Before the
New Hampshire Board of Registration in Medicine
Concord, New Hampshire 03301

In the Matter of:

David C. Whitenack, M.D.

Docket No. 87-0001

DECISION

By the Board: Stephen A. Tzianabos, M.D., chairman; Douglas M. Black, M.D.; Wallace Buttrick, M.D.; Marcel R. Dupuis, M.D.; Maureen P. Knepp, P.A.-C.; and John S. Perley, members. Robert E. Porter, M.D., member, dissenting in part and issuing a separate statement.

Appearances: Edward L. Cross, Esq., Wiggin & Nourie, for the Complainant; Steven L. Tober, Esq., Aeschliman & Tober, for the Respondent.

Background

This is a disciplinary proceeding conducted by the New Hampshire Board of Registration in Medicine ("the Board") under RSA 329:17 for the purpose of examining allegations of professional misconduct against David C. Whitenack, M.D. ("Respondent"), a specialist in psychiatry. These allegations were set forth in a Notice of Hearing served April 13, 1987 and concerned possible unprofessional, negligent or immoral conduct in the Respondent's treatment of Betty L. Sprague ("Complainant").

Ms. Sprague filed a written complaint with the Board on October 31, 1986 which was informally investigated prior to the commencement of this proceeding. The Board's preliminary investigation involved interviews with both the Respondent and the Complainant which revealed relatively few factual discrepancies in their respective positions. The Board was also advised that the New Hampshire

Psychiatric Society had acted upon Ms. Sprague's allegations by suspending the Complainant's membership privileges for two years and requiring that his practice be supervised, and that the Respondent had appealed this decision to the American Psychiatric Association.

A prehearing conference was held on June 3, 1987 which lasted approximately two hours. Attempts to reach a voluntary settlement at that time were unsuccessful, and Ms. Sprague was granted a continuance to obtain counsel to assist her in presenting her view of the case.

A second prehearing conference was held on August 5, 1987 which was also about two hours in duration. A hearing date was established, a discovery schedule was established, the production of certain documents was ordered, and the nine issues to be examined as possible violations of RSA 329:17, VI(d) were more specifically articulated (Prehearing Order of August 14, 1986 at 5-6).

A final prehearing conference was held on October 28, 1987 which was also about two hours in duration. At this conference, the allegations concerning the drug Xanax (Issue No. 8) were withdrawn. Based upon the parties' written and oral prehearing statements, the factual questions which remained in dispute primarily involved differences of emphasis or degree rather than fundamental conflicts as to whether an alleged incident occurred.

An evidentiary hearing was held on November 13, 1987, at which both parties appeared and gave testimony. Rev. Wesley Burrell, a pastoral counselor, also testified on behalf of the Complainant, and Dr. Stephen G. Cronin, M.D., a board-certified psychiatrist, testified as a neutral expert witness at the request of the Board.

The parties were afforded the opportunity to submit written memoranda or argument before December 1, 1987, at which time the record was closed.

At the October 28, 1987 prehearing conference, the Respondent requested the Board to declare that no disciplinary action could be taken unless the facts supporting such action were established by "clear and convincing" evidence, and not merely by a "preponderance" of the evidence. The Board advised the Respondent to present his case on the assumption that a preponderance standard of proof would be used, but that the Board would deliberate further and announce its decision at a later date.

The Board has concluded that no useful regulatory purpose would be served by abandoning the long-established "preponderance" of the evidence test in favor of the more stringent "clear and convincing" evidence standard.1/ The 1986 amendments to RSA 329:17 which provide for public disciplinary hearings still retain limitations on public disclosure which are not present in the case of podiatrists, pharmacists, dentists, veterinarians, and other health care professionals, all of whom are subject to discipline based upon a "preponderance" of the evidence presented. See RSA Chapters 315, 318, 317 and 332-B. The presence or absence of public hearings is unrelated to the standard of proof which will apply in a given legal

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1/ Although the standard of proof was not directly addressed at the time, the Supreme Court has affirmed disciplinary sanctions against both a dentist and a doctor which were imposed under the "preponderance" of the evidence standard. Appeal of Beyers, 122 N.H. 934 (1982) (Dental Board); Appeal of Plantier, 126 N.H. 500 (1985) (Medical Board).

proceeding. Most civil proceedings are public and most employ the "preponderance" standard.

It is true that a "clear and convincing" standard of proof governs disciplinary proceedings involving New Hampshire lawyers, but this practice results from a policy determination made by the Bar Association, and not because special procedural protections are legally required when a lawyer's occupational license is in jeopardy or because disciplinary proceedings involving lawyers are open to the public.2/ In fact, the proceedings of the Bar Association's Professional Conduct Committee are generally kept confidential.

Findings of Fact

Dr. Whitenack was licensed to practice medicine in New Hampshire in 1972. He has maintained a private practice of psychiatry in this state since that time, and has been the subject of no other disciplinary proceedings by the Board.

2/ The Supreme Court has acquiesced in, but has not mandated the use of the "clear and convincing" standard of proof in cases of lawyer discipline. This standard was first mentioned in Musselman's Case, 111 N.H. 402 (1971), where the Court held that the evidentiary record supported the master's findings of fact, but neither accepted nor rejected the master's ruling on the standard of proof. In DeCato's Case, 117 N.H. 885, 886 (1977), the "clear and convincing" standard was employed by mutual consent of the parties because it was prescribed by Rule 39 (10)(g) of the Rules of Judicial Conduct. The use of a higher standard of proof in cases involving judges whose tenure in office is subject to constitutional protections can be distinguished from its use in cases involving lawyers. Nonetheless, the "clear and convincing" standard has become an accepted feature in the proceedings of the Bar Association's Professional Conduct Committee. See, e.g. Eades' Case, 118 N.H. 815, 817 (1978).

Ms. Sprague was 34 years old, married, and the mother of two children, aged 12 and 5, in April 1986. She had been experiencing marital difficulties prior to April 1986 and participated in psychotherapy with a pastoral counselor for about three and one-half years. She is now separated from her husband, has custody of her children and is gainfully employed. A divorce action has not been filed.

Dr. Whitenack provided psychoanalytically oriented psychodynamic insight oriented psychotherapy to Ms. Sprague from April 2, 1986 through August 8, 1986. She was referred to him by her pastoral counselor, Rev. William Hurst, who had decided to retire. Rev. Hurst had worked with Dr. Whitenack at the Durham Pastoral Counseling Center and had treated Ms. Sprague for several years.3/ He previously referred Ms. Sprague to Dr. Whitenack in October 1983 for the prescription of anti-anxiety medication.

Ms. Sprague initially visited Dr. Whitenack once a week, but began twice a week visits at the end of May 1986. She voluntarily terminated treatment with Dr. Whitenack on August 8, 1986, after a total of 26 visits, and subsequently began seeing a psychologist named Eva Powers and Dr. Ralph Luce, M.D.4/

3/ Dr. Whitenack advised the pastoral therapists at the Durham Pastoral Counseling Center during 1979 and 1980, and later served as President of the Center's Board of Directors (1982-1984).

4/ Dr. Luce, a psychiatrist, has seen Ms. Sprague on two occasions (Exhibit 4). In June 1986, she began marital counseling with Rev. Wesley Burwell, a therapist recommended to her by Dr. Whitenack. The Complainant was also evaluated by Stephen Warshaw, Ph.D., a psychologist, in August 1986, and Marcie Lister, a social worker, in September 1986.

Dr. Whitenack diagnosed Ms. Sprague's condition as an adjustment disorder with anxiety features.

The Complainant displayed almost immediate signs of an "eroticized transference" towards Dr. Whitenack in that she became romantically infatuated with him. The Respondent promptly recognized this phenomenon and viewed it as a possible vehicle for effective therapy. He also recognized that this type of transference also represented a barrier or "resistance" to meaningful treatment which needed to be overcome.

The Respondent and Complainant sat adjacent to each other on a couch during treatment sessions. On one or two occasions when she was crying or otherwise upset, he perfunctorily comforted her by holding her hand or patting her knee. Dr. Whitenack briefly hugged the Complainant in a platonic manner at the close of the last dozen treatment sessions, and paternally kissed her forehead during three such hugs. Although it was not so intended, this conduct had the effect of encouraging the Complainant's romantic interest in the Respondent.

Dr. Whitenack engaged in no overt sexual conduct towards the Complainant, and at no time advised her to engage in vigorous, frequent or unusual sexual activities. At an early point in the treatment, he asked the Complainant if she was thinking about having an affair with him, but this question was raised to provide a focal point for discussing her obvious eroticized transference and attempting to discover the underlying emotional needs which it was masking. On other occasions he attempted to deflect her expressions of interest in romantic activity by suggesting that it would be an inappropriate and unrewarding experience for both of them.

Dr. Whitenack did not see or attempt to see the Complainant outside of their regularly scheduled sessions. His behavior toward her, when examined in context, could not have been reasonably construed as an invitation to establish a romantic or other personal relationship with him. Nor did he comport himself in a manner which was intended to intensify or encourage Ms. Sprague's openly expressed romantic attraction towards him.

Dr. Whitenack attempted to discuss Ms. Sprague's infatuation with him in a casual, yet directed fashion which, he hoped, would: 1) help her become aware of underlying emotions which might cause her behavior to fall into patterns which were not always productive for her; and 2) not appear critical or unaccepting of these emotions.

The Respondent ocassionally used erotic or "street" language during his treatment of the Complainant. This language was responsive to the topics being discussed. It was not gratiutious or used to arouse the Complainant sexually.

Dr. Whitenack performed a type of psychotherapy with the Complainant which was personally designed by him, but can be generally described as belonging to the "interpersonal school." Although debate exists with the field of psychiatry concerning the methods and results of interpersonal pyschotherapy, this school is both well-established and reputable.

Interpersonal psychotherapy calls for the therapist to interact to some degree with the patient while also monitoring the strength and nature of his emotional involvement to avoid a loss of objectivity. Practitioners may engage in hugging or other non-erotic touching of patients, and there may be a sharing of observations and emotional responses between patient and therapist.

During the course of Ms. Sprague's treatment, she and the Respondent were on a first name basis. Dr. Whitenack occasionally revealed facts concerning his personal life to the Complainant for the purpose of addressing themes which she introduced into the therapy. This practice was consistent with his treatment method which gave particular emphasis to the establishment of a sufficient bond of trust to facilitate the patient's eventual need to discuss matters which are intensely personal and usually painful to confront.

One such personal detail concerning Dr. Whitenack was the fact that he had previously gone through a period of painful emotional experiences during which he had derived some comfort from realizing that he had a gun located in his office. This disclosure arose in the context of a discussion intended to determine the nature and extent of the Ms. Sprague's complaints of depression. At that time, Dr. Whitenack encouraged her to share such feelings with him and to believe she had some control over the painful emotions in her life. The Respondent's remarks were not intended to condone suicide, nor, when examined in context, were they reasonably likely to create such an impression.

Over a 15 year period, the Respondent has drunk beer or other alcoholic beverages during the treatment sessions of a total of three or four selected patients. The appointments of these patients were scheduled in the late afternoon to facilitate this consumption of alcohol. Ms. Sprague was not one of these patients.

The Respondent told the Complainant about this practice during one of her two final sessions, after she had begun to realize that he would not become personally involved with her and amorous feelings

for him had been misplaced. During her final visit, Dr. Whitenack also told the Complainant that if she resumed therapy with him, she could have a late afternoon appointment and observe that drinking a beer during a therapy session was not as disruptive an event as she seemed to believe. Dr. Whitenack made these statements because he believed she was unrealistically focusing on his "drinking habits" instead of the true source of the hostile emotions she was then experiencing towards him.

The Respondent, in response to a direct question from the Complainant, revealed that he had once treated Rev. Hurst. Rev. Hurst had not provided Dr. Whitenack with an express release of this information. It was, however, unclear at the time the information was revealed whether a prior release of that information had been given by Rev. Hurst, or whether consent had been impliedly given, and the Respondent believed it best to answer in a straightforward manner. He did so because he was concerned that an evasive answer might erode Ms. Sprague's confidence in her current therapy. 5/

5/ Rev. Hurst was contacted by the Complainant, but elected not to make his views known concerning this and other issues.

Discussion and Conclusions

This proceeding presents the Board with three primary issues for decision under RSA 327:17, VI(d): 1) Did Dr. Whitenack sexually abuse or otherwise exploit Ms. Sprague and thereby engage in immoral or unethical conduct; 2) Was Dr. Whitenack negligent in managing Ms. Sprague's treatment; and 3) Was Dr. Whitenack unethical in disclosing to Ms. Sprague that Rev. Hurst had once been his patient?

The Board unequivocally rejects the first contention. Dr. Whitenack engaged in no overtly sexual conduct directed towards the Complainant. The platonic touching and the explicit language about which she now complains comprised only brief portions of the therapy sessions, and neither of these methods are per se forbidden to psychotherapists.6/ The Respondent's use of these methods was not immoral or exploitative.

The absence of immoral conduct in this case was reasonably clear from an early date. Unfortunately, the resolution of this proceeding has been made more difficult by the Complainant's unrealistic and inaccurate portrayal of herself as a person who was "seduced and abandoned" by Dr. Whitenack. In fact, no romantic or erotic relationship was ever begun, no nonconsensual touching occurred, no sexually-motivated touching occurred, and the Respondent consistently attempted to attend to the Complainant's therapeutic needs. Dr.

6/ The Complainant was hugged on two occasions by Rev. Hurst. Hugging (or any type of touching) is inconsistent with certain schools of psychoanalytic psychotherapy, but is an accepted part of other schools.

Whitenack discussed sexually-oriented subjects for the purpose of treating Ms. Sprague's symptoms.

Ms. Sprague's initial complaint (Exhibit I) and written recollection of her treatment sessions (Exhibit IV) are characterized by selectivity and exaggeration.7/ The claims of exploitation contained therein were not substantiated by her own testimony. Ms. Sprague was quite open in admitting that: she developed an almost immediate infatuation with Dr. Whitenack during her initial visit on April 2,1986; this infatuation continued to exist through the date of the hearing; she had attended four years of college and had previous experience with psychotherapy before April 1986; and she was generally aware of what she was doing. She had access to the counsel of Rev. Hurst until April 21, 1986 (until after she had become infatuated with Dr. Whitenack) and had the opportunity to counsel with Rev. Burwell as early as June 1986.

Ms. Sprague's testimony revealed that the significant factual discrepancies between her version and Dr. Whitenack's version of the alleged exploitative events concerned subjective factors such as the intensity of and the motivation attributable to these events. The record as a whole, including the records of the Complainant's treatment with other health care providers, support Dr. Whitenack's assertion that the complained of statements and actions occurred in a

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7/ Mrs. Sprague's "journal" is not a contemporaneous, chronological recording of events which occurred during her therapy sessions. It contains random recollections written after she became angry with Dr. Whitenack, left his treatment, and was deciding whether to bring charges against him. The complaint, the journal and the comments reported in Exhibit 23 take remarks made by the Respondent (and other facts) out of their correct temporal or substantive context.

context which was not sexual and was not exploitative.8/ He did not engage in "sexual activity" with a patient within the meaning of Section 3 of the American Medical Association's Principles of Medical Ethics.

There is also little doubt concerning the third issue. Dr. Whitenack answered "yes" when the Complainant directly asked him whether he had previously treated Rev. Hurst. Revealing a patient confidence violates Section 4 of the Principles of Medical Ethics. 9/ Such a violation cannot occur when the patient has given his or her consent to the disclosure, but the record before the Board does not demonstrate that Rev. Hurst consented to the release of this information.

Dr. Whitenack knew Rev. Hurst had referred the Complainant to him. He had also worked with Rev. Hurst in a professional capacity for several years and believed they had a mutual professional regard for each other. Accordingly, Dr. Whitenack believed it likely that

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8/ Dr. Whitenack's testimony was quite credible. The Complainant, too, appeared to be honestly striving to provide the Board with accurate information. In so doing, however, she illustrated that she had elsewhere (e.g., Exhibits IV and 23) distorted the nature and frequency of the complained of conduct, and generally created the impression that an irrational "revenge" factor was playing a large role in this case. The Complainant's opinions and conclusions concerning the nature of her therapy with Dr. Whitenack reflect a continued obsessive interest in the Respondent. These opinions and conclusions are also at odds with her sworn-to recollections of the specific events which actually occurred during the treatment sessions.

9/ Section 4 provides that:

> A physician shall respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.

Rev. Hurst had already revealed the fact of his previous treatment with Dr. Whitenack to the Complainant, or that Rev. Hurst would, in any event, consent to the disclosure of this information. Moreover, declining to answer the Complainant's question would have the same information disclosing effect as answering it. For these reasons, Dr. Whitenack concluded -- and still believes -- that the best course was to answer Ms. Sprague's question honestly and thereby reinforce his attempts to create an atmosphere of trust and confidence.

Dr. Whitenack's good intentions do not alter the fact that his disclosure of a previous patient's identity violated Ethical Principle No. 4 -- the physician's affirmative duty to avoid revealing patient confidences. Questions of this type pose a basic and recurring problem for any psychotherapist. Even if a patient's identity would be indirectly revealed by deflecting a question of the type posed by Ms. Sprague, the physician should not provide direct verification of the suspected facts. 10/

Although the disclosure concerning Rev. Hurst was unethical, the special relationship between Rev. Hurst, Dr. Whitenack and Ms. Sprague minimizes the significance of the Respondent's error, and the Board declines to impose any disciplinary sanction based upon this rather technical violation of RSA 329:17, VI(d).

The remaining issue (No. 2) is more difficult because of the lack of clear standards relating to the efficacy of psychotherapy in general. Dr. Whitenack probably could have been more diligent and

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10/ The psychiatric annotations to Principle No. 4 plainly state that confidentiality is essential to psychiatric treatment, and that the identification of a person as a patient must be protected with extreme care. Exhibit 10 at 432.

more disciplined in directing Ms. Sprague's therapy, but the Board is not satisfied that his good faith attempt to conduct meaningful pyschotherapy in the face of a strong eroticized transference rises to the level of negligence. Ms. Sprague's therapy was not successful, but medical science cannot offer assurance that any psychotherapy will succeed. Psychotherapy patients often avoid confronting painful new information concerning their image and understanding of themselves. Patients commonly leave therapy just as new insight is being developed.

Dr. Whitenack quickly perceived the Complainant's principal symptoms and correctly diagnosed them. He advised Ms. Sprague that her response to him was a "transference" which should not taken at face value, and attempted to provide some insight into the childhood origins of such behavior. His efforts at least partially contributed to Ms. Sprague's realization that the Respondent was incapable of transforming her life and personality in some magical manner. Dr. Whitenack had anticipated that the Complainant would come to such a realization, but hoped that it would provide a vehicle for greater openness and understanding in her therapy. Unfortunately, Ms. Sprague's insight came so suddenly, and with such vigor and hostility, that she found it too painful to continue working with Dr. Whitenack.

The reason many schools of psychotherapy view the presence of an eroticized transference as a negative factor which warrants a prompt referral to another therapist is because this type of transference typically involves manipulative conduct by the patient which effectively resists therapeutic intervention. It can produce hostile

and confusing emotions such as those experienced by Ms. Sprague. On the other hand, the state of medical knowledge is not such that it can be said that an attempt to manage an eroticized transference by the subject of that transference can produce no therapeutic effects.

Dr. Whitenack was not responsible for the occurrence of Ms. Sprague's eroticized transference. Neither did he exploit it for personal reasons of his own. He treated Ms. Sprague with honesty, respect and compassion.11/ The Complainant would eventually need to recognize that the "crush" she so quickly developed for Dr. Whitenack was an unproductive manifestation of her own mental processes. Whenever this recognition occurred it would have produced some symptoms of anxiety or depression, even if Dr. Whitenack had referred her to another therapist after their second session in 1986.

Ms. Sprague had marital and other problems before she began treating with Dr. Whitenack. She had been infatuated with other men before she began treating with Dr. Whitenack. Dr. Whitenack did not cause the Complainant to separate from her husband. Indeed, he referred her to a marriage counselor in June 1986, and attempted to reveal that her infatuation with him was a recurrence of other, more basic themes in her life. By August 1986 he had succeeded in making her understand that he was not the romanticized figure she wanted him to be. In so doing, he was not the only source of stress in her life. Among other stressors was the fact that her therapist since 1981, Rev. Hurst, had terminated her treatment.

11/ There is some irony in the fact that, to some extent, Ms. Sprague now complains about conduct which reflected compassion for her symptoms.

The Respondent's attempt at managing Ms. Sprague's eroticized transference was unsuccessful, but the Board cannot find that his treatment worsened her symptoms of anxiety and depression, more deeply ingrained the personality traits which troubled her, or otherwise reduced her level of functioning beyond what they would have been had the Respondent simply referred her elsewhere in April 1986. Neither can it be said that the Complainant's symptoms would have been worse (or better) had she continued to treat with Dr. Whitenack after August 1986. The Respondent's treatment does seem to have motivated the Complainant to devote considerable energy to pursuing the instant complaint, but this fact is not evidence that the Complainant was injured or that the Respondent was negligent. Indeed, Psychologist Powers' notes indicate that the Complainant has been considering a legal career (Exhibit 5).

Dr. Cronin's testimony expressed clear dissatisfaction with the treatment which the Respondent provided to the Complainant.12/ Dr. Cronin believed this treatment was not well planned, not well executed and seemed to give undue attention to the Respondent's own emotional needs. He further opined that the Complainant's eroticized transference had been mismanaged by the Respondent. Nonetheless, Dr. Cronin admitted that there are many schools of psychotherapy, that

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12/ Rev. Burwell also expressed the opinion that the Respondent's treatment method was incorrect or improper, and similar opinions are included among the office notes of Ms. Lister (Exhibit 23). The Board ruled that these opinions would not be admitted to the record. The Board also notes that these mental health providers did not have the benefit of hearing Dr. Whitenack's version of the facts, and were told, or assumed, that there was an overt sexual gratification aspect to Dr. Whitenack's behavior which did not exist.

the Respondent's diagnosis appeared correct, and that the practice of touching and engaging in other interpersonal exhanges with patients was not necessarily negligent, even though Dr. Cronin personally disapproved of such direct methods.

Dr. Cronin also appeared confused by the Respondent's duty to respond to the Board's inquiries about this therapy with Ms. Sprague and did not clearly demonstrate that it is medically unacceptable for a psychiatrist to attempt pscyhoanalytic psychotherapy on a patient with an eroticized transference toward the pscyhiatrist.

For the reasons stated above, the Board concludes that Dr. Whitenack violated RSA 329:17, VI(d) only with regard to his disclosure of a patient confidence, but that this violation was of a relatively minor nature and unworthy of any disciplinary sanction.

THEREFORE, IT IS ORDERED That this proceeding is terminated without disciplinary action against Dr. David C. Whitenack, M.D.

Separate statement of Board Member Robert E. Porter, M.D.

Dr. Whitenack did not act in an immoral or in negligent manner, and I concur with the decision of the majority in all respects save one. I believe Dr. Whitenack acted unprofessionally by failing to refer Ms. Sprague to another pyschiatrist (or other qualified therapist) after it became apparent that he was having difficulty managing her eroticized transference. The Respondent recognized the transference

problem during the second, if not the first, therapy session, and was soon confronted with an obvious resistence from Ms. Sprague in the form of manipulative and inappropriate questions.

The Principles of Medical Ethics stress the need for psychiatrists to retain control of their patients' therapy. The physician must be sensitive to the development of countertransference reactions which may reduce the effectiveness of the therapy being provided, regardless of the "school" to which the therapy method may belong. My examination of the record indicates that by May 1986, Dr. Whitenack did not have good control over Ms. Sprague's therapy. Although he may not have fully realized that a loss of control had occurred, Dr. Whitenack should have been been more sensitive to this issue. By June 1, 1986 his professional duty was to refer Ms. Sprague elsewhere. See Section 3, Principles of Medical Ethics. Because he did not terminate his treatment, and did not even refer the Complainant to a marriage counselor until approximately mid-June, I would issue a letter of reprimand which also recommended further training relevant to the handling of eroticized transference.

Dated: February 5, 1988

Jean A. Barnes
Administrative Assistant

BEFORE THE
NEW HAMPSHIRE BOARD OF REGISTRATION IN MEDICINE
CONCORD, NEW HAMPSHIRE 03301

In the matter of	)	
	)	Docket No. 87-001
David C. Whitenack, M.D.	)	

PROPOSED CONSENT AGREEMENT AND ORDER

NOW COMES the complainant, Betty Sprague, and the respondent, Dr. David Whitenack, the parties to the above entitled matter, and submit to the Board of Registration in Medicine for its review and consideration this proposed Consent Agreement and Order. In support of this Agreement, the parties say as follows:

Background

1. On October 31, 1986 Betty Sprague filed a complaint with the Board alleging professional misconduct on the part of her former treating psychiatrist, Dr. David Whitenack.

2. The Board held a hearing on the merits of Ms. Sprague's complaint on November 13, 1987.

3. On February 5, 1988 the Board held that Dr. Whitenack was not guilty of any misconduct in violation of the provisions of RSA Ch. 329 or applicable Board rules and regulations.

4. The complainant appealed the Board's decision to the New Hampshire Supreme Court and on October 6, 1989 the Court ruled that the case should be remanded to the Board for further hearing.

Proposed Consent Agreement and Order

5. In an effort to avoid further litigation in this matter, the complainant and respondent propose that this case be resolved

on the basis of an order issued by the Board providing that:

a. Dr. David Whitenack is to participate in a consultation program with a psychiatrist of his recommendation, to be approved by the Board. The Board will also consider the views of the complainant as to this matter. The Board shall retain, however, complete authority to select the psychiatrist in question and this psychiatrist shall, at the Board's request, confirm that the program of consultation described below is ongoing.

b. The consultation program shall be for a period of two years beginning with the date the Board approves a psychiatrist pursuant to paragraph (a). Dr. Whitenack is to participate in monthly meetings during the first year of the program and quarterly meetings during the second year of the program. The program will provide for peer review with respect to the following matters: (1) case interpretations and diagnoses, (2) the treatment procedures being used by Dr. Whitenack in caring for individual patients and (3) the dynamics of the therapeutic relationships in which Dr. Whitenack is involved as the treating psychiatrist.

c. Dr. Whitenack shall devote twelve and one half hours over the course of the next year of the continuing medical education that he is required to complete by the American Medical Association to the subjects of transference and countertransference.

d. The Board will hold the complainant's claim regarding Dr.Whitenack in abeyance for a two year period. If within this two year period no non-frivolous claims are filed against Dr. Whitenack with the Board and if the Board does not, sua sponte, institute any action against the Doctor during this time period, the Board will close this case with no adverse finding being entered against Dr. Whitenack.

e. Nothing contained in this Order is to be construed as a finding that the charges filed by the Complainant against Dr. Whitenack had merit or that the charges were not filed in good faith.

f. This Order reflects a reasonable resolution of the dispute that has arisen between the parties. The Board also finds that the Order adequately protects the public and the interests of the medical profession.

g. This Order shall take affect on the date it is issued.

WHEREFORE, the parties request the Board to enter an order:

A. Approving this Proposed Consent Decree.

B. Granting the parties such other and further relief as is just and equitable.

Respectfully Submitted,

Betty Sprague,

By Her Attorneys,
WIGGIN & NOURIE

Dated: 1/17/90

By: _____
Edward L. Cross, Jr.
P.O. Box 808
Manchester, NH 03105
(603) 669-2211

Dated: 1/18/90

_____
Betty Sprague

Dr. David Whitenack

By His Attorneys,
AESCHLIMAN & TOBER

Dated: 1/20/90

By: _____
Stephen Tober, Esquire
Aeschliman & Tober
P.O. Box 1151
381 Middle Street
Portsmouth, NH 03801

Dated: 23 Jan 90

_____
David C. Whitenack

Board of Registration in Medicine,

Dated: 2/1/90

By: _____ M.D.

Title: President