



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Daniel R. Cohen  
Master Case No.: M2021-773  
Document: Final Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center  
P.O. Box 47865  
Olympia, WA 98504-7865  
Phone: (360) 236-4700  
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

DANIEL R. COHEN,  
License No. MD.MD.60445146

Respondent.

Master Case No. M2021-773

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**APPEARANCES:**

Daniel R. Cohen, the Respondent, by  
Helsell Fetterman LLP, per  
David J. Corey, Attorney at Law (Neither the Respondent nor his attorney  
appeared at the hearing)

Department of Health Medical Program (Program), by  
Office of the Attorney General, per  
Tracy Bahm, Assistant Attorney General

**PRESIDING OFFICER:** Matthew R Herington, Health Law Judge

A hearing was held in this matter on August 25, 2022, regarding allegations of unprofessional conduct. License **SUSPENDED INDEFINITELY**.

**ISSUES**

Did the Respondent commit unprofessional conduct as defined by RCW 18.130.180(7) and WAC 246-919-630(1), (2)(j) and (k), (3), and (5)?

If the Program proves unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

**SUMMARY OF PROCEEDINGS**

At the hearing, the Program presented the testimony of Karena Whitworth. The Respondent did not appear at the hearing.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

The Presiding Officer admitted the following exhibits:

- Exhibit D-1: Credential View Screen;
- Exhibit D-2: Impact statement from Patient A dated April 13, 2022;
- Exhibit D-3: Complaint filed with the Washington Medical Commission from Patient A dated February 10, 2021;
- Exhibit D-4: Complaint filed with the Washington Medical Commission from Karena Whitworth, MD, dated February 10, 2021;
- Exhibit D-6: The Respondent's statement from May 3, 2021;
- Exhibit D-8: The Respondent's statement from June 9, 2021;
- Exhibit D-9: The Respondent's statement from October 20, 2021;
- Exhibit D-10: Records for Patient A received from the Respondent;
- Exhibit D-11: Records for Patient A received from Family Care Network;
- Exhibit D-12: Prescription Monitoring Program report for Patient A;
- Exhibit D-15: Text messages received from Patient A;
- Exhibit D-16: Cell phone call records received from Patient A;
- Exhibit D-17: Washington Medical Commission 2017 Sexual Misconduct and Abuse Guideline;
- Exhibit R-1: The Respondent's CV;
- Exhibit R-5: Text messages with Patient A's husband;
- Exhibit R-6: Letter from Heather Shepherd dated June 9, 2021; and
- Exhibit R-7: Letter from Heather Shepherd dated July 15, 2021.

Pursuant to WAC 246-10-111, the hearing was held via video and telephone using the Microsoft Teams platform.

## I. FINDINGS OF FACT

1.1 In his Answer to the Statement of Charges and Request for Settlement and Hearing, the Respondent admitted to the following:

- On April 7, 2014, the State of Washington issued Respondent a credential to practice as a physician and surgeon. Respondent's credential is currently active.
- In or around July of 2020, and at all times relevant to the allegations herein, Respondent was working as a psychiatrist under a physician and surgeon license.

1.2 As of 2020, Patient A had a history of psychiatric illness, including: anxiety, obsessive compulsive disorder, and an eating disorder. In addition, she was experiencing ongoing psychiatric symptoms. As a result, Patient A's primary care physician—Dr. Karena Whitworth—recommended that Patient A seek out treatment with a psychiatrist.

1.3 In July of 2020, Patient A began treatment with the Respondent for what the Respondent diagnosed as generalized anxiety disorder. The Respondent also listed histrionic personality disorder as a possible diagnosis in the medical record. For treatment, the Respondent provided weekly psychotherapy, as well as medication management. While the first few sessions were via telephone due to the ongoing COVID-19 pandemic, later sessions were held in-person.

1.4 There is no evidence suggesting that anything about the physician-patient relationship was inappropriate prior to September 2020.

1.5 However, in September 2020 the Respondent began frequently texting Patient A. This included text messages from the Respondent indicating that he was thinking about Patient A, that he missed seeing Patient A, and that he wished he could be with her. Many of these messages contained sexual undertones or were blatantly sexual in nature.

1.6 On December 2, 2020, the Respondent was present at Patient A's appointment with Dr. Whitworth. However, the Respondent did not tell Patient A's primary care provider who he was. Dr. Whitworth observed the Respondent rubbing Patient A's shoulder and back. Although Dr. Whitworth did not know who the Respondent was, she inferred from the Respondent's behavior that he was Patient A's significant other.

1.7 There is a "Psychiatry Termination Note" dated December 8, 2020, in the Respondent's medical record for Patient A. As the reason for termination of care, the Respondent entered "Insufficient progress." The Respondent further wrote that "I discussed w pt I've helped her all I can." Although the note was dated December 8, 2020, it was actually signed by the Respondent on December 25, 2020. (Exhibit D-10)

1.8 Nevertheless, the Respondent clearly continued to act as Patient A's physician after December 8, 2020. For example, the Respondent wrote in a text message to Patient A on December 11, 2020, that "I'm your doctor." (Exhibit D-15). The Respondent also wrote prescriptions for Patient A on December 21, 2020. At the same

time, the Respondent continued to send sexually charged messages to Patient A. This included a text message on December 11, 2020, reading “Get us a room.” (Exhibit D-15). The Respondent also made or attempted to make numerous phone calls to Patient A between December 20, 2020, and December 25, 2020.

1.9 The Respondent continued to communicate via text message and telephone with Patient A in January and February 2021. This included text messages regarding the Respondent’s sexual history, preferences, and fantasies.

1.10 On February 15, 2021, Patient A’s husband sent a text message to the Respondent telling him to cease all contact with Patient A. The Respondent indicated that he understood the message and apologized. There is no record of the Respondent contacting the Respondent after that date.

1.11 On February 17, 2021, Patient A reported the Respondent’s behavior to Dr. Whitworth during a medical visit.

1.12 Since the inappropriate behavior by the Respondent, Patient A has experienced an increase in anxiety, has experienced an increase in somatic symptoms (e.g., nausea), and is not eating as much as she should. She has also had difficulties maintaining care with a new psychiatrist.

1.13 Effective June 30, 2017, the Commission issued a “Guideline” titled “Sexual Misconduct and Abuse.” The Guideline contains the following language:

The practitioner has full and sole responsibility to maintain proper boundaries. It is not a defense or a mitigating factor that the patient or key third party consented to, proposed, or initiated the sexual contact or sexual or romantic relationship. (Exhibit D-17).

## II. CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the Respondent and the subject of this proceeding. Chapter 18.130 RCW; RCW 18.130.062.

2.2 The Washington Supreme Court has held the standard of proof in disciplinary proceedings against physicians is proof by clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516, 534 (2001), *cert. denied*, 535 U.S. 904 (2002). Clear and convincing evidence is evidence that persuades the trier of fact that the fact at issue is “highly probable.” See *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 465 (1998) (*citing Colonial Imports, Inc. v. Carlton Northwest, Inc.*, 121 Wn.2d 734-35).

2.3 The Respondent admitted the allegations contained in Paragraphs 1.1 and 1.2 of the Statement of Charges. See Finding of Fact 1.1 above. Once admitted or not contested, an allegation may not be denied. WAC 246-10-203(1)(d)(i). When an allegation is admitted or not contested, it will be conclusively deemed to be true for all further proceedings. No proof of the allegation need be submitted. WAC 246-10-203(1)(e).

2.4 The undersigned Presiding Officer used his experience, competency, and specialized knowledge to evaluate the evidence. RCW 34.05.461(5).

2.5 The Program proved by clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(7), which states:

Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

Specifically, the Program proved by clear and convincing evidence that the Respondent violated WAC 246-919-630(1), (2)(j) and (k), (3), and (5), which state:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, and guardians or proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in any of the following behaviors with a patient or key third party:

...

(j) Soliciting a date; or

(k) Communicating regarding the sexual history, preferences, or fantasies of the physician.

(3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

....

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:



- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed since the last health care services to the patient;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the physician;
- (f) The nature of the patient's health problem; and
- (g) The degree of emotional dependence and vulnerability of the patient.

....

The evidence shows that the Respondent's sexual misconduct did not cease after December 2020 but continued until February 2021. However, whether Patient A was a current or former patient at that time is irrelevant because the Respondent both "[u]se[d] or exploit[ed] the trust, knowledge, influence, or emotions derived from the professional relationship; and [u]sed or exploit[ed] privileged information or access to privileged information to meet the physician's personal or sexual needs."

2.6 In determining appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. RCW 18.130.160. The Program requests that the Respondent's license be indefinitely suspended, and that the Respondent be required to complete a multidisciplinary evaluation and pay a \$5,000 fine before reinstatement. The Program also requests that the Respondent be on probation for five years if he is reinstated. The Respondent did not appear at the hearing.

2.7 The Respondent's conduct falls in Tier B of the Sexual misconduct or contact schedule. WAC 246-16-820. The Presiding Officer considered the following aggravating factors when determining the sanction in this matter: Patient A was an especially vulnerable patient; the Respondent's actions have caused injury to Patient A;

the Respondent has not taken responsibility for his actions; and the Respondent's actions cast ill repute upon physicians generally, and psychiatrists specifically. The Presiding Officer considered the following mitigating factors when determining the sanction in this matter: no prior disciplinary history.

### **III. ORDER**

3.1 Suspension. The Respondent's license to practice as a physician in the state of Washington is INDEFINITELY SUSPENDED.

3.2 Reinstatement. The Respondent may petition for reinstatement pursuant to RCW 18.130.150. The disciplining authority may agree to an order of reinstatement. If the disciplining authority does not agree, a hearing may be held on the petition. Any order of reinstatement based on agreement or following a hearing may impose any terms and conditions listed in RCW 18.130.160 as deemed necessary by the disciplining authority to protect the public and/or rehabilitate the Respondent's practice.

3.3 Acumen assessment. Prior to petitioning for reinstatement, the Respondent shall undergo a multidisciplinary forensic assessment by Acumen Assessments (Acumen) to determine whether the Respondent is fit to return to practice. If the Respondent is found to be unfit to return to practice, the Respondent shall undertake all treatment recommendations necessary to rehabilitate his practice and undergo subsequent assessment(s). The Respondent will not be eligible for reinstatement until such a time as he is deemed fit to return to practice by such multidisciplinary assessment. Any treatment or professional monitoring

recommendations made as a result of this assessment may be incorporated into an order of reinstatement.

The Respondent shall provide Acumen Assessments a copy of this Initial Order prior to the assessment, and the Respondent acknowledges that the Secretary or his designee will provide Acumen a copy of the evidence contained in the case supporting the Statement of Charges and this Initial Order. The Respondent shall sign all releases necessary to authorize Acumen to communicate directly with the Secretary or his designee and provide the assessment report(s) directly to the Secretary.

Information about Acumen Assessments can be found online at: <http://www.acumenassessments.com/multidisciplinary-assessments>.

3.4 Fine. Prior to reinstatement, the Respondent shall pay a fine to the Department of \$5,000.00. The fine shall be paid by certified check, cashier's check, or money order made payable to the Department of Health and mailed to P.O. Box 1099, Olympia, WA 98507-1099. Credit or debit cards can also be used for payment at the front counter of the Department of Health building at 111 Israel Road SE, Tumwater, WA 98507 during regular business hours.

3.5 Probation. Upon reinstatement, the Respondent shall be on probation for five years. During the probationary period, the disciplining authority shall impose additional requirements as necessary to protect the public. Additional terms or conditions shall include, but are not limited to, the following:

3.5.1 If and when the Respondent's credential is reinstated, the Respondent will be subject to sexual misconduct disclosures as required by

RCW 18.130.063. The duration of such disclosure(s) will be determined by the disciplining authority if and when the Respondent's credential is reinstated.

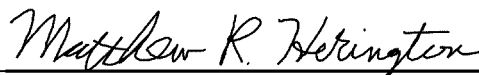
3.5.2 Any treatment or professional monitoring recommendations made as a result of the Acumen multidisciplinary assessment.

3.6 Change of Address. The Respondent shall inform the program manager and the Adjudicative Service Unit, in writing, of changes in his residential and/or business address within 30 days of such change.

3.7 Assume Compliance Costs. The Respondent shall assume all costs of complying with all requirements, terms, and conditions of this order.

3.8 Failure to Comply. Protecting the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order during the probationary period may result in suspension and/or revocation of the Respondent's license after a show cause hearing. If the Respondent fails to comply with the terms and conditions of this order during a probationary period, the disciplining authority may hold a hearing. At that hearing, the Respondent must show cause why his license should not be suspended. Alternatively, the disciplining authority may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, the Respondent will be given notice and an opportunity for a hearing on the issue of non-compliance.

Dated this 10th day of October, 2022.



MATTHEW R. HERINGTON, Health Law Judge  
Presiding Officer

**CLERK'S SUMMARY**

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(7)	Violated
WAC 246-919-630(1), 2(j) and (k), (3), and (5)	Violated

**NOTICE TO PARTIES**

When signed by the presiding officer, this order shall be considered an initial order. RCW 18.130.095(4); Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested. WAC 246-10-701(1). A petition for administrative review must be served upon the opposing party and filed with the adjudicative clerk office within 21 days of service of the initial order. WAC 246-10-701(3).

“Filed” means actual receipt of the document by the Adjudicative Clerk’s Office. RCW 34.05.010(6). “Served” means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within twenty-one (21) calendar days of service of the initial order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
PO Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division  
Office of the Attorney General  
PO Box 40109  
Olympia, WA 98504-0109

**Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on October 31, 2022. Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.**

Final orders will be reported to the National Practitioner Data Bank (45 CFR Part 60) and elsewhere as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110. All orders are public documents and may be released.

For more information, visit our website at: <http://www.doh.wa.gov/Hearings>