

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF PSYCHOLOGICAL EXAMINERS  
OAL DOCKET NO. BDS 5323-94

FILED WITH THE BOARD OF  
PSYCHOLOGICAL EXAMINERS  
ON August 26, 1996

In the Matter of the Suspension :  
or Revocation of the License of :  
:  
JOHN M. ROTONDI, Ph.D. :  
:  
Licensed to Practice Psychology :  
in the State of New Jersey :  
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FINAL ORDER

On December 13, 1993 the Attorney General filed an administrative complaint against John M. Rotondi, Ph.D., a psychologist licensed to practice in New Jersey. The complaint, grounded upon allegations of misconduct made by a former patient of Dr. Rotondi's, charged Dr. Rotondi with: engaging in sexual conduct with a patient (Count 1); accepting gifts amounting to exploitation of a patient for financial benefit and/or failing to provide competent and responsible treatment for the patient's emotional disorder (Count 2); billing for services not rendered (Count 3); abandoning his patient by terminating therapy abruptly (Count 4); and failing to maintain a patient record that accurately reflected patient contact with the practitioner (Count 5). The complaint sought suspension or revocation of Dr. Rotondi's license, penalties, costs, and reimbursement to the complaining patient.

On or about January 11, 1994, Dr. Rotondi filed an answer to the complaint. The Board of Psychological Examiners transmitted the matter to the Office of Administrative Law as a contested case. The hearing in the matter spanned nine days in March and April 1995. The

Honorable Marie Simonelli, ALJ, heard testimony from P.C., the complaining patient,\* two expert witnesses for the complainant (Catherine Brown, M.D., P.C.'s current treating psychiatrist, and Frank Dyer, Ph.D.), P.C.'s sister, and a colleague. Respondent presented the testimony of Dr. Rotondi, his wife Kim Rotondi, two psychologists as fact and character witnesses (Mathias Hagovsky, Ph.D., and Michael Zampardi, Ph.D.), Deborah Brandchaft Matro, M.D., as an expert witness, and two other fact witnesses. The record, which includes approximately 120 documents, photographs, tape recordings, and other physical evidence, closed on October 2, 1995 with the submission of post hearing briefs.

Judge Simonelli rendered her initial decision on February 14, 1996. She found that the Attorney General had failed to prove any of the allegations of the complaint and ordered it dismissed. Her findings of fact and conclusions were based primarily on her determination that P.C. was not a credible witness. She further found that Dr. Rotondi and his expert witness Dr. Matro were highly credible. The Board, upon application of the Attorney General, extended the time for filing exceptions to the initial decision.

On April 22, 1996, the Board, after hearing oral argument of counsel, reviewed the initial decision, exceptions filed by the Attorney General, the reply to exceptions submitted by Dr. Rotondi, and the record (including transcripts and evidence). Following that comprehensive review, the Board determined that it would accept certain findings of fact and conclusions of Judge Simonelli, including the conclusion that Dr. Rotondi did not abandon his patient. It did, however, determine that there was sufficient, credible evidence in the record to find that Dr.

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\*The Board, upon motion of the Attorney General, has ordered that the patient be identified only by her initials and that the record be sealed except for the pleadings and this Final Order.

Rotondi had failed to provide P.C. with competent and responsible treatment for her emotional disorder in that he failed to terminate treatment when it was apparent that the patient was not benefitting from continued treatment. The Board further found that respondent failed to maintain an adequate patient record in violation of Board rules and standards of practice. Having found violations of the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1, et seq., and regulations, N.J.A.C. 13:42-1.1 et seq., the Board advised the parties that a hearing to receive evidence in mitigation of any penalty to be imposed would be scheduled.

Prior to the mitigation hearing, counsel for Dr. Rotondi filed a motion for reconsideration. Dr. Rotondi asserted that the record did not support the findings of the Board, i.e., that he should have terminated the course of therapy when it was clear that the patient was not benefitting from it and that he failed to maintain adequate patient records. Dr. Rotondi further asserted that it would be fundamentally unfair to impose discipline on him for failure to terminate therapy when he had not been charged with a violation of the regulation governing termination and in fact had presented a defense based on the complaint's charge of patient abandonment, which he contended was the antithesis to an allegation of continuing therapy longer than necessary or appropriate.

On June 24, 1996 the Board considered the motion for reconsideration, including oral argument of counsel. The Board reaffirmed its determination that there is sufficient, credible evidence in the record, as set forth below, to support its findings that the acceptance of gifts and the failure to appropriately address the patient's behavior reflect the lack of efficacy of therapy. It was reasonably clear that the patient did not benefit from the therapy provided and that Dr.

Rotondi should have taken appropriate steps to terminate the therapeutic relationship with P.C.\* Because Dr. Rotondi was not charged with failing to terminate therapy, he did not present expert testimony on this matter. As such, the Board, despite its ability to use its own expertise, declined to impose a disciplinary sanction on him for that failure. The Board also reaffirmed its finding that Dr. Rotondi failed to maintain an adequate patient record for P.C., but found in light of the entire matter, including the dismissal of the very serious allegations relating to sexual misconduct, financial exploitation of a patient, and fraudulent billing practices, that the failure, while notable, did not rise to the level of formal disciplinary sanction.

The testimony presented at the hearing by the complaining witness and Dr. Rotondi differs dramatically in many respects. Judge Simonelli, after her opportunity to observe the demeanor of witnesses, determined that P.C. was not a credible witness and discounted substantially all of her testimony. The Board has essentially accepted that credibility determination and bases its findings on the stipulations of the parties, the testimony of Dr. Rotondi himself, and other witnesses whom the judge found to be credible.

P.C., a teacher employed by the Newark Board of Education, began treatment with Dr. Rotondi in January 1988. Sessions were scheduled usually twice a week, with occasional phone sessions. That course of therapy continued until October 1, 1992. The patient, according to Dr. Rotondi, presented with depression and discussed family issues, including her mother's terminal illness. She refused Dr. Rotondi's suggestion of psychological testing. During

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\*The administrative law judge concluded that P.C. should have terminated therapy on her own or filed a malpractice case against Dr. Rotondi because she claimed her condition worsened over time. (Initial Decision at 42.) The Board disagrees with and expressly declines to adopt this conclusion. It is the responsibility of the professional to assess when treatment is no longer efficacious and to take appropriate action.

approximately the first eighteen months, P.C. gradually provided more information on physical and verbal abuse she experienced by family members and others. Dr. Rotondi testified that by late summer, early fall of 1989 and continuing through December 1990, P.C. began to have significant mood changes. She relayed several instances of physical abuse and reported that her boyfriend "David" had injured someone who did not treat her properly. According to Dr. Rotondi, P.C. began to act out her transference by her reported behavior with other men. Her attitude toward him vacillated between wanting to be a close friend and accusing him of treating her just for the fee earned. She presented Dr. Rotondi with some gifts, including flowers. During this time, Dr. Rotondi maintained that he attempted to refer P.C. for a psychiatric assessment to determine whether medications would alleviate her condition. He also discussed hospitalization and attempted to refer P.C. to a female therapist, but she rejected the therapist he suggested.

By December 1990, Dr. Rotondi was able to persuade P.C. to admit herself to Fair Oaks Hospital for an evaluation to rule out biochemical and physical factors as a cause of depression. After a few days, however, she was extremely dissatisfied with the treatment she was receiving and signed herself out. In the days and months following, P.C.'s condition deteriorated significantly. P.C. made numerous calls to the doctor's office, at times up to fifteen a day. She sent numerous cards. P.C. gave him a picture she had painted, which he hung on a wall in his office. She told Dr. Rotondi that her boyfriend David would hurt people who were not nice to her and that she had a gun, which he interpreted as threats. She left messages on his answering machine telling him to "watch his back." Gifts of flowers and fruit baskets increased, arriving every four to six weeks. At Christmas, she gave Dr. Rotondi a sweater, two blouses for his wife,

and outfits for his children. P.C. also gave Dr. Rotondi workbooks (which were being discarded by her school) for his children, gifts of handkerchiefs and cologne. He testified that he discarded some of the items and that he tried to return others. While P.C. testified that she gave other gifts as well, Dr. Rotondi specifically denied receiving those items. Dr. Rotondi testified that he did the best he could in terms of setting boundaries.

After her short stay at Fair Oaks, P.C.'s depression became more severe. Dr. Rotondi testified that she demanded he keep no notes or other records relating to her. He changed the subject and began thereafter to create notes only after the sessions. During her sessions, she would frequently sit on a blanket on the floor, hold a teddy bear, and cry. She began using the names Katherine and Patrice on cards and telephonic messages. P.C. was on medication but, according to Dr. Rotondi, she refused permission to discuss her case with the prescribing physician. He testified that in light of her deteriorating condition, he continued his attempts at referral, stating that he knew a year before the therapy ended that she would have benefitted from having a different therapist. Dr. Hagovsky and Dr. Zampardi both testified to their informal discussions with Dr. Rotondi as to his need to terminate the therapeutic relationship with P.C. Apparently, after attempts to terminate, P.C. would apologize and Dr. Rotondi would then continue treatment. Throughout this time, his diagnosis of P.C.'s disorder was adjustment disorder with anxious mood. Dr. Rotondi testified that, looking back, he did not disagree with a diagnosis of borderline personality, and that he did not view P.C.'s gift giving as an indication of an obsessive compulsive disorder.

The last date that Dr. Rotondi saw P.C. was October 1, 1992. It was not a scheduled appointment. (Dr. Rotondi testified that he had again discussed termination with her on

September 28, 1992, and had not scheduled any further appointments.) P.C. confronted Dr. Rotondi about certain billing practices, claiming that he was double billing and had billed for sessions that she did not have. Dr. Rotondi took out her file and, when P.C. became aware that he had maintained session notes and other documents relating to her in his file, he stated that an infuriated P.C. swept away the file and began tearing up the notes and documents. He testified that this behavior continued for twenty to twenty-five minutes and that, given her state, he assisted her in the destruction of records. He was able to retain some notes by sliding them into an open desk drawer. She then removed the picture she had given him from the wall. Dr. Rotondi accompanied her from his office and advised that he would call her that evening to discuss the matter. She took the records with her. Dr. Rotondi created a note relating to the final session. (R-17) The note discusses security and a possible restraining order. It did not mention that P.C. had destroyed, with his help, her records. Dr. Rotondi testified that reference to the incident was not included because he believed it was not really important at that time.

That evening Dr. Rotondi telephoned P.C. and left a message advising her that he would not see her anymore based on her extreme behavior and threats she had made. He stated that he would provide a referral. Dr. Rotondi sent a termination letter on October 3, 1992. In the next months, P.C. continued to make numerous telephone calls to Dr. Rotondi. She eventually began treatment with Catherine Brown, M.D., who requested the patient records from Dr. Rotondi. In a letter to Dr. Brown in April 1993, Dr. Rotondi enclosed records and relayed the record destruction incident (P-60B). In that letter he stated that P.C.'s request that he forward her records was part of her ongoing harassment. Dr. Rotondi did subsequently create a patient record in response to a Board request. Notably absent in that reconstruction is any mention of the

blanket or teddy bear P.C. used in the months following her hospitalization at Fair Oaks. When asked about the omission, Dr. Rotondi asserted that he did not believe that this information was clinically significant.

There is no doubt that this was a difficult case for Dr. Rotondi. It is similarly difficult for this Board. Litigation seeking disciplinary sanctions is a particularly inapt forum to deal with the issues raised. That is not to say that the Board concludes that the management of patient P.C. was appropriate. On the contrary, review of the entire record, including deference to the trier of fact as to credibility determinations, compels the conclusion that Dr. Rotondi did not appropriately manage P.C.'s case. Dr. Matro, Dr. Rotondi's own expert, concluded that Dr. Rotondi had difficulty setting limits and dealing with confrontation. During at least the period October 1991 through October 1992, Dr. Rotondi himself acknowledges that the patient was deteriorating and that she would have benefitted from treatment by another therapist. She provided and he accepted gifts for him and his family. He was unable to establish appropriate boundaries related to her gift giving, choosing instead to discard or give away items he received. Similarly, Dr. Rotondi was unable to modify the behavior that resulted in an increase in already numerous telephone calls to the point where P.C. placed several hundred calls in an eight month period.

The escalation of P.C.'s behavior, and Dr. Rotondi's failure to control or contain that behavior, demonstrate the lack of efficacy of the therapy and leads inevitably to the Board's conclusion that the therapy should have been modified or terminated. For at least a year by his own admission, Dr. Rotondi knew that the therapy should have been terminated as P.C. was not benefitting from treatment. From October 1991 through September 1992, he discussed

termination with P.C., Dr. Hagovsky, and Dr. Zampardi. While he may have attempted some referrals, he did not obtain formal supervision to assist him in handling this difficult patient, choosing instead to rely on the informal discussions he had with his colleagues. His resolve to terminate would fade once P.C. apologized for her actions. While the Board agrees that the record establishes Dr. Rotondi did not abandon P.C., the professional bears the responsibility for the therapy and to ensure that the patient is benefitting from it. Dr. Rotondi would be well served to seek counseling to gain insight into his professional responsibility and his own limitations and to seek professional courses in setting boundaries with patients.

As to the maintenance of adequate patient records, the Board reviewed carefully the testimony and documents presented to determine whether Dr. Rotondi maintained an adequate patient record for P.C. Dr. Rotondi testified that the lack of records was occasioned by P.C.'s conduct in tearing up and removing the records from his office on October 1, 1992. Even if the Board were to accept this version of the events (and it is certainly a strain on credulity to find that the destruction of records occurred as described by Dr. Rotondi\* ), the Board notes that Dr. Rotondi's final session note makes no mention of this clinically significant event. While mention of the incident is made in Dr. Rotondi's April 1993 letter to Dr. Brown, the lack of a contemporaneous note on this incident in itself demonstrates significant deficiencies in Dr. Rotondi's record keeping practices. Moreover, to state that he did not believe the incident to be "that important," reflects an inadequacy in record keeping. This inadequacy is compounded by his failure in his reconstructed notes to mention the blanket and teddy bear P.C. used in the

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\* Judge Simonelli found that "[it is apparent from...[the] testimony about the last session that P.C. was in a rage. It is, therefore, conceivable that P.C. ripped up her records and took them with her." (Initial Decision at 43)

months following her brief stay at Fair Oaks Hospital. These omissions evince a clear departure from generally recognized standards of adequate record keeping. Dr. Rotondi, as any licensee of the Board, is responsible for the creation and maintenance of patient records as required by regulation.

Having made those findings, the Board nonetheless concludes that not every mistake in management, and not every deviation from certain recognized standards, warrants disciplinary sanction. Given the totality of the charges brought, most of which were found not to have been proven by a preponderance of credible evidence in the record by the administrative law judge and the Board, the Board finds the record as a whole fails to demonstrate that the public will be served by the imposition of a formal disciplinary sanction.

Therefore, It is on this 26<sup>th</sup> day of August, 1996

ORDERED: that the complaint against Dr. Rotondi be dismissed with prejudice.

NEW JERSEY BOARD OF PSYCHOLOGICAL EXAMINERS

By: Kenneth G. Roy, Ph.D.  
Kenneth Roy, Ph.D., President