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FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LS9403101MED

VERNON R. JAESCHKE, P.T.,

Respondent

FINAL DECISION AND ORDER

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

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Vernon R. Jaeschke, P.T.
S46 W22470 Tansdale Road
Waukesha, WI 53186

State of Wisconsin
Physical Therapists Affiliated Credentialing Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53703

A hearing was held in this matter on May 17, 1994. Respondent Vernon R. Jaeschke appeared in person and by Attorney Larry W. Barton. Complainant was represented by Attorney John R. Zwieg of the Division of Enforcement.

The administrative law judge filed his Proposed decision in the matter on July 5, 1994. Respondent's attorney filed his objections to the Proposed Decision on July 19, 1994. Attorney for the complainant filed his objections to the Proposed Decision on July 22, 1994. Oral arguments on the objections were heard by the credentialing board on August 30, 1994, and the board considered the matter on that date.¹

¹This matter was originally brought before the Medical Examining Board, which had jurisdiction over discipline of physical therapists at the time the Complaint was filed on May 17, 1994. 1993 Wisconsin Act 107 created the

Based upon the entire record of the proceeding, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Vernon R. Jaeschke, P.T., (DOB: 9/15/34) is duly licensed to practice physical therapy in the State of Wisconsin pursuant to license #581, which license was first granted on 11/20/62.

2. Mr. Jaeschke's latest address on file with the Department of Regulation and Licensing is S46 W22470 Tansdale Road, Waukesha, Wisconsin 53186.

3. In June of 1990, a neurologist referred Patient 1 to Mr. Jaeschke for physical therapy.

4. Patient 1 continued to see Mr. Jaeschke for physical therapy through November of 1990. Patient 1 discontinued physical therapy because her husband objected to her receiving it from a male physical therapist.

5. In February, 1991, subsequent to separating from her husband, Patient 1 returned to Mr. Jaeschke for further physical therapy. On one occasion Mr. Jaeschke kissed Patient 1 on her forehead during treatment and they sometimes hugged at the end of physical therapy sessions.

6. In March of 1991, while Patient 1 was still seeing Mr. Jaeschke for physical therapy, they were each planning to travel to the east coast during the same week. When they became aware of this, they agreed that they would travel together in Patient 1's car on the way to the east coast. During that trip Mr. Jaeschke and Patient 1 had sexual intercourse.

7. Upon their return from the east coast trip, Patient 1 continued in physical therapy with Mr. Jaeschke. They also continued their sexual relationship. Sexual contact took place during physical therapy sessions, and they had sexual intercourse at the physical therapy department on at least one occasion. Other sexual contact and sexual intercourse occurred away from the physical therapy department. The therapy relationship and the personal relationship ended in May of 1991.

8. In July of 1989, Patient 2 was in an automobile accident which caused

Physical Therapists Affiliated Credentialing Board effective July 1, 1994. The Act provides at §67(2)(d) that "Any matter relating to the regulation of physical therapists that is pending with the medical examining board . . . [on July 1, 1994, is] transferred to the physical therapists affiliated credentialing board, and all materials submitted to or actions taken by the medical examining board . . . with respect to the pending matter are considered to have been submitted to or taken by the physical therapists affiliated credentialing board."

injuries that required physical therapy for her neck. From July of 1989 to March of 1990, Patient 2 received physical therapy from physical therapists other than Mr. Jaeschke.

9. In March of 1990, Patient 2 began seeing Mr. Jaeschke for physical therapy to treat conditions in her neck and lower back. Patient 2 continued to receive physical therapy from Mr. Jaeschke approximately three times a week until May of 1991.

10. In April of 1990, while Mr. Jaeschke was performing a "release" on Patient 2, Patient 2 recalled a traumatic event that had occurred when she was 12 years of age. The recollection caused an emotional reaction by Patient 2 and Mr. Jaeschke placed his arms around Patient 2, hugged her, and told her that the emotional release was part of healing. From that point, hugging became part of most treatment sessions.

11. In July of 1990, Mr. Jaeschke and Patient 2 had sexual intercourse for the first time. It occurred away from the physical therapy department. Mr. Jaeschke and Patient 2 continued to have sexual contact and sexual intercourse until the termination of therapy in May of 1991. Some of the acts of sexual contact and sexual intercourse took place in the physical therapy department.

12. From May 15, 1991 through October 15, 1991, as a direct result of the conduct set out in paragraphs 5 through 17 above, Mr. Jaeschke did not practice physical therapy in the state of Wisconsin.

13. From October 16, 1991 through the present Mr. Jaeschke has practiced as a physical therapist in the state of Wisconsin and no other complaint of a similar nature has been made about him to the Wisconsin Department of Regulation and Licensing, the Wisconsin Medical Examining Board, Respondent's employers, any law enforcement agency, or anyone else to his knowledge.

14. In 1993, based upon the recommendation of the Division of Enforcement, Mr. Jaeschke, at his own expense, was evaluated by Dr. Charles M. Lodl, a Milwaukee psychologist with experience in performing psychological evaluations of people accused of sexual misconduct. Dr. Lodl prepared an evaluation of Mr. Jaeschke dated November 26, 1993, which is part of the record in this matter. This evaluation is to be considered confidential to the extent allowed under secs. 51.30 and 146.82, Stats., and the exceptions to the public records and open meetings laws.

15. Mr. Jaeschke is currently employed as a staff physical therapist with Performance Enhancement Psychological and Physical Therapy Services in Brookfield, Wisconsin.

CONCLUSIONS OF LAW

1. As of July 1, 1994, the Physical Therapist Affiliated Credentialing Board is

the legal authority responsible for issuing and controlling credentials for physical therapists, under ch. 448, Stats. The board has jurisdiction over Mr. Jaeschke's license.

2. The Physical Therapist Affiliated Credentialing Board has personal jurisdiction over Mr. Jaeschke under sec. 801.04 (2), Stats., based on his receiving notice of the proceeding, and his holding a credential issued by the board.

3. The Physical Therapist Affiliated Credentialing Board has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.085(5)(c), Stats. and sec. 448.57, Stats.

4. Mr. Jaeschke's conduct in entering into a sexual relationship with Patient 1, under the circumstances set out above, constitutes unprofessional conduct within the meaning of §§448.02(3) and 448.57(2)(f), Stats., and §Med 10.02(2)(h), Code.

5. Mr. Jaeschke's conduct in entering into a sexual relationship with Patient 2, under the circumstances set out above, constitutes unprofessional conduct within the meaning of §§448.02(3) and 448.57(2)(f), Stats., and §Med 10.02(2)(h), Code.

6. Unprofessional conduct is an appropriate ground for the imposition of professional discipline, under sec. 448.57(2), Stats.

ORDER

THEREFORE, IT IS ORDERED that the license issued to Vernon R. Jaeschke to practice physical therapy be suspended for six months.

IT IS FURTHER ORDERED that Mr. Jaeschke be given credit against his six-month suspension for the five months during which he was unemployed as a direct result of his actions in this case, and that his license be suspended for an additional thirty days, effective 10 days from the date hereof. Mr. Jaeschke shall have no patient contact during the period of suspension of his license.

IT IS FURTHER ORDERED that Mr. Jaeschke's license be limited as follows:

1. Mr. Jaeschke shall participate in treatment with a mental health professional, who shall first be approved by the board or its designee.

a. The mental health professional shall be provided with a copy of the evaluation prepared by Charles M. Lodi, Ph.D. dated November 26, 1993, and treatment shall address the issues raised by Dr. Lodi.

b. Mr. Jaeschke shall comply with all recommendations of the approved mental health professional for inpatient or outpatient treatment or both and shall comply with all aspects of the treatment program, including medication, as recommended by the mental health professional.

c. All costs of the treatment program shall be the responsibility of Mr. Jaeschke or his health insurer.

d. The approved mental health professional shall submit formal written reports to the Board every 3 months, with the first report due 3 months from the date of this Order. The report shall indicate whether Mr. Jaeschke has continued to follow the psychiatrist's recommendations for treatment and shall assess Mr. Jaeschke's progress in treatment. Mr. Jaeschke shall be responsible for the timely filing of these reports.

e. Mr. Jaeschke shall provide and keep on file with his approved mental health professional and all treatment facilities current releases which comply with state and federal laws authorizing release of all of his medical and treatment records and reports to the Wisconsin Physical Therapists affiliated Credentialing Board and its agents and permit his mental health professional and other health care providers to disclose and discuss the progress of his treatment and rehabilitation with the Wisconsin Physical Therapists Affiliated Credentialing Board and its agents.

f. In the event that the approved mental health professional is unable or unwilling to continue to provide treatment to Mr. Jaeschke, Mr. Jaeschke shall find another mental health professional to provide those services, who shall first be found to be acceptable to the Board.

g. In the event that Mr. Jaeschke's approved mental health professional believes that there is no longer a need for Respondent to continue in treatment, that mental health professional shall submit a report to the Physical Therapists Affiliated Credentialing Board setting out the basis for that conclusion, and the Board shall consider whether to end this requirement regarding treatment.

2. There shall be another health care professional physically present in the immediate area (physical therapy department, hospital ward, or unit), for all examinations or treatments provided to female patients by Mr. Jaeschke. The other health care professional need not, however, be in the same room with Mr. Jaeschke.

3. A physician or physical therapist who practices at the same facility as Mr. Jaeschke, and who shall first be approved by the Board, shall serve as Mr. Jaeschke's supervisor for purposes of this Order. The supervisor shall insure that the requirements of paragraph 2 are being carried out at all sites where Mr. Jaeschke

practices. The supervisor shall meet with Mr. Jaeschke on a weekly basis to discuss Mr. Jaeschke's practice and address any problems or concerns in Mr. Jaeschke's practice.

4. The supervisor shall file reports with the board every 3 months, beginning 3 months from the date of this Order. The report shall indicate the manner in which the requirements of paragraph 2 are being carried out, and any problems or concerns which have arisen regarding Mr. Jaeschke's practice.

5. The requirements set out in paragraphs 2, 3 and 4 shall continue for at least one year from the date of this Order. Subsequent to the expiration of one year, these limitations may be modified or terminated if Mr. Jaeschke appears before the Wisconsin Physical Therapists Affiliated Credentialing Board and requests that these limitations on his license be modified or terminated, and if the Board grants that request. Mr. Jaeschke shall provide the Board with any basis for such request.

6. Within three months after the entry of this order, Mr. Jaeschke must communicate in writing with the appropriate official(s) of the Wisconsin Physical Therapy Association to volunteer to be a presenter or a panel member on a subject related to his professional discipline at the next available annual meeting of the Association. If his offer is accepted, Mr. Jaeschke must follow through and appear as a presenter or panel member.

7. If Mr. Jaeschke requests that any limitation on his license which is imposed by this Order be modified or terminated, it shall be within the sole discretion of the Board whether to modify or terminate the limitation. In the event that the Board declines to make a modification or termination requested by Mr. Jaeschke, it shall not be considered a denial of license so as to entitle Mr. Jaeschke to a hearing on the decision.

8. In the event Mr. Jaeschke, his approved mental health professional, or his supervisor, becomes aware of any complaint made against Mr. Jaeschke regarding alleged misconduct in the practice of physical therapy, that person shall immediately report the existence and details of that complaint to the Wisconsin Physical Therapists Affiliated Credentialing Board.

9. Mr. Jaeschke shall be permitted to continue practice upon condition that he refrains from engaging in unprofessional conduct. He shall appear before the Board, its officers or its agents at such times as may be designated by the Board from time to time; shall fully disclose to the Board, or its officers or agents, the nature of his practice and conduct; shall fully comply with the limits placed on his practice and conduct by the Board; and shall cooperate with the Board.

10. Violation of any term or condition of this Order may constitute grounds for revocation of Mr. Jaeschke's license to practice physical therapy in the state of Wisconsin. Should the Board determine that there is probable cause to believe that Mr.

Jaeschke has violated the terms of this Order, the Board may order that Mr. Jaeschke's license be summarily suspended, pending hearing and determination of the alleged violation.

EXPLANATION OF VARIANCE

The board has accepted the ALJ's recommended Findings of Fact in their entirety. The board has also accepted the ALJ's Conclusions of Law, but has supplemented Conclusions of law 4. and 5. to include references to both the statutory unprofessional conduct provision in effect at the time of the filing of the Complaint, and sec. Med 10.02(2)(h), Code, the rule of the Medical Examining Board violated in this case.²

The board has modified the recommended Order in a number of particulars. First, while in accepting the ALJ's recommendation that the license be suspended for six months, the board has not accepted the recommendation that that portion of the suspension which is to be served prospectively be served at any time within the next six months. It is the board's conclusion that the disciplinary objectives of rehabilitation and deterrence are not properly subserved by permitting Mr. Jaeschke to serve his period of suspension at his convenience. Accordingly, the board orders that the period of suspension commence 10 days following the date hereof. The board has also not accepted the ALJ's recommendation that during the period of suspension, Mr. Jaeschke "may not perform any of the functions reserved to licensed physical therapists, but may be employed in any other capacity which is available to an unlicensed person, including interviewer or trainer or supervisor or consultant." Instead, the board removes any question or confusion as to what is permitted or prohibited by ordering simply that during the period of suspension, Mr. Jaeschke may have no patient contact.

Next, the board has ordered that Mr. Jaeschke receive psychotherapy for a period of one year. Psychologist Charles M. Lodl, Ph.D., conducted an evaluation of Mr. Jaeschke in connection with these proceedings. Dr. Lodl's evaluation concludes that Mr. Jaeschke should attend weekly psychotherapy sessions for at least 12 months. The administrative law judge did not accept that recommendation. The board does.

Finally, the administrative law judge recommends that Mr. Jaeschke's practice be monitored for a period of one year. The board has instead ordered that his practice be monitored for an indefinite period of not less than one year, with provision for Mr. Jaeschke to petition for reduction or elimination of the monitoring requirement after one year. This modification will permit the board to more easily and effectively address any problems with Mr. Jaeschke's practice which may become apparent through the monitoring process, and to continue the monitoring requirement after one year if such

²1993 Wisconsin Act 107, at sec. 67(2)(c), provides that all rules promulgated by the Medical Examining Board pertaining to the regulation of physical therapists shall constitute rules of the physical therapists affiliated credentialing board until amended or repealed by the credentialing board.

continuation appears necessary.

Dated this 9th day of September, 1994.

STATE OF WISCONSIN
PHYSICAL THERAPISTS
AFFILIATED CREDENTIALING BOARD

by Michael W. Edwards
Michael W. Edwards, P.T.
Chairman

WRA-JAESCHKE.DOC

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN MEDICAL EXAMINING BOARD.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

SEPTEMBER 14, 1994.

1. 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 sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

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

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision 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.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)