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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST DAVID Y. KIM, M.D., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER LS9206251MED

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 21 day of October, 1992.

B. Jan Nevinser

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9206251-MED
DAVID Y. KIM,	:	(DOE case number 92 MED 193)
RESPONDENT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

David Y. Kim
1244 Wisconsin Ave., Suite 303
Racine, WI 53403

Medical Examining Board
1400 East Washington Ave.
Madison, WI 53708

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

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Medical Examining Board on June 24, 1992. A disciplinary proceeding (hearing) was scheduled for July 27th, 28th, and 29th, 1992. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on June 25, 1992 to David Y Kim, who received it on June 26, 1992. Also on June 24, 1992 an Order was issued by the Medical Examining Board, by stipulation, that Dr. Kim's license to practice medicine and surgery in the state of Wisconsin was suspended for 30 days.

B. On June 24, 1992 a prehearing conference was held, at which time Dr. Kim's attorney, Geoffrey T. Van Remmen of Van Remmen & Wilz, S.C., P.O. Box 723, Racine, WI 53401 requested that the hearing be rescheduled for August 17th, 18th, and 19th, 1992. The request was granted, and Dr. Kim's license was ordered suspended until a Final Decision is issued by the Medical Examining Board.

C. On July 17, 1992 Dr. Kim failed to appear in his attorney's office for a scheduled deposition.

D. On July 28, 1992 Mr. Van Remmen filed an answer on behalf of Dr. Kim.

E. On August 3, 1992 Mr. Van Remmen filed a motion to withdraw as Dr. Kim's attorney stating, among other things, that he had had no contact with his client since July 7, 1992 and that he could not effectively represent Dr. Kim without his assistance. A prehearing conference was held on August 3, 1992 and the motion was granted.

F. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on August 17, 1992. Dr. Kim did not appear, either in person or by counsel. The Medical Examining Board was represented by Attorney John Zwieg of the Department's Division of Enforcement. Due to scheduling problems with a witness, the hearing was continued until August 25, 1992. Notice of this hearing was mailed to Dr. Kim at his last known address on file with the Board on August 21, 1992, and the continued hearing was held as scheduled. Again, Dr. Kim did not appear and the Medical Examining Board was represented by John Zwieg. The testimony and exhibits entered into evidence at the hearing and the continued hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. Respondent David Y. Kim, M.D. was at all times relevant to the facts set forth herein a physician licensed to practice medicine and surgery in the state of Wisconsin, under license number 23168, originally granted on December 9, 1977. Dr. Kim's last address on file with the Medical Examining Board is 1244 Wisconsin Ave., Suite 303, Racine, WI 53403.

2. Dr. Kim's medical specialty is psychiatry.

3. On December 19, 1990, the Medical Examining Board limited Dr. Kim's license. Among the limitations was the following:

> "Dr. Kim's practice shall include medical management, evaluations, diagnosis, treatment planning and similar activities, but shall not include indepth, long term psychotherapy with patients."

4. Dr. Kim treated Patient A (who is identified by name in the Board's file for this case) with medication and psychotherapy for manic depressive (bipolar) disorder from November 1980 to December 1982. From December 1982 to February 1989 Dr. Kim treated Patient A with medication only.

5. From February 1989 on Patient A met with Dr. Kim for medication monitoring and psychotherapy on the following dates, and during these sessions Patient A talked about her feelings and problems and Dr. Kim assisted her in trying to understand and resolve the issues she brought forth.

2/27/89	1/16/90	1/18/91	1/14/92
3/11/89	2/19/90	2/12/91	2/10/92
3/27/89	3/20/90	3/11/91	4/14/92
4/11/89	4/6/90	4/8/91	
5/5/89	4/24/90	5/7/91	
5/19/89	5/8/90	6/11/91	
6/2/89	5/22/90	7/23/91	
6/27/89	6/22/90	8/30/91	
7/14/89	8/24/90	9/24/91	
8/25/89	9/21/90	10/22/91	
9/15/89	10/9/90	11/18/91	
10/6/89	11/20/90	12/16/91	
10/30/89	12/18/90		
11/13/89			

6. In his office notes and in his answer to the complaint in this case Dr. Kim referred to his sessions with Patient A as "supportive psychotherapy" or "psychotherapy".

7. Dr Kim engaged in in-depth long-term psychotherapy with Patient A subsequent to December 19, 1990.

8. On two occasions in the period between November 1980 and December 1982, Dr. Kim had sexual intercourse with Patient A.

9. On one occasion in the period between December 1982 and February 1989, Dr. Kim had sexual intercourse with Patient A.

10. On three occasions in the period between February 1989 and December 19, 1990, Dr. Kim had sexual intercourse with Patient A.

11. On three occasions in the period between December 19, 1990 and April 1992, Dr. Kim had sexual intercourse with Patient A.

CONCLUSIONS OF LAW

I. The Medical Examining Board has personal jurisdiction over the Respondent, based on fact #1 above.

II. The Medical Examining Board has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, and sec. 448.02(3), Wis. Stats.

III. By engaging in in-depth, long-term psychotherapy with Patient A subsequent to December 19, 1990 in violation of the limitation on his license, Dr. Kim violated a Board order, which constitutes unprofessional conduct under sec. MED 10.02(2)(b), Wis. Admin. Rules and sec. 448.02(3), Wis. Stats.

IV. By engaging in sexual intercourse with Patient A while she was his patient, Dr. Kim engaged in conduct which constituted a danger to the health, welfare or safety of a patient, and this constitutes unprofessional conduct under sec. MED 10.02(2)(h), Wis. Admin. Rules and sec. 448.02(3), Wis. Stats.

ORDER

THEREFORE, IT IS ORDERED that the license issued to David Y. Kim, M.D. to practice medicine and surgery in the state of Wisconsin be revoked, as of the date this order is signed.

IT IS FURTHER ORDERED that David Y. Kim, M.D. pay the costs of this proceeding, as authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code.

OPINION

Approximately two weeks after the complaint was filed in this case, Dr. Kim disappeared. Although Dr. Kim's attorney filed an answer on his behalf on July 28, 1992, he subsequently filed a motion on August 3, 1992 to withdraw as Dr. Kim's counsel, stating that he had had no contact with Dr. Kim since July 7th and that he could not effectively represent Dr. Kim without his assistance. The motion was granted, and neither Dr. Kim nor an attorney appeared at the scheduled hearing on August 17, 1992. Appearing on behalf of the Board, Attorney Jack Zwieg did not ask for the respondent to be found in default, but instead proceeded with the hearing, preferring to have the case against Dr. Kim proven by evidence and testimony.

The evidence presented by uncontroverted deposition testimony and Dr. Kim's office records (exhibit 2 corroborated by exhibits 3 and 4) shows that Dr. Kim had sexual intercourse[1] with a person while that person was Dr. Kim's patient. It has been amply established by previous rulings of the Board[2] that sexual intercourse or other sexual intimacy with a patient constitutes a danger to the health, welfare or safety of the patient, in violation of sec. MED 10.02(2)(h), Wis. Admin. Code. A violation of that section is unprofessional conduct, and is subject to discipline under sec. 448.02(3), Wis. Stats.

The evidence also shows that Dr. Kim's license to practice medicine and surgery in the state of Wisconsin was limited by the Medical Examining Board on December 19, 1990, with one of the limitations being that he not engage in in-depth, long-term psychotherapy with patients. (This is admitted in the answer to the complaint.) The evidence from Patient A and from Dr. Kim's office records shows that he treated Patient A with medication and psychotherapy from November 1980 to December 1982 for manic depressive disorder. The evidence also shows that he continued to see Patient A on a regular basis for medication monitoring from December 1982 to February 1989. The evidence further shows that Patient A met with Dr. Kim on 42 occasions from February 1989 to April 1992 (approximately once per month), and that in those sessions, some of which occurred after December 1990, Patient A

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[1]As defined by sec. 940.225(5)(c), Wis. Stats., sexual intercourse includes cunnilingus, fellatio and anal intercourse as well as vulvar penetration. The findings of fact that the respondent engaged in sexual intercourse on nine occasions therefore are mixed findings of fact and legal terminology, because some involved vaginal intercourse with or without fellatio or cunnilingus, while others involved only fellatio.

[2]The following disciplinary cases involving sexual contact with patients have been decided by the Medical Examining Board since 1979: Eppley, 1979; Prastka, 1980; Kroner, 1982; Puls, 1984; Siegel, 1984; Clinton, 1986; Edson, 1986; Wood, 1986; Reed, 1986; Connerly, 1987; Strelnick, 1987; Kay, 1987; Garbowicz, 1987; Stubenrauch, 1987; Parikh, 1988; Kay, 1989; Roberts, 1989; Kurt, 1990; Biros, 1990; Josephson, 1990; Gandhi, 1990; Kim, 1990; Shapiro, 1990.

talked about her feelings and problems and Dr. Kim assisted her in trying to understand and resolve the issues raised. In the opinion of G. Thomas Pfaehler, M.D., the services which Dr. Kim provided to Patient A after December 19, 1990 were in-depth, long-term psychotherapy. This is a violation of a condition of a board order, in violation of sec. MED 10.02(2)(b), Wis. Admin. Rules, and is subject to discipline under sec. 448.02(3), Wis. Stats.

The seriousness of the offenses proven in this case, and the magnitude of the danger to the health and welfare of a patient which Dr. Kim knowingly caused, make revocation of Dr. Kim's license the only possible alternative. Professional discipline should be imposed (1) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, (2) to rehabilitate the offender, and (3) to deter others in the profession from similar unprofessional conduct.[3] In this case, since Dr. Kim has already violated limitations placed on his license, no terms or conditions would by themselves be sufficient to protect the public in the future; Dr. Kim's rehabilitation[4] will only be achieved, if at all, by a discipline sufficiently severe to inform him for the future that such conduct can never be condoned; and others in the profession must receive the unambiguous message that sexual intimacy with a patient is absolutely unprofessional and unacceptable.

An assessment of costs is entirely appropriate in a case such as this, where a respondent has incurred discipline as a result of his/her own self-serving actions or conscious misconduct; the burden of paying for the investigation and prosecution of such cases should not be borne by other members of the profession although, as a practical matter, it appears unlikely that Dr. Kim will be heard from again.

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[3]These three purposes of professional discipline have been set forth by the Wisconsin Supreme Court in four attorney discipline cases: State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Corry, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976).

[4]In my reading of the cases referred to in footnote 2, the term "rehabilitation" covers both positive and negative reinforcement to deter the offender from similar behavior in the future. See, for example, Corry at 126. Thus, even though the purpose of discipline is not to impose punishment per se, appreciating the unpleasant consequences of unprofessional behavior is part of rehabilitation.

Dated August 25, 1992.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-2124

NOTICE OF APPEAL INFORMATION

(Notice f Rights for Rehearing r Judicial Review, the times allow d for each, and th identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day peri d commences the day after personal service or mailing of this decisi n. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly t circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition f r judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board.

within 30 days of service of this decision if there has been no petiti n for rehearing, or within 30 days of service of the order finally disposing f the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service r mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing f this decision is shown below.) A petition for judicial review should b served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is October, 22, 1992.

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST DAVID KIM, RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS OF OFFICE OF BOARD LEGAL SERVICES Case No. 9206251MED

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. He is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of his employment, he was assigned as the administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter:

a. Administrative Law Judge Expense - John N. Schweitzer

Prehearing conference 6-24-92	1/2 hour
Prehearing conference 8-3-92	1/2 hour
Hearing 8-17-92	1 hour
Research and writing 8-19-92 and 8-20-92	4 1/2 hours
Hearing 8-25-92	1/2 hour
	7 hours

Total administrative law judge expense:
7 hours @ $23.80/hour = $166.60

b. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI
Record and transcribe hearings $ 119.30

Total reporter expense = $119.30

Total costs for Office of Board Legal Services = $285.90

John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 29 day of October, 1992.

June I. Rivers, Notary Public, State of Nevada.
County of Washoe

My commission 2-19-93

JUNE T. RIVERS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
MY APPOINTMENT EXPIRES FEB. 19, 1993