo is on the Post Graduate Board of Natural College of Chiropractic for Sports Medicine. He gives one to four lectures a

year to physical therapy associations in the state on the health care disciplines. (Giammatteo Testimony, Day Six, Page 21)

383. Giammatteo is a graduate of Northeastern University and Boston Bouve College of Physical Therapy. He received his doctor of chiropractic in 1992 and had a fellowship with an osteopathic physician and then became a licensed massage therapist. (Giammatteo Testimony, Day Six, Page 23)
384. Giammatteo's professional time is spent fifty percent on clinical care and fifty percent on administration and education. (Giammatteo Testimony, Day Six, Page 24)
385. Giammatteo has approximately eighteen physical therapists working in his business. (Giammatteo Testimony, Day Six, Page 24)
386. The state of Connecticut recognizes integrated manual therapy as a separate profession. (Giammatteo Testimony, Day Six, Page 25)
387. Giammatteo testified that integrated manual therapy is a functional and structural approach to physical therapy that works with all the systems of the body. It is about placement of the hands on the body and uses different palpation skills for diagnostics and various treatment techniques. (Giammatteo Testimony, Day Six, Page 27-28)
388. Giammatteo testified that practitioners of integrated manual therapy palpate from head to toe; palpate every single tissue to determine whether the fascial planes move easily or with some resistance. (Giammatteo Testimony, Day Six, Page 27)
389. Giammatteo testified that Respondent's professional reputation is outstanding. (Giammatteo Testimony, Day Six, Page 37)
390. Giammatteo testified that Respondent has always acted in accordance with the standards of conduct in the physical therapy profession. (Giammatteo Testimony, Day Six, Page 38)
391. Giammatteo testified that he knows of no complaints registered against the Respondent, other than the ones that are the subject of the hearing. (Giammatteo Testimony, Day Six, Page 39)
392. Giammatteo is published in four professional journals. (Giammatteo Testimony, Day Six, Page 26)

393. Giammatteo has been a business partner and friend of the Respondent for many years. (Giammatteo Testimony, Day Six, Page 34)
394. Giammatteo reviewed the medical records of K.S. and A.C. before testifying. (Giammatteo Testimony, Day Six, Page 39)
395. Giammatteo testified that it is common and customary practice that a patient coming from out of state would receive up to eleven hours of treatment in a two day period. (Giammatteo Testimony, Day Six, page 49)
396. Giammatteo testified that at times the dialogue between the therapist and the patient ends up relating to more than just the actual symptoms and care and treatment. For instance, if the therapist is treating a patient with painful vaginal lips or erectile dysfunction, the therapist would ask what positions bother the patient. (Giammatteo Testimony, Day Six, page 52)
397. Giammatteo testified that at times the conversation or the dialogue between the therapist and the patient can get into very personal intimate issues. (Giammatteo Testimony, Day Six, page 53)
398. Giammatteo testified that the manual therapy and treatment plan and the actual care rendered to K.S. by Respondent were reasonable and conformed with good, acceptable physical therapy practice. (Giammatteo Testimony, Day Six, page 54,55)
399. Giammatteo testified that the therapist does not violate any of the ethical principles if he accepts a hug as a sign of gratitude from a patient. (Giammatteo Testimony, Day Six, page 58)
400. Giammatteo testified that it would not be a violation of any of the ethical principles if a therapist were to accept a gift from a patient. (Giammatteo Testimony, Day Six, page 58)
401. Giammatteo testified that he has never known the Respondent to violate any of the ethical principles or not know where the proper boundaries lie. (Giammatteo Testimony, Day Six, page 60)
402. Giammatteo testified that in his opinion Respondent exercised sound professional judgment in his treatment of K.S. and A.C. (Giammatteo Testimony, Day Six, page 65)

403. Giammatteo testified that it would not be appropriate for a physical therapist to disclose to a patient that he was having problems in his marriage. (Giammatteo Testimony, Day Six, page 83)
404. Giammatteo testified that it would not be appropriate for a current patient to spend the night at the residence of a treating physical therapist.) (Giammatteo Testimony, Day Six, page 83, 84)
405. Giammatteo was not present for any of the treatment rendered by Respondent to A.C. or to K.S. (Giammatteo Testimony, Day Six, Page 96)
406. Respondent, Giammatteo, and Giammatteo's wife have collaborated on a book. (Giammatteo Testimony, Day Six, Page 36)
407. Respondent is Dean of the Connecticut School of Integrated Manual Therapy, which was founded by Thomas Giammatteo and his wife. Thomas Giammatteo's wife is Educational Director of the School, and either he or his wife is the President of the School. (Giammatteo Testimony, Day Six, Pages 90-91)
408. Respondent's ability to practice physical therapy affects Giammatteo's business enterprises. (Giammatteo Testimony, Day Six, Page 93)

Gordon

409. Carol Gordon ("Gordon") is a licensed physical therapist and a partner in Regional Physical Therapy. She is licensed in Missouri, Connecticut and Massachusetts. (Gordon Testimony, Day Six, Page 117)
410. Gordon graduated from St. Louis University in 1979 with a B.S. in physical therapy. (Gordon Testimony, Day Six, Page 118)
411. Gordon has known Giammatteo for sixteen years. (Gordon Testimony, Day Six, Page 121)
412. Gordon has known the Respondent for eighteen years. (Gordon Testimony, Day Six, Page 132)
413. Gordon has not, in her observations and work with the Respondent, observed him violate the Code of Ethics. (Gordon Testimony, Day Six, Page 135-137)

414. Gordon testified that it is common for patients to develop emotional or sexual feelings or attractions towards a physical therapist. (Gordon Testimony, Day Six, Page 154)
415. Gordon testified that if such an attachment developed boundaries should be set and discussed with the therapist and the patient. (Gordon Testimony, Day Six, Page 154)
416. Gordon testified that this event should be documented in the patient chart and maybe in an incident report. (Gordon Testimony, Day Six, Page 156)
417. Gordon testified that if a physical therapist knew or should have known that a patient had developed emotional or sexual feelings toward him, it would be best not to have the patient spend the night in his house. (Gordon Testimony, Day Six, Page 158)
418. Carol Gordon was not present for any of the treatment rendered by Respondent to A.C. or to K.S. (Gordon Testimony, Day Six, Pages 163-64)

Board Regulations

419. The Code of Ethics of the American Physical Therapy Association sets forth principles of ethical practice of physical therapy. The Code of Ethics is silent on the topics of accepting gifts from patients, having dinner with patients, inviting the patient to stay overnight in the therapist's home, allowing a patient to have an e-mail relationship with a therapist's daughter. (Exhibit 19)
420. The Code of Ethics of the American Physical Therapy Association, principle 4 states that "A physical therapist shall exercise sound professional judgment. (Exhibit 19)
421. The APTA Guide for Professional Conduct is intended to serve physical therapists in interpreting the Code of Ethics of the American Physical Therapy Association. (Exhibit 20)
422. Principle 4.4 of the guide states that "A physical therapist shall not invite, accept, or offer gifts, monetary incentives, or other considerations that affect or give an appearance of affecting his/her professional judgment. (Exhibit 20)

Conclusions of Law

1. Based on the Findings of Fact, the Respondent's conduct violates Board regulation 259 CMR 5.05(1), the Code of Ethics of the American Physical Therapy Association ("APTA Code"), and the Guide for Professional Conduct Principle 1 for failing to respect the rights and dignity of all individuals.
2. Based on the Findings of Fact, the Respondent's conduct violates Board regulation 259 CMR 5.05(1), the APTA Code, and the Guide for Professional Conduct Principle 2 for failing to act in a trustworthy manner towards patients/clients.
3. Based on the Findings of Fact, the Respondent's conduct violates 259 CMR 5.05(1), the APTA Code, and the Guide for Professional Conduct Principle 2.1(A) for allowing his conduct to be guided by considerations other than his concern for patients and contrary to the best interest of patients.
4. Based on the Findings of Fact, the Respondent's conduct violates 259 CMR 5.05(1), the APTA Code, and the Guide for Professional Conduct Principle 2.1(B) for exploiting any aspect of a physical therapist/patient relationship.
5. Based on the Findings of Fact, the Respondent's conduct violates 259 CMR 5.05(1), the APTA Code, and the Guide for Professional Conduct Principle 3 for failing to practice physical therapy in compliance with governing laws and regulations.
6. Based on the Findings of Fact, the Respondent's conduct violates Board regulation 259 CMR 5.01(1), the APTA Code, and the Guide for Professional Conduct Principle 4.1(A) for failing to exercise professional judgment in the best interests of patients/clients.
7. Based on the Findings of Fact, the Respondent's conduct violates M.G.L. c. 112, § 23K (f); for acting in a manner that is professionally unethical according to ethical standards of the profession of physical therapy.

Discussion

Board's Authority to Discipline

The role of the boards of registration is to take primary responsibility in the regulation of the practices of various professions in the Commonwealth, including the practice of physical therapy and athletic training, in order to promote the public health, welfare, and safety. *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, 143 (1990). The courts have conferred upon these boards considerable latitude in shaping appropriate sanctions and the discretion to impose sanctions that will best protect the public. *Levy v. Board of Registration & Discipline in Medicine*, 378 Mass. 519, 525 (1979); *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299 (1981). The Board's mandate is to police the profession and discipline those members who do not live up to the solemn nature of their public trust. *Levy* at 528.

The Board's decision whether or not to discipline a licensee under its jurisdiction must be based upon "such evidence as a reasonable mind might accept as adequate to support a conclusion." M.G.L. c. 30A, §1(6). The Board is obliged to make determinations "upon consideration of the entire record, including evidence in the record that fairly detracts from the [board's] opinion." *Cohen v. Board of Registration in Pharmacy*, 350 Mass 246, 253 (1966); *Arthurs v. Board of Registration in Medicine*, 383Mass 299, 304 (1981) (While the board is free to evaluate evidence in light of its expertise, it cannot use its expertise as a substitute for evidence in the record).

Board Regulations

259 CMR 5.05 adopts the Code of Ethics, Guide for Professional Conduct and Standards of Physical Therapy Services and Physical Therapy Practitioners ("Guide") of the APTA as the ethical standards of practice for persons holding a license to practice physical therapy in Massachusetts. The Guide is intended to serve physical therapists in interpreting the Code of Ethics in matters of professional conduct. The

Guide provides guidelines by which physical therapists may determine the propriety of their conduct. Principle 1 of the Code of Ethics states that "A physical therapist shall respect the rights and dignity of all individuals and shall provide compassionate care." Principle 2 of the Code of Ethics states "A physical therapist shall act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy practice." Guide 2.1 states in part that "Patients/clients often come to the physical therapist in a vulnerable state and normally will rely on the physical therapist's advice, which they perceive to be based on superior knowledge, skill, and experience." Principle 4 of the Code of Ethics states "A physical therapist shall exercise sound professional judgment."

Expert Testimony

The Board must rely on expert testimony to determine whether the Respondent's conduct fell below the acceptable standards in the practice of physical therapy. The Board does not credit the testimony of the two experts offered by the Respondent because they revealed significant biases that discredit their testimony: both have been friends and colleagues of the Respondent for approximately eighteen (18) years; Giammatteo and Respondent are business partners and collaborators on publications and they are co-administrators of the Connecticut School of Integrated Manual Therapy. It would damage the business of Giammatteo to have one of his therapists –the Respondent- disciplined by the Board. Gordon offered no relevant testimony other than that Respondent was a friend and colleague and that she had never observed him violate any guidelines. Therefore, when weighed against the impartiality of the Prosecution's expert who had nothing to gain by her testimony and her demonstrated knowledge of the APTA guidelines, the Board relies on the testimony of the Prosecution's expert to establish the standards of practice and to determine whether the Respondent's conduct adhered to those standards.

Allegations of sexual misconduct

The Board is faced with a classic “she said” “he said” situation as to whether or not sexual activity took place during K.S.’s treatment sessions at Jay Kain Physical Therapy. K.S. alleges that she and Respondent had an ongoing consensual sexual relationship during her treatment sessions from June 2001 to March 2002. She further alleges that at the last session he raped her. The Respondent categorically denied any sexual involvement with K.S. After a thorough review of the record, the Board finds no evidence to support K.S.’s allegations of a consensual sexual relationship.

In support of the contention that Respondent raped K.S., the Prosecution introduced the police report filled out when K.S. reported the rape five (5) months after it was alleged to occur. Respondent was never arrested or charged with any crime as a result of that report. The Respondent must be presumed innocent until proven guilty.

The allegations of K.S. against the Respondent are extremely serious. With this in mind, the Board was very careful in its review of the evidence in the record before it. The Board cannot find by a preponderance of the evidence that either a consensual or nonconsensual sexual relationship took place or did not take place.

However, the Board does not have to decide whose testimony to credit in order to find that the Respondent’s conduct with respect to K.S. and A.C. violated important Board regulations and APTA guidelines.

Boundary Violations

Although the Code of Ethics and the Guide are silent on the subject of boundary violations, Prosecution’s expert testified that it does not fall within the accepted range of practice of the physical therapy profession for a physical therapist to have a patient stay in his home with him and his family because it is not within the realm of physical therapy care to provide housing for a patient. That same expert

testimony established that a physical therapist has a duty to be sensitive to the patient's issues and be able to establish professional boundaries. Expert testimony demonstrated that a physical therapist should not engage in any kind of personal relationship with a patient because boundaries can get crossed and because the patient is in a vulnerable state and has to place her trust in the physical therapist. Patients with chronic pain are particularly vulnerable and often seek non-conventional therapies to alleviate their pain. This places them in a heightened state of vulnerability; a state which the Respondent should have been particularly sensitive to. Respondent's failure to respect this boundary is in violation of the Principles of the Code of Ethics. In this case, Respondent knew from his intake data with K.S. that she was in chronic pain, had experienced lengthy sexual dysfunction, had three marriages and had suffered abuse in her marriages and as a child. He knew or should have known that these conditions rendered her vulnerable and in need of help. Therefore, when he invited her to a barbecue at his house, invited her to spend the night at his house and met her in Pittsburgh, he was violating a necessary professional boundary.

K.S. testified that the Respondent treated her at his home. Respondent testified that he did not. K.S. testified that she had breakfast at the Pittsburgh airport with the Respondent. Respondent testified that he had dinner with K.S. and ██████████ in Pittsburgh, not breakfast alone with K.S. K.S. testified that when she spent the night at the Respondent's home she had breakfast with the family the next morning. ██████████ testified that when she woke up that morning, K.S. was gone and had left a thank you note addressed to her. K.S. testified that she spent the night in the Respondent's daughter's room. Respondent testified that she stayed in the basement guest suite. K.S. testified that she told the Respondent about her e-mail contact with his

daughter. Respondent testified that he did not know about the e-mail relationship.

In spite of this differing testimony of these events, by engaging K.S. socially, Respondent created a false family atmosphere attractive to the needs of K.S., and unwittingly or not, he exploited her vulnerability and neediness and in so doing, violated the Principles of the Code of Ethics. The dynamic of the patient/therapist relationship is such that Respondent's actions perverted the relationship, transforming it into a quasi-social relationship which drew K.S. into the intimacy of his family.

Whether Respondent invited only [REDACTED] to the barbecue, and [REDACTED] brought K.S., is beside the point. Respondent testified that he thinks it is appropriate for a current patient to have a meal at the residence of a treating therapist and that he has many current patients come over to his house. As a result of Respondent's failure to maintain appropriate boundaries, K.S. also developed personal relationships with other members of Respondent's family. She had an email correspondence with Respondent's teenage daughter, took that daughter shopping and to the pool. Also, Respondent's wife considered K.S. a "family friend." This fed into K.S.'s need to be part of a family situation. Even if Respondent did not know that K.S. had an e-mail relationship with his daughter, by inviting K.S. into the penumbra of his family, he is responsible for her reliance on the perceived good will of the family, thereby violating Principle 1 for making poor decisions, Principle 2 for taking advantage of a patient in a vulnerable state and Principle 4 for not making decisions in the patient's best interest.

Furthermore, Respondent invited and allowed K.S. to stay at his home when she needed emergency treatment in July 2001, only about a week after she had just traveled to Great Barrington for treatment with him. Respondent testified he invited her stay in his home to help her because she could not afford to pay for both more treatment and another

hotel stay so soon after her last trip. However, Respondent could have avoided the boundary violation in this situation where a patient is traveling a long distance for treatment by resolving issues such as these prior to the commencement of treatment. Instead, Respondent had K.S. stay in his home and eat dinner with him and his family.

He should not have continued to socialize with K.S. by meeting her in Pittsburgh for dinner along with [REDACTED]. Again, he was putting forth a false impression by engaging in social activities with a patient, in violation of Principle 2 and was making poor decisions in violation of Principle 1.

Respondent admits that on more than one occasion, he was alone with K.S. in his office after the office had closed for the evening, including on March 4 and 5, 2002. Respondent should have recognized the potential for these protracted, late night treatment sessions to compromise the therapist/patient relationship. Being alone with K.S. left Respondent open to K.S.'s allegations regarding sexual misconduct.

Respondent also committed less severe but nevertheless inappropriate boundary violations while treating A.C. Respondent asked A.C. inappropriate questions about her sexual relationship with her boyfriend.

Most dramatically, Respondent's reaction when A.C. said that she wanted to kiss him was entirely unprofessional and inappropriate. As the Prosecution's expert testified, if a patient tells a physical therapist that she wants to kiss him, the therapist should let the patient know that that is not appropriate and that he cannot return such feelings. The expert also testified that if a patient expresses romantic or sexual interest in a physical therapist, the therapist should document that fact in the patient's treatment record and should also document what the

therapist said and did in response. Respondent's treatment record for A.C. does not document this incident at all.

Respondent admits that he kissed A.C. on the lips on or around her birthday in April 2004. A.C. testified that Respondent said "Happy birthday," and then leaned forward and kissed her on the lips. Respondent claims that he kissed her on the lips only because his eyes were closed and because he and A.C. "turned exactly the same way." However, he admits that he failed to document the kiss anywhere in his treatment notes and that he did not notify anyone else in his office or file an incident report. This kiss was yet another example of Respondent's pattern of boundary violations with female patients.

Failure to act in a trustworthy manner

Both K.S. and A.C. came to Respondent in a vulnerable state, and Respondent failed to act in a trustworthy manner toward them. Instead, he exploited their vulnerability, their trust in him, and their reliance upon him. Patients, like K.S. and A.C., who experience ongoing, exquisite pain place the person who could resolve that pain on a pedestal.

When both K.S. and A.C. began treatment with Respondent, they were suffering severe chronic pain that impeded their ability to function and to perform basic daily activities. K.S. had been living with pain for fifteen years and had not achieved much success with the other doctors and physical therapists with whom she had been treating. Her orthopedic physician, [REDACTED], had discussed with her the possibility of a risky and invasive surgery. K.S. was fearful about the surgery and felt desperate to find an alternative way to reduce her pain. Her physical therapist and close friend [REDACTED] told her that Respondent did advanced therapy that could help improve her condition. K.S. was willing to travel from Pittsburgh, Pennsylvania, to Great Barrington, Massachusetts, because she trusted [REDACTED] opinion that Respondent

could help relieve her pain. Respondent raised K.S.'s hopes by advising her against the surgery she feared and asking her to commit to physical therapy with him instead.

Similarly, A.C. had seen several other medical practitioners who had failed to reduce her pain. She began treating with Respondent after her other physical therapists told her that he was the only person who could help her and was her last hope. In short, K.S. and A.C. both came to Respondent feeling desperate for his help, and they were therefore extremely vulnerable.

Respondent testified that he knows his patients place their trust in him. He was aware of the desperation and vulnerability on the part of K.S. and A.C. when they came to him for treatment. Both women told Respondent that they felt depressed about being in pain for so long. He also knew that K.S. was particularly vulnerable, having suffered some abuse earlier in her life and two failed marriages. Respondent, therefore, should have been especially aware of the importance of establishing and maintaining appropriate professional boundaries with these patients.

Furthermore, Respondent attempted to engage both K.S. and A.C. in discussions of their emotional needs and to treat what he believed were their emotional problems, which was outside the scope of appropriate physical therapy practice. Respondent told A.C. that the pain in her arms was related to self-love and that her condition had not improved because she did not love herself. He repeatedly told her that she needed to learn to love herself, and he once gave her a pillow and told her to hug it and pretend it was herself as a way to practice self-love. Respondent also once gave K.S. a pillow and then left the treatment room while she held the pillow and cried. Respondent admits that he has had patients, including A.C., hug a pillow as part of his treatment. Respondent also testified that he believes that he can touch a patient's body to elucidate emotional problems.

With both K.S. and A.C., Respondent's attempts to delve into what he perceived as their emotional problems demonstrate a pattern of inappropriate conduct for a physical therapist. Early on, Respondent began asking both women about what they needed and wanted. When K.S. told Respondent that she needed to get better and live a happy, normal life, he repeated the question and told her to answer from her heart, not her head. Similarly, Respondent told A.C. that she would not get better until she knew what she really wanted. When she told him that she wanted to get better and be out of pain, Respondent told her that that was not what she was thinking, and he pressured her to come up with a different answer. Respondent even told A.C. that if she did not talk to him about her emotional issues, then she would not get 100 percent better. As Prosecution's expert testified, if a physical therapist believes that a patient has emotional problems that are impeding the physical therapy, then the therapist should make sure that the patient is receiving appropriate mental health care referrals because mental health treatment is outside the scope of the practice of physical therapy.

After beginning treatment with Respondent, both women were very happy with their improvement, and they both felt hopeful that he could cure their chronic pain problems. K.S. experienced significant improvement in her condition after her treatment with Respondent in April 2001. When she returned to him for further treatment in June 2001, she told him that her pain was greatly reduced and that she was very happy with the work that he had done. At that point, she had already begun to feel dependent on Respondent. She thanked him for being a caring man and told him that she was grateful for his help and treatment. K.S. kept going back to Respondent because she was making progress in her ongoing treatment, and ████████ told her that she could not continue treating her in Pittsburgh without the notes she received from Respondent. K.S.'s orthopedic physician, ████████, was also in

full support of her continuing physical therapy with Respondent. When K.S.'s condition began to deteriorate in late 2001 and early 2002, she considered ending her treatment with Respondent, but both Respondent and ██████ urged her to continue, and Respondent warned her that her condition would spiral out of control if she quit. At this juncture, Respondent should have reassessed the on-going treatment plan with patient's unique situation in mind – distance she needed to travel for the therapy, monetary concerns, and the obvious possibility that she was forming an inappropriate bond with the Respondent.

Similarly, A.C. experienced a reduction in pain after she began physical therapy with Respondent. Her improvement made her feel hopeful for the first time in a long time. After Respondent made comments that made her uncomfortable, she thought about not going back to him, but she felt desperate to get better, and Respondent was the first physical therapist who had reduced her pain at all. She believed that continuing her treatment with Respondent was her only hope to get better and that she therefore had no choice but to do so. As she became increasingly uncomfortable with Respondent's inappropriate conduct, A.C. considered trying to find another physical therapist, but after discussing it with her mother and her boyfriend, she concluded that she was out of options because she had seen so many practitioners who did not reduce her pain. A.C. finally decided to end her treatment with Respondent because she was so disturbed that he had kissed her on the lips.

Respondent's behavior demonstrates where boundary violations can lead and how dangerous violations of this nature are to both patient and therapist. The Respondent's actions warrant disciplinary action against his licenses as a physical therapist and athletic trainer. The Respondent's conduct reflects a pattern of failing to maintain appropriate professional boundaries with patients, failing to act in a trustworthy manner toward patients, and exploiting the physical therapist/patient

relationship. Respondent's conduct violated professional ethical standards and Board regulations.

In imposing a sanction on the Respondent, the Board is mindful of its obligation to refrain from imposing sanctions in an arbitrary and capricious manner. Therefore, the Board considered sanctions meted out in similar matters before it and the record before it in this matter. In fashioning a sanction, the Board also considers its mandate to protect the public and the integrity of the physical therapy profession. Kvitka v. Board of Registration in Medicine, 407 Mass. 140, 143 (1990); Levy v. Board of Registration & Discipline in Medicine, 378 Mass. 519, 525 (1979); Arthurs v. Board of Registration in Medicine, 383 Mass. 299 (1981).

Conclusion and Order

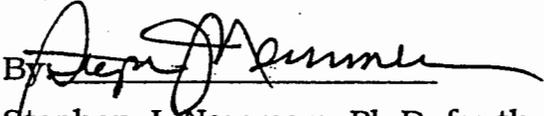
Based on the Findings of Fact and Conclusions of Law set out above the Board concludes that the Respondent's licenses are subject to discipline. The Board voted in favor of a motion to issue this Order and incorporate the following Sanction on June 28, 2007 by the following vote: In favor: ALL abstaining: NONE absent: Charles Redmond, Denise Sargent, Nancy DeMattia, Frank Mastrangelo. The Sanction against the Respondent is the following: The Respondent's licenses to practice as a Physical Therapist and as an Athletic Trainer in the Commonwealth of Massachusetts are suspended for Three (3) years. The suspension is stayed for a period of three (3) years ("the stayed suspension period"). Respondent must comply with following terms and conditions during the stayed suspension period: Respondent may not practice physical therapy in a home setting (either his home or the patient's home); Respondent must have a second adult female present in the treatment room when treating female patients. The presence and identity of the second adult female must be documented in the treatment notes; and Respondent must abide by all Board statutes, rules and regulations.

Failure to comply with any term or condition set forth above at any time during the period of stayed suspension, shall result in imposition of the entire three (3) year suspension. Sanctions are effective on the date of this Final Decision and Order.

RIGHT TO APPEAL

This is a final decision of the Board. Respondent is hereby notified of his right to appeal this Final Decision and Order by filing a written petition for judicial review within thirty (30) days after entry of this Order, pursuant to M.G.L. c. 112, §64 and M.G.L. c. 30A §§ 14 and 15.

Board of Registration of Allied
Health Professionals

By 
Stephen J. Nemmers, Ph.D. for the
Board of Registration of Allied
Health Professionals

Date: June 29, 2007