

5-17-01

AT

Final Order No. DOH-01-1329- ~~FF~~-MOA

FILED DATE - 8/9/01

Department of Health

By: *[Signature]*
Deputy Agency Clerk

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DIVISION OF
ADMINISTRATIVE
HEARINGS

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

DEPARTMENT OF HEALTH

Petitioner,
vs.

DOAH Case No. 00-4526PL
Case No. 98-03896
License No. MH 881

ISMAEL LOPEZ,

Respondent.

SFD-CWS

FINAL ORDER

THIS MATTER came before the Board of Clinical Social Work, Marriage and Family and Mental Health Counseling (hereinafter "the Board") for final action pursuant to Section 120.57(1)(l), Florida Statutes, at a duly-noticed public meeting held on July 23, 2001, in Orlando, 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 Deborah B. Loucks, Esq. The Respondent appeared Pro Se at the Board meeting.

After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order, a copy of which is attached hereto as Exhibit A, any exceptions filed by the parties, and the arguments of each party, the Board makes the following findings and conclusions:

EXCEPTIONS

Respondent's exceptions attached hereto as Exhibit B are hereby rejected in toto.

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 of fact as adopted by the Board.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the provisions of Sections 120.569 and 120.57(1) and Chapter 491, Florida Statutes.
2. The Administrative Law Judge's conclusions of law are hereby approved, adopted and incorporated herein.
3. There is competent substantial evidence to support the Board's findings and conclusions.

IT IS THEREFORE ORDERED AND ADJUDGED:

The recommendation by the Administrative Law Judge is rejected. The Administrative Law Judge in this matter, Stephen F. Dean, erred when he recommended that the Petitioner's license be revoked pursuant to Rule 64B4-10.002, Florida Administrative Code.

In paragraph 29 of Judge Dean's Recommended Order, he finds that the Petitioner's behavior and actions "violated minimum standards of performance" but he never made any finding of sexual misconduct on the part of the Petitioner. In fact, paragraphs 25 and 27 of the Recommended Order suggest that Judge Dean did not believe that the Petitioner engaged in sexual misconduct as defined by Rule 64B4-10.002, Florida Administrative Code. However, for some unapparent reason,

Judge Dean recommended disciplinary action that would be appropriate for a person found to have committed sexual misconduct. See Rule 64B4-5.001(1)(k), Florida Administrative Code (1997).

Rule 64B4-5.001(1)(s), Florida Administrative Code (1997), reads as follows:

Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee or certificate holder is not qualified by training or experience. The usual recommended penalty shall be an administrative fine of \$1,000 and suspension until such time as the licensee demonstrates to the Board's satisfaction competence in the performance of the licensee's profession, then probation from one to four years with such terms and conditions as set by the Board.

Accordingly, the Board imposed the following penalty in accordance with Rule 64B4-5.001(1)(s), Florida Administrative Code (1997):

1. The licensee must pay an administrative fine of \$1,000.00 and investigative costs of \$2,580.00 to the Board office within 1 year from the date of entry of this order. Payment shall be made by money order. Partial payments shall not be accepted.
2. The license of ISMAEL LOPEZ is suspended until he personally appears before the Board and can demonstrate his present ability to practice with competence, skill and safety. That demonstration shall include at least an in-depth psychological evaluation coordinated through Physicians Recovery Network (PRN). Mr. Lopez shall supply a copy of this order to PRN and the evaluator. The evaluation must contain evidence that the evaluator knows of the reason for referral. The evaluator must specifically advise this Board that the licensee is presently able to engage in safe practice or recommend the conditions under which

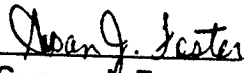
safe practice could be obtained. The Board reserves the right to impose reasonable conditions of reinstatement when Mr. Lopez appears before the Board to demonstrate the present ability to engage in safe practice which shall include a period of probation.

Within 30 days from the date of entry of this order, the licensee shall return his license to the board office.

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

DONE AND ORDERED this 8th day of August, 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, any substantially affected person is 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 has been furnished by certified mail to: Stephen F. Dean, Administrative Law Judge, Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Ismael Lopez, 13691 Gavina Avenue, Unit 447, Sylmar, California 91342, and by interoffice mail to Deborah B. Loucks, Esq., Senior Attorney, Agency for Health Care Administration, P.O. Box 14229, Tallahassee FL 32317-4229 and Simone Marsteller, Senior Attorney, Agency for Health Care Administration, P.O. Box 14229, Tallahassee FL 32317-4229 this 9th day of August, 2001.

