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IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS0311041PHT
PAUL Z. ABLER, P.T., :
RESPONDENT. :

FINAL DECISION AND ORDER

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

Paul Z. Abler, P.T.
36752 Lower Lake Road
Oconomowoc, WI 53066

Physical Therapists Affiliated Credentialing 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 Physical Therapists Affiliated Credentialing 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. Paul Z. Abler, P.T., Respondent, date of birth October 30, 1958, is licensed by the Wisconsin Physical Therapists Affiliated Credentialing Board as a physical therapist in the State of Wisconsin pursuant to license number 2334, which was first granted April 13, 1981.

2. Respondent's last address reported to the Department of Regulation and Licensing is 36752 Lower Lake Road, Oconomowoc, WI 53066.

3. Respondent is the owner of Abler Physical Therapy LLC and provides physical therapy services at its offices in Hartland and Elm Grove, Wisconsin.

4. On September 2, 2000, Ms. A (DOB 3/14/80) was involved in a motor vehicle accident, in which he vehicle was struck from behind. Following the accident, Ms. A had head, neck and back pain, and received the following evaluations and treatment, prior to being seen by Respondent:

a. On September 7, 2000, Ms. A's primary physician referred her to a sports medicine and physical therapy center for evaluation and treatment of neck and back strain due to the accident. Ms. A was treated with various modalities at that center from September 12, 2000 to April 13, 2001. Through the latter portion of that treatment, Ms. A also complained of pain in the posterior aspect of her pelvic girdle. Results of treatment suggested sacroiliac joint instability might be causing some of her pain.

b. From July 10, 2001 through January 8, 2002, Ms. A was then treated with physical therapy and massage therapy at an exercise and spine center for complaints of pain in the lower and mid back and the neck.

c. During that time, Ms. A was evaluated by an orthopedic surgeon on September 20 and October 15, 2001 and January 4, 2002, who diagnosed an isthmic spondylolisthesis at L5-S1, Grade 1, with a mild degenerative disc at L4-5. The possibility of surgery was discussed with Ms. A on January 4, which she declined.

5. Ms. A was then referred to Respondent for further treatment of her condition:

a. Respondent provided physical therapy to Ms. A on 22 occasions from January 25, 2002 to May 10, 2002.

b. All treatment sessions prior to March 29, 2002 took place at Respondent's office in Hartland. Because Ms. A had purchased some home gym equipment and wanted Respondent's recommendation on how to use it to strengthen her back, sessions on March 29, April 19 and May 10, 2002 were held at Ms. A's home in Waukesha.

6. Respondent's note of February 13, 2002 indicates that, in addition to her other symptoms, Ms. A reported increased urinary urgency and a feeling of decreased control of her bladder. Respondent concluded that the symptoms indicated a lack of strength in her pelvic floor muscles. This also indicated to Respondent that Ms. A's lack of pelvic floor muscle control was a contributing factor to her overall clinical status of spinal and pelvic instability.

7. Ms. A and Respondent then discussed specific exercises and manipulation that could be done to improve the strength of the pelvic floor muscles. Respondent had Ms. A perform Kegel muscle strengthening exercises. On several occasions, in order to determine if Ms. A was using the correct muscles and to facilitate their neuromuscular activation, Respondent placed two to three of his fingers against Ms. A's levator ani, pubococcygeus and iliococcygeus muscles from the coccyx to the inferior margin of the external labia, while she performed certain exercises. Ms. A contends that Respondent lowered her panties and placed his fingers directly against the skin of her labia. Respondent contends that Ms. A's panties remained in place and were between his fingers and her labia.

8. On May 10, 2002, Respondent went to Ms. A's residence to provide her with treatment. They were the only people in the house. During that treatment session, the following occurred:

a. Ms. A contends that Respondent touched Ms. A's labia differently than he had during other treatment sessions. Ms. A describes the touch as caressing rather than therapeutic. Ms. A contends that for the first time, Respondent inserted his finger between Ms. A's external labia. She describes the touching as attempting to sexually stimulate her.

b. Ms. A contends that while still stimulating Ms. A's labia with one hand, Respondent used his other hand to move Ms. A's sports bra off one breast and then leaned down and touched her nipple with his mouth.

c. Ms. A immediately pushed Respondent away from her and told him to stop. Respondent asked whether he could touch her "there" indicating the genital area and she said that he could not and asked him to leave. Respondent apologized and left Ms. A's residence.

9. That same day, Ms. A reported Respondent's conduct to the Waukesha Police Department. As a result, Respondent was charged in Waukesha County Circuit Court case number 02CM2623, with one count of violating § 940.225(3m), Stats., (4th Degree Sexual Assault), a class A misdemeanor. On April 10, 2003, Respondent entered a no contest plea and was convicted of the charge.

10. § 940.225(3m), Stats., is a crime which relates to practice under Respondent's license.

11. On May 8, 2003, Respondent was given a stayed sentence of nine months in the local jail, and placed on two years probation. Conditions included:

a. Jail time: 60 days, with Huber privileges.

b. Costs & Restitution: \$1748.82 in restitution; \$50.00 mandatory victim/witness surcharge; \$194.88 court and other costs.

c. Other: no contact with the victim Ms. A; no contact with private parts of female patients unless a third party is present; follow through any assessments and/or recommendations.

12. Respondent was psychologically evaluated by Dr. Charles Lodl, a psychologist who specializes in evaluating and treating sexual offenders. Dr. Lodl's report, issued July 26, 2002, says Respondent does not meet "any criteria for the diagnosis of a paraphilic disorder." The report also states:

"While there is not a specific risk index to address the likelihood of continued professional misconduct, based on the information at hand, Mr. Abler appears to be at a low risk to engage in future sexually assaultive behavior.

With these conclusions in mind, I would recommend that Mr. Abler participate in a program for men who have sexually abused others. His level of risk suggests that his treatment needs could adequately be addressed through community-based outpatient programming. The focus of

such treatment should include: increasing his awareness of boundary issues, increasing his awareness of personal feelings and emotions toward females, increasing his awareness of the impact of sexually abusive behaviors on victims and indirect victims, and to assist him in developing appropriate interventions and safety plans to prevent relapse.”

13. Respondent has not practiced physical therapy from May 15, 2003 to the present as a result of additional conditions placed on Respondent by his probation agent. Respondent has not represented himself as a physical therapist during the period.

14. Following Dr. Lodl’s evaluation, Respondent commenced and continues in treatment with Dr. Michael Kotkin, a Milwaukee psychologist recommended by Dr. Lodl. The treatment is focused sex abuse treatment addressing the issues and needs identified by Dr. Lodl.

CONCLUSIONS OF LAW

1. The Wisconsin Physical Therapists Affiliated Credentialing Board has jurisdiction over this matter pursuant to § 448.57, Stats.

2. The Wisconsin Physical Therapists Affiliated Credentialing Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

3. Respondent, by engaging in the conduct with Ms. A as set out above, has committed unprofessional conduct by failing to avoid conduct which tends to constitute a danger to the health, welfare or safety of a patient, as defined by Wis. Adm. Code § PT 7.02(8), and is subject to discipline pursuant to § 448.57(2)(h), Stats.

4. Respondent, by having been convicted of a crime which relates to practice under his license, has engaged in unprofessional conduct as defined by Wis. Adm. Code § PT 7.02(18) and is subject to discipline pursuant to § 448.57(2)(b) and (f), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the license of Paul Z. Abler, P.T., to practice physical therapy in the state of Wisconsin is hereby **SUSPENDED** for a period of at least two years. The effective date of the commencement of the suspension is retroactive to May 15, 2003.

2. That Respondent may petition the Physical Therapists Affiliated Credentialing Board for the termination of the suspension after two years, under the following terms and conditions:

a. Respondent shall provide the Board or its designee with the names and locations of all persons who have evaluated or treated or educated Respondent relating to the recommendations set out in Finding of Fact 12.

b. Respondent shall execute all releases necessary for those persons to provide their

records to the Board and to discuss their evaluations, treatment and education of Respondent with the Board or its designee.

c. The Board shall have the opportunity to review those records and discussions and Respondent must provide proof sufficient to the Board that Respondent can practice with reasonable skill and safety of patients and public.

d. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address the facts of this disciplinary matter and the records or discussions relating to the recommendations of finding of fact 12, 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.

e. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

3. Any request for approval of an evaluator, therapist, supervisor or educational program required by this Order shall be mailed or delivered to:

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

4. If Respondent believes that the Board's refusal to end the suspension is inappropriate or that any limitation imposed or maintained by the Board under paragraph 2d is inappropriate, Respondent may seek a class 1 hearing pursuant to sec. 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 suspension or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

5. Violation of any term or condition of this Order, or of any limitation imposed under paragraph 2d above, may constitute grounds for revocation of Respondent's license to practice physical therapy 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 paragraph 2d 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 this 4th day of November, 2003.

Barbara Flaherty

Chairperson

Physical Therapists Affiliated Credentialing Board