

BEFORE THE
BOARD OF NATUROPATHIC EXAMINERS
STATE OF OREGON

In the Matter of the License to)
Practice Naturopathic Medicine)
of) FINAL ORDER BY DEFAULT
)
)
STEVEN McCLURE, N.D.)

A hearing to establish a record by default was held in the above matter on January 19, 1994, at the offices of the Oregon Board of Naturopathic Examiners, State Office Building, Room 410, 800 N.E. Oregon Street, Portland, Oregon, based on Licensee's failure to timely request a hearing from a letter of Proposed Disciplinary Action sent to Licensee on June 15, 1993, by Don C. Walker, Chair of the Board. Licensee was advised that he had twenty-one (21) days to request a hearing from the date of mailing or service of the letter.

Joel A. Gallob, attorney for Licensee, wrote to the Board on July 9, 1993, asking for clarification of Dr. Walker's letter of June 15, 1993. In that letter Attorney Gallob asked that the Board extend the twenty-one (21) day period to request a hearing.

On July 30, 1993, Dr. Walker wrote to Attorney Gallob clarifying the "Board's Order". The request to extend the time to request a hearing was provided with an additional twenty-one (21) days from July 30, 1993.

A request for hearing within twenty-one (21) days from July 30, 1993, was never made. Because Licensee failed to request a hearing, the Board issued a "Final Order by Default" on

November 22, 1993, which established a three-year (3) period of probation for Licensee beginning June 25, 1993, with certain conditions contained therein. The Board, however, had not established an evidentiary record or identified a file for the issuance of the Final Order of November 22, 1993.

The Board issued an Emergency Suspension Order on December 6, 1993, because the Board had evidence that Licensee had not complied with the conditions of probation set out in the Final Order.

On December 7, 1993, Licensee requested a hearing regarding the Emergency Suspension Order. A hearing was set for January 4, 1994.

Prior to the hearing on January 4, 1994, the Board had discovered that it had not established an evidentiary record to support its Final Order. Therefore, the Board vacated the Emergency Suspension Order disclosing that to Licensee orally at the time of hearing on January 4, 1994.

The matter was set for January 19, 1994, for the purpose of establishing a record.

On January 19, 1994, Licensee appeared, along with his attorney, Paul W. Dudley.

On January 17, 1994, Attorney Paul W. Dudley filed a motion with the Board to reopen the record, along with a petition for rehearing and a petition for leave to submit additional evidence.

The Board considered Licensee's motion and petitions but denied them.

Therefore, on January 19, 1994, the matter proceeded with the

Board establishing a record in this matter.

Thirty-two (32) exhibits were admitted which represents the Board's file in this case.

ISSUE FOR DETERMINATION

The issue for determination is set forth in the Board's original notice to Licensee, dated June 15, 1993 (Ex 24) in which the Board stated that Licensee was in violation of ORS 685.110(15) for having engaged in repeated conduct contrary to recognized standards of ethics in the profession which constitutes a danger to the health or safety of a patient.

The Board must now determine if substantial evidence exists to demonstrate that Licensee has violated ORS 685.110(15). If a violation is found, the Board must determine what is the appropriate sanction to be applied under OAR 850-10-190. Under OAR 850-10-190(3)(a)(B) the Board may revoke a license if a Licensee has engaged in unprofessional or dishonorable conduct which includes sex with a patient. Under ORS 685.110(15), the Board may suspend or revoke a license or may impose a probation as an appropriate disciplinary sanction if a Licensee violates recognized standards of ethics.

FINDINGS OF FACT

1. Licensee was licensed as a Naturopathic physician in Oregon on December 31, 1984 (Certificate No. 567).

2. On or about February 27, 1991, the Board received a complaint that Licensee had engaged in sexual contact with a patient.

3. The Board wrote to Licensee on May 20, 1991, advising him that his conduct appeared to be in violation of recognized standards of the ethics of the profession which did not permit naturopathic physicians to engage in personal intimate relations with current patients. Licensee was advised to consider the potential of future revocation of his license under ORS 685.110(15).

4. In February and April, 1992, the Board received a complaint from D.A., a patient of Licensee, advising that she and Licensee had engaged in a sexual relationship while she was his patient (see more specifically Ex 19 adopted here).

5. The Board secured patient treatment records regarding complainant D.A. which demonstrated that she had, in fact, been a patient of Licensee in 1991 and while his patient, Licensee had a sexual intimate relationship with D.A.

6. On March 31, 1993 (Ex 21), Licensee wrote to the Board asserting that he was victimized by patient D.A., admitting that he had intimate relations, sex with D.A. which he characterized as being "consensual, non-forced" and conducted with "wild enthusiasm" by D.A. Licensee characterized D.A. as a "walking lawsuit waiting to explode" and alleged that she had a history of similar action against other professionals.

7. The Board's file contains statements from witnesses on behalf of Licensee who wrote to verify that patient D.A. had a history of similar claims against professionals.

8. At the hearing regarding the Emergency Suspension Order

on January 4, 1994, Licensee again admitted that he engaged in sex with patient D.A., although the relationship had a dual aspect to it in that Licensee was also providing office space to D.A. to conduct her own professional activities. Therefore, Licensee considered D.A. to be a "colleague."

9. Based upon a preponderance of the evidence, it is clear that Licensee engaged in consensual sexual contact with patient D.A., in violation of the Board's Administrative Rules.

ULTIMATE FINDINGS OF FACT

Licensee engaged in sexual contact with D.A. on several occasions in 1991 while D.A. was a patient of licensee.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, Licensee is in violation of OAR 850-10-190(3)(a)(B) in that he engaged in sex with a patient.

Licensee is subject to discipline under ORS 685.110(15) as having engaged in repeated conduct or practices contrary to recognized standards of ethics of the Naturopathic profession constituting a danger to the health or safety of a patient.

For having violated the Board's Administrative Rule, Licensee is subject to suspension, revocation or probation regarding his license, and the Board may impose a civil penalty not to exceed \$1,000 for each offense under ORS 685.110.

DISCUSSION

There is no dispute about the fact that Licensee has engaged in sexual contact with patient D.A. and has therefore breached

ethical standards of the Naturopathic profession. Licensee has a history of having breached ethical standards in the past with another patient.

Licensee's explanation that patient D.A. was consenting is immaterial to his violation. Likewise, the fact that patient D.A. may also have been a colleague of Licensee at the time does not excuse the clear violation of professional ethics.

The allegations concerning patient D.A.'s past conduct are irrelevant to this case. It is the licensee's responsibility to conduct himself in a professional manner at all times. The Board is justified in providing conditions for the probation, including an objective assessment by a counselor as to whether or not Licensee is a sexual predator. There is evidence that Licensee has on at least two (2) occasions been unable to maintain ethical professional boundaries in that he has engaged in sexual conduct with patients. In addition, Licensee is currently unable to accept or acknowledge responsibility for having breached a clear ethical standard. Instead, Licensee continues to portray himself as a victim of patient D.A. Licensee, however, is in clear violation of the Board's standards of ethical conduct regarding proscribed conduct of no sex with current patients.

ORDER

It is hereby ordered, as follows:

1. Licensee shall undergo counseling by a mental health professional licensed by the State of Oregon and approved by the Board. Counseling shall specifically address, but not be limited

to patient-related ethical issues, the need for supervision as stated in #3 of this order, and the consequences of violation of professional ethics. The content, direction and duration of the counseling shall be at the discretion of the mental health professional and the OBNE.

2. Licensee shall execute a release of information authorizing the mental health professional to provide reports to the Board on a quarterly basis detailing Licensee's progress, his participation and an assessment as to whether or not Licensee has sufficient insight regarding his breach of ethical standards.

3. Licensee shall refrain from any examination of female patient unless there is a female assistant present at the exam at all times.

4. Licensee's probation shall be for a three-year (3) period beginning with the date of the Board's Final Order in this case.

5. Licensee shall refrain from violation of ORS Chapter 685 and the Board's Administrative Rules, Chapter 850, as a condition of probation. Should Licensee violate a condition of his probation or any provision of ORS Chapter 685 or Chapter 850 during the term of his probation, his license shall be subject to revocation following a hearing under the Oregon Administrative Act, ORS Chapter 183.

Dated this 14 day April, 1994.

Signature on file

Andrew Elliott, Chairman
Oregon Board of Naturopathic Examiners