

Post

7-27-00

Final Order No. DOH-01-0096- *FOF*-MOA
FILED DATE - *11/11/01*
Department of Health

By: *Vicki R. Kenon*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CLINICAL SOCIAL WORK, MARRIAGE AND
FAMILY THERAPY AND MENTAL HEALTH COUNSELING

SAL - CLOS

DEPARTMENT OF HEALTH
Petitioner,

vs.

MARTIN LUDWIG,
Respondent.

AT

Division of Administrative Hearings
DOAH CASE NO. 97-5193
FILED
Date *7/16/04*

FINAL ORDER

THIS MATTER came before the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling (hereinafter the "Board") for final action pursuant to Section 120.57(1)(j), Florida Statutes, at a duly-noticed public meeting held on October 19, 2000, in Gainesville, Florida, for the purpose of considering the Recommended Order issued by the Administrative Law Judge in the above styled case. The Petitioner was represented by Maureen L. Holz, Esquire. The Respondent was present and was represented by Michael I. Schwartz, Esquire.

As a preliminary matter the Board considered Respondent's Motion to Recuse filed with the Board office sometime prior to consideration of the Recommended Order wherein Respondent argues that Board members who reviewed and considered a proposed stipulated agreement in this matter on October 22, 1999 should recuse themselves from consideration of the Recommended Order in this matter. Respondent argued that the Board rejected the stipulated agreement and referred the matter back to probable cause because of the presence of information regarding a possible criminal conviction related to the Respondent's practice or

ability to practice that was not considered by the probable cause panel when the case was originally considered. Respondent asserted that the Department of Health and not the Board should have brought such information to the Probable Cause Panel pursuant to Section 455.621, Florida Statutes, and that such actions on the Board's part "tainted" the Board and should preclude its participation in consideration of the Recommended Order.

Upon review and consideration of the party's arguments and materials provided in support thereof, the Board denied Respondent's Motion to Recuse. While Respondent did make an allegation of prejudice, he failed to show any actual prejudice on the part of any Board member. Furthermore, when Respondent signed the proposed stipulated agreement in this matter, he agreed that the presentation and consideration of the stipulated agreement and other documents and matters by the Board would not prejudice the Board or any of its members from further participation, consideration or resolution of his case.

Prior to consideration of the actual Recommended Order, the Board also considered Petitioner's motion to reject Respondent's Exceptions to Recommended Order and the party's arguments in support and in opposition to the motion. Rule 28-106.217(1), Florida Administrative Code, provides that exceptions to recommended orders must be filed within fifteen (15) days from the date of entry of a recommended order. Petitioner argues that Respondent's exceptions were filed approximately fifty (50) days after the entry of the recommended order and were not served upon the litigation counsel. Respondent argues that such actions resulted in precluding the Petitioner from filing a response to the exceptions.

Upon review and consideration of the party's arguments and materials provided in support thereof, the Board granted Petitioner's motion to reject Respondent's Exceptions to Recommended Order on the basis that they were not timely filed.

After a complete review of the record in this matter, including consideration of the Administrative Law Judge's Recommended Order (a copy of which is attached hereto and incorporated herein by reference) and the Respondent's Exceptions to the Recommended Order, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. The Administrative Law Judge's Findings of Fact are hereby approved, adopted, and incorporated herein.
2. There is competent, substantial evidence to support the Administrative Law Judge's findings as adopted by the Board.

CONCLUSIONS OF LAW

3. The Board has jurisdiction of this matter pursuant to the provisions of Section 120.57(1), and Chapter 491, Florida Statutes.
4. The Board hereby accepts the Administrative Law Judge's conclusions of law, and thus, hereby approves, adopts and incorporates them herein.

PENALTY

Based on the foregoing Findings of Fact and Conclusions of Law, the Board approves, adopts and incorporates the recommended penalties and imposes the following:

COSTS: Respondent shall pay costs in the amount of \$2,000.00. Such fine shall be paid by Respondent to the Executive Director of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within thirty (30) days of the entry of this Final Order.

FINES: Respondent shall pay an administrative fine in the amount of \$2,053.68. Such costs shall be paid by Respondent to the Executive Director of the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within thirty (30) days of the entry of this Final Order.

SUSPENSION: Respondent's term of suspension shall commence on the thirtieth (30th) day after entry of this final order.

PROBATION: The terms of Respondent's probation shall be as follows:

(a) Respondent shall comply with all state statutes and rules pertaining to the practice of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling in Chapters 455, Part II, and 491, Florida Statutes, and Rule Chapter 64B4, Florida Administrative Code.

(b) Respondent shall appear before the Board at the first meeting after said probation commences, at the last meeting of the Board preceding termination of probation, and at such other times as requested by the Board.

(c) In the event Respondent leaves the State of Florida for a period of thirty days or more, or otherwise, does not engage in practice in Florida, Respondent's probation shall be tolled and shall remain in a tolled status until Respondent returns to active practice in the State of Florida, at which time the probationary status shall resume. Respondent must keep current residence and business addresses on file

with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

(d) Respondent shall practice only under the supervision of a psychotherapist fully licensed under Chapter 491 to be approved by a Board Monitor. Respondent shall have the supervising psychotherapist with the Respondent at the Respondent's first probation appearance before the Board. Prior to approval of the supervising psychotherapist by the Board Monitor, the Respondent shall provide to the supervising psychotherapist a copy of the administrative complaint filed in this case. A failure of the Respondent or the supervising psychotherapist to appear at the scheduled Board meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the supervising psychotherapist by the Board Monitor, Respondent shall submit to the Board Monitor current curriculum vitae and description of the current practice from three proposed supervising psychotherapists. Said materials shall be received in the Board office no later than fourteen (14) days before Respondent's first scheduled probation appearance. Respondent shall be responsible for ensuring that the supervising psychotherapist submits the required reports on a timely basis. The Board monitor shall select one of the proposed supervising psychotherapists prior to the Respondent's first appearance before the Board and the term of probation shall not commence until a supervisor is approved by the Board monitor. The responsibilities of the supervising psychotherapist shall include:

(1) Submit quarterly reports, which shall include:

a. Brief statement of why Respondent is on probation.

b. Description of Respondent's practice.

c. Brief statement of Respondent's compliance with terms of probation.

d. Brief statement of Respondent's relationship with supervising
psychotherapist.

e. Detail any problems which may have arisen with Respondent.

(2) Review forty (40) percent of Respondent's patient records selected on a
random basis at least once every two (2) weeks.

(3) Report to the board any violations by the Respondent of Chapters 456
and 491, Florida Statutes, and the rules promulgated pursuant thereto.

(e) Respondent shall submit quarterly reports to the Board. The reports shall
include:

1. Brief statement of why Respondent is on probation.

2. Practice location.

3. Description of current practice, stating type and composition.

4. Brief statement of compliance with probationary terms.

5. Description of relationship with the supervising psychotherapist.


6. Description of any problems.

(f) Respondent shall take six (6) semester hours of academic courses in the
subject of boundary violations and six (6) semester hours of academic courses in
the subject of ethical practice. Such courses shall be taken in addition to those
Continuing Education courses required for renewal of licensure. Such courses shall
not be home study courses and may be taken during Respondent's term of
suspension.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 4th day of January, 2000. ²⁰⁰¹

**BOARD OF CLINICAL SOCIAL
WORK, MARRIAGE AND FAMILY
THERAPY, AND MENTAL HEALTH
COUNSELING**



Susan J. Foster
Executive Director

NOTICE OF RIGHT TO JUDICIAL REVIEW UNLESS WAIVED

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a Notice of Appeal with the Clerk of the Department of Health and by filing the filing fee and one copy of the Notice of Appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been forwarded by U.S. mail to Respondent's legal counsel, Michael I. Schwartz, 410 North Gadsden Street, Tallahassee, Florida 32301, and Deborah Loucks, Senior Attorney, Agency for Health Care Administration, Practitioner Regulation - Legal, Mail Stop 39, Tallahassee FL 32317-4229, and Simone Marsteller, Senior Attorney--Appeals, Agency for Health Care Administration, Mail Stop 39, Tallahassee FL 32317-4229 on this ____ day of _____, 2000.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Martin Ludwig, 6437 NW 58th Way, Pompano Beach, Florida 33067-4445, Michael I. Schwartz, 410 North Gadsden Street, Tallahassee, Florida 32301 and interoffice delivery to Deborah Loucks, Senior Attorney, Agency for Health Care Administration, Practitioner Regulation – Legal, Mail Stop 39, Tallahassee, FL 32317-4229 and Simone Marstillier, Senior Attorney—Appeals, Agency for Health Care Administration, Mail Stop 39, Tallahassee, FL 32317-4229 at or before 5:00 p.m., this _____ day of _____, 2001.
