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Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **RAYMOND G. LUECK, Psy.D.**,
Respondent

FINAL DECISION AND ORDER
WITH VARIANCE
DHA Case No. SPS-12-0020

Division of Enforcement Case No. 11 PSY 032

ORDER 0002281

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Raymond G. Lueck, by

Attorney Guy DuBeau
Axley Brynson, LLP
2 E. Mifflin St., Suite 200
P.O. Box 1767
Madison, WI 53701-1767

Wisconsin Psychology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Enforcement, by

Attorney James E. Polewski
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Complaint on or about March 2, 2012, against Respondent Raymond G. Lueck, Psy.D. Respondent filed an Answer to the Complaint on April 16, 2012. Telephone prehearing conferences were held on April 10, 2012 and March 29, 2012 at which the parties indicated that they were working on a stipulation to

resolve all issues in the matter, with the exception of discipline, on which the parties requested a hearing. By Notice of Hearing dated May 29, 2012, the matter was set for a hearing on June 26, 2012 on the issue of discipline only. The parties e-mailed the administrative law judge a Stipulation of Fact and Law on June 7, 2012, and a hearing was held on discipline on June 26, 2012.

On October 10, 2012, the Board reviewed the Proposed Decision and Order of the ALJ. Upon considering the ALJ's proposed decision and disciplinary recommendations, the objections to the proposed decision and the response filed by the parties, the Board adopts as its own the findings of facts, conclusions of law and discussion set forth therein. However, the Board varies the proposed decision with regard to the ordered discipline and costs.

STIPULATED FACTS

1. Respondent Raymond G. Lueck was born on May 15, 1952, and is licensed to practice psychology in the state of Wisconsin pursuant to license number 57-1434. This license was first granted on May 15, 1989. He has not previously been the subject of investigation or discipline by the Division of Enforcement.

2. Respondent's most recent address on file with the Wisconsin Psychology Examining Board is 2500 N. Mayfair Road Suite 560, Wauwatosa, WI 53226.

3. Patient A is a woman born on July 8, 1989.

4. On November 19, 2010, Respondent filed a psychological report on Patient A with the Circuit Court of Jefferson County, Wisconsin, as part of a criminal matter in which Patient A was facing sentencing.¹

5. In his report, Respondent reported several psychological diagnoses, and stated that he believed that Patient A is unable to function in a normal way in society. Respondent noted that she had suffered a traumatic brain injury and brain damage in a car accident, was addicted to

opiates, and is unable to maintain consistent employment. However, he ended his report of his evaluation of her as having made good progress in the past several months.

6. At the time Respondent authored the psychological report, Patient A had lived off and on at Respondent's residence for several months. Although Respondent wrote favorably of Patient A's then-current living situation and praised her "mentor," he did not mention that she was a resident in his home, and that he was the "mentor" of whom he wrote.

7. At about 4:00 a.m. on September 29, 2011, Patient A was arrested at Respondent's residence, in connection with a robbery.

8. Respondent was payee on Patient A's social security disability check, intending to assist her to avoid spending money on illicit drugs.

STIPULATED CONCLUSIONS OF LAW

The parties stipulated to the following conclusions of law.

1. The Psychology Examining Board has jurisdiction in this matter pursuant to Wis. Stat. § 455.09 and is authorized to resolve this matter by stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondent's conduct in allowing Patient A to live at his residence and in being payee on her Social Security disability check was a dual relationship within the prohibition described by Wis. Admin. Code § Psy 5.01(17) (June 2004).

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION FOR DISCIPLINE

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

At the disciplinary hearing held on June 26, 2012, Respondent testified as follows with regard to the circumstances surrounding the dual relationship with Patient A.

¹ At hearing, the report was introduced by the Division and admitted into evidence as Exhibit 1.

Respondent has owned a clinic in Wauwatosa since 1988 and currently has two other therapists working for him. Respondent has had other people not related to him live at his residence over the last ten years. He has taken in at least six people, from weeks to months at a time, who have struggled with unemployment or homelessness, and has tried to help them get back on their feet.

Respondent had known Patient A's mother through his church. Patient A and her mother were living in Watertown. Patient A was twenty-one years old. The mother told Respondent that Patient A needed some medical treatment in Milwaukee for a few days and asked if Respondent could help arrange that and take care of Patient A while she was getting the medical treatment, including staying in Respondent's home. Respondent agreed to allow Patient A to stay with him. The first time Patient A stayed with Respondent, it was for three days. However, she then asked if she could stay there again while she looked for work in Milwaukee, to which Respondent agreed. Patient A stayed with Respondent from February through May of 2010, for two or three days every other week. Patient A was living with her mother, and then went to live with her father but had conflicts with both of them. In May 2010, when she was unable to go back to either her mother or her father's place, she asked if she could stay with Respondent on a more permanent basis until something came up for her. He agreed to let her stay at his home. After a few months, Patient A moved in with her boyfriend, but they had conflicts and he was somewhat abusive so she then called Respondent and asked if she could return to his home.

Patient A had her own room, which she shared with her four year-old daughter. Her two year-old son also stayed with them occasionally.

Patient A had physical health issues as well as mental health issues. Respondent arranged for her to see a psychiatrist and to see a regular doctor for physical care. Patient A also had an opiate addiction. She had been in a car accident and was put on painkillers and became addicted to them. Respondent got her involved in a methadone clinic. Respondent paid for

Respondent's psychiatric and medical services because Patient A did not have any medical assistance through the State. Respondent had helped other people with financial issues in the past. Because Patient A did not have a driver's license, Respondent drove Patient A to and from her doctor and psychiatrist appointments and drove her each morning to the methadone clinic to receive treatment. Respondent also got her into a 12-step program through their church. Respondent enrolled Patient A's daughter in public school and also helped her receive medical care. Because Patient A had lived in various places without a stable home environment for several years, Patient A's daughter had not had any medical care or education. Patient A had never completed high school; therefore, Respondent enrolled her in Milwaukee Area Technical College so she could work on completing her GED.

Respondent also helped Patient A get food stamps and had her apply for Social Security Disability. After she was approved for disability payments, Social Security informed her that because of her drug problems, the agency wanted someone else to be responsible for her funds. She requested that Respondent manage her money for her and Respondent agreed to do so. He never used any money from Patient A's Social Security checks for his own purposes and tried to make sure that Patient A's daughter's needs were always taken care of first.

During the time that Patient A lived with Respondent, she faced sentencing for some past felonies. Respondent and Patient A's public defender discussed the need for a presentence psychological assessment. Respondent tried to arrange for a psychological assessment for Patient A and contacted several clinics; however, Patient A did not have insurance and Respondent was unable to find anyone who was willing to do the assessment *pro bono* or at a reduced rate. At that time, Respondent could not personally afford to pay for a psychological assessment for Patient A. Respondent believed that Patient A was in desperate need and he did not want Patient A's daughter to end up in foster care. Therefore, Respondent authored the psychological presentence report himself. During the time that Patient A lived with Respondent,

Respondent made sure she saw other therapists and paid for other therapy treatment. He did not want to be her therapist and tried to keep distance between them. He did not provide her any counseling. He had done evaluations for presentence investigations for other people who were his clients. Respondent stated that he knew on some level that doing a psychological evaluation for Patient A was wrong but he “rationalized that it needed to be done.” He stated that he has never done anything like that in the past.

The Division’s attorney did not cross-examine Respondent or present any evidence to contradict any of Respondent’s assertions. Therefore, for purposes of determining discipline in this matter, Respondent’s statements are accepted as true. The Division recommended a suspension of Respondent’s license for one month, six hours of education on boundaries and ethics, and that the full costs of this disciplinary proceeding be imposed on Respondent. In arguing for such discipline, the Division noted that such dual relationships are clearly prohibited by administrative rule and that the rule is designed to protect patients, as well as licensees. In addition, the Division noted that Respondent misled the sentencing court with his report. On the other hand, the Division’s attorney stated that he did not want this to be a situation of “no good deed goes unpunished;” that Respondent “has been extremely cooperative in this matter;” and that, despite allegations to the contrary contained in the Complaint, he “has no evidence and presented no evidence that there has been any inappropriate physical contact between [Respondent] and Patient A.”

Respondent’s counsel requested that six hours of education in ethics and boundaries be imposed, with no suspension, and that Respondent, who, according to counsel, is not a man of extreme financial means, not be required to pay all of the costs of the disciplinary proceeding. Counsel stated that the typical dual relationship usually involves a psychologist gaining the trust of a client through an actual psychological relationship and then trading on that trust for the psychologist’s own benefit, whereas here, Respondent was motivated to help the client, not

himself. Counsel also noted Respondent's lengthy career and stated that any suspension would affect Respondent's ability to get insurance and would constitute a taint that could not be undone.

Based on the violation that occurred here, the uncontradicted testimony produced at hearing regarding the circumstances of the violation, and the arguments of the attorneys, the ALJ concluded that the three purposes of discipline are best served by imposing no suspension of Respondent's license and requiring Respondent to complete 10 hours of education in ethics and boundaries which must be pre-approved by the Psychology Examining Board (the Board). Based on the testimony produced at the disciplinary hearing, the ALJ concluded that it did not appear that a suspension is required to promote Respondent's rehabilitation; rather, the educational requirements imposed, as well as the disciplinary proceeding itself, should suffice to serve Respondent's rehabilitative needs. Likewise, in light of Respondent's lengthy career with no disciplinary proceedings against him and in view of the circumstances of Respondent's violation, the discipline imposed should serve to protect the public from other instances of misconduct and deter other licensees from engaging in similar conduct.

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION FOR COSTS

The final issue is what amount of costs, if any, of the investigation and prosecution of this matter should be borne by Respondent under Wis. Admin. Code § SPS 2.18.

As stated, the Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. Factors to be taken into account when considering imposition of costs in disciplinary matters were set forth in *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), in which the Chiropractic Examining Board stated:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

1. The number of counts charged, contested, and proven;
2. The nature and seriousness of the misconduct;
3. The level of discipline sought by the parties;
4. The respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
7. Any other relevant circumstances.

Considering the factors set forth in the *Buenzli-Fritz* decision, Respondent is ordered to pay fifty percent of the costs of this proceeding. While the conduct in this case was serious, including Respondent's conduct in deceiving the sentencing court by his report, it constituted only one violation and is not as serious as most other conduct that is the subject of disciplinary proceedings before this administrative law judge. In addition, as acknowledged by the Division, the conduct did not stem from bad motives or an attempt at personal gain. Rather, Respondent wished to help Patient A get her life back together and keep her relationship with her daughter intact. Finally, as acknowledged by the Division, Respondent was "extremely cooperative" in the disciplinary proceeding, admitting the violation a relatively short period of time after the Complaint was issued.

On the other hand, the disciplinary proceedings were the result of Respondent's improper actions and, as the costs of disciplinary proceedings are borne by the revenue received from licenses, it would be unfair not to impose half of the costs of disciplining Respondent on Respondent himself rather than on other members of his profession.

If the Board assesses costs against Respondent, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

EXPLANATION OF VARIANCE

Under Wis. Stat. § 227.46 (2), as the regulatory authority and final decision maker in this Class 2 proceeding, the Wisconsin Psychology Examining Board may make modifications to a proposed decision. Here, the Board adopts as its own the findings of fact and conclusions of law set forth in the proposed decision. However, the Board modifies the ALJ's recommended discipline and the imposition of costs in several respects, explaining the basis for each.

The ALJ declined to order a suspension as requested by the Division, believing this was unnecessary based upon the totality of the facts presented at hearing. The Board agrees, based on the specific facts of this case, however, the Board finds it appropriate to issue a reprimand for the conduct as a deterrent to this and other licensees. Dual relationships, however allegedly well meaning, are not permissible and that fact requires a reprimand in addition to the other ordered discipline in this matter.

While the Board accepts the ALJ's conclusion that education in ethics and boundaries should be required, the Board finds that the ten hours of education recommended by the ALJ is insufficient to accomplish the purposes of discipline and therefore increases the education to 18 hours to include 6 hours in forensic ethical practice. Respondent's conduct in misleading the court regarding his relationship with the individual he was evaluating requires that he be rehabilitated by reeducation in the requirements of forensic psychology, in addition to education in ethics and boundaries.

The Board also concludes that a limitation requiring a period of monitoring and reporting are required to ensure adequate protection of the public and rehabilitation of the licensee. In this case, practice review by a board approved psychologist serving as a mentor for Respondent is indicated by the nature of the violations. While Respondent may have viewed his relationship

with Patient A as a mechanism for assisting her, the dual relationship which this created was clearly a violation of which he should have been aware. While it appears that Respondent's actions were an attempt to benefit the patient and not himself, they still evidence a basic failure to understand appropriate boundaries in establishing a relationship with a patient. Providing a professional mentor for a period of time who can monitor Respondent's practice will assist Respondent in applying the appropriate boundaries which will be identified in the education he will also be taking as part of this Order. The monitoring of Respondent's practice will also provide reassurances to the public and future patients that this type of activity does not reoccur. To that end, the Board concludes that a period of monitoring for one year with monthly monitoring reports to be submitted to the board following biweekly meetings with the mentor is required.

Finally, the Board finds that based on all of the circumstances in this matter, imposition of full costs is warranted. While the Respondent cooperated in this matter, a disciplinary proceeding was still required and costs were incurred. Imposing the full amount of the costs on Respondent is justified based on the seriousness of Respondent's violation. Further, payment of full costs by the Respondent is warranted to avoid burdening other members of the psychology profession, who have not engaged in such conduct, with the costs of Respondent's disciplinary proceeding.

ORDER

IT IS ORDERED that Respondent be, and hereby is, REPRIMANDED.

IT IS FURTHER ORDERED that the license of RAYMOND J. LUECK, Psy.D. to practice psychology in the State of Wisconsin is hereby LIMITED on the following terms and conditions:

EDUCATION:

1. Within six months of the date of this Order, Respondent shall successfully complete 12 hours of education in ethics and boundaries and 6 hours of education in the ethical practice of forensic psychology, including any testing components of the courses.
2. The designated education must be pre-approved by the Board or its designee.
3. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.
4. All costs of the education are the sole responsibility of Respondent.

PRACTICE RESTRICTIONS:

5. Within 30 days of the date of this Order, Respondent shall provide the Board with the name of psychologist to serve as a professional mentor. The named psychologist shall be approved by the Board or its designee prior to beginning service.
6. For a period of one year commencing no later than 60 days from the date of this Order, Respondent shall meet on a biweekly basis with the professional mentor to review no less than six (6) patient records at each meeting to discuss patient treatment and Respondent's professional relationship with the patient. The records shall be randomly selected by the professional mentor and shall be equally divided by gender.
7. Respondent shall advise the Board or its designee of the date upon which the mentoring commences.
8. The professional mentor shall submit a written report on a monthly basis to the Board detailing the professional mentor's findings beginning one month from the date the mentoring is commenced. If the professional mentor notes any violations of the standard of practice for a

psychologist which may constitute unprofessional conduct, the professional mentor shall report those findings to the Board immediately.

9. All costs of the mentoring and timely submission of the professional mentor's reports are the sole responsibility of the Respondent.

IT IS FURTHER ORDERED that Respondent shall pay the full costs of the investigation and prosecution in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.

IT IS FURTHER ORDERED that all requests, approvals, notices, reports and payments of recoverable costs required by this Order shall be provided to:

Department Monitor
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

IT IS FURTHER ORDERED that this Order is effective on the date signed below.

Dated at Madison, Wisconsin on February 4th, 2013.

Wisconsin Psychology Examining Board

By: Bruce Erdmann
A Member of the Board Dw