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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR LICENSE TO PRACTICE	:	
PSYCHOLOGY OF	:	
	:	FINAL DECISION
STANLEY D. RUBINSTEIN,	:	AND ORDER
APPLICANT.	:	

The State of Wisconsin, Psychology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

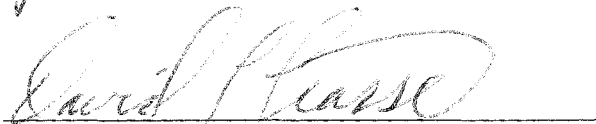
ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Psychology Examining Board. Let a copy of this order be served on the respondent by certified mail.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Stanley D. Rubinstein.

A party aggrieved by this decision who is a resident of this state may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Psychology Examining Board.

Dated this 2nd day of April, 1984.



STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR LICENSE TO PRACTICE	:	
PSYCHOLOGY OF	:	
	:	PROPOSED DECISION
STANLEY D. RUBINSTEIN,	:	
APPLICANT.	:	

The parties to this proceeding for the purposes of Wis. Stats.
sec. 227.16 are:

Stanley D. Rubinstein
c/o P. O. Box 176
West Bend, Wisconsin 53095

Psychology Examining Board
1400 East Washington Avenue, Room 178
P. O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P. O. Box 8936
Madison, Wisconsin 53708

A hearing was held in the above-captioned matter and, subsequent thereto, written briefs were submitted by the parties. Representing the applicant in this proceeding was Attorney Daniel L. Sargeant, and representing the Division of Enforcement was Attorney Michael J. Berndt.

Based upon the record herein, the examiner recommends that the Psychology Examining Board adopt as its final decision in this case the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Stanley D. Rubinstein (Rubinstein), the applicant herein, had been licensed by the Board of Medical Quality Assurance to practice psychology within the State of California. That license was granted on June 25, 1973.

CONDUCT

2. On April 25, 1979, a complaint was filed by the Attorney General for the State of California alleging in part that Rubinstein had, while licensed to practice as a psychologist in the State of California, engaged in sexual intimacies with two separate patients under his care. Said complaint, entitled "Accusation", was captioned In the Matter of the Accusation against Stanley D. Rubinstein, Ph.D.

3. The Accusation against Rubinstein provided, in material part, as follows:

"4. Beginning approximately in 1973, and continuing until approximately September 1975, and commencing on or about September 1976 through on or about April 1977, respondent (Rubinstein) undertook to professionally care for and treat patient Christine Dieffenback for emotional and personal problems.

"5. In diagnosing, treating, and caring for patient Christine Dieffenback during said period of time, and beginning particularly on or about September 1976 through November 1976, respondent permitted and/or encouraged the psychotherapeutic relationship to develop into a personal, physically intimate, and sexual relationship between himself and said patient by engaging in numerous occasions in such acts as sexual intercourse, fellatio and cunnilingus with said patient in his office.

"6. Beginning on or about December 1975, respondent undertook to professionally care for and treat patient Eleanor Brooks for post-partum blues, depression and emotional upset. Said patient remained under the professional care and treatment of respondent until on or about July 1977.

"7. In diagnosing, treating, and caring for patient Eleanor Brooks during said period of time, and particularly on or about December 23, 1976, respondent permitted and/or encouraged the psychotherapeutic relationship to develop into a personal, physically intimate, and sexual relationship between himself and said patient by engaging in such acts as hugging, kissing, fellatio, and cunnilingus with said patient, at an office located at his residence."

4. On October 17, 1979, Rubinstein, by himself and his attorney, entered into a Stipulation with the Attorney General for the State of California by which Rubinstein admitted each and every allegation of the Accusation described above.

5. On January 16, 1980, the State of California Psychology Examining Committee of the Board of Medical Quality Assurance revoked Rubinstein's license to practice as a psychologist in the State of California, however, the revocation was stayed for a period of five years during which time Rubinstein was ordered suspended for a minimum of sixty days and placed on probation. During the period of probation, Rubinstein's license was subject to the conditions and limitations set forth in the "Proposed Decision Pursuant to Stipulation", a copy of which is attached hereto and incorporated herein as though fully set forth.

6. Under the terms of the California decision described above in paragraph 5, periods of residency or practice outside California do not apply to the reduction of the probationary period described in the decision. Rubinstein has not begun or completed his probation period in California.

MATERIAL CONSIDERATIONS

7. During the time period in which Rubinstein engaged in sexual intimacies with clients, September-December, 1976, as described above, he was experiencing serious difficulties, both emotionally and sexually, within his marriage. Rubinstein has subsequently received a divorce and has remarried. He described his current marriage as positive.

8. From the end of 1976 through 1979, Rubinstein underwent psychotherapy on a weekly basis. Rubinstein now considers himself to be completely recovered from the emotional and mental pressures which he experienced in 1976.

9. In December, 1979, Rubinstein was hired as a field psychologist by, and in, the country of Israel. His employment involved the performance of psychology services for the Israeli Air Force, including such duties as performing psychological evaluations, engaging in short term individual treatment, and crisis intervention. For approximately the last two years, Rubinstein has supervised other psychologists working for the Israeli Air Force.

10. Rubinstein's immediate supervisor in his employment is Dr. Alexander Hess (Hess). Hess is a Lieutenant Colonel in the Israeli Air Force. Hess has performed psychological services for the Israeli Air Force since 1968 and has been designated as a chief psychologist since approximately 1972 or 1973. Hess' responsibilities as chief psychologist include determining mental health policies, providing psychological services to patients, and supervising and evaluating the performance of his staff, which consists of about 18 individuals, including social workers.

11. In his role as Rubinstein's supervisor, Hess meets with Rubinstein about 2 or 3 times a month, discusses individual patient cases, and prepares written evaluations of Rubinstein's performance which are placed in his personnel file.

12. It is Hess' opinion that Rubinstein is one of the most highly skilled and competent individuals on his staff. Despite his awareness of Rubinstein's disciplinary problem in the State of California, Hess' opinion of Rubinstein is such that he has assigned him increasing responsibilities, including the supervision of other staff. Hess has placed no restrictions upon Rubinstein's practice, and permits him to counsel both male and female patients.

CONCLUSIONS OF LAW

1. The Psychology Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 455.09.

2. Pursuant to Wis. Adm. Code sec. Psy 3.02(15), indulging in sexual intimacies with clients constitutes unprofessional conduct in the practice of psychology.

3. Pursuant to Wis. Stats. sec. 455.09(1)(g), the Psychology Examining Board may, in its discretion, deny or grant an application for a license of an individual who has indulged in sexual intimacies with clients contrary to Wis. Adm. Code sec. Psy 3.02(15).

ORDER

NOW, THEREFORE, IT IS ORDERED, that Stanley D. Rubinstein shall be issued a license to practice psychology in the State of Wisconsin at the time Rubinstein files satisfactory proof with the Psychology Examining Board of the following:

1. That Rubinstein has engaged the services of a Board certified/ National register psychiatrist or psychologist of his choice who is acceptable to the Board for the purpose of obtaining counseling and treatment. Prior to beginning treatment, Rubinstein shall provide the Board with the name of this psychiatrist or psychologist for its approval.

2. That the psychiatrist or psychologist selected by Rubinstein, and approved by the Board, has submitted a written report to the Board which sets forth an evaluation of Rubinstein and further indicates that he is capable of practicing psychology in a manner consistent with the public interest.

3. That all expenses incurred under paragraphs 1 and 2 above shall be the responsibility of Rubinstein.

IT IS FURTHER ORDERED that in the event Rubinstein files the satisfactory proof set forth above, the license issued to him to practice psychology shall be limited as follows for a period of five years from the date of issuance:

4. That Rubinstein shall permit said psychiatrist or psychologist to submit written reports regarding Rubinstein's treatment, condition, and progress to the Board on a semi-annual basis for the entire period of the limited license; the first report being due no later than six months following the date of issuance of Rubinstein's limited license hereunder. It shall be the responsibility of Rubinstein to insure that these reports are submitted on a timely basis.

5. That all expenses incurred under paragraph 4 above shall be the responsibility of Rubinstein.

6. That upon resumption of his practice, Rubinstein shall permit a psychologist selected by Rubinstein and approved by the Board, to supervise his practice during the time the license limitations are in effect. That supervision shall include, but not be limited to, defining the nature and scope of Rubinstein's practice, review of treatment proposals, approval of clientele, review of records, and consultation regarding practice. Rubinstein shall submit to the Board a written plan from his supervising psychologist detailing the supervision procedures prior to resuming practice.

7. Rubinstein shall permit his supervising psychologist to submit written reports to the board regarding the supervision of his practice at six-month intervals during the pendency of the license limitations. It shall be the responsibility of Rubinstein to insure that these reports are submitted on a timely basis.

8. Rubinstein shall pay the reasonable expenses incurred and the reasonable value of the services rendered by his supervising psychologist in reviewing his records and practices and in preparing written reports and evaluations.

9. At any time following a date not less than one year from the time Rubinstein resumes his practice, Rubinstein may petition the Board for removal of any or all of the license limitations. Rubinstein must provide the Board with evidence that said limitations may be safely removed, including a written report from the supervising psychologist so indicating. The Board retains the discretion to grant or deny this request.

10. Proof, after hearing, of a violation of any of the conditions, requirements, and restrictions herein on Rubinstein's limited license, may result in disciplinary action against Rubinstein's license to practice psychology.

OPINION

The applicant, Stanley D. Rubinstein, was disciplined by the State of California Board of Medical Quality Assurance, Psychology Examining Committee, on January 16, 1980 for having engaged in sexual relationships with two female clients between September, 1976 and December, 1976. The disciplinary order of the California board suspended Rubinstein's license to practice psychology in that state for a period of at least three months, and placed him under probation for five years, subject to certain limitations and conditions. Rubinstein has applied for licensure in this state and on March 9, 1983 the Psychology Examining Board denied such application based upon his conduct in California. Rubinstein requested a formal hearing upon the board's denial pursuant to Wis. Adm. Code ch. Psy 2. This proposed decision is based upon the hearing requested and held.

This action is designated as a "class 1 proceeding", which is described within Wis. Stats. sec. 227.01(a) as one in which the board "acts under standards conferring substantial discretionary authority upon the agency." In determining whether or not to grant a license to Rubinstein in this case, the board must look to several factors which will assist in the exercise of its reasoned discretion. It is clear that just as the protection of the public is the prime consideration when considering disciplinary action against current licensees, this same overriding factor is of paramount importance in determining whether a license should be issued. Cf., Strigenz v. Department of Regulation, 103 Wis.2d 281 (1981) and State v. Aldrich, 71 Wis.2d 206 (1976). "Punishment" of an applicant, however, would seem no more of a factor in determining whether or not a license should be granted than it is in determining appropriate discipline. Cf., State v. MacIntyre, 41 Wis.2d 481 (1969).

One of the factors which must be considered in this proceeding is the seriousness of Rubinstein's conduct in California, which led to discipline by the California board and the initial application denial here. There can be no question but that a psychologist who engages in sexual intimacies with clients is guilty of grossly improper conduct. A client who seeks professional services from a licensed psychologist must be able to place total trust in the integrity and competency of the individual. Engaging in sexual relationships with a client can result in serious emotional problems for the client and present the risk of substantial harm. Very little, if any, positive therapy can be expected to take place where a sexual relationship between the psychologist and client is present.

The seriousness of Rubinstein's conduct is no less, even if it is accepted that he may have only "permitted" the development of sexual relationships with the two clients involved. See, State's Ex. #2, paragraphs 5 and 7. The nature of the relationship between a psychologist and client is such that professional integrity in this area must be scrupulously and completely adhered to at all times. The Wisconsin Psychology Examining Board has recognized the nature of such misconduct in the past and has revoked the licenses of those found to have engaged in such activity. See, In the Matter of Ronald Mathias (5/23/80) and In the Matter of Kenneth Davis (11/17/81). In another case, the board imposed a lengthy suspension and placed strict limitations upon the licensee when reinstated to practice. See, In the Matter of Charles Goldsmith (2/4/82).

In light of the nature of Rubinstein's past conduct, a major issue which must be addressed is the potential risk which Rubinstein currently poses to prospective clients should his license be granted. The past speaks for itself. Rubinstein fully admits this and indicates that he is aware of the impropriety of his actions in 1976 and is remorseful. In order to assess his current fitness to practice psychology in a manner consistent with the safety and welfare of the public, Rubinstein's history since the 1976 events must be examined, as well as the circumstances surrounding the misconduct.

Rubinstein testified that during the time in question, September through December, 1976, he was experiencing emotional and sexual problems within his marriage. He stated that his relationships with the two clients were a direct reflection and result of the problems within his marriage. Realizing this, and recognizing his need for counseling, he underwent professional therapy on a weekly basis from the end of 1976 through 1979. He believes that his treatment was successful, as is affirmatively demonstrated by his positive employment record since that time. In assessing his current fitness, he claims that the underlying cause for his conduct is now removed. He divorced his wife of the time, underwent successful psychological treatment, remarried and is currently experiencing a positive and satisfactory relationship with his spouse. It appears, then, that Rubinstein's personal situation is materially different today than in 1976, in that his current marital situation is such as to lessen the likelihood of a recurrence of similar misconduct.

Also presented at the hearing was the testimony of Rubinstein's supervising psychologist, Dr. Alexander Hess. In December, 1979, Rubinstein accepted a position as a psychologist with the Israeli Air Force in the country of Israel. Dr. Hess, who as chief psychologist was responsible for supervising the activities of Rubinstein, testified that Rubinstein was one of the most competent and highly skilled individuals on his staff. He stated that he placed significant trust in Rubinstein, despite his past misconduct, to the extent that he assigned Rubinstein increasing responsibilities, including supervision of other staff, and placed no restrictions upon Rubinstein's counseling of female patients.

It should be noted in reviewing Dr. Hess' testimony, that there is no issue in this case as to Rubinstein's competency or technical proficiency. His testimony, however, is significant in corroborating Rubinstein's position that he has not engaged in conduct similar to that which occurred in 1976 and that he is currently capable of treating female patients without posing a risk to their safety or welfare.

In reviewing and balancing the various factors relevant to the determination to be made here, it is my opinion that Rubinstein should be provided with the opportunity to reintegrate himself into the profession of psychology. A substantial period of time has passed, over 7 years, since Rubinstein's misconduct. During that time he has received professional counseling; has not engaged in inappropriate conduct with female patients; and has apparently established a satisfactory and positive marriage relationship. Rubinstein indicates that he is fully cognizant of the grossly unprofessional nature of his past conduct. His positive work history over the last seven years confirms Rubinstein's expressed intent to act in a professional and ethical manner if licensed.

It is necessary, however, that sufficient controls be put in place to assure that his practice in this state will be consistent with the public welfare and safety. Indeed, the board has ordered strong limitations upon licensees who re-enter practice after similar serious past conduct. See, In the Matter of Charles Goldsmith (Orders dated 2/4/82, 2/18/83 and 2/2/84). In this case, the board should require the submission of a current evaluation of Rubinstein by a psychologist or psychiatrist indicating that he is presently fit to practice psychology, prior to issuing any license. Thereafter, assuming the receipt of a positive report, any license issued to Rubinstein must be limited for a substantial period of time in order for the board to closely monitor his practice in the public interest. The recommended limitations, which are similar to those imposed in Goldsmith, supra, and by the California board in 1980, will also serve to reinforce and continuously assess Rubinstein's rehabilitation.

The recommendation that a limited license be issued to Rubinstein upon his submission of a positive psychological evaluation is essentially equivalent to the position taken by the attorney from the Division of Enforcement in his post-hearing written arguments. Although requesting that Rubinstein's application be denied at this time, he states:

"The Complainant would urge that the Applicant be invited to reapply for a limited license if a favorable psychological report is obtained by a psychologist approved by the Board. The suggested limitations would be much the same as those set forth in the Order of the California Board."

Under either the Division's recommendation or the order proposed in this decision, the ultimate result is that Rubinstein would be granted a limited license upon his submission of an appropriate psychological evaluation. The primary advantage of the approach taken within this decision is that Rubinstein will be placed upon advance notice of the strict limitations which the board will be placing upon any future license. Any perceptions that the future limitations upon Rubinstein's license will be lenient or non-exacting, should be dispelled at the earliest time possible. Setting forth such license restrictions at this time will promote this end.

In conclusion, it is my opinion that Rubinstein has demonstrated that his misconduct of over 7 years ago is unlikely to occur in the future to an extent sufficient to warrant conditioned licensure. He appears currently fit to practice psychology without representing a danger to the public. Assuming that he is able to present a positive evaluation by a psychologist or psychiatrist supporting this conclusion, Rubinstein should be granted a license. However, given the nature of his past misconduct, and the necessity that the board assure itself of his continued rehabilitation, such license should be restricted as recommended for a substantial period of time to enable a close monitoring of his future practice in the public interest.

Dated at Madison, Wisconsin this 13th day of February, 1984.

Respectfully submitted,



Donald R. Rittel
Hearing Examiner