

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

GERALD H. GAMMELL, M.D. :
RESPONDENT. :

Case No. LS9806242MED

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Gerald H. Gammell, M.D.
3945 Xerxes Ave. S.
Minneapolis, MN 55410

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Medical Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Gerald H. Gammell, M.D., Respondent, date of birth February 15, 1937, is licensed by the Wisconsin Medical Examining Board as a physician in the state of Wisconsin pursuant to license number 14553, which was first granted February 13, 1963.
2. Respondent's last address reported to the Department of Regulation and Licensing is 3945 Xerxes Ave. S., Minneapolis, MN 55410.
3. On January 15, 1997, the Minnesota Board of Medical Practice issued its Findings of Fact, Conclusions, and Final Order taking disciplinary action against Respondent.

4. The Minnesota Board found that from 1982 to 1990, while Respondent was in solo private practice, he failed to protect the health, welfare, and safety of several of his patients by engaging in unethical and unprofessional conduct, improperly managing medical records and engaging in conduct with his patients that was sexual or could be interpreted as sexual.

5. The Minnesota Board also concluded that Respondent applied nontraditional treatment modalities on his patients, including past life regression therapy, holotropic breathwork, shamanism, releasement or exorcism, and extensive touching, which violated the standard of care for psychiatry and in some instances were harmful to patients.

6. Specifically, the Minnesota Board found:

a. Respondent's psychiatric care of Patient 1 fell below minimum accepted and prevailing standards and was professionally incompetent by each of the following actions:

- 1) Asking Nurse 1 to sit on Patient 1's hospital bed, having the patient tell her his feelings of attraction, and commenting that they must have enjoyed a two hour period they were alone together;
- 2) Recommending Patient 1 attend a Tony Robbins motivational seminar shortly after hospitalization;
- 3) Inadequately assessing the patient when he returned before the seminar ended;
- 4) Directing the patient to return to the seminar;
- 5) Developing and maintaining a friendship with Patient 1 and with Nurse 1 after he became aware that she and the patient were romantically involved;
- 6) Failing to explore the possibility that the relationship which developed between Patient 1 and Nurse 1 involved transference or countertransference;
- 7) Attending Patient 1's wedding to Nurse 1;
- 8) Conducting therapy in restaurants on three or more occasions;
- 9) Recommending Respondent's own church to Patient 1;
- 10) Providing therapy to the patient in Respondent's car on the way to a television interview;

- 11) Performing past life regression therapy on Patient 1;
- 12) Telling Patient 1 he was possessed by his deceased alcoholic Uncle Don;
- 13) Performing depossessions on Patient 1;
- 14) Failing to investigate alcohol consumption as a possible source of Patient 1's alcoholic vapors, jaundice and elevated liver function tests;
- 15) Recommending that Patient 1 attend holotropic breath workshops and attending at the same time;
- 16) Lying with Nurse 2 on the floor for an extended period of time during a breath workshop in front of Patient 1;
- 17) Traveling by car to Colorado with Patient 1's wife;
- 18) Pursuing Nurse 2 sexually in the hotel room while Patient 1's wife was present;
- 19) Telling Patient 1's wife not to tell Patient 1 about the incident;
- 20) Attempting to kiss Patient 1's wife twice while in Colorado;
- 21) Suggesting or agreeing that Patient 1 should leave the group after Respondent's conduct in Colorado was disclosed.

b. Respondent's care of Patient 2 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by recommending holotropic breath workshops and attending with the patient.

c. Respondent's care of Patient 3 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by each of the following acts:

- 1) Touch in group, namely full body-hugs of Patient 3;
- 2) Shaming comments in response to Patient 3 mentioning his discomfort with the hugs.

d. Respondent's care of Patient 4 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by each of the following acts:

- 1) Touch in group, including full-body hugs, holding the patient for long periods, having her put her head on a pillow in his lap, and having her lie on the floor with her head on his thigh;
- 2) Telling the patient, "God put me here to help you;"
- 3) Writing Patient 4 an employment recommendation;
- 4) Telling Patient 4 he loved her;
- 5) Telling Patient 4 at the conclusion of therapy that they could be "colleagues;"
- 6) Recommending his church;
- 7) When Patient 4 asked if she had been abducted by aliens, telling her to look for scars or unusual marks on her body;
- 8) Crying in Patient 4's therapy session;
- 9) Matchmaking or appearing to match-make Patient 4 and another patient;
- 10) Recommending that Patient 4 participate in holotropic breath workshops;
- 11) Performing depossessions or releasements on Patient 4;
- 12) Performing past life regression on Patient 4.

e. Respondent's care of Patient 5 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by each of the following acts:

- 1) Hugs and extended holding;
- 2) Kissing Patient 5 on the cheek;
- 3) Giving Patient 5 a ride in his car;
- 4) Recommending his own church and that the patient see his minister/good friend while she was hospitalized;

- 5) Writing the patient in response to a card from her that he "never received a nicer gift" and "wanted to take it personally;"
- 6) Telling Patient 5 that he had recently discovered he was a victim of sexual abuse;
- 7) Recommending that a third person attend sessions between Patient 5 and her primary therapist, Ms. A, for the purpose of holding the patient;
- 8) Placing Patient 5 in the middle between Respondent and Ms. A by encouraging the patient to ask Ms. A to hold her when Ms. A did not want to do so;
- 9) Asking Patient 5 for information about Ms. A when Respondent and his officemate moved from the building in a dispute;
- 10) Failing to adequately address Patient 5's concerns about the relationship between Patient 1 and Nurse 1;
- 11) Failing to provide appropriate or adequate closure to Patient 5 when she decided to terminate therapy;
- 12) Recommending Patient 5 participate in holotropic breathwork;
- 13) Performing past life regression on Patient 5;
- 14) Recommending the shamanic ritual power animal retrieval to Patient 5 and attending with her and drumming.

f. Respondent failed to maintain adequate medical records for Patient 5 on four occasions when he failed to dictate hospital discharge summaries in a timely fashion.

g. Respondent's care of Patient 6 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by each of the following acts:

- 1) Touching Patient 6 and exposing Patient 6 to extensive touch in group;
- 2) Telling Patient 6 he wanted to unzip another woman's dress with his teeth;
- 3) Telling Patient 6 he would never leave her;

- 4) Asking Patient 6 detailed questions about her sexual activity in breaking the group rules;
 - 5) Terminating Patient 6 from group and individual therapy in a shaming and judgmental way and without adequate assessment of her actions and needs.
- h. Respondent engaged in verbal sexual conduct with Patient 6 or conduct the patient reasonably interpreted as sexual by telling the patient he wanted to unzip another woman's dress with his teeth.
- i. Respondent's care of Patient 7 fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent by hugging and holding Patient 7, and other touch in group.
- j. Respondent engaged in conduct which Patient 7 reasonably interpreted as sexual by holding her during group therapy.
- k. Respondent failed to maintain adequate medical records for Patient 7 when he failed to record a formal diagnosis ever in her chart and failed to record any diagnostic impression during the last two years of therapy.
- l. Respondent's psychiatric care of Patient 8 failed to satisfy minimum accepted and prevailing standards of care and was professionally incompetent by each of the following acts:
- 1) Suggesting that Patient 8 ask to sit in his lap during group therapy;
 - 2) Giving her repeated hugs during and after therapy;
 - 3) Cradling the patient across his body and otherwise holding her;
 - 4) Engaging in Pesso-style therapy on the floor in which he and the patient ended up with legs entwined;
 - 5) Lying prone on the couch with the patient for 15 to 30 minutes;
 - 6) Pulling the patient into his lap and saying that she could stay there because he could handle any erections;
 - 7) Holding the patient's hands and having her "play" his fingers like a piano;
 - 8) Directive statements to the patient to engage in touch with him and touching her without permission;

- 9) Singing lullabies and hymns to the patient while holding her;
- 10) Asking the patient to describe her sexual fantasies and failing to address the transference manifested;
- 11) Lending the patient a book about a psychiatrist who advocated participating in orgies with his patients;
- 12) Inviting Patient 8 to a weekend-long Pessco-style therapy workshop Respondent sponsored and attending with her;
- 13) Referring Patient 8 to Respondent's former therapist to help the patient understand Respondent;
- 14) Conducting therapy while taking walks around the neighborhood;
- 15) Encouraging the patient to attend his church and participating in many church activities with her;
- 16) Failing to recognize that his behavior contributed to the patient's self-destructive actions and rage toward him;
- 17) Failing to adequately respond to the patient's symptoms when she called him at church in March 1988;
- 18) Recommending that inappropriate co-therapists sit in on sessions with Patient 8;
- 19) Inadequately assessing or treating the patient when she decompensated in his office bathroom and he sent her home;
- 20) Recommending Patient 8 enter a residential treatment program;
- 21) Rapidly and rigidly imposing boundaries on his relationship with Patient 8 by abruptly decreasing her sessions;
- 22) Providing the patient a free session;
- 23) Giving the patient a gift of his embracing monkey dolls;
- 24) Reinstating hugging and holding of the patient after the female co-therapists ceased attending sessions;

m. Respondent engaged in sexual conduct with Patient 8 or conduct Patient 8 reasonably believed was sexual by each of the following acts:

- 1) Lying on the couch during therapy with her;
- 2) Pulling the patient onto his lap and saying he could handle any erection;
- 3) Loaning the patient the book in which a psychiatrist condoned orgies with patients.

n. Respondent's recommendation and use of holotropic breathwork fell below minimum accepted and prevailing standards of psychiatric care and was professionally incompetent.

o. Respondent's recommendation of and participation in shamanic rituals with his patients fell below minimum accepted and prevailing standards of psychiatric practice and was professionally incompetent.

p. Respondent's use of depossessions fell below minimum accepted and prevailing standards of psychiatric practice.

q. Respondent's use of past life regression therapy fell below minimum accepted and prevailing standards of psychiatric practice.

r. Respondent's inappropriate conduct in Colorado in front of Patient 1's wife and Patient 2 resulted in unnecessary and inappropriate termination of therapy groups attended by patients 1, 3, 4 and 7.

7. As discipline against Respondent, the Minnesota Board ordered:

a. That Respondent was reprimanded for his conduct.

b. That Respondent's license to practice medicine and surgery in the state of Minnesota was conditioned and restricted as follows:

- 1) Not later than nine (9) months from the date of this Order, Respondent shall successfully complete a professional boundaries training course designated by the Committee. Successful completion shall be determined by the Committee.
- 2) Respondent shall practice only in a group setting, approved in advance by the Committee. Respondent shall not provide consultation for Rule 29 or other clinics.

3) Subject to approval by the Committee in accordance with b, Respondent shall not practice psychiatry except as may be required for patient medication management and any minimally necessary ancillary psychotherapy.

4) Respondent shall identify a work quality assessor, who shall provide quarterly written reports to the Board regarding Respondent's overall work performance.

5) Respondent and a designated Board member or designee shall meet on a quarterly basis. It shall be Respondent's obligation to contact the Board member or designee to arrange each of the meetings. The purpose of the meetings shall be to review Respondent's progress under the terms of this Order.

6) Not earlier than five (5) years from the date of this Order, Respondent may petition the Board to remove the foregoing conditions and restrictions.

c. That Respondent shall pay \$25,000.00 to the Board within one (1) year of the date of the Order to offset a portion of the cost of the proceeding.

8. Respondent appealed the Minnesota Board of Medical Practice's decision to the state of Minnesota Court of Appeals, as case number C4-97-320. On September 9, 1997, the Court of Appeals affirmed the decision of the Minnesota Board

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to § 448.02(3), Stats.

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5) and 448.02(5), Stats.

3. Respondent, by having had disciplinary action taken against his Minnesota license to practice medicine and surgery by the Minnesota Board of Medical Practice has committed unprofessional conduct as defined by Wis. Adm. Code § Med 10.02(2)(q) and is subject to discipline pursuant to § 448.02(3), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the voluntary surrender of the license to practice medicine and surgery in the state of Wisconsin of Gerald H. Gammell, M.D., Respondent, is hereby accepted, effective immediately.

2. That Gerald H. Gammell shall never reapply for a license to practice medicine and surgery in the state of Wisconsin.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 24th day of June, 1998.



Wanda Roever
Secretary
Medical Examining Board

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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

GERALD H. GAMMELL, M.D. :
RESPONDENT. :

Case No. **LS 9806242 MED**

STIPULATION

It is hereby stipulated and agreed, by and between Gerald H. Gammell, M.D., Respondent; Marcy S. Wallace, attorney for Respondent; and John R. Zweg, as attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent by the Department of Regulation and Licensing, Division of Enforcement on behalf of the Medical Examining Board (file 97 MED 383).

2. Respondent understands that by the signing of this stipulation Respondent voluntarily and knowingly waives Respondent's rights, including: the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against Respondent; the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena; the right to testify; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation prior to signing this stipulation, and has done so.

4. Respondent admits the allegations in this matter, and agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

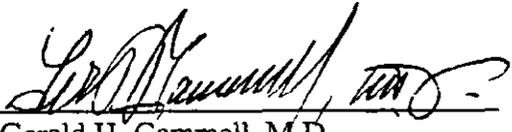
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this stipulation are Respondent's current wall and wallet registration certificates.

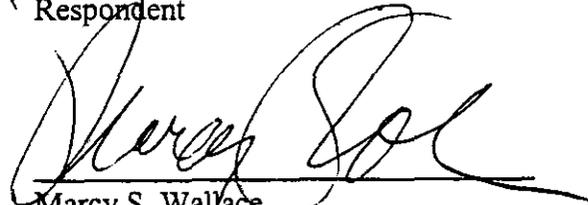
7. The parties to this stipulation agree that the Respondent, Respondent's attorney, and an attorney for the Division of Enforcement, and the member of the Board who has been appointed as the investigative advisor may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

8. The parties agree to waive all costs of the investigation and this proceeding.

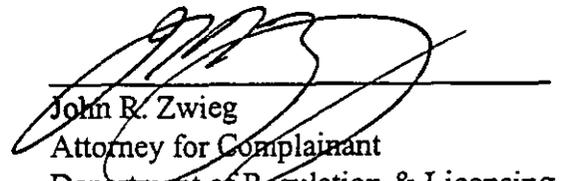
Dated this 13th May day of ~~March~~, 1998.


Gerald H. Gammell, M.D.
Respondent

Dated this 13th May day of ~~March~~, 1998.


Marcy S. Wallace
Attorney for Respondent

Dated this 11th day of March, 1998.


John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

NOTICE OF RIGHTS OF APPEAL

TO: MARCY S WALLACE ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 6/26/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935