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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

MICHAEL A. DELAIN, PH.D.,

FINAL DECISION AND ORDER

RESPONDENT

LS0205221PSY

The parties to this action for the purposes of § 227.53, Stats, are:

Michael A. DeLain, Ph.D.

1501 Hendricks Avenue

Kaukauna, WI 54130

Wisconsin Psychology 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 Psychology 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. Michael A. DeLain, Ph.D., Respondent, date of birth November 3, 1962, is licensed by the Wisconsin Psychology Examining Board as a psychologist in the state of Wisconsin pursuant to license number 1606, which was first granted November 27, 1990.
2. Respondent's last address reported to the Department of Regulation and Licensing is 1501 Hendricks Avenue, Kaukauna, WI 54130.

01 PSY 027

3. Ms. A, who was then 16 years of age, first saw Respondent for professional services at New Wellness Associates in Ashwaubenon, Wisconsin on April 4, 2001. On April 11, 2001, she had an additional session with him at his office. Ms. A also was seen by Respondent once while she was hospitalized at Bellin Hospital in Green Bay, prior to April 25, 2001.
4. On April 25, 2001, Ms. A saw Respondent for a session in his office. At the end of the session, another session was scheduled for May 2, 2001.
5. On April 26, 2001, Ms. A reported to the police that Respondent had sexual contact with her in his office

during the session of April 25, 2001.

6. The police concealed an audio recorder and video camera in Ms. A's backpack, which she took into Respondent's office during the May 2, 2001 session. The devices transmitted to a receiver in a police car which was in Respondent's parking lot.

7. On June 7, 2001, Respondent was interviewed by the police at the Ashwaubenon Police Department about the May 2, 2001 session with Ms. A. At the time of the interview, the police had not told the Respondent they had recorded the session.

8. On July 10, 2001, Respondent was charged in Brown County Wisconsin Circuit Court case number 01CF000624 with:

a. Count I – violating § 940.22(2), Stats., (Sexual Exploitation by Therapist), a Class C felony, by having sexual contact with Ms. A on April 25, 2001.

b. Count II – violating § 948.09, Stats., (Sexual intercourse with a child 16 or older – sexual intercourse is defined to include any intrusion of any part of a person's body or of any object into the genital opening of a victim), a Class A misdemeanor, by having sexual intercourse with Ms. A on April 25, 2001.

c. Count III – violating § 940.22(2), Stats., (Sexual Exploitation by Therapist), a Class C felony, by having sexual contact with Ms. A on May 2, 2001.

d. Count IV – violating § 946.41(1), Stats., (Obstructing an officer), a Class A misdemeanor, by making false statements to the interviewing officer on June 7, 2001.

9. On March 7, 2002, following a jury trial, Respondent was found guilty and convicted of Counts I, III and IV and was found not guilty of Count II. A pre-sentence investigation has been ordered to be completed by April 5, 2002 and the sentencing hearing is set for May 14, 2002.

10. Respondent intends to appeal his convictions.

11. § 940.22(2), Stats., is a crime the circumstances of which substantially relate to the circumstances of the professional practice of psychology.

12. § 946.41(1), Stats., is a crime the circumstances of which substantially relate to the circumstances of the professional practice of psychology.

96 PSY 007 & 98 PSY 014

13. In addition to investigative file 01 PSY 027, the investigation of the above allegations, the Division of Enforcement has two other open investigations of Respondent:

a. File 96 PSY 007: Opened based upon information from another therapist who reported that one of her female adolescent clients told the therapist that Respondent had requested and received sexual contact with the client in Respondent's office when she was referred to him for psychological testing. During the investigation, the question arose whether the testing done by Respondent was appropriate for the purposes of the client's referral.

b. File 98 PSY 014: Opened based upon information from the father of two children Respondent had evaluated who reported that Respondent had begun a sexual relationship with the children's mother and was living in the home with the mother and children while the divorce of the mother and father was pending. During the investigation, the question arose whether Respondent's evaluation and diagnosis of the children was done appropriately.

14. Respondent has asked to surrender his license, under the conditions set out in the order, below.

CONCLUSIONS OF LAW

1. The Psychology Examining Board has jurisdiction over this matter pursuant to § 455.09(1), Stats.

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

3. Respondent, by having been convicted of sexual exploitation by therapist, a crime the circumstances of which substantially relate to the circumstances of the professional practice of psychology, for his **April 25, 2001 conduct**, has committed unprofessional conduct as defined by Wis. Adm. Code § Psy 5.01(5) and is subject to discipline pursuant to § 455.09(1)(g), Stats.

4. Respondent, by having been convicted of sexual exploitation by therapist, a crime the circumstances of which substantially relate to the circumstances of the professional practice of psychology, for his **May 2, 2001 conduct**, has committed unprofessional conduct as defined by Wis. Adm. Code § Psy 5.01(5) and is subject to discipline pursuant to § 455.09(1)(g), Stats.

5. Respondent, by having been convicted of obstruction of an officer, a crime the circumstances of which substantially relate to the circumstances of the professional practice of psychology, for his **June 7, 2001 conduct**, has committed unprofessional conduct as defined by Wis. Adm. Code § Psy 5.01(5) and is subject to discipline pursuant to § 455.09(1)(g), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The surrender by Michael A. DeLain, Ph.D., of his license to practice psychology in the state of Wisconsin is hereby accepted, effective immediately.

2. If Respondent's appeal of the criminal convictions, set out in Finding of Fact 8, is successful and all counts of the conviction are reversed, and Respondent provides proof sufficient to the Board that this has occurred:

a. Respondent's license to practice psychology shall be reinstated unless, within 30 days of being advised by Respondent that he has prevailed on the appeal of all convictions, the Division of Enforcement (Division) commences a disciplinary proceeding against Respondent which includes allegations that Respondent is subject to discipline for his conduct with Ms. A. The disciplinary complaint may also include allegations from investigative files 96 PSY 007 and 98 PSY 014.

b. If the Division commences a disciplinary proceeding against Respondent as provided in subparagraph 2a. above, Respondent's license to practice psychology shall remain surrendered until the Board issues a Final Decision and Order in that disciplinary matter.

3. If Respondent's appeal of the criminal convictions, set out in Finding of Fact 8, is unsuccessful and all counts of the conviction are not reversed, and Respondent provides proof sufficient to the Board that he has exhausted his appeals, Respondent may petition the Board for relicensure. Respondent may or may not be granted relicensure, but may petition for relicensure, under the following terms and conditions:

a. Respondent shall notify the Division of the request and provide the Division with any information he provides to the Board.

b. The Division shall have the opportunity to apprise the Board of all allegations and information contained in the three investigative files.

c. If the Board believes that it will be of assistance to the Board in responding to Respondent's petition:

i. Respondent shall, at his own expense, have undergone an assessment by a mental health care practitioner with experience in assessing health care providers who have become involved sexually with patients.

ii. The practitioner performing the assessment must have been approved by the Board or its designee, with an opportunity for the Division to make its recommendation, prior to the assessment being performed.

iii. Respondent shall provide the Board with the practitioner's written report and provide the Board and the Division with the opportunity to discuss the evaluation and findings with the practitioner.

d. Following the presentation of information by Respondent and the Division and a review of any assessment requested by the Board, the Board may, in its sole discretion, elect to relicense Respondent, with or without limitations, or to deny Respondent's petition.

e. If the Board determines to relicense Respondent, Respondent's license shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by

the supervisor.

f. The Board, in deciding whether to grant the petition, shall consider and weigh the three objectives of professional discipline:

- Protection of the public.
- Deterrence of the licensee and other licensees.
- Rehabilitation of the licensee.

g. If Respondent believes that any denial of licensure or that any limitation imposed by the Board is inappropriate, Respondent may seek a class 1 hearing pursuant to § 227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The denial of licensure or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

4. Violation of any term or condition of this Order, or of any limitation imposed under subparagraph 3e. above, may constitute grounds for revocation of Respondent's license to practice psychology in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under subparagraph 3e. above, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

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 22nd day of May, 2002.

Barbara A. Van Horne, M.B.A., Ph.D.

Chairperson

Psychology Examining Board