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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
: Administrative Action
SCOTT WHITE, D.C. :
License No. MC4139 : FINAL ORDER
:
TO PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

This matter was initially opened to the Board of Chiropractic Examiners (the "Board") by the entry of a Provisional Order of Discipline on June 28, 2001, which provisionally revoked the license of Scott White ("respondent") to practice chiropractic in this State based on his conviction for criminal sexual contact in violation of N.J.S.A. 2C: 14-2(c)(1). The Order also barred an application for reinstatement for a period of at least five years. Following review of a submission by respondent dated July 25, 2001, which included numerous letters attesting to respondent's good character as well as a request for a full hearing, and a reply by the Attorney General dated September 12, 2001, the Board entered a Final Order of Discipline on October 8, 2001. The Final Order of Discipline summarized the submissions by both parties, found that respondent did not dispute the facts set forth in his guilty plea, and therefore found that a basis for discipline existed without a need for a hearing. The Final Order further reviewed the materials

submitted by respondent in mitigation of penalty, including more than thirty-five letters from individuals who attested to respondent's character and professionalism. The Order noted, however, that respondent made no personal statement to the Board in mitigation of penalty: his only statement was contained in the words of the plea allocution. Moreover, respondent's submissions suggested that respondent was minimizing the impact of his conduct, and he showed no remorse for his actions. He had also failed to provide any evidence of a psychological evaluation or that he had intended to complete any educational program concerning a professional's appropriate boundaries with patients. Accordingly, the Board determined to finalize the discipline provisionally imposed by the Provisional Order, and revoked respondent's license, with a bar to an application for reinstatement for five years. The Order additionally set forth requirements in the event respondent should choose to apply for reinstatement.

Following entry of the Final Order of Discipline, by letter dated October 26, 2001, respondent moved for reconsideration of that Order. The basis for that motion was that respondent's counsel misinterpreted the Board's procedures by assuming that the Board would hold a hearing, and therefore failed to submit certain documents for the Board's consideration in mitigation of penalty. The additional documents, including a report from Roger T. Raftery, Ph.D., a psychologist who evaluated him prior to sentencing, a

letter from Alan Horen, L.C.S.W., who is providing counseling to respondent currently, a personal statement from respondent, and the transcripts of respondent's plea allocution and sentencing,* were submitted to the Board with respondent's motion papers.

Dr. Raftery's report indicated that "[a]lthough Dr. White may be minimizing his behavior, he knows that he acted impulsively and inappropriately." Dr. Raftery also noted that Dr. White's belief that the sexual contact was consensual "is likely a cognitive distortion." Dr. Raftery concluded that the action was impulsive and is not likely to happen again because of the legal and administrative consequences.

Alan Horen, who is currently treating respondent, opines that Dr. White's action was "an isolated or misinterpreted behavior" and similarly concludes that it is unlikely to be repeated in the future.

In respondent's personal statement, he explained that he did not understand the Board's procedure, so he did not previously submit a statement indicating remorse. Respondent claimed that statements in his previous submissions were not intended to blame the victim or attack her credibility. Rather, his attorney stated the facts in an objective manner, and the fact that respondent's plea acceptance differs from the victim's charge "stands as a

* Respondent initially submitted only excerpts from these transcripts in support of his motion for reconsideration. At the Board's request, complete copies of the transcripts were provided.

statement against her credibility; this is an objective fact that I cannot change." However, respondent admits he is responsible for his actions and acknowledges that they were in violation of his professional code of conduct.

The Attorney General, by Deputy Attorney General John Hugelmeyer, submitted a November 13, 2001 letter in response to respondent's request for reconsideration. The Attorney General noted that respondent's submission contained nothing new. He reiterated that respondent continued to focus on the credibility of the witness and perceived injustice to himself, and still failed to accept and appreciate that his conduct violated an established physician-patient relationship. Further, the Attorney General argued that in the event the Board chose to grant the motion for reconsideration to consider the additional information in mitigation of penalty, there was no reason for respondent to appear before the Board as the respondent was not entitled to re-litigate the facts underlying his plea, and the submissions provided an adequate record upon which the Board could reach a decision.

Respondent submitted a letter in rebuttal dated November 21, 2001. That letter urged the Board to permit a personal appearance by respondent or at least review the additional submissions,, because of respondent's counsel's misinterpretation of Board procedure. Respondent requested that the Board consider the

statement attesting to his remorse, his remedial efforts and the court's sentencing in mitigation of the penalty imposed.

On January 24, 2002, the Board considered the arguments made by respondent and the Attorney General, and, in the interests of justice, determined to grant respondent's motion for reconsideration in order to consider all of the materials submitted by respondent in mitigation of the penalty provisionally imposed upon him.

The Board considered all of the materials presented. Both Dr. Raftery and Mr. Horen opined that Dr. White would not be likely to repeat the behavior, but Dr. Raftery also noted that Dr. White appeared to be minimizing his behavior. Indeed, in the prior Final Order, this Board noted that Dr. White seemed to be blaming the victim and attacking her credibility in an effort to mitigate the penalty for his conduct. Although Dr. White, in his personal statement, claims to the contrary, his argument is still that the facts underlying the plea agreement were not the same as the victim's charge against him. His argument is that he is telling the truth and she is not - framing that "argument" as a retelling of the facts simply does not change that Dr. White is still attempting to discredit the victim for his own benefit. However, the Board notes that in the transcript of the plea agreement, the prosecutor noted that the charges were amended and downgraded with the approval of the victim, who did not want the stress of coping

with a trial. Thus, the issue is not one of veracity, but the actual facts attested to as part of the plea agreement.

During his plea allocution, Dr. White testified that he had touched the victim, K.R., in her genital area for his own sexual gratification, and not as part of her adjustment. Thus, respondent's sworn testimony before the court establishes facts constituting professional misconduct in violation of N.J.S.A. 45:1-21(e). It is troubling that respondent continues to blame the victim, something he attempted to do even in his plea allocution before the Court. However, the victim's credibility is not at issue here. Simply, based upon respondent's own sworn testimony in his criminal proceeding, he has violated N.J.A.C. 13:44E-2.3, which also constitutes professional misconduct.

The Board is concerned by respondent's continued efforts to attack the victim's credibility in this matter, even defending himself by arguing that his statements are "objective facts" rather than opinions. Respondent needs to understand that in this case, it is respondent's admissions under oath and before a Court of Law that provide the basis for the sanctions the Board is imposing upon him. Respondent admitted to touching a patient with whom he had an ongoing physician-patient relationship for his own sexual gratification. Such conduct constitutes a serious violation of that relationship and of the Board's sexual misconduct regulation.

However, the additional statements submitted by respondent,

taken in conjunction with the materials already submitted and the statements by the judge overseeing the criminal proceeding, all of which conclude that respondent's conduct was an isolated incident unlikely to reoccur, have convinced this Board that some mitigation of penalty is warranted in this case. That the penalty is being mitigated is not intended to minimize in any way the seriousness of respondent's professional misconduct, but rather is a recognition of the specific facts of this case. Thus, the Board has reduced from five years to three the time when respondent may make application to the Board for reinstatement of his license. Revocation of respondent's license remains the appropriate penalty, as respondent's violation of an established physician-patient relationship is conduct this Board will not tolerate from its licensees.

THEREFORE, IT IS ON THIS 21st DAY OF March, 2002,
ORDERED:

1. Respondent's license to practice chiropractic in the State of New Jersey is revoked. The Board will not entertain an application for reinstatement sooner than three (3) years from the entry of this Order. Respondent shall comply with the Board's directives applicable to licensees who have been suspended or revoked. A copy of the directives is attached to and made part of this Order.

2. In connection with any application for reinstatement, respondent shall provide the following to the Board:

a. proof of successful completion of a program of therapeutic education in the area of sexual boundaries for professionals, approved in advance by the Board;

b. a record of monitoring for alcohol abuse conducted by the Physicians' Health Program of the Medical Society of New Jersey ("P.H.P.") and a record of attendance at Alcoholics Anonymous, as required by the P.H.P. or by his criminal sentence; and

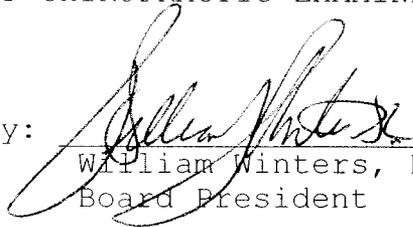
c. proof of compliance with all terms of the criminal sentence imposed on March 16, 2001.

3. Prior to any reinstatement, respondent shall appear before the Board or a committee of the Board, to demonstrate his fitness to resume practice. The Board may require an independent psychological evaluation prior to reinstatement. The Board reserves the right to place any restriction on respondent's practice that it deems necessary to protect the public health, safety, and welfare.

4. Any practice by respondent in this State prior to formal reinstatement by the Board shall be deemed the unlicensed practice of chiropractic.

NEW JERSEY STATE BOARD
OF CHIROPRACTIC EXAMINERS

By:


William Winters, D.C.
Board President