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STATE OF WISCONSIN
BEFORE THE PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
GABRIELE SCHUE HAYES, P.T., Respondent	:	Case No. 0409142PHT

FINAL DECISION AND ORDER

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

Gabriele Schue Hayes
303 Blue Water Court
Dousman, WI 53118

Physical Therapists Affiliated Credentialing Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter commenced on March 7, 2005.[1] The Division of Enforcement appeared by attorney John R. Zwieg. The respondent, Gabriele Schue Hayes, P.T., appeared in person and by her attorney Burton A. Wagner. At the conclusion of the first day of hearing, the respondent's attorney requested that the matter be adjourned and rescheduled to a later date due to the unavailability of a witness. The hearing was adjourned and reconvened on March 30, 2005. When the hearing reconvened, the parties indicated that they had reached a stipulation concerning the testimony of the witness and the stipulated facts were read into the record. Closing arguments were made by the parties and the hearing concluded.

FINDINGS OF FACT

1. Respondent, Gabriele Schue Hayes, P.T., (D.O.B. 3/1/1968), is licensed by the Wisconsin Physical Therapists Affiliated Credentialing Board as a physical therapist in the State of Wisconsin pursuant to license # 24-3948. Respondent's license was first granted on August 23, 1990.

2. Respondent's last address reported to the Department of Regulation and Licensing is N65W38500 S. Woodlake Circle, Oconomowoc, Wisconsin, 53066. [2]

3. During the time of the events set out below, Respondent was employed as a physical therapist at Abler Physical Therapy LLC, which had offices in Hartland and Elm Grove, Wisconsin.

4. On May 6, 2002, Mr. A., a 43 year old married man, was evaluated by an orthopedic surgeon who diagnosed him with

left adhesive capsulitis of the shoulder and low back pain due to a lumbar herniated disk. Mr. A was then referred to Respondent for evaluation and treatment.

5. As a result of the referral, Respondent performed an initial evaluation of Mr. A on May 9, 2002, and provided physical therapy to Mr. A on twenty-two (22) occasions from May 14, 2002 to September 18, 2002. Mr. A's treatment included extensive evaluation, mobilizations, modalities, rotator cuff exercises, lumbar stabilization exercises including the ball, soft tissue mobilization to the shoulder, and lumbar paraspinals.

6. At the time Respondent performed the initial evaluation of Mr. A on May 9, 2002, Respondent noted that Mr. A was instructed in isometrics for the scapula and free weight exercises and that at the time of the next visit, he would begin lumbar stabilization exercises. Respondent indicated that Mr. A would be seen twice a week for four weeks and return for re-exam.

7. During his treatment session on September 11, 2002, Mr. A was advised that his next session on September 18, 2002, would be his last session and that a final evaluation and discharge recommendation would be provided at that session.

8. Respondent personally scheduled Mr. A's final treatment session on September 18th, as it was her customary practice to manage her own patient appointment schedules.

9. Respondent considered Mr. A "discharged" on September 11, 2002, because his final treatment had been done and he was only coming for an assessment to be sent to his referring physician, measurements, and a review of his home exercise program. Respondent wrote in Mr. A's chart on September 11, 2002, "Continue PT one visit then discharge patient to home exercise."

10. On September 13, 2002, Mr. A called Respondent and asked if she had decided whether she would go to lunch with him. Respondent accepted the invitation.

11. On September 17, 2002, Respondent and Mr. A met at a local park and went for a long drive and talked. They also went to hit golf balls at a driving range, and went to the Sybaris Hotel in Mequon and engaged in sexual intercourse.

12. During Mr. A's last treatment session on September 18, 2002, Respondent did a final evaluation including range of motion and muscle testing to provide measurements for Mr. A's referring physician. Respondent discharged Mr. A that day, after discussing with him a plan for him to continue a home exercise program.

13. Respondent and Mr. A have continued to have a personal and sexual relationship to the present.

14. Respondent and Mr. A were married approximately two years ago.

15. Respondent was discharged from therapy and Respondent did not provide any further physical therapy treatment to Mr. A after September 18, 2002.

16. During the course of her treatment of Mr. A, Respondent's chart notes do not indicate that she performed an additional reevaluation of his reported lower back pain to obtain a clinical impression of the cause of this pain.

17. Respondent's chart notes do not indicate that she communicated with Mr. A's physician prior to commencing her treatment of his lower back.

18. Respondent did not make adequate records of Mr. A's condition and treatment.

19. At the hearing, the parties stipulated that the following facts that would have been testified to by Dr. Stanwyck, who was Mr. A's referring physician:

    a. That Respondent was a good physical therapist.

b. That Dr. Stanwyck would not have authorized the continued care of Mr. A if it was inappropriate and he confirmed the validity of the prescriptions which he wrote for Mr. A's physical therapy on May 5, 2002, June 6, 2002, and August 6, 2002.

c. That Dr. Stanwyck does not recall the specifics of any discussions with Respondent regarding Mr. A's care or whether he personally discussed the care with her.

20. The American Physical Therapy Association (APTA) Guide for Professional Conduct interprets the APTA Code of Ethics and provides guidelines by which physical therapists may determine the propriety of their conduct. Principle 2, 2.1 (C) of the APTA Guide states:

A physical therapist shall not engage in any sexual relationship or activity, whether consensual or nonconsensual, with any patient while a physical therapist/patient relationship exists.

21. Respondent engaged in sexual contact with Mr. A while he was her patient.

CONCLUSIONS OF LAW

1. The Physical Therapists Affiliated Credentialing Board has jurisdiction over this matter pursuant to § 448.57 (1), Wis. Stats., and may impose discipline against Respondent pursuant to § 448.57 (2) (f), Wis. Stats.

2. By having engaged in sexual contact with Mr. A while he was her patient, Ms. Hayes committed unprofessional conduct in violation of § 448.57 (2) (f), Wis. Stats. and § PT 7.02 (8), Wis. Admin. Code.

3. By failing to make adequate records of Mr. A's condition and treatment, Ms. Hayes committed unprofessional conduct contrary to § 448.57 (2) (f), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Gabriele Schue Hayes, P.T., to practice physical therapy in the State of Wisconsin is hereby **SUSPENDED** for a period of one year, effective thirty (30) days from the date this Order is signed, and is further **LIMITED** as follows:

1. Within one year from the date of this order, Respondent shall take and complete, at her expense, the following:
    a) A course or courses, equivalent to six (6) continuing education hours, addressing the issue of health care provider-patient boundaries.
    b) *Ethics and Professional Responsibility*, a four contact hour, web based course offered by the American Physical Therapy Association, or a course of similar content and length.
2. Respondent shall, prior to taking the courses described above, provide information to the Board, or its designee, and receive approval from the Board, or its designee, that the selected courses meets the requirements of this order.
3. Respondent shall provide proof sufficient to the Department Monitor of satisfactory completion of the required education required in the paragraph 2 above, within 30 days of completion.
4. Respondent shall pay the full costs of this proceeding.
5. All requests for approval of educational programs, notification of completion of educational programs and payments shall be mailed, faxed or delivered to:

Department Monitor

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264 Telephone: (608) 267-3817

EXPLANATION OF VARIANCE

The Physical Therapists Affiliated Credentialing Board (Board) varies the Findings of Fact, Conclusions of Law, and Order as set forth in the Proposed Decision. More specifically, based on the information contained in the record, the Board explicitly determined that Ms. Hayes engaged in sexual contact with Mr. A while he was a patient of hers (*See* Finding of Fact 21). The Board also found there was sufficient evidence to determine that Ms. Hayes did not make adequate records of Mr. A's condition and treatment (*See* Finding of Fact 18). In light of those additions, the Board varied the Conclusions of Law to include a determination that Ms. Hayes acted unprofessionally contrary to § 448.57 (2) (f), Wis. Stats., both as it related to her sexual contact with a patient and to her inadequate recordkeeping with respect to that same patient. And while the Board accepted the recommendation on costs, it did not believe that a reprimand was a sufficient means of discipline in this case, and it has therefore modified the Order to include a suspension in addition to the recommended limitations.

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

A suspension in this matter is essential not only to protect the public, but also to ensure that no other licensees engage in similar conduct. This Board has a consistent history of imposing suspensions against those physical therapists who engage in sexual contact with their patients. Here, Ms. Hayes engaged in conduct that she knew or should have known was inappropriate. In support of that position is the uncontroverted testimony of Gwyneth Straker. Ms. Straker is a professor of physical therapy and the director of clinical education in physical therapy at the University of Wisconsin-La Crosse. She has been a physical therapist since 1973, and, beginning in 1996, began teaching a course on professional ethics for physical therapists, both at the university and at continuing education seminars throughout the country. (See Tr. at 79). Ms. Straker testified that in September of 2002, which is the time when Ms. Hayes engaged in sexual contact with her patient, it was below the minimal standard of care for physical therapists to have sexual contact with their patients. She further testified that a minimally competent physical therapist should have known that. (See Tr. at 82-83).

Ms. Straker explained why having sexual contact with patients puts them at risk for harm during her testimony on direct examination:

Q: (by Mr. Zwieg) Ms. Straker, do you have an opinion as to whether in 2002 a physical therapist having sexual contact with a patient exposed the patient to any risk of harm?
A: Yes.
Q: And what is that opinion?
A: The principles underlying such a restriction on the patient-therapist relationship focuses on several elements. One, that whenever a patient is -- it focuses on the fiduciary relationship that the therapist has with her patient and that all professionals have with their clients in that given the skills of the professional the patient comes to you somewhat vulnerable, relying on you and your expertise to render the best possible decisions about their care. And in order to do that, they're depending on your objectivity, certainly sympathetic objectivity. Nevertheless, that you will always make decisions in their best interests. If you

have a romantic and intimate or a sexual relationship, there is the potential for a conflict of interest; that the decisions you make could be self-serving. In other words, to benefit that relationship that you have with the patient. So your decisions could be potentially consciously or unconsciously influenced by the fact that you're in a relationship with your patient.

Q: All right. So the professional decisions that the physical therapist needs to be making could be impacted by the personal relationship?

A: Yes.

Q: And if that were to happen, what is the risk of harm?

A: Well, the risk of harm is clearly that the patient isn't getting the best possible care you have to offer. There's also the other risk of harm in that there is -- it impacts on not just that individual patient's ability to trust that particular physical therapist but all physical therapists if not all healthcare providers. In addition to that, there's a perceived impact on public trust in that the entire public community could think that they are not able to trust that healthcare provider to always act in their best interest; that there is the potential to be self-serving when possible.

Q: So if the public were to know that physical therapists are entering into sexual relationships with their patients, that could have an impact on whether a spouse would allow a patient to go to a physical therapist?

A: A spouse, family members, friends. It's related to the whole notion of being able to trust that relationship will stay at the level of a professional relationship. It's compounded by the fact that physical therapists often are seeing their patients partially dressed, disrobed, their hands are -- they have got close proximity to the patient. They're touching their patients. So they're in an intimate space with their patient. Because they have entered an intimate space with their patients, they have even a greater obligation to maintain clarity in the relationship with the patient so that there's no perceived violation.

(Tr. at 83-86).

The record is clear that Mr. A had an appointment for physical therapy with Ms. Hayes which had been established in advance of their first sexual contact. Indeed, Mr. A kept that appointment and was evaluated by Ms. Hayes the day following their first sexual contact. (Tr. at 62-63). He was quite obviously still her patient at the time they became intimate. Consequently, Ms. Hayes conduct fell below the minimally acceptable standard of care for physical therapists because she engaged in sexual contact with a patient. By engaging in such conduct, she not only put her professional judgment at risk, but she also risked compromising the care she provided to Mr. A.

Additionally, the Board also found there was sufficient evidence to determine that Ms. Hayes did not make adequate records of Mr. A's condition and treatment. For instance, there was no information with respect to whether Mr. A was compliant with his home exercise program, what his home exercise program was, or whether Ms. Hayes provided him with patient education. These omissions are underscored by Ms. Straker's testimony:

Q: (by Mr. Zwieg) Did you see any place in that record where it was mentioned that Mr. A was noncompliant or partially compliant with a home exercise program?

A: No.

Q: Is that an important thing to put in a record?

A: Yes.

Q: Is that something that a minimally-competent physical therapist would put in a record?

A: Yes.

Q: And why is it important and why would a minimally-competent physical therapist put that in the record?

A: Patient education is considered an essential part of physical therapist practice, and it has been for some time. That's not a newly-acquired skill. Seventy to 80 percent of all physical therapy services that do not work are suggested to be the result of poor patient adherence to the program. And as we move into managed care and we do experience fewer and fewer visits,

the patient education component of our practice becomes more and more important. That's been present in the literature for a good 15, 20 years.

Q: So patient education. Why is it important to put it in the record?

A: Because it's part of your intervention. It's considered part of your intervention according to the guide to physical therapy practice, which is a consensus document that was developed by physical therapists nation wide across all types of patient problems. And patient education and documenting patient education is part of our standard of practice.

Q: All right, now, when you reviewed the record, could you determine what home exercise program Mr. A had been given?

A: No.

Q: And is that because it's not mentioned in the record?

A: It was unclear to me. Being a physical therapist, I could logically follow the decision making that Ms. [Hayes] was doing as she progressed with the patient from May 9th through discharge on September 18th. The documentation would have been more clear had Ms. [Hayes] documented the patient -- what she included in her patient education sessions, what she is instructing the patient about the nature of his back pain being chronic, biomechanics, posture, none of those were mentioned, the need to manage the back problems secondary to compliance with the home exercise program. I prefer to use the term "adherence" because I don't think anybody is fully compliant. It's still standard practice to also include a handout. Most physical therapists will provide their clients with verbal as well as written instructions and document that the patient was instructed in a home exercise program and see attached form and then patient was able to demonstrate patient fully understood. Patient asked questions. Blah blah blah. So that's standard practice.

(Tr. at 90-92).

As this exchange illustrates, it is essential for physical therapists to include certain key information in patient records. By doing so, diagnoses are documented, progress is noted, treatments are included, and reassessments, if necessary, are identified. Failure to include that information falls below the standard of care and prevents subsequent reviewers from being able to fully understand a patient's history, treatment, and progress.

In short, Ms. Hayes seems to have little recognition or apparent concern that her conduct was not in keeping with the standards of her profession. Her lack of insight is troubling given her experience in the field. Engaging in sexual contact with a patient is not an acceptable standard of care for physical therapists, nor is it acceptable for a physical therapist to maintain incomplete patient records. The imposition of a suspension is therefore warranted not only to deter other licensees from having sexual contact with their patients, but also to reinforce to them that this type of conduct will not be tolerated in the profession. It is also designed to encourage practitioners to keep accurate and timely patient records.

Dated this 8th day of December, 2005.

STATE OF WISCONSIN
PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

Jane L. Stroede, P.T.A.
Board Member

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[1] The original complaint in this matter was erroneously captioned as LS0409141PHT. The correct case file number is LS0409142PHT. Various pre-hearing filings referenced the original erroneous case number, however, they have been received and included as part of the record for this

proceeding.

[2] Since the commencement of this proceeding, the Respondent has moved, and her new address as reported to the Department of Regulation and Licensing is 303 Blue Water Court, Dousman, Wisconsin 53118. Since the commencement of this proceeding, Respondent's legal name has also changed. For purposes of continuity in this proceeding and reference to the record evidence, the Respondent shall be referred to hereinafter as Ms. Hayes.