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Final Order No. DOH-01-0976-FOF-MOA
FILED DATE - 6/26/01
Department of Health
By: [signature]
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 1999-53281
DOAH CASE NO.: 00-3100PL
LICENSE NO.: ME0061141

STEPHEN SCHENTHAL, M.D.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 1, 2001, in Dania, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, the Petitioner's Motion to Increase Penalty, and the Response to Petitioner's Motion to Increase Penalty (copies of which are attached hereto as Exhibits A, B and C) in the above-styled cause. Petitioner was represented by Albert Peacock, Senior Attorney. Respondent was present and represented by Douglas P. Jones, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

3. There is competent substantial evidence to support the conclusions of law.

RULING ON MOTION TO INCREASE PENALTY

The Board reviewed the Petitioner's Motion to Increase Penalty and determined that the penalty should be increased based upon the reasons set forth in the Petitioner's motion, and due to the fact that Respondent's sexual misconduct involved a minor with prior sexual abuse issues.

PENALTY

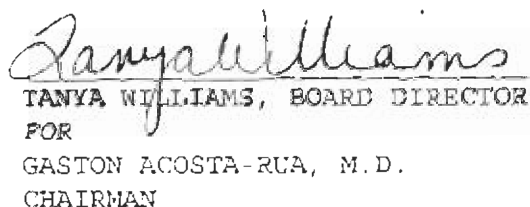
Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be REJECTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 25 day of June, 2001.

BOARD OF MEDICINE



TANYA WILLIAMS, BOARD DIRECTOR
FOR
GASTON ACOSTA-RUA, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE AGENCY FOR HEALTH CARE ADMINISTRATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Stephen Schenthal, M.D., 4501 Old E Plantation Place, Destin, Florida 32541-3424; to Douglas P. Jones, Esquire, and P. David Brannon, Esquire, McFarlain, Wiley,

Cassedy & Jones, 215 South Monroe Street, Suite 600, Tallahassee, Florida 32316-2174; to Charles C. Adams, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief Medical Attorney, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this 27th day of June, 2001.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,	)	
Petitioner,	)	
vs.	)	Case No. 00-3100PL
STEPHEN SCHENTHAL, M.D.,	)	
Respondent.	)	

RECOMMENDED ORDER

Notice was provided and on December 4 though 6, 2000, a formal hearing was held in this case. The hearing location was the office of the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The case was presented before Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Albert Peacock, Esquire
Agency for Health Care Administration
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: Douglas P. Jones, Esquire
P. David Brannon, Esquire
McFarlain & Cassedy
215 South Monroe Street, Suite 600
Tallahassee, Florida 32316-2174

STATEMENT OF THE ISSUES

When the hearing commenced, the parties through counsel agreed that sufficient facts would be presented to sustain a finding of violations of Counts One, Two, and Three a. and b., within the Administrative Complaint drawn by the State of Florida, Department of Health, Case No. 1999-53281. It was left for the fact finder to portray those facts consistent with the agreement. The parties presented their cases and facts have been found on the record which promote findings of violations of the aforementioned counts. In addition, as envisioned by the parties and accepted by the undersigned, determinations concerning recommended sanctions for the violations have been made on the record presented at hearing.[1]

PRELIMINARY STATEMENT

In relation to care provided patient M.B.G., Respondent, Stephen Schenthal, M.D., agrees that he has been guilty of violations in the Administrative Complaint Case No. 1999-53281 in the following respects:

Count One

> 31. Respondent used information gathered from a patient during psychiatric therapy sessions to establish trust and exercise influence over that patient, and engaged in a course of conduct between April 24, 1998, and February 14, 1999, which establishes that Respondent exercised influence

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established within that relationship, for purposes of engaging that seventeen (17) year old female patient, Patient M.B.G., in a sexual relationship.

32. Respondent is guilty of violating Chapter 458.31(1)(j), Florida Statutes, by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

Count Two

* * *

34. Respondent entered a plea of nolo contendere to charges of attempted interference with child custody and attempted sexual misconduct by a psychotherapist, both arising out of his psychiatric treatment of a teenage female patient, Patient M.B.G.

35. Respondent is guilty of violating Chapter 458.331(1)(c), Florida Statutes, by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.

Count Three

* * *

37. Respondent failed to practice medicine within the acceptable standard of care by:
a. failing to maintain a proper boundary of professional objectivity in treating a young female patient, Patient M.B.G.;
b. personally intervening in his patient's traumatic life situation; . . .

38. Respondent is guilty of violating Chapter 458.331(1)(t), Florida Statutes, by gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

When served with Administrative Complaint Case No. 1999-53281, Respondent disputed the underlying facts and sought a formal hearing. The case was forwarded to the Division of Administrative hearings for consideration leading to the disposition that has been described.

In response to the Order of Pre-Hearing Instructions the parties submitted a Joint Stipulation, as amended by the agreements that have been discussed. The Joint Stipulation has been considered in preparing this Recommended Order.

Petitioner's motion to officially recognize Chapter 64B8-8, Florida Administrative Code, was granted.

Petitioner presented the testimony of its witnesses by deposition. Those witnesses were: M.B.G.; M.G., mother of M.B.G.; D.G., father of M.B.G.; Claudia J. Finn; Brook Godbey; Lizabeth Godbey; Tim Godbey; Victor F. DeMoya, M.D.; and Peter A. Szmurlo, M.D. Petitioner's Exhibits 1 through 7 and 10 were admitted.

Respondent testified in his own behalf. He presented the testimony of Richard R. Irons, M.D.; Raymond Pomm, M.D.; Henry M. Haire, M.D.; Joel Klass, M.D.; and his wife Brenda Schenthal. By agreement the testimony of Patricia Harrison, M.D., was presented by telephone. The deposition of Barbara Stein, M.D., was presented. Respondent's Exhibits 1 through 14 were admitted.

The hearing Transcript was filed on January 5, 2001. It had been decided that the proposed recommended orders should be filed by January 22, 2001. A joint motion was filed requesting an extension of that deadline to February 9, 2001. The parties were informed that the requested extension was granted. Both parties filed Proposed Recommended Orders on February 9, 2001. The Proposed Recommended Orders have been considered in preparing this Recommended Order which is entered consistent with expectations in Rule 28-106.216, Florida Administrative Code.

FINDINGS OF FACT

Respondent's History

1. At all times relevant, Respondent has been licensed as a physician in the State of Florida in accordance with license No. ME:0061141. His practice has been in the field of psychiatry. Respondent is Board-certified in psychiatry.

2. Respondent has a Bachelor's of Science degree from the University of Michigan. He holds a Masters' degree in Clinical Social Work from Tulane University and a Medical Degree from Louisiana State University Medical School. Respondent did a four-year residency at Ochner Foundation Hospital in Psychiatry.

3. Respondent has been married to Brenda Schenthal for 25 years. The Schenthal's have two sons, ages 10 and 12. The family resides in Destin, Florida.

4. Respondent began private practice in the Fort Walton Beach, Florida, area in 1993 with Dr. Victor DeMoya. Respondent was affiliated with that practice when circumstances arose for which he stands accused. Respondent practiced in the group known as Emerald Coast Psychiatric Care, P.A., in Fort Walton Beach, Florida.

5. Respondent does not have a prior disciplinary history with the Board of Medicine.

M.B.G.

6. M.B.G. was born July 23, 1981.

7. Respondent first saw M.B.G. on March 21, 1996, when she was 14 years old. M.B.G. presented with issues of uncontrollable behavior, running away from home, anger, rage, drug use, suspected alcohol abuse, and sexual promiscuity. M.B.G. did not have a history of acting out until she was 13 or 14 years old.

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8. Respondent had been treating M.B.G. for approximately two months, when in May 1996, M.B.G. was involved in a physical altercation with another student in her school. The evaluation Respondent performed at that time revealed that M.B.G. was extremely angry, presenting sufficient risk that Respondent determined to involuntarily commit M.B.G. to Rivendell Hospital in Fort Walton Beach, Florida. At the time M.B.G. remained hospitalized for a couple of weeks. Following her hospitalization M.B.G. was seen by Dr. Deborah Simkan, an adolescent psychiatrist. Dr. Simkan was associated with Respondent's clinic. M.B.G. remained in treatment with Dr. Simkan until August of 1996. At the time M.B.G. was also being seen by Betty Mason, a mental health counselor affiliated with Respondent's practice.

9. There was some concern about the progress M.B.G. was making under Dr. Simkan's care and the family determined to move M.B.G. from the Fort Walton Beach, Florida, area to live with an aunt in Charleston, South Carolina.

10. M.B.G. had been sent to live with her aunt because M.B.G. was defiant, would not follow the rules in her household, and was difficult to control.

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11. After living with her aunt in Charleston, South Carolina, for several months it became apparent that the aunt was unable to control M.B.G. There was some suspicion that M.B.G. was using drugs while residing with her aunt.

12. When M.B.G. returned from Charleston, South Carolina, she ran away from home as she had before. When she was found she was sent to live in a treatment facility in Trenton, Alabama. That facility was Three Springs. The reasons for her placement related to the inability to control her conduct, suspected alcohol abuse, and sexual promiscuity. M.B.G. remained at Three Springs from January 1997 until her return home in April 1998. Her stay in that facility was in accordance with a very structured environment.

13. While at Three Springs M.B.G. revealed for the first time that she had been the victim of sexual abuse by a male YMCA counselor when she was nine years old. As a means to express her feelings, while at Three Springs, M.B.G. was encouraged to write in journals, in that she found writing about her feelings an easier means of expression then verbalizing her feelings. M.B.G. could share or refuse to share the things that she had written in the journals.

14. Upon her release from Three Springs M.B.G. asked that Respondent resume her care. It was anticipated that Respondent would treat M.B.G. for the sexual abuse that had occurred

earlier in her life and as a means to transition from the very structured environment at Three Springs into greater freedom she would have living at home.

15. In April 1998, when Respondent again undertook M.B.G.'s care, his response to his duties was initially appropriate. However, upon reflection Respondent questions the decision to undertake the care following his former decision to place M.B.G. in Rivendell Hospital under the Baker Act.

16. In April, M.B.G. was being seen by Respondent in his practice twice a week for one hour each visit. A couple of months later the schedule changed from two one-hour sessions per week to one two-hour session per week.

17. Around August or September 1998, Respondent began to see M.B.G. three or four times a week in his office. By January of 1999, Respondent was seeing M.B.G. almost on a daily basis, not always in his office.

18. Some of the increases in contacts between M.B.G. and the Respondent were associated with group therapy sessions involving M.B.G. and other sexual abuse patients under Respondent's care. One of the persons in the group was considerably older than M.B.G. It was not shown that the inclusion of the older patient in the therapy group was designed to advance some inappropriate purpose in the relationship between Respondent and M.B.G. Nonetheless, Respondent now

questions the appropriateness of placing M.B.G. in the group with such divergence in ages among the participants.

19. Upon her return from Three Springs M.B.G. became pregnant as was manifest in May 1998. She informed Respondent of her pregnancy. Reluctant to tell her parents about her condition, M.B.G. expressed the belief that an abortion was a better choice in responding to her pregnancy. Respondent left it to M.B.G. to inform her parents or not concerning the pregnancy. Respondent arranged for M.B.G. to talk to a patient who had gone through a somewhat similar experience. Ultimately M.B.G. told her mother of the pregnancy and the desire to terminate her pregnancy. Her mother was supportive of that choice and arranged for the abortion procedure.

20. Respondent offered to go with M.B.G. and her mother M.G. when the abortion was performed. Respondent now concedes the error in the choice to offer to accompany and the accompaniment of M.B.G. and her mother to the place where the abortion was performed. This was not an appropriate response for a care-giver.

21. Upon her return from Three Springs M.B.G. had a better relationship with her family than before. But the cordiality did not last. Over time their relationship became strained. M.B.G. was especially irritated with her mother.

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22. As before, M.B.G. maintained journals upon her return from Three Springs, portions of which she shared with Respondent. M.B.G. considered the journals to be private. Her mother was aware of the issue of privacy. Without permission M.G. read her daughter's journals. Being aware that the mother had read the journals, Respondent brought M.B.G. a safe to help maintain the journals in privacy. This purchase constituted involvement with the patient M.B.G. beyond the provision of appropriate care and into the area of problem solving in which Respondent should not have been involved. Respondent has come to understand that the purchase of the "lock-box" was not an appropriate decision.

23. Another indication that Respondent was deviating from the normal physician-patient expectations in treating M.B.G. occurred in September 1998, in a meeting between M.B.G. and her parents. Rather than maintain his professional objectivity, Respondent sided with the patient M.B.G. in a setting in which the parents were attempting to impose rules and restrictions on her conduct. In retrospect Respondent feels that he should have handled that appointment differently, realizing his conduct indicated that something was going on within him that was not desirable, as evidenced by his starting to side with the patient.

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24. In November 1998, in response to one of the therapy sessions Respondent was engaged in with M.B.G., Respondent provided the patient with a can of Spaghettios and a poster board that he sent home with her mother. With these items he wrote a note that indicated that the Spaghettios were a reward for her efforts and he signed the note "your protector" and the name "Steve" in informal reference. As Respondent acknowledges, this was "an indication there was certainly more going on with myself," referring to feelings he was developing for the patient that were not proper conduct for a physician.

25. M.B.G. and her family took a Christmas holiday in 1998. M.B.G. did not enjoy the trip. In explaining the lack of enjoyment, M.B.C. indicated that she did not enjoy spending time with her family on the vacation. Upon the return home M.B.G. went to stay with a friend from school.

26. The friend with whom M.B.G. was staying upon the return from the vacation was being visited by some students from Florida State University. It was decided that M.B.G.'s friend, M.B.G., and those students would go to M.B.G.'s house to play pool. The next morning, M.B.G.'s mother found evidence that beer or other forms of alcohol had been consumed in the basement where the pool table was located. D.G., M.B.G.'s father also saw this evidence. M.G. confronted M.B.G. with the evidence. M.B.G.'s response was to leave her home and return to her

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friend's home. Later M.B.G. called her home and left a message that she was going to spend the night with her friend. Beyond that point Respondent became aware that M.B.G. and her mother had a disagreement about what had happened in the basement at their home. M.B.G. denied being involved in drinking. Respondent became involved in what he considered to be a stand-off between M.B.G. and her mother concerning terms acceptable for M.B.G.'s return home from her friend's house. As Respondent described it, he was allowing himself to get stuck in between M.B.G. and her mother on this subject.

27. During the time that M.B.G. lived away from her home with the friend, Respondent spoke to M.G. about a contact which M.G. had with Three Springs, in which it was stated that M.B.G. might be returned to that facility or that M.B.G. might possibly be emancipated.

28. Respondent spoke to Dr. Ellen Gandle, a forensic child/adolescent/adult psychiatrist, expressing his feelings of responsibility to help M.B.G. other than in the role of psychiatrist. Dr. Gandle strongly suggested Respondent not abandon his role as psychotherapist in favor of that of guardian for M.B.G. The possible guardianship was another subject that had been discussed with M.G.

29. Respondent also tried to contact Dr. Charles Billings who had been the Respondent's residency director at Ochner to discuss this situation concerning M.B.G.

30. In conversation, Dr. Victor F. DeMoya, Respondent's partner in the practice, advised Respondent that Dr. DeMoya considered it to be a conflict in roles for Respondent to be a therapist to M.B.G. and her guardian and that Respondent should seek the "feedback" of other colleagues about that prospect.

31. Given the schism that existed between M.B.G. and her mother, the mother expressed a reluctance to provide continuing financial support to her daughter, the mother wanted the daughter to return the car the daughter was allowed to drive, and the mother wanted the house keys and credit cards returned. These views were made known to Respondent.

32. Respondent went with a member of M.B.G.'s therapy group to M.B.G.'s home to remove her belongings. This retrieval of the patient's belongings was a boundary violation of conduct expected of a physician. Beyond that point Respondent continued to pursue a course of conduct involving boundary violations in his relationship with M.B.G.

33. While M.B.G. was living with her friend from December 1998 until February 12, 1999, Respondent saw her frequently outside the treatment setting. In these instances Respondent discussed with M.B.G. her living circumstance. Respondent was

involved with paying rent to the family of the friend with whom M.B.G. was living. Respondent was involved with shortening M.B.G.'s school day as a means to assist her in getting a job. Respondent helped M.B.G. to fill-out applications for college.

34. Although Respondent had the expectation that M.B.G. would eventually repay the money expended, Respondent and his wife purchased an automobile and gave it to M.B.G.

35. Respondent opened a joint checking account in which M.B.G. had access to monies that had been placed there by Respondent.

36. Respondent provided M.B.G. a pager which was used by Respondent in contacting M.B.G. at her friend's residence after curfew hours that had been imposed by the friend's parents.

37. Sometime around the latter half of January 1999, Respondent became convinced that he was falling in love with M.B.G. He gave expression to these feelings both verbally and in cards that he sent to M.B.G. In addition, Respondent had sexual fantasies about M.B.G. Respondent went so far as to discuss with M.B.G. the possibility of marrying her and the consequences of that choice. Eventually, Respondent made his wife aware of his feelings toward M.B.G.

38. On February 11, 1999, while seated in the car Respondent had purchased for M.B.G., they kissed briefly.

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39. On February 12, 1999, M.B.G. and the friend in whose house M.B.G. was living, had an argument and M.B.G. left the home. After leaving she called Respondent early on February 13, 1999. She explained to Respondent that she had left the friend's home and was planning to drive to Tuscaloosa, Alabama. In response Respondent offered to meet M.B.G. They met at a parking lot at a Walgreens store. While seated in the car they talked for a while and kissed. Respondent invited M.B.G. to stay at his residence. She declined. Respondent then offered to get her a hotel room.

40. On February 13, 1999, Respondent paid for a room in a local motel for M.B.G. to use. Respondent carried her belongings into the room. They sat on the bed in the room and talked, kissed, and hugged. In the course of the hugging Respondent placed his hand inside the band of M.B.G.'s sweat pants that she was wearing. Respondent touched M.B.G.'s breast on the outside of her clothing. Respondent then left the lodging and returned home. When at home he explained to his wife what had transpired with M.B.G.

41. Following the encounter on February 13, 1999, in the motel, Respondent discussed the situation involving M.B.G. with his partner in the clinic. His partner told Respondent that Respondent needed help.

42. Respondent contacted Dr. Henry Dohn, an adult psychiatrist practicing in Pensacola, Florida. This visit took place on February 14, 1999. They discussed the situation with M.B.G. An arrangement was made for a return visit which occurred on February 19, 1999. Respondent reports that Dr. Dohn told Respondent that the Respondent was not thinking clearly and needed to stop practicing and to attend to whatever issues needed attention in association with the boundary violation pertaining to M.B.G. Respondent was told by Dr. Dohn that if he did not report himself, Dr. Dohn would make a report concerning the conduct.

43. In turn Respondent called a Dr. Dwyer, the on-call doctor at the Physician's Resource Network.

44. Consistent with the discussion held between Respondent and Dr. Dohn, Respondent determined to admit himself for treatment at the Menninger Clinic in Topeka, Kansas. Respondent was admitted to the clinic on February 22, 1999. He had told his partner Dr. DeMoya that he was going to the clinic. Respondent admitted himself to the Menninger Clinic on a voluntary basis. While under treatment at Menninger Clinic Respondent was cared for by Dr. Richard Irons. Respondent also consulted with Dr. Glenn Gabbard, who specializes in boundary violations. Respondent was treated at the Menninger Clinic from February 22, 1999 through February 24, 1999, on an in-patient

basis. He continued his treatment on an out-patient basis from February 24, 1999 until March 19, 1999. Respondent was released from the Menninger Clinic on March 19, 1999, and returned to Florida.

45. Without justification and contrary to appropriate conduct for a physician, especially when recognizing his past indiscretions with M.B.G., Respondent made an arrangement to meet M.B.G. in person. This was contrary to any of the advise he had been given either medical or legal. While it had been suggested that Respondent offer assistance in placing M.B.G. in therapy with another care-giver, it was not contemplated that the arrangements would be made in person. Moreover, Respondent had a more expansive agenda in mind when meeting M.B.G., beyond acknowledging his responsibility for what had transpired between them, the offer to assist in finding a therapist and the possibility of paying for the therapy. Broadly stated, Respondent believed at that point-in-time that he could "fix things between them."

46. Respondent was unaware that M.B.G. had contacted the authorities after their encounter in the motel room and complained about his conduct. She agreed to assist the authorities in investigating Respondent, to include taping telephone conversations between M.B.G. and Respondent while he was in Topeka, Kansas, undergoing treatment and upon his return.

As well, M.B.G. was wearing a transmitter when she met Respondent in a park in Fort Walton Beach, Florida, on March 22, 1999, that would allow the authorities to record the meeting. The meeting was also video-taped.

47. When the meeting concluded Respondent was arrested by Okaloosa County, Florida, Sheriff's deputies upon charges of battery, attempted sexual misconduct by a psychotherapist and interference with child custody. As a consequence, Respondent was charged in State of Florida vs. Stephen Schenthal, in the Circuit Court of Okaloosa County, Florida, Case No. 99-497-CFA. The case was disposed of by entry of a plea of nolo contendere to Count One: attempted interference in custody, Count Two: attempted sexual misconduct by a psychotherapist. In response an order was entered by the Court withholding the adjudication of guilt and placing defendant on probation on September 2, 1999. Respondent was placed on probation for a period of two years under terms set forth in the court order. These criminal offenses relate to the practice of medicine or the ability to practice medicine.

48. In his testimony Respondent acknowledged that he committed boundary violations with M.B.G. that are depicted in the fact finding. Whether Respondent recognized the damage he was causing while he was engaged in the misconduct, he does not deny that he violated the fiduciary relationship with his

patient by betraying M.B.G.'s trust and participating in the re-traumaterzation of her past. No independent evidence from a person treating the patient was presented concerning M.B.G.'s mental health following Respondent's transgressions. But Respondent recognizes the potential for significant damage to his patient by making it hard for M.B.G. to trust other physicians, therapists, authority figures, or to trust relationships in general and the possible re-enforcement of the trauma that had occurred in her childhood.

49. Dr. Peter A. Szmurlo, a psychiatrist who practices in Florida, was called upon to review the circumstances concerning Respondent's relationship with M.B.G. Dr. Szmurlo has not had the opportunity to examine M.B.G. However, in a report dated November 1, 2000, concerning Respondent's actions, Dr. Szmurlo stated, "I believe that the patient's relationship with Dr. Schenthal was nothing but destructive and may preclude her ability to ever be able to develop a trusting relationship with another male and/or with another psychotherapist." In his deposition Dr. Szmurlo expressed the opinion that the issue of potential harm to M.B.G. was clear and that the potential harm was in association with "further undermining of the patient's sense of safety and, therefore enhancing or recreating the original trauma (assuming it really occurred), and that's the sexual trauma which occurred in early years."

50. Dr. Joel Ziegler Klass, practices psychiatry in Florida. Dr. Klass reviewed information concerning Respondent's relationship with M.B.G. Dr. Klass did not personally assess M.B.G., however, within his knowledge of the facts concerning the relationship between Respondent and M.B.G. and the patient's prior history; Dr. Klass did not think a lot of damage had been done by Respondent to M.B.G. He did express the opinion that M.B.G. lost out on valuable time to get help for her mental health based upon Respondent's indiscretion.

51. As of November 27, 2000, when M.B.G. gave her deposition, she was attending the University of Alabama in Tuscaloosa, Alabama. She explained that she had been seen by a mental health care provider, Dr. Carol Ware, a psychologist in Tuscaloosa, Alabama. The purpose for seeing Dr. Ware was basically pertaining to "things that had happened with Dr. Schenthal." M.B.G. last saw Dr. Ware in July or August 2000. M.B.G. expressed an interest in seeing a psychiatrist and indicated that she had called three different doctors. She wishes to see a female psychiatrist and she understands that only one or two female psychiatrists were practicing in Tuscaloosa when she inquired. She provided information to facilitate being seen by one of those psychiatrists but has not heard back from either practitioner concerning their willingness to treat M.B.G. In her deposition M.B.G. expressed the feeling

of depression "just ups and downs and it comes as fast as it goes and it's getting a lot worse and I need somebody to help me with it."

52. Dr. Szmurlo expressed the opinion, within a reasonable degree of medical certainty, that Respondent used information gathered from the physician/patient relationship during the therapeutic sessions to establish trust and exercise influence over M.B.G. thereby engaging in a course of conduct for purposes of engaging a patient in a sexual relationship. That opinion is accepted.

53. Dr. Szmurlo also expressed the opinion, within a reasonable degree of medical certainty, that Respondent in his treatment of M.B.G. practiced medicine with a level of care, skill, and treatment, which would not be recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. That opinion is accepted.

Respondent: Diagnosis, Care, and Practice Opportunities

54. Respondent returned to the Menninger Clinic on March 29, 1999, and was seen on an in-patient basis until May 14, 1999. Dr. Richard Irons was Respondent's principal treating physician at the Menninger Clinic.

55. Upon his release from the Menninger Clinic, Respondent has been routinely treated by Dr. Roberta Schaffner, who practices psychiatry in Pensacola, Florida. Her treatment began

July 9, 1999, and was continuing upon the hearing dates. Her treatment involves psychotherapy and the use of medications. As Dr. Schaffner explained in correspondence to counsel for Respondent, Dr. Schaffner's treatment does not involve the role of making specific recommendations about the timing and details of Respondent's possible return to practice. The treatment provided by Dr. Schaffner was in agreement with the treatment plan from the Menninger Clinic and was discussed with Dr. Irons and Dr. Gabbard who had cared for Respondent at the Menninger Clinic. Dr. Schaffner does not oppose the recommendations of Dr. Barbara Stein, a psychiatrist who has evaluated Respondent concerning his fitness to return to practice and under what circumstances. With this knowledge, Dr. Schaffner has indicated that were she persuaded that the suggestions by Dr. Stein for restrictions on Respondent's possible return to practice were ideas that were dangerous or inappropriate, Dr. Schaffner would be active in expressing her opposition, recognizing Respondent's difficulties. This is taken to mean recognizing Respondent's underlying mental health which needs attention.

56. As Dr. Klass explained in his testimony, Respondent's present physician Dr. Schaffner would not offer her specific observations concerning Respondent in the interest of maintaining the physician/patient relationship.

57. Using the diagnostic criteria in DSM-IV, Mental Disorders, Dr. Irons identified Respondent's condition as follows:

> Axis I: 296.22 Major depressive episode, single, in full remission
> V. 62.2 Occupational problem associated with professional sexual misconduct
>
> Axis II: 301.9 Personality disorder NOS, a mixed personality disorder with narcissistic, histrionic, compulsive and dependent features.

Dr. Irons expressed this diagnosis in correspondence dated March 24, 2000, directed to Dr. Raymond M. Pomm, Medical Director for the Physician's Resource Network. In addition to the prior treatment described, Dr. Irons has seen Respondent for internal review of Respondent's progress and rehabilitation. On November 29 and 30, and December 1, 1999, Dr. Irons noted that:

> The patient continued to show progress and understanding in appreciating boundary-related issues, as well as problems of potential vulnerability associated with professional re-entry. The patient shows incremental improvement in understanding dynamics of boundary violations and appears to have gained some insight into the nature of his own transgressions. I concur with opinions presented by Dr. Schaffner, as well as Dr. Gabbard that ongoing and continuing work should be strongly encouraged. Collectively, Dr. Gabbard, Dr. Schaffner, and myself believe that this individual has the potential to practice psychiatry but only with the use of a carefully structured and monitored professional re-entry program.

We would support professional re-entry into a psychiatric practice that involves males and females if the site provided for direct supervision with regular reports to appropriate regulatory authorities in Florida.

58. In the correspondence Dr. Irons went on to express his view:

It is my professional opinion with a reasonable degree of medical certainty that Steven Schenthal has made sufficient progress to be able to return to the practice of psychiatry with reasonable skill and safety on the following conditions:

1. The patient will return to practice serving an all-male population. The patient will not serve females professionally under any circumstances.
2. Dr. Schenthal will not engage in marital therapy or couples therapy or work with groups involving males and females.
3. Dr. Schenthal will engage in a program that will involve monitoring of his practice through a sexual boundary violation contract with the Physicians Recovery Network.
4. The patient will enact practice modifications which include appointments only during office hours with support staff in attendance, limitation of office hours to 8 a.m. to 5 p.m., office policies and office practice to be monitored by a psychiatrist agreeable to Dr. Schenthal and the Physician Resource Network, ongoing individual psychotherapy with Roberta Schafner, [sic] M.D., twice weekly at this time and a frequency agreeable to Dr. Schafner [sic] and other concerns [sic] parties.
5. The patient will practice in an office which includes other therapists if not other physicians, and will arrange for clinical supervision with the supervisor having regular contact with Roberta Schafner [sic].

59. Dr. Barbara N. Stein, is Board-certified in psychiatry and practices in Florida. She was requested by Respondent to provide a second opinion on what parameters would allow Respondent to practice medicine with reasonable skill and with safety to patients. Reportedly, this request was made by Respondent who was dissatisfied with Dr. Irons' recommendations concerning the circumstances under which Respondent might return to practice. Based upon a review of the history of Respondent and the treatment provided to M.B.G. and an interview conducted on August 22, 2000, Dr. Stein concluded that Respondent suffers from Major Depressive Disorder, Single Episode, without psychotic features, Mild DSM-IV 296.21; Dysthymic Disorder, DSM-IV 300.4; and that there is evidence that Respondent suffers from personality disorder, not otherwise specified with narcissistic, histrionic, and anti-social personality traits, DSM-IV 301.9.

60. In her report Dr. Stein went on to express her opinion on how Respondent can practice medicine with reasonable skill and safety to patients and stated that within her opinion with reasonable medical certainty Respondent can practice safely as long as certain restrictions were in place to include:

> 1. Dr. Schenthal continues at least weekly (and preferably twice a week) therapy as recommended with Dr. Schaffner.

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2. Dr. Schenthal continues in weekly PRN Caduceus group.

3. Dr. Schenthal continues to have regular, indirect physician monitoring of his cases directed by the Board.

4. Dr. Schenthal works only in an institutional or group practice setting and does not treat (with psychotherapy) any female patients under 30 for at least two years or until which time he is deemed safe to do so. Dr. Schenthal may do medication management with females under 30 if and only if he has a licensed female health care worker in the room at all times and he does not have any call responsibilities that would cause him to treat these patients after hours without a chaperone. He should not ever treat female adolescents again.

5. Dr. Schenthal takes a series of professional boundary/risk management courses on an annual basis.

6. Patient survey and physician survey forms are employed quarterly and results are satisfactory.

7. Dr. Schenthal has appointments only during regular office hours.

8. Dr. Schenthal continues taking his antidepressant medication until his depressive symptoms have remitted for a minimum of six months and/or Dr. Schaffner recommends discontinuation.

9. Dr. Schenthal and his wife participate in marital therapy if recommended by Dr. Schaffner.

10. Dr. Schenthal is fully compliant with the above and with his long-term PRN contract.

With the above recommendations for continued rehabilitation, supervision and monitoring in place, it is my medical opinion that Dr. Schenthal can begin his re-entry into professional practice with the reasonable skills and safety to patients.

61. Dr. Raymond M. Pomm is a psychiatrist. He is the Medical Director of the Physician's Resource Network. Dr. Pomm was aware of Dr. Stein's findings concerning Respondent when Dr. Pomm prepared his own report on October 27, 2000. Based upon Dr. Stein's evaluation, Dr. Pomm's knowledge of the case and with the recognition that restrictions on Respondent's return to practice would be monitored by the Physician's Resource Network, in part and by the Agency for Health Care Administration otherwise, Dr. Pomm described the nature of restrictions he would recommend, should Respondent be allowed to return to practice. They were as follows:

1) Dr. Schenthal should continue at least weekly psychotherapy. This will be a requirement of his PRN contract.
2) Dr. Schenthal should continue his weekly PRN Caduceus group. This also will be a part of his PRN contract.
3) Dr. Schenthal should have indirect physician supervision. This supervision would entail Dr. Schenthal meeting with a physician who is Board-Certified in his specific specialty of Psychiatry on a monthly basis. Each visit will require the supervisor to review with Dr. Schenthal a randomly selected ten percent of Dr. Schenthal's charts pertaining to his treatment of female patients. Therefore, every quarter, a minimum of thirty percent of his charts should have been reviewed.

7923

The review would be looking at the appropriateness of evaluative techniques used, therapeutic and psychotropic medication management issues, as well as, countertransferential issues. Also, this review will determine the appropriateness of the ongoing treatment plan and Dr. Schenthal's follow-up with said treatment plan.

4) Dr. Schenthal should only work in an institutional or group practice setting.

5) Dr. Schenthal should not treat any female patient under thirty years of age with psychotherapy for at least two years, and until such time he is deemed safe to do so. Dr. Schenthal may do medication management with females under thirty years of age, if an only, if, he has a licensed female health care worker in the room at all times.

6) Dr. Schenthal should never have any call responsibilities that would cause him to treat the restricted population after hours without a chaperone.

7) Dr. Schenthal should never treat female adolescent patients again (any female patients under twenty-one years of age).

8) Dr. Schenthal should receive annual CME credits in boundary violation and risk management.

9) Patient survey forms, which will be supplied by PRN, should be distributed to his patients by his office manager for one entire week every quarter. These completed forms would then be sent to his indirect physician supervisor for review.

10) Dr. Schenthal should only have appointments with patients during regular office hours.

11) Dr. Schenthal should continue to see his psychiatrist on a regular basis as required by his PRN monitoring contract.

12) Dr. Schenthal will be required to inform his office staff of the difficulties he is experiencing, the terms of his agreement with the Agency for Health Care Administration, as well as, the terms of his

agreement with his PRN contract and give his
staff the PRN phone number.
13) The tenure of the PRN contract will be
license-long.

62. Dr. Klass was called upon by Respondent to offer an opinion concerning Respondent's conduct, in relation to the care Respondent provided M.B.G. After familiarizing himself with the circumstances, to include the reports of Dr. Schaffner concerning treatment provided Respondent and the forensic psychiatric examination performed by Dr. Stein, Dr. Klass arrived at his opinion concerning Respondent's status. Dr. Klass also spoke to Dr. Schaffner by telephone concerning her opinion and attitudes about Respondent. Implicit in Respondent's request was the intent that Dr. Klass speak to the issue of Respondent's future opportunities to practice and under what conditions. In arriving at his conclusions Dr. Klass performed an assessment of Respondent. Dr. Klass expressed the opinion that if Respondent were allowed to return to practice, Respondent could do so acceptably if the following restrictions were in place: 1) No treatment of a female patient younger than 21 years of age until Respondent completes his therapy, as attested to by two sources, one of whom is his treating psychiatrist and the other psychiatrist who is selected; 2) Supervision of all female cases not just young females; Respondent would have to take the charts of his female patients

to a qualified Board-certified expert and go over those cases so that it can be determined whether Respondent is significantly affected by his problem in that it is not resolved; 3) Marriage counseling; 4) Participation in group therapy; 5) Medication as necessary; 6) Urine checks that Respondent would have to consent to on an unscheduled basis to determine if he is taking prescribed medication; 7) Further psychiatric/psychological testing if deemed necessary by treating therapists or the Board of Medicine; 8) Literature review on the subject of countertransferance which was in evidence in Respondent's conduct directed to M.B.G.; 9) No patients seen before 8:00 a.m. or after 6:00 p.m.; 10) Contact with Physician's Resource Network professionals who have similar problems to those experienced by Respondent; 11) Allowing assessment by a third-party through a psychological or psychiatric evaluation; 12) Allowing communication with female consenting patients concerning limited questions about their therapy; and 13) Maintaining a "dream journal." With these restrictions in mind, Dr. Klass believes, within a reasonable degree of medical probability, that Respondent could practice psychiatry safely.

63. The restrictions which the physicians have recommended recognize that Respondent has yet to achieve a level of improvement in his condition that would not require close monitoring of his practice and their belief that he not be

allowed to treat young female patients. These opinions are held while recognizing Respondent's improvement and willingness to continue with treatment. The opinions concerning restrictions on practice are accepted as well informed and meaningful.

64. Dr. Madison Haire is a practicing internist and nephrologist in Fort Walton Beach, Florida. In the past, Dr. Haire referred patients to Respondent and was persuaded that Respondent provided those patients with excellent supervision, monitoring, and care, prior to the incident with forms the basis for this case. Dr. Haire was unaware of any complaints against Respondent.

65. Dr. Patricia Harrison is a Board Certified psychiatrist who is practicing in the Fort Walton Beach area and has had the opportunity to observe Respondent in the performance of his duties. Dr. Harrison has observed that Respondent exercised professionalism and good judgment in rendering good care and treatment to his patients, aside from the present case.

66. Other physicians have offered favorable opinions concerning Respondent's practice as evidenced in Respondent's Exhibit No. 8.

CONCLUSIONS OF LAW

67. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in

accordance with Sections 120.569(1) and 120.57(1), Florida Statutes.

68. By agreement between the parties and the undersigned, the case proceeded to a formal hearing to allow an independent determination of the facts to support a finding of violations under Counts One, Two, and Three a. and b., of the Administrative Complaint, Respondent having conceded those violations. Nonetheless, clear and convincing evidence was presented to support a finding of those violations. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1st DCA 1987).

69. In keeping with the agreement entered into by the parties no showing has been made that Respondent violated Counts Three c., Four, Five, or Six.

70. In association with the counts that have been violated consideration is given to the appropriate penalties to be imposed when taking into account aggravating and mitigating circumstances.

71. Under Count One, Respondent is guilty of a violation constituting grounds for disciplinary action in reference to Section 458.331(1)(j), Florida Statutes, by exercising influence at times relevant to the administrative complaint, within the physician/patient relationship for the purposes of engaging M.B.G., his patient, in sexual activity.

72. Under Count Two, Respondent is guilty of a violation constituting grounds for disciplinary action in reference to Section 458.331(1)(c), Florida Statutes, by virtue of the entry of a plea of nolo contendere to charges of attempted interference with child custody and attempted sexual misconduct in his role as psychotherapist, in the treatment of M.B.G., a teenage female patient, regardless of the fact of no adjudication of the crimes and in recognition that the crimes were directly related to the practice of medicine or the ability to practice medicine.

73. Under Count Three, Respondent is guilty of a violation constituting grounds for disciplinary action in reference to Section 458.331(1)(t), Florida Statutes, by failing to maintain the proper boundary or professional objectivity in treating the young female patient M.B.G. and through his personal intervention in that patient's traumatic life situation, through acts that constituted gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances.

74. The nature of the possible discipline for the violations established include possible revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine not to exceed $10,000 for each count or

separate offense, and placement of the physician on probation for a period of time subject to such conditions as the Board of Medicine may specify, among those specifications being Respondent's submission to treatment, attending continuing education courses, and working under supervision of another physician. Section 458.331(2), Florida Statutes.

75. Further guidance for the imposition of discipline in relation to the offenses is set forth in Rule 64B8-8.001(a), Florida Administrative Code, which sets forth ranges of penalties for the violations as follows:

> 458.331(1)(c): From probation to revocation and an administrative fine ranging from $250 to $5,000.
> 458.331(1)(j): From one year suspension to revocation and an administrative fine from $250 to $5,000.
> 458.331(1)(t): From two years probation to revocation and an administrative fine from $250 to $5,000.

76. In deciding the range of penalties for the violations Rule 64B8-8001(3), Florida Administrative Code, states:

> (3) Aggravating and Mitigating Circumstances. Based upon consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the penalties recommended above. The Board shall consider as aggravating or mitigating factors the following:
>
> (a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;

(b) Legal status at the time of the offense: no restraints, or legal constraints;
(c) The number of counts or separate offenses established;
(d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;
(e) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;
(f) Pecuniary benefit or self-gain inuring to the applicant or licensee; . . .
(h) Any other relevant mitigating factors.

77. At a minimum M.B.G. suffered injury in the delay of the treatment of her mental health based upon the Respondent's conduct and potential injury in her ability to relate to treatment professionals in the future and her ability to have meaningful relationships in her life. Respondent's legal status at the time of the offenses was not one in which restraints or constraints were in place. Several distinct violations have been shown in the first three counts to the Administrative Complaint. Respondent has no history of similar offenses in his past. Before these violations, Respondent did not have a disciplinary history during the time that he practiced. His practice began in 1993. Respondent realized no pecuniary benefit in his misconduct. His conduct did involve self-gain which inured to his benefit. Respondent has undergone treatment for his mental health problems which had contributed to his misconduct. Respondent has faithfully pursued that treatment.

Respondent needs additional treatment. Prior to the violations with M.B.G. Respondent enjoyed a good reputation in his medical community and was held in esteem.

78. The Board of Medicine has had the opportunity to make decisions concerning sexual misconduct by psychiatrists with under-aged female patients in the cases of Pitone v. Dep't of Professional Regulation, 13 F.A.L.R. 1153 (Final Order 1991), and Agency for Health Care Administration v. Salzberg, 18 F.A.L.R. 2974 (Final Order 1995).

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered which imposes the following penalties:

Count One: Imposition of a $5,000.00 administrative fine;

Count Two: A suspension of one year from the date upon which the final order is entered;

Count Three: Placement of Respondent on two years probation following the service of his suspension, subject to such conditions as the Board may specify and restriction of Respondent's practice consistent with those recommendations that have been made by the treatment specialists, as deemed appropriate.

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOAH Case No. 00-3100PL
DOH Case No. 1999-53281

STEPHEN SCHENTHAL, M.D.,

Respondent.

_______________________________/

PETITIONER'S MOTION TO INCREASE PENALTY

COMES NOW, Petitioner, the Department of Health, through and by the Agency for Health Care Administration, and respectfully requests that the Board of Medicine increase the penalty recommended by the Honorable Administrative Law Judge in the above-styled cause, stating as follows:

1. On April 27, 2000, Petitioner filed an Administrative Complaint in DOH Case No. 1999-53281 against Respondent alleging that he violated Sections 458.331(1)(j)(c)(t)(q) and (m), Florida Statutes.

2. Initially, Respondent disputed the allegations in the Administrative Complaint and requested a formal hearing pursuant to Section 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings.

3. On December 4-6, 2000, a formal hearing was held before the Division of Administrative Hearings and its duly designated Administrative Law

Judge, Charles C. Adams. When the hearing commenced, Respondent conceded that sufficient facts would be presented by Petitioner to sustain a violation of Sections 458.331(1)(t)(c) and (j), Florida Statutes.

4. On March 15, 2001, the Administrative Law Judge Charles C. Adams, filed a Recommended Order that found Respondent guilty of violating Sections 458.331(1)(t)(c) and (j), Florida Statutes, and outlined the factual basis for these findings. The factual basis of the Administrative Law Judge's findings involves sexual misconduct against a minor patient and the failure to maintain professional boundaries and objectivity in the psychiatric treatment of this patient.

5. Based upon the offenses committed, Judge Adams recommended that a Final Order be entered finding that Respondent violated Sections 458.331(1)(t)(c) and (j), Florida Statutes, and he recommended a penalty of a five thousand dollar ($5,000.00) administrative fine, a one (1) year suspension, and two (2) years probation with conditions to be set by the Board.

6. Section 120.57(1)(l), Florida Statutes, provides: "...The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action."

7. In this case, Patient M.B.G. was a minor at the time of the incident. Respondent was well aware of this fact, having even considered the possibility of

becoming her legal guardian. Patient M.B.G. also had a history of being sexually abused as a child, which was known to Respondent at the time of the incident through the trust and authority of his psychiatric treatment of Patient M.B.G. Respondent knew that Patient M.B.G.'s history of sexual abuse created significant mental health issues for the patient. Even with this knowledge, Respondent violated the boundaries and trust of the physician/patient relationship, and he committed sexual misconduct against Patient M.B.G., further jeopardizing Patient M.B.G.'s mental health. Given these reasons, Petitioner asserts that the Board should increase the penalty in this case.

8. Rule 64B8-8.001(2), Florida Administrative Code, outlines a range of penalty guidelines for violations of Section 458.331(1), Florida Statutes. According to these disciplinary guidelines, a single count of Section 458.331(1)(c), Florida Statutes, has a penalty range of probation to revocation, and an administrative fine from $250.00 to $5,000.00 dollars. The disciplinary guidelines set forth a range of penalties for a violation of a single count of Section 458.331(1)(j), from one year suspension to revocation or denial, and an administrative fine from $250.00 to $5,000.00 dollars. The disciplinary guidelines set forth a range of penalties for a violation of a single count of Section 458.331(1)(t), from two years probation to revocation or denial, and an administrative fine from $250.00 to $5,000.00 dollars.

9. Furthermore, based upon the consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the

range of penalties recommended in the disciplinary guidelines. Rule 64B8-8.001(3), Florida Administrative Code, outlines the factors that the Board may consider when deviating from the range of penalties. Because revocation is within the disciplinary guidelines for Sections 458.331(1)(t)(c) and (j), Florida Statutes, the Board is not required to consider the factors outlined in this rule, if the Board decides to revoke Respondent's license. However, Petitioner asserts that the Board may consider the number of counts or separate offenses established by Petitioner as an aggravating factor, in that:

a) Respondent was found guilty of three (3) separate disciplinary violations outlined in Chapter 458, Florida Statutes, and the disciplinary guidelines for each of these violations allows for revocation;

b) Respondent failed to maintain proper boundary or professional objectivity in the treatment of Patient M.B.G. in numerous ways, including those outlined by the Administrative Law Judge in findings of fact 20, 22, 23, 24, 28, and 32-40. Each of these findings of fact constitutes a separate offense in violation of Section 458.331(1)(t), Florida Statutes;

c) Respondent committed sexual misconduct against Patient M.B.G, as outlined by the Administrative Law Judge in findings of fact 37, 38, 39, & 40. Each of these findings of fact constitutes a separate offense in violation of Section 458.331(1)(j), Florida Statutes; and

d) Following sexual contact with Patient M.B.G., Respondent entered a treatment program in Kansas from February 22, 1999, through March 19, 1999.

Immediately after his treatment program concluded, Respondent met Patient M.B.G. in a park against the advice of his own treating physicians.

10. Thus, given the importance of protecting the public, the range of penalties in the disciplinary guidelines, and the numerous factors outlined in the motion, Petitioner asserts that the revocation of Respondent's medical license is the appropriate penalty in this case.

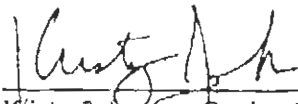
11. As a defense to the allegations in this case, Respondent presented evidence of his personality disorder. Specifically, Respondent presented the testimony of health care professionals, who opined that Respondent could practice medicine with reasonable skill and safety under strict limitations, although these professionals had varying opinions on the extent of the required limitations in order to protect the public. However, the standard of "practicing medicine with reasonable skill and safety" used by these professionals is a legal standard outlined in Section 458.331(1)(s), Florida Statutes. Section 458.331(1)(s), Florida Statutes, provides for disciplinary action against physicians who are impaired by reason of illness or use of alcohol or drugs. Petitioner did not allege that Respondent violated Section 458.331(1)(s), Florida Statutes.

12. Regardless of Respondent's personality disorder, Petitioner maintains that Respondent should have his Florida medical license revoked. With the issuance of a medical license, a physician is granted automatic trust and authority in the medical treatment of the public. Trust and authority are particularly important aspects of the practice of psychiatric medicine. Given the egregious

nature of the facts in this case, Petitioner maintains that Respondent has abused the trust and authority bestowed upon him through the issuance of a Florida medical license. Thus, in order to protect the public from further abuse, the Board should revoke Respondent's medical license.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an Order revoking Respondent's Florida medical license, and imposing an administrative fine of $15,000.00.

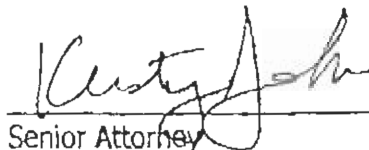
Respectfully submitted,



Kristy Johnson, Senior Attorney
Florida Bar Number 144282
Agency for Health Care Administration
P.O. Box 14229
Tallahassee, FL 32317-4229
(850) 488-6367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been furnished by Facsimile and U.S. Mail to Douglas P. Jones, Esquire, McFarlain & Cassedy, 215 South Monroe Street, Suite 600, Tallahassee, Florida 32316-2174, by United States Mail, this 7th day of May, 2001.



Senior Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH

Petitioner,

v.

AHCA CASE NO.: 1999-53281
DOAH CASE NO.: 00-3100

STEPHEN SCHENTHAL, M.D.,

Respondent.

RESPONSE TO PETITIONER'S MOTION TO INCREASE PENALTY

COMES NOW Respondent, Stephen Schenthal, M.D., and respectfully request that this Board strike Petitioner's Motion to Increase Penalty. In the alternative, Respondent respectfully requests that the Board deny Petitioner's Motion to Increase Penalty. In support Respondent states the following:

1. Petitioner's motion to increase penalty was originally filed on April 27, 2001.

2. This motion was withdrawn on May 7, 2001. A substitute motion to increase penalty was filed by Petitioner on May 7, 2001. The original motion, and the substituted motion filed on May 7, 2001, were both filed after the statutorily defined 15 days allowed to file exceptions to a recommended order. Because Petitioner's motion to increase penalty was not timely filed, and is therefore contrary to law, it should be stricken.

3. In the alternative, the Board should deny Petitioner's motion to increase penalty and in so doing should consider relevant mitigating factors

4. A formal hearing was held before Administrative Law Judge, Charles Adams, on December 4-6, 2000. During this three-day hearing the parties presented live witnesses, deposition testimony, videotaped evidence, and other documentary evidence.

5. Judge Adams had an opportunity to ascertain the demeanor and credibility of all live

witnesses, to weigh the testimony and opinions of the experts and treating physicians, and to carefully consider and weigh the deposition testimony and other evidence presented.

6. On March 15, 2000, Judge Charles Adams, filed a Recommended Order outlining his findings of fact, conclusion of law, and recommended penalty. Judge Adams found violations of Section 458.331(1)(t)(x)(j), Florida Statutes. Judge Adams recommended a penalty of an administrative fine of $5,000, a one-year suspension, and two years of probation with conditions to be set by the Board. Judge Adams conclusions and recommended penalty were well reasoned and based on all the evidence presented by the parties.

7. Petitioner now seeks an increase in penalty. In support of an increase, Petitioner cites to the patient's age, the patient's history of sexual abuse, and the fact the boundary violations jeopardized the patient's mental health. All these factors were carefully considered by the Administrative Law Judge in entering his Recommended Order and Recommended Penalty. Further, Petitioner's motion fails to address those factors considered by the Administrative Law Judge which worked in mitigation of the boundary violations. These mitigating factors included, but were not limited to:

(1) Dr. Schenthal was impaired at the time the violations occurred;

(2) The "sexual misconduct" was limited in that it did not include intercourse, oral sex, genital fondling, or any other "consummating" sexual act.

(3) Dr. Schenthal's impairment was a factor in his violations. Early boundary crossings reflected Dr. Schenthal's attempt to "rescue" the patient from her dysfunctional family situation. This led to further counter-transference feelings for the patient and to Dr. Schenthal's ultimate belief that he was in love with the patient.

(4) Dr. Schenthal suffered from a classic counter-transference, love sick therapist syndrome which impaired his judgment in dealing with this patient

(5). Dr. Schenthal sought treatment for his impairment. He has progressed in his treatment and, with restrictions as outlined by his therapists, can safely return to practice.

(6) Dr. Schenthal has openly confessed his misdeeds and sought treatment.

(7) Dr. Schenthal has successfully contracted with and met his obligations to Physicians Recovery Network.

8. Petitioner further suggests an increase in penalty based upon Judge Adams findings of fact listed in various paragraphs of the Recommended Order. Petitioner suggest that each of these findings of fact constitute a separate offense in violation of 458.331(1)(t) and that other findings in other designated paragraphs constitute separate offenses of 458.331(1)(j). The findings of fact/paragraphs enumerated in Petitioner's motion were not charged as separate offenses in the complaint. To view these "findings of fact" as separate offenses justifying an increase in penalty is improper, without basis in law, and violates due process.

9. Petitioner cites Section 458.331(1)(s) in arguing the Board should not consider Dr. Schenthal's impairment as a relevant factor in determining the appropriate penalty. Section 458.331(1)(s) is not relevant to the issues before the Board. The evidence of Dr. Schenthal's impairment is wholly relevant. His impairment is relevant because it provides insight into how and why the violations occurred. The impairment is also relevant in discerning Dr. Schenthal's potential for successful treatment and safe return to practice.

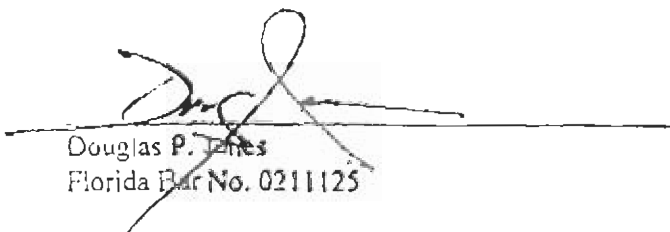
10. There are a number of violations outlined in Chapter 458, Florida Statutes, which have disciplinary guidelines allowing for a range of sanctions, including revocation. The Board should distinguish between the pathological/sociopathic personality, and the impaired physician who may fall victim to the well recognized countertransference syndrome. It is entirely appropriate for the Board to bar the un-rehabilitatable and the unremorseful from continued practice. At the same time, it is

appropriate for the Board to note that the impaired counter-transference violator is an entirely different person. As in the case of Dr. Schenthal, such practitioners have often exercised poor judgment relating only to a single patient. As with Dr. Schenthal, such practitioners initially commit violations with all good intentions, later falling victim to the full effects of the syndrome. Such practitoners are capable of understanding their vulnerability to the syndrome, are capable of remorse, are receptive to treatment, and can be safely be returned to practice.

WHEREFORE, Respondent respectfully requests that the Board of Medicine strike the Petitioner's Motion to Increase Penalty or, in the alternative, decline to increase penalty.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail this 30th day of May, 2001 to Albert Peacock, Agency for Health Care Administration, Post Office Box 14229, Tallahassee, Florida 32317.

McFARLAIN & CASSEDY, P.A.
215 South Monroe Street
Suite 600
Tallahassee, Florida 32301
850-222-2107



Douglas P. Jones
Florida Bar No. 0211125

DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32399-1850

JON S. WHEELER
CLERK OF THE COURT

(850) 488-6151

September 4, 2002

R. S. Power, Clerk
Department Of Health
4052 Bald Cypress Way
Bin A02
Tallahassee, FL 32399

RE: Stephen Schenthal, M.D. v. Department of Health, Etc.

Docket No: 1D01-2911
Lower Tribunal Case No.: 1999-53281, 00-3100PL

Dear Mr. Power:

I have been directed by the court to issue the attached mandate in the above-styled cause. It is enclosed with a certified copy of this Court's opinion.

Yours truly,

Jon S. Wheeler

Jon S. Wheeler
Clerk of the Court

JSW/jc
Enclosures
c: (letter and mandate only)
Douglas P. Jones
Pamela H. Page
Harold R. Mardenborough, Jr.
William W. Large, G.C.

01-926

M A N D A T E

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To Tanya Williams, Board Director, Department of Health

WHEREAS, in that certain cause filed in this Court styled:

STEPHEN SCHENTHAL, M.D. Case No : 1D01-2911

v. Lower Tribunal Case No : 1999-53281, 00-3100PL

DEPARTMENT OF HEALTH, ETC.

The attached opinion was issued on August 19, 2002.

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable MICHAEL E. ALLEN, Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahassee, Florida,

on this 4th day of September 2002.

Jon S. Wheeler

JON S. WHEELER, Clerk
District Court of Appeal of Florida, First District

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

STEPHEN SCHENTHAL, M.D.,

Appellant,

v.

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,

Appellees.

___________________________/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

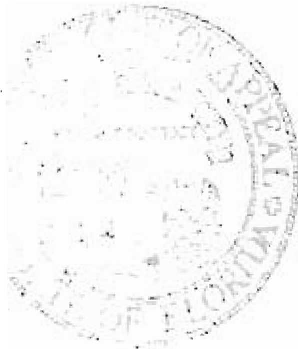
CASE NO. 1D01-2911

Opinion filed August 19, 2002.

An appeal from an order of the Department of Health.

Harold R. Mardenborough, Jr., and Douglas P. Jones of McFarlain & Cassedy, P.A., Tallahassee, for Appellant.

Pamela H. Page, Senior Attorney – Appeals, Agency for Health Care Administration, Tallahassee, for Appellees.



PER CURIAM.

AFFIRMED.

ERVIN, WOLF and PADOVANO, JJ., CONCUR.

DONE AND ENTERED this 15th day of March, 2001, in Tallahassee, Leon County, Florida.

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of March, 2001.

ENDNOTES

[1]/ By the agreement of the parties it was acknowledged that the record would not support a finding of a violation of Count Three c. and that facts in the record supporting a finding of violations of Counts Four, Five, and Six, should be disregarded. These requests by the parties have been accepted and no determination has been made concerning Counts Three c., Four, Five, and Six.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH,	)	
	)	
PETITIONER,	)	
	)	
v.	)	CASE NO. 1999-53281
	)	
STEPHEN SCHENTHAL, M.D.,	)	
	)	
RESPONDENT.	)	

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Stephen Schenthal, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

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2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 0061141. Respondent's last known address is 348 Miracle Strip Parkway #31, Fort Walton Beach, Florida 32548.

3. Respondent specializes in Psychiatry, and is board certified in Psychiatry.

4. In or around 1996, Respondent began treating Patient M.B.G., a female who was at that time fourteen (14) years old. Patient M.B.G.'s symptoms included uncontrollable fits of rage, hypersensitivity to small sounds, obsessive and ritualistic thoughts and behaviors, and fainting spells. Respondent diagnosed chronic depression, obsessive-compulsive disorder (OCD), and lack of anger control, and prescribed Luvox, Klonopin, and Ativan. At one point, Respondent had Patient M.B.G. involuntarily committed for inpatient psychiatric treatment under the Baker Act after she became violent toward an ex-boyfriend at school, verbally abusive toward teachers, and prone to uncontrollable rages at home. After her release from involuntary commitment, Patient M.B.G. continued in outpatient therapy with Respondent until 1997.

5. In 1997, Patient M.B.G. began treatment in a residential treatment program in Trenton, Alabama. After sixteen (16) months of intensive treatment in the residential program, Patient M.B.G. was released to her parents and returned to outpatient treatment with Respondent on or about April 24, 1998, when she was seventeen (17) years old.

6. Patient M.B.G. had difficulty re-adjusting to living with her family, and continued to suffer from chronic anxiety and depression. Respondent also held parental counseling sessions for Patient M.B.G.'s parents (mother Patient M.G. and father Patient D.G.).

7. In the fall of 1998, Respondent changed the focus of his therapy sessions with Patient M.B.G. from discussions of M.B.G.'s problems to Respondent's "relationship" with her. Because Patient M.B.G. had revealed a long-repressed sexual abuse incident while in residential

treatment, Respondent enrolled Patient M.B.G. in a twice-weekly therapy group for child sexual abuse victims. This "group", which consisted of Patient M.B.G. and one adult woman, centered on discussion of the participants' sexual histories, and created in Patient M.B.G. the impression that Respondent was attempting to coerce her into a sexual relationship with him. Respondent also frequently stood behind a chair or held a book in his lap during his therapy sessions with Patient M.B.G., and told her on several occasions that he was afraid to hug her tightly because she would know how excited he was.

8. By December 1998, Patient M.B.G.'s relationship with her family had deteriorated to the point that Respondent suggested that she move out of her parents' house and move in with him and his family. After her mother, Patient M.G., found and read her journals, Patient M.B.G. became very upset, and Respondent bought a locked file for Patient M.B.G. to keep the journals, as well as correspondence between himself and Patient M.B.G.

9. On or about December 13, 1998, Respondent noticed that Patient M.G., Patient M.B.G.'s mother, had some prescription medication for anxiety. He volunteered to prescribe something stronger, and wrote her a prescription for Ativan, despite never having taken a medical history or physical examination or keeping any other medical records to justify Patient M.G.'s need for the medication.

10. Ativan is a legend drug as defined by Chapter 465.003(8), Florida Statutes, and contains lorazepam, a Schedule IV controlled substance listed in Chapter 893.03, Florida Statutes. Lorazepam is used in the treatment of anxiety disorders, and carries a moderate potential for physical or psychological dependence. Adverse reactions to lorazepam include sedation, dizziness, weakness, unsteadiness, and disorientation.

11. By December 30, 1998, Patient M.B.G.'s relationship with her family deteriorated to the point that she left the family home and began living at a friend's house. Respondent called Patient M.B.G.'s parents, and told them that Patient M.B.G. "was never going to get better in her home environment." He also told them that he wanted Patient M.B.G. to live with him, and suggested that they grant her emancipation. Respondent also told them that Patient M.B.G. did not want to see them when she came to pick up her belongings, and later told Patient M.G.B. that her parents had said that they did not want her to return.

12. Patient M.G. reported that, during the month that she took the Ativan, she was extremely disoriented, and described herself as being "out of it" when Respondent contacted her to discuss Patient M.B.G.'s possible emancipation or living with Respondent.

13. On or about December 30, 1998, Respondent's notes indicate that he consulted, by telephone, with a colleague who specializes in difficulties between parents and children. That psychiatrist advised Respondent not to attempt to assume guardianship of Patient M.B.G., a question apparently raised by Respondent, and advised Respondent to maintain his role as an objective observer and counselor.

14. On or about January 1, 1999, Respondent supervised as Patient M.B.G. removed her personal items and clothes from her parents' house. Respondent had arranged the pickup at a time when the parents would not be at home, and ensured that Patient M.B.G. and her parents would have no contact with each other.

15. On or about January 7, 1999, Respondent consulted with another colleague regarding Patient M.B.G.'s treatment, and was warned to "consider counter-transference issues". Counter-transference is defined as "the conscious or unconscious emotional reaction of the therapist to the patient, which may interfere with psychotherapy". Respondent's notes from that

telephone conference indicate a "conflict between [s]ocial worker and [p]sychiatrist which ha[d] led to bending boundaries", also noting that his partners in the professional association had expressed concern about his behavior.

16. During this time period, Respondent bought numerous gifts for Patient M.B.G., including health insurance, a phone pager, Rollerblades, a joint checking account, and a $10,000 car. Respondent also gave Patient M.B.G. a videotape movie called *Lovesick*, about a male psychiatrist who falls in love with a young female patient. He also sent a number of romantic cards and letters to Patient M.G.B., and telephoned or paged her at her friend's house several times a day.

17. On or about January 11, 1999, Respondent attempted to conduct a therapy session with Patient M.B.G., but noted that they would be unable to return to the therapeutic process because of her awareness that Respondent's role as a neutral therapist had been compromised. Respondent's notes from that date conclude with notation that Respondent "[w]ill no longer schedule therapy sessions." However, Respondent did not arrange to have Patient M.B.G.'s case transferred to another psychiatrist. Respondent also continued to attempt to arrange for Patient M.B.G.'s legal emancipation, education, rent, and other personal needs.

18. On or about January 12, 1999, the day after supposedly terminating therapy with Patient M.B.G., Respondent again held a group therapy session with her and several other female sexual abuse victims.

19. On or about January 15, 1999, Respondent paid Patient M.B.G.'s application fee to Florida State University in Tallahassee, Florida.

20. According to his notes, Respondent allegedly consulted with a colleague on or about February 6, 1999, regarding Respondent's confusion with the "countertransference feelings arising in this case".

21. On or around February 6, 1999, Respondent spoke with the father of the friend with whom Patient M.B.G. was residing, who complained that his daughter's driving Patient M.B.G. to and from her work was interfering with the daughter's school work.

22. On or about February 13, 1999, after an argument with the friend she had been staying with, Respondent picked Patient M.G.B. up in his car. He rented a hotel room for her at the Best Western Summer Place Inn in Destin, Florida at approximately 3:00 a.m. Respondent stayed in the room with Patient M.B.G. for 2-3 hours, during which time he kissed her on the face, fondled her breasts, and placed his hands down her pants, under her underwear. Patient M.B.G. stated that Respondent touched the edges of her vagina, but did not penetrate the vagina. Respondent also asked Patient M.G.B. to remove her clothing and get into the hotel bed so that he could hold her. After Patient M.B.G. rebuffed his advances for several hours, Respondent left the room.

23. The next day, February 14, 1999, Respondent drove Patient M.B.G. to look at an apartment complex in Sandestin, Florida, and Respondent filled out paperwork to lease an apartment for Patient M.B.G. Later that day, Respondent waited in the parking lot outside Patient M.B.G.'s place of employment until she got off work, and told Patient M.B.G. that he was "in big trouble". Respondent said that her friend's father had found out about their relationship, and was going to tell Patient M.B.G.'s parents "everything". Patient M.B.G. then left, but when she returned to her hotel room, she found red roses and a Valentine's day card from Respondent inside the locked hotel room. Patient M.B.G. grew concerned about her security, and agreed to

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meet with her parents. She learned at that time that Respondent had lied to her when he told her that her parents had said they did not want her to return, and that they wanted her emancipated.

24. On or about February 16, 1999, Patient M.B.G. and her parents contacted the Okaloosa County Sheriff's Office, and gave their statements to a detective with that office.

25. On or about March 3, 1999, the sheriff's detective monitored a telephone call from Patient M.B.G. to Respondent, after Respondent had paged her from Kansas. During the telephone call, Respondent admitted to kissing and fondling Patient M.B.G. inappropriately. Respondent also asked Patient M.B.G. if she or her parents had contacted law enforcement, and admitted that he had left Florida because he was afraid of being arrested.

26. After verifying that Respondent had bought Patient M.B.G. a car and opened a joint checking account, and after recovering the Valentine's Day card from the hotel room where Patient M.B.G. had hidden it, the Sheriff's Office obtained a warrant for Respondent's arrest on charges of battery (a first degree misdemeanor), interference with child custody (a third degree felony), and attempted sexual misconduct by a psychotherapist (a first degree misdemeanor).

27. The sheriff's office arrested Respondent on or about March 23, 1999, after he returned to Florida and attempted to meet with Patient M.B.G. in a local park.

28. On or about September 2, 1999, Respondent pled nolo contendere in Okaloosa County Circuit Court to misdemeanor charges of attempted interference with child custody and attempted sexual misconduct by a psychotherapist, and was sentenced to two (2) one-year probation sentences to run consecutively, sixty (60) days community control, one hundred (100) hours of community service, court costs, and costs of supervision. The Court withheld adjudication.

29. An Agency expert reviewed the medical record in this case, and opined that Respondent's treatment of Patient M.B.G. fell below the acceptable community standard of care. Specifically, Respondent's emotional, financial, and sexual involvement with a patient were clear violations of the ethical boundary of objectivity to which a psychiatrist must adhere, and his attempts to take advantage of a vulnerable patient's dependency needs to satisfy his own personal desires fell below the standard of care.

COUNT ONE

30. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29), as if fully set forth herein this Count One.

31. Respondent used information gathered from a patient during psychiatric therapy sessions to establish trust and exercise influence over that patient, and engaged in a course of conduct between April 24, 1998, and February 14, 1999, which establish that Respondent exercised influence established within that relationship, for purposes of engaging that seventeen (17) year old female patient, Patient M.B.G., in a sexual relationship.

32. Respondent is guilty of violating Chapter 458.331(1)(j), Florida Statutes, by exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

COUNT TWO

33. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29) and paragraph thirty-one (31) as if fully set forth herein this Count Two.

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34. Respondent entered a plea of nolo contendere to charges of attempted interference with child custody and attempted sexual misconduct by a psychotherapist, both arising out of his psychiatric treatment of a teenage female patient, Patient M.B.G.

35. Respondent is guilty of violating Chapter 458.331(1)(c), Florida Statutes, by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.

COUNT THREE

36. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29) and paragraphs thirty-one (31) and thirty-four (34) as if fully set forth herein this Count Three.

37. Respondent failed to practice medicine within the acceptable standard of care by:

a. failing to maintain a proper boundary of professional objectivity in treating a young female patient, Patient M.B.G.;

b. personally intervening in his patient's traumatic life situation; and

c. attempting to exacerbate that situation in order to satisfy his personal sexual desires.

38. Respondent is guilty of violating Chapter 458.331(1)(t), Florida Statutes, by gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT FOUR

39. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29) as if fully set forth herein this Count Four.

40. Respondent failed to practice within the acceptable standard of care by prescribing Ativan, a Schedule IV controlled substance, to Patient M.G., the mother of Patient M.B.G., without having taken a medical history and physical, documenting the patient's symptoms, or giving a reason to justify the prescribing of a powerful, potentially addictive medication.

41. Respondent is guilty of violating Chapter 458.331(1)(t), Florida Statutes, by gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

COUNT FIVE

42. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29) and paragraph forty (40) as if fully set forth herein this Count Five.

43. Respondent inappropriately prescribed Ativan, a powerful psychotropic legend drug containing a Schedule IV controlled substance, to Patient M.G., the mother of Patient M.B.G., at a time when he was trying to establish legal guardianship, or win emancipation, of Patient M.B.G. over her parents. Respondent knew, or should have known, that the drug would have the effect of clouding Patient M.G.'s decision-making ability, and did not prescribe it in the course of a course of medical treatment of Patient M.G.

44. Respondent is guilty of violating Chapter 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including

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any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

COUNT SIX

45. Petitioner realleges and incorporates paragraphs one (1) through twenty-nine (29) and paragraphs forty (40) and forty-three (43) as if fully set forth herein this Count Six.

46. Respondent failed to keep any patient records, including a medical history and physical examination, documentation of symptoms requiring treatment, or a record of drugs prescribed, for Patient M.G., a person for whom the Respondent prescribed the legend drug Ativan.

47. Respondent is guilty of violating Chapter 458.331(1)(m), Florida Statutes, by failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician who is responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of the

Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs related to the investigation and prosecution of this case as provided for in Section 455.624(4), Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 25th day of April, 2000.

Robert G. Brooks, M.D., Secretary

Kathryn L. Kasprzak
Chief Medical Attorney

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