

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD)
OF CLINICAL SOCIAL WORK,)
MARRIAGE AND FAMILY THERAPY,)
AND MENTAL HEALTH COUNSELING,)
)
Petitioner,)
)
vs.) Case No. 04-0302PL
)
CHRISTOPHER B. DEBELLEVUE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Bradenton, Florida, on April 20, 2004.

APPEARANCES

For Petitioner: Ellen M. Simon
Assistant General Counsel
Department of Health
4052 Bald Cypress Way, Bin C65
Tallahassee, Florida 32399-3265

For Respondent: Dirk Lorenzen
Caruana and Lorenzen, P.A.
1000 Courthouse Tower
Miami, Florida 33130

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of failing to maintain records, in accordance with Sections 491.009(2)(q) and (s) and 491.0148, Florida Statutes (1998), and Florida

Administrative Code Rule 64B4-9.002(s), and failing to meet the minimum standards of practice of clinical social work, in accordance with Section 491.009(2)(s), Florida Statutes (1998), by: 1) touching a patient inappropriately and conducting improper "play therapy" or 2) telephoning the client after termination of the therapeutic relationship and inviting the client to lunch, so as to fail to maintain proper boundaries for the therapeutic relationship. If so, an additional issue is the penalty to be imposed.

PRELIMINARY STATEMENT

By Amended Administrative Complaint dated May 24, 2001, Petitioner alleged that Respondent was a licensed Clinical Social Worker, holding license number SW 0002688. The Amended Administrative Complaint alleges that B. S., a patient, attended 40 counseling sessions with Respondent, who maintained records of only 17 sessions, even though he submitted 31 invoices to B. S.'s insurer. The Amended Administrative Complaint alleges that Respondent's failure to maintain records violates Sections 491.009(2)(q) and (s) and 491.0148, Florida Statutes (1998), and Florida Administrative Code Rule 64B4-9.002(s).

The Amended Administrative Complaint alleges that, after the termination of the therapeutic relationship, Respondent telephoned B. S. and, on one occasion, invited her to lunch. The Amended Administrative Complaint alleges that Respondent

failed to maintain appropriate boundaries with B. S. and departed from the minimum standards of practice of clinical social work. The Amended Administrative Complaint alleges that Respondent's failure to meet the minimum standards of practice of clinical social work violates Section 491.009(2)(s), Florida Statutes (1998).

The Amended Administrative Complaint alleges that, at three sessions, Respondent asked B. S. to lie down on the couch with her head on a pillow that was on Respondent's lap. The Amended Administrative Complaint alleges that this was a "play therapy" technique that is not widely accepted or used in social work. The Amended Administrative Complaint alleges that, during some of the sessions, Respondent stroked B. S.'s hair and touched her face. The Amended Administrative Complaint alleges that touching a patient's face in this manner is not an acceptable therapeutic practice and does not meet the minimum standards of practice of clinical social work. The Amended Administrative Complaint alleges that Respondent's failure to meet the minimum standards of practice of clinical social work violates Section 491.009(2)(s), Florida Statutes (1998).

Respondent timely requested a formal hearing.

At the hearing, Petitioner called three witnesses and offered into evidence three exhibits: Petitioner Exhibits 1-3. Respondent called one witness and offered into evidence five

exhibits: Respondent Exhibits 1 and 3-6. All exhibits were admitted. However, Respondent Exhibit 1, which was an Order of Consolidation of DOAH Case Nos. 01-0102PL and 01-0103PL, was not filed within the ten days after the hearing that the Administrative Law Judge permitted its filing. Respondent is therefore deemed to have withdrawn the exhibit.

The court reporter filed the transcript on May 10, 2004. The parties filed their proposed recommended orders on June 1, 2004.

FINDINGS OF FACT

1. At all material times, Respondent has been licensed as a clinical social worker, holding license number SW 0002688. The record reveals no prior discipline of Respondent.

2. From May 1996 to March 1998, Respondent conducted approximately 40 therapeutic counseling sessions, on an intermittent basis, with patient B. S. From these sessions, Respondent retained notes or records for about 17 of these sessions, although he submitted invoices to B. S.'s insurer for about 31 sessions.

3. B. S. is a second-grade teacher at a Manatee County school. She initially contacted Respondent to obtain help in dealing with a teenaged son who had been misbehaving in the couple of years since B. S. had obtained a divorce. The child

had remained angry about the divorce, and B. S. had been unable to help her child sufficiently through this difficult period.

4. B. S. first visited Respondent in early 1996. Her son only visited Respondent a few times. Although Respondent at first established a file for B. S.'s son, he soon established a file for B. S. and began treating her in a therapeutic setting.

5. The frequency of B. S.'s sessions with Respondent varied over time. Sometimes, sessions were as frequent as weekly. Sometimes, sessions were every two or three weeks. Once, during the approximately two years that the therapeutic relationship continued, B. S. went as long as 4-5 months without visiting Respondent.

6. At all relevant times, Respondent's office was set up with a chair behind a small desk and a couch. A small coffee table separated the couch from the desk. Initially, Respondent sat in the chair, and B. S. sat on the couch.

7. Sometime during the first year of the therapeutic relationship, Respondent began sitting next to B. S. on the couch, rather than remain in his chair during the session. During some sessions, he sat closer to B. S. than he did during other sessions.

8. At one session, possibly the first during which Respondent began sitting on the couch, he asked B. S. if she remembered how her father smelled when she had been a child.

Feeling that she had never been sufficiently close to her father to have known how he had smelled, B. S. began crying.

Respondent asked if he could sit next to her on the couch, and she said that he could. He asked if he could hold her hand, and she said that he could. He asked if he could hold her, and she said that he could. Respondent then placed his arms around B. S., as she cried into his shoulder.

9. Without asking permission, Respondent began the practice of concluding each session with a hug. One time, Respondent nuzzled into B. S.'s neck and tried to kiss it, but she prevented him from doing so, saying, "we're not going there."

10. On three occasions, toward the end of the therapeutic relationship, Respondent placed a pillow in his lap and instructed B. S. to lie down, placing her head, face up, on the pillow. B. S. would then place her head on the pillow, where it would remain for about 30 minutes, as the session continued. On at least one such occasion, while B. S. was lying with her head on the pillow in Respondent's lap, he leaned down and kissed her forehead, stroked her cheeks, ran his hands through her hair, and said, "I see you. I live my life on the edge, and I bet you do too, don't you [B.]?" B. S. looked into Respondent's eyes and thought that he was looking into her soul. Although Respondent initiated the first two pillow sessions, B. S. asked that they do the last pillow session.

11. B. S. gradually became quite fond of Respondent. For Christmas of 1997, she gave him a present. For another session, B. S. brought a cooler with root beer, ice cream, and two glasses.

12. B. S. found Respondent attractive and began dreaming about him. Shortly prior to the last session, B. S. informed Respondent about the dreams, which revealed the attraction that she was experiencing for her therapist.

13. During their sessions, Respondent would supply personal information about himself. Some of the information was emotionally benign, such as his youth coaching activities. However, some information was emotionally loaded, such as the difficulties that he had been experiencing in his marriage and his uncertainty whether his marriage would continue.

14. At the end of the last session, B. S. and Respondent got up from the couch and engaged in a warm hug. B. S. then said, "you know, Kip [Respondent's first name], I just really love you." Respondent replied, "And I love you too, [B.]"

15. As she listened to her statement and Respondent's response, B. S. suddenly felt conflicting feelings. Outside of Respondent's office, B. S. sat in her car for five minutes, thinking that something in the relationship between her and Respondent was not right. She began to question the scope and direction of her therapy.

16. B. S. decided to return to a previous therapist. In the past, Respondent's secretary would prompt B. S. to schedule appointments by sending her a note. In the past, Respondent had never called B. S. at home for any purpose, including setting another appointment.

17. Except for one telephone call identified below, B. S. did not contact Respondent at any time after the March 1998 appointment. In April 1998, after only about one month since the last session, Respondent called B. S. at home. He offered her continuing support, but B. S. replied that she was "having trouble letting go of the experience," meaning the relationship that had evolved between her and Respondent. Respondent offered to see her anytime the following day, and B. S. replied that she would have to think about it.

18. A couple of months later, in June 1998, Respondent called B. S. again, also at her home. Explaining that he called clients to whom he had become especially close, Respondent said that he missed her. He added, "we'll have to do lunch sometime." B. S. wondered about the purpose of meeting Respondent for lunch because they had never had a session outside of his office or otherwise met outside of his office. B. S. did not accept the invitation.

19. Respondent called B. S. a third time in August 1998. B. S. was having a luncheon with school staff at her home when

she received the call. Referring to an upcoming change to B. S.'s insurance, Respondent asked whether they should not get in as many sessions as possible. B. S., who had had counseling experience with three other counselors, replied that she had never had a counselor who had called to invite her to therapy. She asked Respondent what would they do and what goals would they pursue. Respondent replied, "anything you want." B. S. answered, "I'm having conflicting goals about therapy. I don't know." Respondent said that she could reach the next level, meaning that she could advance in her therapy at this time. B. S. said that she would think about returning to therapy with Respondent.

20. After having giving the matter more thought, B. S. called Respondent at his office about one week later and stated that she was not going to make another appointment with him. At the end of the conversation, Respondent told B. S. that he was in the process of the formal dissolution of his marriage. B. S. said that she was sorry to hear that, but she had been rethinking her therapy and had started to think that she had stayed "way too long" with Respondent, and that he had encouraged her to do so.

21. At the end of December 1998, Respondent called B. S. a final time, ostensibly to wish her a happy new year. B. S. did not say anything for a long time, prompting Respondent to say,

"you're angry." B. S. replied that she felt conflicted about him. Respondent asked what could he have done differently. B. S. became offended, thinking that, after all, Respondent was the professional. She answered that she was not returning to therapy, and he needed to quit calling her. Drawing upon a conversation that she had had with a daughter who is a counselor and some material that B. S. had read, B. S. then asked, "what about that counter-transference?" Respondent replied that he had been going through a difficult time, and he hoped that B. S. did not think badly of him. B. S. ended the conversation by telling Respondent that she did not want him to call her again. Respondent said that he would not call her again, and he never did.

22. At no time did Respondent ever lock the door to the office during any session. At all times, a secretary remained outside the closed door. At no time did Respondent ever touch a B. S.'s breast, groin, or buttocks.

23. Petitioner's expert witness attempted to establish that Respondent had improperly used play therapy with B. S. However, among the deficiencies in this testimony was the witness's conditional condemnation of this practice, even as applied to an adult. The present record therefore does not support findings or conclusions barring the use of play therapy with adults in all cases or even this case.

24. However, Petitioner's expert witness established that Respondent had crossed a boundary at some point in the therapeutic relationship. It is unnecessary to identify, in isolation, any single act or omission of Respondent that impermissibly crossed the boundary that must exist between the therapist and the patient. In combination, a number of Respondent's acts and omissions combined to establish his failure to respect the boundary that must exist between the therapist and patient for effective therapy to take place in a setting that is reasonably safe for the patient.

25. As Petitioner's expert witness observed, transference, in which the patient develops feelings of attachment toward the therapist, is not unusual. Respondent contested the notion of transference. However, whether a patient experiences transference or merely the development of a personal attraction toward the therapist, this process, by whatever name, underscores the fiduciary obligation owed by the therapist to the patient.

26. The competent therapist uses personal attachment as an opportunity to help the patient develop the skill to process, rather than act upon, her feelings. The competent therapist can deal with the emotions of the patient toward the therapist in a safe, controlled setting, and, by handling the issue properly, help the patient confront other settings--less safe and

controlled--in which she can develop and apply the same skills, when necessary, to process, rather than act upon, her emotions.

27. Respondent repeatedly displayed his incompetence in treating B. S. In his hands, play therapy was an automatic weapon, whose firing Respondent could start, but could not stop. As B. S. eventually intuited, Respondent had no idea where the therapy was leading, or where it should lead. Instead, he recklessly joined in the emotional intensity that he was unleashing, such as by his comments about living on the edge, placing B. S.'s head on a pillow in his lap for extended periods while he kissed her forehead, stroked her cheeks and ran his hands through her hair, nuzzling and trying to kiss B. S.'s neck, and stating that he loved her. The impropriety of this behavior is exacerbated by the unmistakable signs of attachment that B. S. was displaying, as she had recounted her romantic dreams featuring Respondent, displayed her growing affection for him with a small gift and "office picnic," and finally declared, in an unguarded moment, love for her therapist.

28. Eventually, the therapy turned to serve Respondent's needs, as evidenced by his entirely inappropriate disclosure about marital problems. When B. S. discontinued attending sessions, the real focus of the therapy--the needs of Respondent, not B. S.--emerged, as Respondent repeatedly pursued B. S. to return to the office, or at least meet him for lunch,

even though B. S. revealed to him that she had concluded that the professional relationship had been lost and was no longer serving her needs.

29. By the calls in August 1998, it was obvious that Respondent had lost the last vestiges of clinical detachment when he confessed that his marriage was failing. It is difficult and unpleasant to characterize the December 1998 call. Long ago, Respondent had crossed the boundary that the professional must maintain for the benefit and safety of the client. The prior summer, Respondent had revealed himself as an emotionally needy person in what should have been a professional relationship. Perhaps, most generously, the December 1998 call is best characterized as final confirmation that Respondent had long since lost the therapeutic goal of B. S.'s treatment and had forgotten what this goal ever had been.

30. Petitioner has proved that Respondent has failed to meet the minimum standards of performance of his profession when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified through training or experience.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stats. (2004).

32. Section 491.009(1)(s), Florida Statutes (1998), authorizes Petitioner to impose discipline for:

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, registered intern, or certificateholder is not qualified by training or experience.

33. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

34. Petitioner has proved that Respondent has failed to meet the above-cited standard of care in his treatment of B. S.

35. Florida Administrative Code Rules 64B4-9.001(4) and 64B4-9.002, require the documentation of diagnostic and treatment sessions and the maintenance of these records for at least seven years after last contact. Section 491.009(1)(q), Florida Statutes (1998), authorizes Petitioner to impose discipline for the violation of any rules adopted pursuant to Chapter 491, Florida Statutes, such as the rules referenced in this paragraph.

36. Petitioner has proved that Respondent has failed to meet the requirements of law regarding the documentation and maintenance of records concerning his diagnosis and treatment of B. S. In light of Respondent's failure to maintain a clear

therapeutic goal in his treatment of B. S., this recordkeeping omission is especially pertinent.

37. Although the Amended Administrative Complaint seeks the full range of penalties through revocation, Petitioner's proposed recommended order states that Florida Administrative Code Rule 64B4-5.001(1) authorizes a reprimand to revocation and a \$1000 fine for a violation of Section 491.009(1)(q), Florida Statutes (1998) and a \$1000 fine and suspension followed by up to four years' probation for a violation of Section 491.009(1)(s), Florida Statutes (1998). In its proposed recommended order, Petitioner seeks a reprimand, \$2000 fine, continuing education classes in boundaries and other relevant topics, 100 hours' community service, and two years' probation, during which time Respondent may not treat female patients without another licensed health care practitioner in the room.

38. Florida Administrative Code Rule 64B4-5.001 provides the following penalty guidelines. For a first violation of Section 491.009(1)(s), Florida Statutes (1998) (now Section 491.009(1)(r), Florida Statutes), Florida Administrative Code Rule 64B4-5.001(1)(s) provides a range of a reprimand and \$250 fine, as the minimum penalty, and a \$1000 fine and probation, as the maximum penalty. For a first violation of Section 491.009(1)(q), Florida Statutes (1998) (now Section 491.009(1)(w), Florida Statutes), Florida Administrative Code

Rule 64B4-5.001(1)(q) provides a range of a reprimand and \$500 fine, as the minimum penalty, and a \$1000 fine and probation, as the maximum penalty.

39. Respondent poses a threat to the public due to his obvious incompetence and willingness to subordinate the professional relationship to his personal needs. Although little harm seems to have occurred in this case, this fact is more due to the vigilance of B. S., the patient, than the acts or omissions of Respondent.

RECOMMENDATION

It is

RECOMMENDED that the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling enter a final order placing Respondent's license on probation for five years (upon such restrictions as the Board deems fit to protect the public), imposing a fine of \$2000, and requiring the completion of 100 hours of continuing education, in such areas that are approved by the Board as necessary to eliminate Respondent's deficiencies.

DONE AND ENTERED this 15th day of July, 2004, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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COPIES FURNISHED:

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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 must be filed with the agency that will issue the final order in this case.