

BEFORE THE SOUTH CAROLINA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

Roger E. Adler, M.D.,

Medical License #11260,

(M-131-96) Respondent.

**ORDER DENYING RESPONDENT'S
REQUEST AND AMENDING PRIOR
ORDER**

This matter came before the Board of Medical Examiners (the Board) for hearing on February 8, 2005, as a result of the Respondent's request dated October 3, 2004 to approve a physician to perform an assessment on the Respondent as required by a previous order of the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §40-47-200 to address the issues raised by the Respondent. Lynne W. Rogers, General Counsel, represented the State. The Respondent was represented by Desa A. Ballard, Esquire.

This case has a complex procedural history, and further detail may be gathered from the various orders and other documentation associated with the case. The following is a brief summary of the procedural history of the case. The Respondent was originally charged with violation of various provisions of S.C. Code Ann. §40-47-200, and Regulation No. 81-60 of the Rules and Regulations of the Board of Medical Examiners. The original charges were heard by a hearing panel in June 1999. The Board affirmed the panel's findings and revoked the Respondent's license by order dated August 5, 1999. The ALJD affirmed the Board's order. On appeal to the circuit court, Judge Lockemy vacated the Board's decision, and remanded the case for further proceedings. The Board again found the Respondent guilty of professional misconduct, and revoked the Respondent's license. The ALJD affirmed the Board. On appeal to the circuit court, Judge Kinard reversed the Board's decision and remanded the case to the Board for the entry of an order consistent with his decision, which included a requirement that the Board specifically address each of several factors set forth in Judge Kinard's order in determining an appropriate sanction. In its order on remand dated November 30, 2003, the Board addressed the factors set forth by Judge Kinard, and issued an order suspending the Respondent's license indefinitely, referring the Respondent, at his own expense, to the Behavioral Institute of Atlanta for a complete assessment, and for recommendations to the Board. After receipt by the Board of the assessment and recommendations of the Behavioral Institute of Atlanta, the Board was to determine and issue a final sanction in this matter. After hearing on May 4, 2004 the Respondent's Motion for Reconsideration or Amendment dated December 19, 2003, and the Respondent's Petition for Reinstatement dated January 20, 2004, the

Board issued an order dated May 16, 2004 revising its prior order and allowing the Respondent to propose an independent group or institution, pre-approved by the Board, to perform, at the Respondent's expense, the complete assessment and recommendations regarding the Respondent. The Board has now received the Respondent's request dated October 3, 2004 to approve a physician to perform an assessment on the Respondent as required by previous order of the Board.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Board received a psychosexual evaluation and assessment from Dr. William Burke. Among many other findings, the report used the "Static 99" actuarial instrument to predict recidivism among adjudicated sexual offenders. Dr. Adler's rating was 4, which placed him in the Medium-High category. Dr. Burke also administered the Abel Screen Assessment which led to three main findings: that it does appear that the Respondent has a persistent sexual attraction to children, that the Respondent does not appear to have an interest in sadistic/masochistic sexual behavior, and that the Respondent does appear to have a high probability of molesting female children outside the family under the age of 14. The Burke report concludes that the Respondent appears to have chronic sexual interest in deviant sexual stimuli, has an elevated risk to re-offend if allowed to treat children, and lacks empathy for his two admitted professional sexual misconduct adult victims. The Report further concluded that the Respondent exhibited behavior consistent with Narcissistic Personality Disorder.

2. The Burke report made the following recommendations. Dr. Adler should enter an established Professional Sexual Misconduct treatment program. The suggested programs were the Abel program in Atlanta, Georgia, the Medows program in Arizona, the Masters and Johnson program in New Orleans, or Dr. Burke's program in Summerville, South Carolina. It was recommended that the Respondent return to work under the following conditions: he enter, participate, and make substantial progress in one of the above-mentioned PSM programs, his practice be restricted to a Department of Mental Health outpatient facility (the Respondent previously indicated that he has a likely job offer at Mental Health), he should always have a chaperone in the room with him while seeing patients, the Mental Health Center agrees to follow the practice oversight protocol established by Abel (1998), the Respondent be restricted to treating patients 18 year old and above, and that the Respondent have biannual and event driven polygraph exams.

3. Dr. Luadzer, a psychotherapist and certified sex therapist testified before the Board. The Respondent had requested the approval of Dr. Luadzers to perform an assessment on Dr. Adler. Dr. Luadzers had proposed performing an extensive clinical assessment using standardized indices including the Vermont Scale of Sexual Offending. Dr. Luadzers noted that sleep apnea created a

problem for the Respondent with the testing administered by Dr. Burke. He recommended that the Respondent be allowed to return to work, comply with all Mental Health Department guidelines, and receive intensive therapy for a year, after which he could be re-evaluated. Dr. Luadzers regarded the Respondent as suffering from an adjustment issue, depression, and anxiety. He was of the opinion that the Respondent had a low probability of re-offending if he followed his recommendations. He did not think chaperones were necessary, and felt that the Respondent could treat a child of any age.

4. We find the recommendations of Dr. Burke to be compelling and should be adopted by the Board in order to assure the protection of the public, with attention also directed toward the problems identified by Dr. Luadzers.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-47-200, supra, has the authority to order the revocation or suspension of a license to practice medicine or osteopathy, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension, such as requiring the licensee to undertake additional professional training subject to the direction and supervision of the Board or imposing restraint upon the medical or osteopathic practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars to the Board and the costs of the disciplinary action.

2. The Respondent has previously been found by the Board to have violated S.C. Code Ann. §§40-47-200(F)(7) and (8), and Regulations No. 81-60(A), (D), and (F) prior to June 26, 1992 and (A), (B), (C), and (D) on or after June 26, 1992 of the Rules and Regulations of the Board, in various particulars.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified medical doctors against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the physician, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1 The Respondent's license remains indefinitely suspended pending compliance with the following terms and conditions, and until further action by the Board.

2 The Respondent shall enter an established Professional Sexual Misconduct treatment program, pre-approved by the Board, to include either the Abel program in Atlanta, Georgia, the Medows program in Arizona, or the Masters and Johnson Program in New Orleans.

3. The Respondent shall be allowed to return to work under the following conditions:

A. The Respondent shall enter, participate, and successfully complete to the Board's satisfaction one of the above-mentioned PSM programs.

B. The Respondent's practice shall be restricted to a Department of Mental Health outpatient facility.

C. The Respondent shall have a chaperone present in the room with him while seeing patients.

D. The Respondent's place of employment must agree to follow the practice oversight protocol established by Abel (1998).

E. The Respondent shall only treat patients who are 18 years old and above.

F. The Respondent shall submit to biannual and event driven polygraph examinations.

G. The Respondent shall undergo diagnosis and treatment for sleep apnea, depression, and adjustment disorder by appropriate physicians pre-approved by the Board.

H. The Respondent's medical records (office, hospital, and surgical activity) shall be subject to periodic review by Board representatives. The cost of such reviews shall be borne by the Respondent.

I. The Respondent shall appear and report to the Board as requested by the Board.

J. The Respondent shall comply with the terms of this final order and all state and federal statutes and regulations concerning the practice of medicine.

K. The Respondent shall promptly advise this Board in writing of any changes in address, practice, hospital privileges, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,
Licensing, and Regulation
Board of Medical Examiners
P.O. Box 11289
Columbia, SC 29211

4. Failure by the Respondent to abide by any of the aforementioned conditions if he should return to practice shall warrant the immediate temporary suspension of his license to practice medicine in this State pending hearing into the matter and until further order of the Board.

5. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. Failure to satisfactorily comply with such requests will be deemed a violation of this final order.

6. This final order shall take effect upon the service of this order on the Respondent or his counsel.

AND IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS

BY: Satish Prabhu M
Satish Prabhu, M.D.
President of the Board

2/15/2005, 2005.