

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH CARE SERVICES
BOARD OF PSYCHOLOGY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

DAVID VERNON FALKNER, PH.D.
License No. 63-01-007073

Complaint No. 63-12-126326
(Consolidated with 63-14-132349)

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Heidi L.

~~Johnson, on behalf of the Department of Licensing and Regulatory Affairs,~~

Complainant herein, files the within First Superseding Administrative Complaint against David Vernon Falkner, Ph.D., (Respondent), alleging upon information and belief as follows:

1. The Board of Psychology, (Board), an administrative agency established by the Public Health Code, (Code), 1978 PA 368, as amended, MCL 333.1101 et seq, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee, (DSC).
2. Respondent is currently licensed to practice psychology pursuant to the Code. At all times relevant to this complaint, Respondent was employed in private practice in Ann Arbor, Michigan.

3. Section 16233(5) of the Code mandates that "if a licensee . . . is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, the department shall find that the public health, safety, or welfare requires emergency action and . . . shall summarily suspend the licensee's license"

4. Section 16221(a) of the Code authorizes the DSC to take disciplinary action against Respondent for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of ~~employees or other individuals, whether or not injury results, or any conduct,~~ practice, or condition that impairs, or may impair, Respondent's ability to safely and skillfully practice as a licensed psychologist.

5. Section 16221(b)(i) of the Code authorizes the DSC to take disciplinary action against Respondent for incompetence, which is defined in Section 16106(1) of the Code as "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs."

6. Section 16221(b)(iii) of the Code authorizes the DSC to take disciplinary action against Respondent for a "[m]ental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner."

7. Section 16221(b)(v) authorizes the DSC to take disciplinary action against Respondent for “[c]onviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony.”

8. Section 16221(b)(vi) of the Code authorizes the DSC to take disciplinary action against Respondent for lack of good moral character. “Good moral character” is defined by 1974 PA 381, MCL 338.41 et seq, as amended, as “the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.”

9. Section 16221(b)(vii) of the Code authorizes the DSC to take disciplinary action against Respondent for “[c]onviction of a criminal offense under section 520e or 520g of the Michigan Penal Code” A certified copy of the court record is conclusive evidence of the conviction.

10. Section 16221(b)(ix) authorizes the DSC to take disciplinary action against Respondent for “[c]onviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession.”

11. Section 16221(d)(iii) of the Code authorizes the DSC to impose sanctions against Respondent for “fraud or deceit in obtaining or attempting to obtain third party reimbursement.”

12. Section 16221(h) of the Code authorizes the DSC to impose sanctions against Respondent for “[a] violation . . . of this article or of a rule promulgated under this article.”

13. 2007 AACCS, R 338.2515(f) prohibits a psychologist from “soliciting or engaging in a sexual relationship with a current patient”

14. 2007 AACCS, R 338.2515(g) prohibits a psychologist from “soliciting or engaging in a sexual relationship with a former patient . . . within 2 years after the termination of the treatment or professional relationship.”

15. Section 16226 of the Code authorizes the DSC to impose sanctions against persons licensed by the Board if, after the opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

ALLEGATIONS

16. On September 16, 2013, Respondent self-reported to the Health Professionals Recovery Program (HPRP), with whom he subsequently completed an intake evaluation. HPRP determined that Respondent required substance abuse monitoring, and Respondent signed a three-year monitoring agreement on January 29, 2014.

17. On February 13, 2014, Respondent missed a urine drug screen.

18. On February 17, 2014, Respondent reported to his case manager that he relapsed on February 13, 2014. Respondent also ceased calling into the urinalysis lab as of February 17, 2014.

19. On February 24, 2014, Respondent contacted HPRP to inform HPRP that he would no longer be participating in HPRP.

20. On March 6, 2014, Respondent's HPRP case was closed non-compliant.

21. On November 13, 2013, Respondent pled guilty in the Washtenaw County Circuit Court to Criminal Sexual Conduct -- 4th Degree -- Mental Health Professional, a high court misdemeanor punishable by up to two years in prison;

and pled no contest to Medicaid Fraud -- Medically Unnecessary, a felony.

Patient K.B.

22. On August 5, 2011, patient K.B., an adult female, presented to Respondent for counseling regarding marital and career concerns. From August 2011 through February 2012, K.B. attended weekly counseling sessions with Respondent.

23. In February 2012, Respondent and K.B. engaged in sexual activity during a counseling session. Thereafter, Respondent and K.B. maintained a sexual relationship that lasted until approximately September, 2012. At a May 15, 2013 interview with the department investigator, Respondent admitted that he engaged in a sexual relationship with K.B.

24. At his May 15, 2013 interview, Respondent advised the department investigator that he ceased treating K.B. in March 2012.

25. Respondent submitted requests for reimbursement for treatment to K.B.'s health insurance provider for counseling sessions on February 17, 2012; February 23, 2012; March 8, 2012; and March 15, 2012. No counseling took place at these sessions; rather, Respondent and K.B. engaged in conversation and sexual activities.

26. Respondent repeatedly offered K.B. wine during counseling sessions. Respondent also consumed wine during their sessions.

COUNT I

27. Respondent's conduct as described above constitutes a violation of general duty, consisting of negligence or failure to exercise due care, contrary to section 16221(a) of the Code.

COUNT II

28. Respondent's conduct as described above constitutes incompetence, contrary to section 16221(b)(i) of the Code.

COUNT III

29. Respondent's conduct as described above constitutes a mental or physical inability reasonably related to and adversely affecting the licensee's ability

to practice in a safe and competent manner, contrary to section 16221(b)(iii) of the Code.

COUNT IV

30. Respondent's conduct as described above constitutes "[c]onviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony," contrary to section 16221(b)(v) of the Code.

COUNT V

31. Respondent's conduct as described above constitutes a lack of good moral character, as defined by 1974 PA 381, as amended, contrary to section 16221(b)(vi) of the Code.

COUNT VI

32. Respondent's conduct as described above constitutes a conviction under section 520e or 520g of the Michigan Penal Code, contrary to section 16221(b)(vii) of the Code.

COUNT VII

33. Respondent's conduct as described above constitutes "[c]onviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees

related to the practice of a health profession,” contrary to section 16221(b)(ix) of the Code.

COUNT VIII

34. Respondent’s conduct as described above constitutes fraud or deceit in obtaining or attempting to obtain third party reimbursement, contrary to section 16221(d)(iii) of the Code.

COUNT IX

35. Respondents conduct as described above violates 2007 AACCS, R 338.2515(f), contrary to section 16221(h) of the Code.

COUNT X

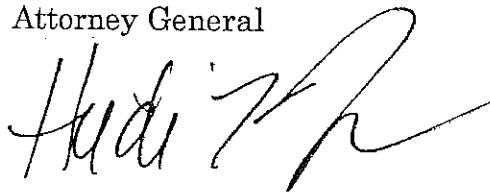
36. Respondents conduct as described above violates 2007 AACCS, R 338.2515(g), contrary to section 16221(h) of the Code.

FURTHER, Complainant requests that pending the hearing and final determination Respondent’s license to practice as a psychologist in the State of Michigan continue to be summarily suspended pursuant to section 92 of the Administrative Procedures Act and section 16233(5) of the Public Health Code for the reason that, based upon the allegations set forth herein, to permit Respondent to continue to practice the profession constitutes a danger to the public health, safety and welfare requiring emergency action.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Health Care Services, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(8), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

FURTHER, the administrative complaint previously filed against Respondent on June 28, 2013, is hereby WITHDRAWN and replaced in full by this superseding complaint.

BILL SCHUETTE
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