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**STATE OF FLORIDA  
BOARD OF PSYCHOLOGY**

Final Order No. DOH-02-0514-~~FoF~~-MQA  
FILED DATE - 4/15/02  
Department of Health

By: Vicki R. Kanan  
Deputy Agency Clerk

**DEPARTMENT OF HEALTH,  
BOARD OF PSYCHOLOGY,**

**Petitioner,**

**vs.**

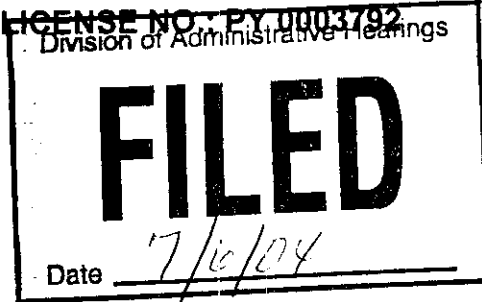
AT

**JOHN J. SCHULTE, Psy.D.,**

**Respondent.**

DWD-clos

**CASE NO.: 1999-630111**  
**LICENSE NO.: PY 0003792**  
Division of Administrative Hearings



**FINAL ORDER**

THIS MATTER came before the Board of Psychology (hereinafter "the Board") for final action pursuant to Section 120.57(1), Florida Statutes, at a duly-noticed public meeting held on March 22, 2002, in Miami, 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 Mary Denise O'Brien, Senior Attorney, Agency for Health Care Administration. The Respondent was present at the Board meeting, and represented by Jesse Suber, Esquire.

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," the exceptions filed by Respondent, the Petitioner's response to those exceptions, and the arguments of each party, the Board makes the following findings and conclusions:

**EXCEPTIONS TO THE RECOMMENDED ORDER**

1. Petitioner filed an exception to the Administrative Law Judge's recommended

penalty, which included revocation of the Respondent's license to practice psychology in the state of Florida, on the grounds that the Recommended Order did not mention the mitigation evidence presented at the final hearing. The Board **denied** the exception on the grounds that the record clearly shows that mitigation evidence was presented at the final hearing, and the Administrative Law Judge's failure to mention it in the Recommended Order does not prove that he failed to consider it in arriving at the recommended penalty.

2. The Respondent filed an exception to the fact that the Administrative Law Judge denied his motion to continue the final hearing pending his evaluation by a psychiatrist as directed by the Physicians' Recovery Network. The Board **denied** this exception on the grounds that granting or denying a motion for continuance is within the discretion of the Administrative Law Judge, and that this is not a matter within the substantive jurisdiction of the Board. See, *Barfield v. Department of Health, Board of Dentistry*, 805 So.2d 1008 (Fla. 1<sup>st</sup> DCA 2001).

#### **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 Administrative Law Judge's conclusions of law are hereby approved, adopted and incorporated herein.
2. The record in this case establishes that Respondent violated Section

490.009(2)(k), Florida Statutes (2000), by committing any act upon a patient which constitutes sexual misconduct as set forth in Rule 64B19-16.003(2), Florida Administrative Code.

3. The record in this case further establishes that Respondent violated Section 490.009(2)(v), Florida Statutes (2000), by failing to maintain in confidence a communication made by a patient or client.

4. The record in this case further establishes that Respondent violated Section 490.009(2)(s), Florida Statutes (2000), by failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance.

5. There is competent substantial evidence to support the Board's findings and conclusions.

#### **PENALTY**

#### **IT IS THEREFORE ORDERED AND ADJUDGED:**


1. Respondent shall pay an administrative fine in the amount of three thousand dollars (\$3,000) to the Executive Director of the Board of Psychology within thirty (30) days of the filing of this Final Order.

2. Respondent's license to practice psychology in the state of Florida is hereby **REVOKED**, and Respondent shall not practice as a psychologist in the State of Florida

This Order shall become final upon filing with the Clerk for the Department of Health.

DONE AND ORDERED this 10 day of April, 2002.

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BOARD OF PSYCHOLOGY



Kaye Howerton, Executive Director  
for Katurah Jenkins-Hall, Ph.D., Chair

**NOTICE OF RIGHT TO APPEAL**

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by United States Mail to John J. Schulte, Psy.D., 4551 Carolyn Cove Lane North, Jacksonville, Florida 32258-2181, and to Jesse F. Suber, Esquire, 117 South Gadsden Street, Tallahassee, Florida 32301-1525; and by Inter-Office Mail to Mary Denise O'Brien, Esquire, Agency for Health Care Administration, P.O. Box 14229, Tallahassee, Florida 32317-4229, and to Lisa Pease, Esquire, Agency for Health Care Administration, 2727 Mahan Drive, Mailstop 39, Tallahassee, Florida 32308, this day of 16<sup>th</sup> April, 2002.

A handwritten signature in cursive script, appearing to read "Kimberly Webb", is written over a horizontal line. The signature is fluid and somewhat stylized.