

88-04

IN THE MATTER OF
GERALD H. FINK, M.D.

* BEFORE THE COMMISSION ON
*
* MEDICAL DISCIPLINE OF MARYLAND
*
* CASE NO. 85-345
*
* * * *

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

Background

Certain information having come to the attention of the Commission on Medical Discipline of Maryland (the "Commission"), the Commission, pursuant to the Medical Practice Act, Health Occupations Article, Annotated Code of Maryland (the "Act"), §14-501, requested that the Peer Review Committee of the Medical and Chirurgical Faculty of Maryland ("Med-Chi") review the complaint received against GERALD M. FINK, M.D. (the Respondent). Having reviewed the report of Med-Chi the Commission determined to charge Respondent under §14-504(3) of the Act.

Notice of the charge and the allegations supporting the charge was given to Respondent by letter dated June 9, 1987. A prehearing conference was scheduled for Thursday, July 16, 1987, and held that day.

The prehearing conference was attended by Respondent, Respondent's attorney, Kenneth R. West, Esquire, Barbara Hull Foster, Assistant Attorney General, Administrative Prosecutor, and Ronald J. Taylor, M.D., Commission representative. Following the discussions at the prehearing conference the Respondent

agreed to enter into a Consent Order as proposed by the parties and accepted by the Commission.

FINDINGS OF FACT

1. At all times relevant hereto Respondent was a physician licensed to practice medicine in Maryland.

2. At all times relevant hereto Respondent was a practicing psychiatrist.

3. Respondent accepted Patient A in his practice and agreed to treat her in a therapeutic relationship.¹

4. During the treatment of Patient A a transference developed wherein Patient A conferred her trust to Respondent, and developed emotional and sexual feelings for Respondent. Respondent identified these feelings to Patient A as transference and explained these feelings as such to Patient A.

5. During the treatment of Patient A, Respondent developed feelings for Patient A which he did not recognize to be countertransference. During the treatment of Patient A, Respondent did not recognize the importance and extent of his countertransference feelings.

6. Respondent should have been aware that his feelings toward Patient A were countertransference as he was aware that

¹ Patient A's identity is coded to protect her confidentiality. The Commission maintains records of the identity of the Patient. Respondent knows the identity of Patient A.

Patient A's sexual and emotional feelings toward him were a natural and understandable part of the therapeutic process.

7. A therapist must help a patient understand any transference feelings toward the therapist, and a therapist must not take advantage of these feelings.

8. The therapeutic relationship between patient and therapist does not terminate immediately or within four (4) weeks of stopping treatment. The individual is still a patient.

9. When a therapist becomes emotionally and sexually involved with a patient, or a former patient, a therapist must seek a consultation.

10. Respondent did not seek a consultation. When Respondent acted on his emotional feelings (countertransference) and entered into a romantic and sexually intimate relationship with Patient A, Respondent erroneously believed therapy has terminated. This relationship lasted for several years. Respondent lived with Patient A and intended to marry Patient A.

11. When Respondent became romantically involved and sexually intimate with Patient A, Respondent still had a therapeutic relationship with Patient A.

12. Sexual activity between a psychiatrist and a patient is unethical.

13. When the sexual and emotional relationship developed between Patient A and Respondent, this relationship proved to be deleterious and damaging to Patient A, and served no

legitimate therapeutic purpose. Prior to that time the therapeutic relationship had been helpful to Patient A.

14. Respondent now understands and admits that his actions towards Patient A violated the standards of practice for a psychiatrist and a physician in Maryland. At the time that Respondent became emotionally and sexually involved with Patient A he did not believe his conduct to be unethical, as Respondent believed Patient A to be a former patient.

15. Respondent sought and has undergone extensive therapy to deal with the problems that caused him to become emotionally and sexually involved with Patient A, and caused him to fail to recognize his feelings towards her as countertransference.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission concludes as a matter of law that Respondent has committed a prohibited act under Health Occupations Article, §14-504.

Specifically:

Is guilty of immoral conduct in the practice of medicine; §14-504(3) of the Act.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is this 4 day of AUGUST, 1987, by a unanimous vote of those members of the Commission on Medical Discipline of Maryland who considered this case,

ORDERED that Respondent's license to practice medicine in Maryland is hereby **SUSPENDED**; and be it further

ORDERED that the **SUSPENSION** is immediately **STAYED** and Respondent is placed on **PROBATION** subject to the following conditions of probation:

1. Within thirty (30) days from the date Respondent receives a list submitted to him by the Peer Review Committee of the Maryland Psychiatric Association ("Peer Review") Respondent shall select a psychiatrist ("supervisor") from the list and notify Peer Review in writing of his selection. In the event that Respondent has a professional or personal relationship with any individual named on the list, he will immediately inform Peer Review and another name will be substituted.
2. Respondent will be responsible for all expenses incurred by the supervisor, including any charges made by the supervisor for his/her time.
3. As soon as the supervisor can arrange an appointment with Respondent, but at least within sixty (60) days from the effective date of this order, that date being the date the Commission executes this Order, the Order having previously been executed by Respondent, the supervisor shall review Respondent's entire practice with him, this Consent Order and all underlying information forwarded to him/her by the Commission or by Peer Review. The supervisor shall arrange for, at minimum, weekly supervisory sessions with Respondent. (Respondent may code name the patients for confidentiality.)
4. The supervisor will notify Peer Review in writing that the initial meeting has been held, and that he/she understands all the terms of this Consent Order, and has reviewed the underlying documents.
5. The supervisor will determine which cases to closely monitor in order to assess Respondent's level of competence and judgment, in light of the charges the Commission brought against Respondent. The supervisor will determine how much time is needed to assess Respondent's competence to practice psychiatry.

6. During the first year of suspension, the supervisor shall make monthly written reports to Peer Review assessing Respondent's practice, the reports being due on the fifteenth (15th) of each month, starting October 15, 1987.

7. During the first year of suspension, Respondent's practice is limited to seeing twenty-five patients a week. Respondent shall inform his supervisor of any patients discharged and any new patients whom he has agreed to treat, by code identifying them.

8. After ten (10) months of active supervision, the supervisor will report to Peer Review whether he/she thinks the supervisory sessions can be reduced and/or Respondent's number of patients seen increased.

9. Peer Review will make an initial determination whether the supervisory sessions can be reduced, whether Respondent's number of patients seen can be increased and whether the supervisor's reports can be bimonthly or quarterly. Peer Review will file its recommendation with the Commission. The Commission must ratify the recommendation before any change in supervision, or numbers of patients seen becomes effective. The supervisor will proceed accordingly.

10. The Respondent shall continue in therapy with Respondent's present therapist and inform Respondent's therapist of all terms and conditions of this consent agreement.

11. The Respondent shall arrange for Respondent's therapist to submit written quarterly reports to Peer Review commencing on October 15, 1987, indicating that Respondent is making satisfactory progress in dealing with the problems that lead to his involvement and lack of professional judgment with Patient A. It is understood that Respondent has been in therapy for two (2) years and during these two (2) years has explored his relationship with Patient A.

12. The Respondent shall continue in therapy until the therapist certifies to Peer Review in writing that the Respondent is discharged.

13. Upon discharge from the therapy the Respondent shall arrange for the therapist to submit a final report to Peer Review indicating that Respondent had satisfactorily made progress in treatment and that the

therapist has recommended that Respondent be discharged.

14. In the event that the Respondent terminates therapy prior to discharge by the Respondent's therapist the therapist shall immediately notify Peer Review that Respondent has left therapy without consent of the therapist.

15. One (1) year and ten (10) months after the effective date of this Order, the supervisor will submit a summary report to Peer Review indicating whether he/she is of the opinion that Respondent is competent to practice psychiatry. Within one (1) year eleven (11) months of the effective date of this Order, Peer Review will review all the supervisor's reports, and may interview Respondent and the supervisor.

16. If the reports from the supervisor and Respondent's therapist indicate that Respondent is competent to practice psychiatry, within two (2) years from the effective date of this Order, Peer Review will recommend to the Commission that the suspension be lifted. If the reports from the supervisor and Respondent's therapist indicate that Respondent is not competent to practice psychiatry, Peer Review will either recommend that Respondent continue in supervision or that the stay of suspension be lifted.

17. In the event that the Commission initially decides to either lift the stay of suspension or have Respondent continue under supervision, Respondent will be entitled to notice and a hearing, prior to the stay being lifted, except as provided below.

18. In the event that Respondent moves permanently or temporarily Respondent shall promptly notify the Commission in writing of Respondent's new address and telephone number during the probationary period;

19. The Respondent shall not engage in the conduct that led to the charges by the Commission against Respondent;

20. The Respondent shall practice in accordance with the laws governing the practice of medicine in Maryland; and be it further

ORDERED that TWO (2) YEARS AFTER THE EFFECTIVE DATE OF


THIS ORDER, the Commission will entertain a petition for termination of Respondant's probationary status and reinstatement of Respondent's license to practice medicine in Maryland without any conditions or restrictions whatsoever. At that time if the Commission determines that a termination of probation would not be appropriate the Commission may impose other conditions of probation. If the Respondent has complied with all conditions of probation and if there are no outstanding complaints against Respondent's practice Commission will reinstate the Respondent's license without any conditions or restrictions whatsoever; and be it further

ORDERED that if the Commission receives a report from Respondent's supervisor or therapist indicating that Respondent has engaged in inappropriate, intimate, or sexual relations with a patient, or that Respondent is a danger to himself, or to the public safety, health, or welfare, the Commission, **WITHOUT PRIOR NOTICE AND AN OPPORTUNITY TO BE HEARD MAY LIFT THE STAY OF REVOCATION ON RESPONDENT'S LICENSE**, provided that Respondent is given immediate notice of the charges and an opportunity for a hearing thirty (30) days after requesting same; and be it further

ORDERED that if Respondent violates any other term of Respondent's probation, the Commission, after notice and a hearing, and a determination of violation may lift the stay of **SUSPENSION** of Respondent's license or may impose any other disciplinary sanctions if deems appropriate; and be it further

ORDERED that a copy of this Order shall be filed with the Board of Medical Examiners in accordance with Health Occupations Article, §14-507; and be it further

ORDERED that this a final order and as such is consider a public document pursuant to State Government Article of the Annotated Code of Maryland, Section 10-611, et seq.


Hilary T. O'Herlihy, M.D.
Chair
Commission on Medical Discipline

CONSENT

By this Consent, I hereby admit the truth of the Findings of Fact, and accept and submit to the foregoing Order and its conditions, consisting of ten (10) pages. I acknowledge the validity of the Order as if made after a hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law. I also recognize that I am waiving my right to appeal any adverse ruling of the Commission that might have followed any such hearing. By this consent, I waive all such rights and acknowledge that by my failure to abide by the conditions of the Order, I may suffer disciplinary action against my license to practice medicine in the State of Maryland.

I further acknowledge that the Order provides that the stay of suspension can be lifted **WITHOUT PRIOR NOTICE AND AN**

OPPORTUNITY TO BE HEARD in the event that the Commission receives notice from my supervisor or my therapist that I am have engaged in intimate, or sexual relations with a patient, or that I am a danger to the public safety, health and welfare, or myself. I acknowledge that in the event that the stay of suspension is lifted in such a matter, I will be given immediate notice and an opportunity to a hearing within thirty (30) days of my requesting same.

I sign this Order after having an opportunity to consult with an attorney, without reservation, and I fully understand its meaning.

Gerald H. Fink, M.D.
GERALD H. FINK, M.D.

STATE OF _____
CITY/COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of July, 1987, before me, a Notary Public of the State and City/County aforesaid, personally appeared GERALD H. FINK, M.D., and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public

My Commission Expires: _____