

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
PSYCHOLOGY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-2602PL  
 )  
JOHN J. SCHULTE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis held a formal administrative hearing in this case on October 9, 2001, in Jacksonville, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: Mary Denise O'Brien, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Building 3  
Mail Stop 39  
Tallahassee, Florida 32308

For Respondent: Jesse Suber, Esquire  
117 South Gadsden Street  
Post Office Box 1049  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in the case is whether Respondent committed allegations of Section 490.009(2), Florida Statutes, sufficient to justify the imposition of administrative penalties with

regard to his licensure as a psychologist in the State of Florida.

PRELIMINARY STATEMENT

On May 8, 2001, the Agency for Health Care Administration, Board of Psychology, filed an Administrative Complaint against Respondent, John J. Schulte. Respondent is alleged to have violated Section 490.009(2)(k), Florida Statutes, by committing any act upon a patient which constitutes sexual misconduct; Section 490.009(2)(v), Florida Statutes, by failing to maintain in confidence a communication made by a patient or client; and Section 490.009(2)(s), Florida Statutes, by failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance.

At the formal hearing, Petitioner presented the testimony of three witnesses and eight exhibits. Respondent presented the testimony of three witnesses and six exhibits.

A Transcript of the final hearing was filed on November 16, 2001. Both parties submitted Proposed Recommended Orders which have been reviewed and utilized in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to these proceedings, Respondent held a license as a psychologist in the State of Florida.

2. Petitioner, through the Board of Psychology, is the state agency that licenses and has regulatory jurisdiction of psychologists.

3. Respondent provided therapy to S.P. from June 1997 through November of 1999. He also provided therapy to M.R., a friend of S.P.

4. S.P. sought the services of Respondent as a psychologist on the recommendation of a rheumatologist treating S.P. for fibromyalgia. S.P.'s sessions with Respondent started out with her discussion of her childhood and her family. Respondent used relaxation techniques to help lessen S.P.'s pain from fibromyalgia.

5. During the two and a-half years that S.P. was treated by Respondent, she also saw other psychologists and psychiatrists where she was treated for panic attacks, anxiety, bipolar disorder, borderline personality disorder, narcissistic personality disorder, and histrionic personality disorder.

6. Approximately six months into S.P.'s treatment, Respondent started becoming more physical with S.P. First, he rubbed her hand and told her she had smooth skin. S.P. testified that this made her feel good and felt as if she were getting close to him. It made her want to be around him because he made her feel safe.

7. Eventually, S.P.'s sessions with Respondent escalated to the point in which Respondent started to use what he described to S.P. as a healing-hands technique. Respondent told S.P. that he had an aura that came out of his hands and he would move his hands around her body, at first, without touching her. Later, he used what was described as hands-on healing wherein he touched her face and moved down her body. Then his hands went to her breasts and in between her legs. During these sessions S.P. was wearing clothes. Over the next few weeks Respondent engaged in more intimate touching and hugging.

8. Also during this period, Respondent started meeting with S.P. outside of the office. They met at various places and sat in his or her car or his truck and talked, hugged, and kissed.

9. Office visits during this time with S.P. were scheduled by Respondent two or three times a week, always at 8:00 p.m. The relationship between the two was consensual.

10. Respondent gave S.P. several gifts during this time. The gifts included two stuffed bears, a cell phone and cover, a children's Christmas book, and an angel necklace that had been worn by Respondent's deceased sister.

11. When Respondent's mother came to town for a visit, S.P. sent her yellow roses and signed the card as if the flowers

had been sent by Respondent. S.P. charged this to her credit card.

12. Respondent and S.P. had oral sex numerous times in his office, in his truck and car, and in her car. When Respondent traveled to Tampa for a seminar, S.P. also went to Tampa. They also engaged in oral sex on that trip.

13. The first time Respondent and S.P. had sexual intercourse was in an office, on the floor in front of the receptionist desk. Later, Respondent was house-sitting and he took S.P. to the house, they had wine, danced, and then had sexual intercourse on the couch. Finally, just prior to a break-up in October of 1999, they had intercourse at Respondent's office.

14. In November of 1999, Respondent and S.P. thought S.P. was pregnant. Also in November, Respondent's wife found out about the relationship. At that point Respondent decided to end the relationship with S.P. To that end, he enlisted the help of M.R., who was also a patient of Respondent and a friend of S.P. The three of them had a three-way telephone conversation to discuss the pregnancy issue and whether it should be terminated. Respondent told M.R. that he and S.P. had been having sexual intercourse. Respondent was scared and confused and did not want to leave his wife. Respondent and S.P. met one more time and then he never contacted her again.

15. During the three years that S.P. was seeing Respondent, he would tell her that he was no longer going to treat her and she would go to another therapist. However, she always came back to Respondent. She never went for longer than a week without seeing Respondent.

16. Testimony of Petitioner's expert establishes that a patient seeing a therapist is vulnerable and often forms an emotional attachment to their therapist. The therapeutic relationship is based on trust and mutual respect, but involves an unequal power relationship where there's an expert with advice and training who can help a patient. When a patient develops feelings toward their therapist, it is often transference of feelings from other significant people in their life. It is the therapist's responsibility to be aware when transference develops and to use it to promote the therapy and not to exploit the patient's vulnerability.

17. It is never accepted treatment for a therapist to encourage or to engage in sexual activity with a patient. This is true even if the patient consents or encourages the contact.

18. Patients with borderline personality disorders and bipolar disorders are difficult patients to treat. These are people who have problems in their inner personal relationships and with their own identity. They tend to be impulsive and immature. Respondent's expert testified that patients with

borderline personalities have relationships that tend to be chaotic. Further, patients with borderline personality disorders can also be flamboyant and tend to be very seductive. While false accusations of sexual misconduct are rare, when they do occur these charges are generally made by persons with borderline personality disorder.

19. Respondent's expert also opined that it is not appropriate for a therapist to get into a relationship with a patient wherein the patient becomes, as in the instant case, the therapist to the therapist. It is also not appropriate for a therapist to give gifts to or engage in sexual acts with a patient. Ultimate responsibility of the fiduciary relationship falls on the therapist and he has to say no.

20. During the course of S.P.'s treatment, Respondent discussed several of his patients with her. He talked about "Charlie" who was seriously depressed and contemplated suicide. This was very disturbing to S.P. Respondent also talked about two little girls who were involved in a custody/visitation dispute. He also talked about M.R., who was his patient and also S.P.'s friend.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.57, Florida Statutes.

22. Section 490.009(2)(v), Florida Statutes, states:

(2) The following acts of a licensee, provisional licensee, or applicant are grounds for which the disciplinary actions listed in subsection (1) may be taken.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined in s. 490.0111.

(s) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance. . . .

(v) Failing to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 490.0147.

23. Rule 64B19-16.003(2), Florida Administrative Code, states:

It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage, attempt to engage, or offer to engage the client in sexual intercourse or other sexual behavior. Sexual behavior includes, but is not limited to, kissing, or the touching by either the psychologist or the client of the other's breasts or genitals.

24. Clear and convincing evidence exists that Respondent engaged in a sexual relationship with S.P.

25. Respondent violated Section 490.009(2)(v), Florida Statutes, by failing to maintain in confidence a communication made by a patient or client in that Respondent discussed various other patients with S.P. and discussed S.P. with M.R.



26. Respondent violated Section 490.009(2)(s), Florida Statutes, by failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance. This was exemplified not only by sexual misconduct but also by the gift giving and the use of the patient to listen to the problems of the therapist.

27. Petitioner has met the burden of proving by clear and convincing evidence that Respondent has violated the above statute. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1st DCA 1987).

28. Petitioner's disciplinary guidelines are set forth in Rule 64B19-17.002, Florida Administrative Code. Those recommended penalties provide that each violation of the sort committed by Respondent in this matter should be punished by imposition of a fine of \$1,000 and revocation of licensure.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Psychology enter a final order finding Respondent guilty of the allegations set forth in the Administrative Complaint, imposing an administrative fine in the amount of \$3,000 upon Respondent, and revoking Respondent's license as a psychologist in the State of Florida.

DONE AND ENTERED this 28th day of November, 2001, in  
Tallahassee, Leon County, Florida.

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DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of November, 2001.

COPIES FURNISHED:

Mary Denise O'Brien, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Building 3  
Mail Stop 39  
Tallahassee, Florida 32308

Jesse F. Suber, Esquire  
117 South Gadsden Street  
Post Office Box 1049  
Tallahassee, Florida 32302

Dr. Kaye Howerton, Executive Director  
Board of Psychology  
Department of Health  
4052 Bald Cypress Way, BIN C05  
Tallahassee, Florida 32399-1701

Theodore M. Henderson, Agency Clerk  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1701

William W. Large, General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.