



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Joseph M. McCreery, MD
Master Case No. M2008-118416
Document: Statement of Charges

Regarding your request for information about the above-named practitioner, 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:

The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

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
MEDICAL QUALITY ASSURANCE COMMISSION**

FILED
APR 2 / 2010
Adjudicative Clerk

In the Matter of the License to Practice
As a Physician and Surgeon of

No. M2008-118416

JOSEPH M. McCREERY, MD
License No. MD00021272

STATEMENT OF CHARGES

Respondent

The Disciplinary Manager of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by the evidence contained in file number 2008-125629. The patient referred to in this Statement of Charges is identified in the attached Confidential Schedule.

1. ALLEGED FACTS

1.1 On December 20, 1983, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in psychiatry.

1.2 From May 10, 2005, through November, 17, 2005, Respondent provided psychotherapy to Patient A. The therapy addressed personal issues in the patient's life, including boundary issues, issues related to the patient's husband and daughter, and the grief felt by the patient following the deaths of her friend and her mother. Respondent documented that on November 17, 2005, he informed Patient A that the physician/patient relationship "ends as of today." Respondent prescribed medications for Patient A during therapy, including a prescription for Sonata dated October 24, 2005, and a prescription for 30 Lunesta with one refill dated October 22, 2005.

1.3 Approximately one month later, the patient contacted Respondent and suggested that they meet socially. Respondent and Patient A met socially in approximately mid-January of 2006. Respondent began a romantic relationship with Patient A in late April of 2006, and began a sexual relationship with Patient A in mid-October of 2006. Both Respondent and Patient A were married to other individuals.

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180 (1), (4), (7), and (24), and WAC 246-919-630, which provide:

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

...
(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...
(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

...
(7) 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;

...
(24) ...sexual contact with a client or patient;

WAC 246-919-630 Sexual misconduct. (1) Definitions:

(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) "Physician" means a person licensed to practice medicine and surgery under chapter 18.71 RCW.

(c) "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, guardians and 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 the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation 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.

(4) 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;
 - (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;
 - (g) The degree of emotional dependence and vulnerability.
- (5) This section does not prohibit conduct that is required for medically

recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

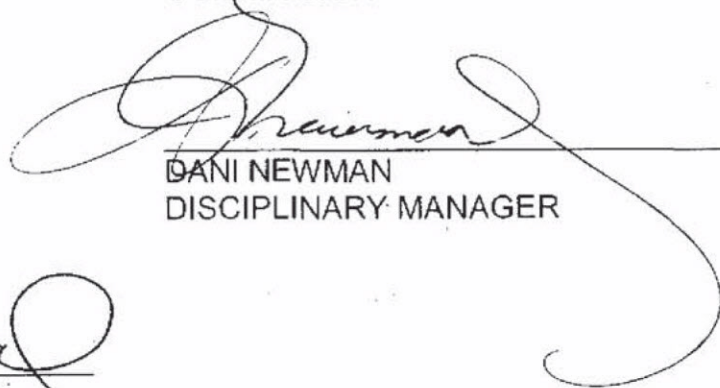
2.2 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

3. NOTICE TO RESPONDENT

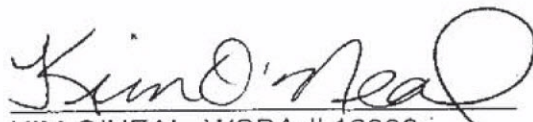
The charges in this document affect the public health, safety and welfare. The Disciplinary Manager of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: April 27, 2010.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
COMMISSION



DANI NEWMAN
DISCIPLINARY MANAGER



KIM O'NEAL, WSBA # 12939
ASSISTANT ATTORNEY GENERAL

CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named below. RCW 42.56.240(1)

Patient A





STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Joseph M. McCreery MD
Master Case No. M2008-118416
Document: Agreed Order

Regarding your request for information about the above-named practitioner, 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:

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**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

JOSEPH M. McCREERY, MD
License No. MD00021272

Respondent

No. 2008-118416

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through James McLaughlin, Department of Health Staff Attorney, and Respondent, represented by Richard Brothers, Attorney at Law, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On April 27, 2010, the Commission issued a Statement of Charges against Respondent.

1.2 In the Statement of Charges, the Commission alleges that Respondent violated RCW 18.130.180(1), (4), (7), and (24); and WAC 246-919-630.

1.3 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent understands that if the allegations are proven at a hearing, the Commission has the authority to impose sanctions pursuant to RCW 18.130.160.

1.5 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.6 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Commission accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.7 The parties agree to resolve this matter by means of this Agreed Order.

1.8 Respondent understands that this Agreed Order is not binding unless and until it is signed and accepted by the Commission.

1.9 If the Commission accepts this Agreed Order, it will be reported to the Health Integrity and Protection Databank (HIPDB)(45 CFR Part 61), the Federation of State

Medical Boards' Physician Data Center and elsewhere as required by law. HIPDB will report this Agreed Order to the National Practitioner Data Bank (45 CFR Part 60).

1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's listserv, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2: FINDINGS OF FACT

Respondent and the Commission acknowledge that the evidence is sufficient to justify the following findings:

2.1 On December 20, 1983, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active.

2.2 From May 10, 2005, through November, 17, 2005, Respondent provided psychotherapy to Patient A. The therapy addressed personal issues in the patient's life, including boundary issues, issues related to the patient's husband and daughter, and the grief felt by the patient following the deaths of her friend and her mother. Respondent documented that on November 17, 2005, he informed Patient A that the physician/patient relationship "ends as of today." Respondent prescribed medications for Patient A during therapy, including a prescription for Sonata dated October 24, 2005, and a prescription for 30 Lunesta with one refill dated October 22, 2005.

2.3 Approximately one month later, the patient contacted Respondent and suggested that they meet socially. Respondent and Patient A met socially in approximately mid-January of 2006. Respondent began a romantic relationship with Patient A in late April of 2006, and began a sexual relationship with Patient A in mid-October of 2006. Both Respondent and Patient A were married to other individuals.

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(4).

3.3 The above violation provides grounds for imposing sanctions under RCW 18.130.160

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

4.1 Probation. The Commission places Respondent's license on PROBATION for a period of at least three years from the effective date of this Agreed Order.

4.2 Ethics course. Within 6 months of the effective date of this Agreed Order, Respondent shall complete the Professional/Problem Based Ethics Course (ProBE), at the Center for Personalized Education for Physicians (CPEP). To satisfy this provision, Respondent must obtain an "unconditional pass" as an assessment following the course. Respondent shall permit CPEP to communicate with the Commission regarding his participation in this course, and shall provide the Commission with a copy of the essay that Respondent writes as part of the course. A failure by Respondent to obtain an "unconditional pass" may result in additional charges for noncompliance under RCW 18.130.180(9).

4.3 Fine. Respondent shall pay a fine of \$1,000, which is to be paid within one year of the effective date of this Agreed Order. Respondent's check will be submitted to the Department of Health, Accounting Department, P.O. Box 1099, Olympia, WA 98507-1099.

4.4 Compliance appearances. Respondent shall appear in person before the Commission in approximately six months from the effective date of this Agreed Order, at a date and location designated by the Commission. Respondent shall present proof that he is complying with this Agreed Order, and present information concerning the nature of his

practice. Thereafter, Respondent shall appear before the Commission annually, or at a frequency otherwise designated by the Commission.

4.5 Obey all laws. Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.6 Costs. Respondent is responsible for all costs that he incurs in complying with this Agreed Order.

4.7 Violation. If Respondent violates any provision of this Agreed Order in any respect, the Commission may take further action against Respondent's license.

4.8 Change of address. Respondent shall inform the Program and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.9 Termination of order. Respondent may not petition to modify or terminate this Agreed Order until three years from the effective date of this Agreed Order. Any petition to terminate must be in writing. The Commission will have full discretion as to whether to grant or deny the petition. Upon a written petition to terminate, the Commission will also have the discretion to require Respondent to appear in person before the Commission.

4.10 Effective date. The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices result in moderate patient harm or the risk of moderate to severe patient harm. Respondent's social, romantic, and sexual relationship with Patient A, a former psychotherapy patient, created the risk of moderate to severe harm to Patient A. Respondent's development of a personal or dual relationship with a patient, even a patient whose medical treatment and therapy was terminated shortly before the social relationship, is a violation of the trust and objectivity required for effective physician-patient relationships, and creates the risk of emotional harm to the patient.

Patient A was married to another person at the time of psychotherapy and at the beginning of the social, romantic and sexual relationship. Respondent's development of a personal relationship with Patient A created a risk of harm to Patient A's marriage. Patient A later divorced her husband and married Respondent.

5.2 Tier B requires the imposition of sanctions ranging from two years of oversight to five years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

5.3 Three years of probation, with terms and conditions, is slightly below the mid-point of the Tier B range. This position within the range is justified by the balance of the aggravating and mitigating factors in this case. The aggravating factor is that Respondent does not acknowledge his misconduct. The mitigating factor is that Respondent has been licensed since 1983 without any prior disciplinary actions.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this order, the Commission may hold a hearing to require Respondent to show cause why the license should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

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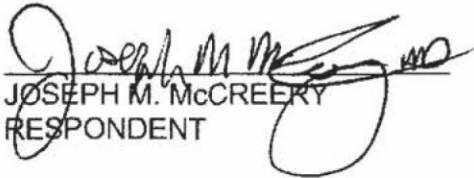
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7. RESPONDENT'S ACCEPTANCE

I, Joseph M. McCreery, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.


JOSEPH M. McCREERY
RESPONDENT

02/01/2011
DATE


RICHARD BROTHERS, WSBA #2669
ATTORNEY FOR RESPONDENT

2/2/2011
DATE

8. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED: March 3, 2011.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
COMMISSION

Frederick H Dore MD
PANEL CHAIR

PRESENTED BY:

Jim Mclaughlin
JAMES MCLAUGHLIN, WSBA #27349
DEPARTMENT OF HEALTH STAFF ATTORNEY

3/3/11
DATE