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BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

GARY L. DELL, P.A. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 14, 2000.

Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Gary L. Dell, P.A., to practice as a physician assistant in the State of Ohio is PERMANENTLY REVOKED.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

Anand G. Garg, M.D.
Secretary

(SEAL)

JUNE 14, 2000
Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF GARY L. DELL, P.A.

The Matter of Gary L. Dell, P.A., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on April 12, 2000.

INTRODUCTION

I. Basis for Hearing

A. In a Notice of Automatic Suspension and Opportunity for Hearing, dated February 9, 2000, the State Medical Board of Ohio [Board] notified Gary L. Dell, P.A., that, pursuant to Section 4730.25(G), Ohio Revised Code, Code (as in effect prior to March 9, 1999), Mr. Dell's certificate of registration as a physician assistant in the State of Ohio had been automatically suspended. The automatic suspension was based on Mr. Dell's guilty pleas to, and conviction of, one felony count of Sexual Battery and two felony counts of Gross Sexual Imposition. The Board further advised Mr. Dell that his continued practice as a physician assistant would be considered practicing without a certificate.

Moreover, the Board notified Mr. Dell that the Board had proposed to take disciplinary action against his certificate. The Board based its proposed action on its allegations that Mr. Dell had pleaded guilty to, and had been convicted of, one felony count of Sexual Battery and two felony counts of Gross Sexual Imposition, based on Mr. Dell's sexual contact with a victim who was less than thirteen years of age, and for whom Mr. Dell was the "natural or adoptive parent, stepparent, custodian, or [was] in loco parentis."

The Board further alleged that Mr. Dell's guilty pleas and the judicial findings of guilt constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4730.25(B)(11), Ohio Revised Code (as in effect prior to March 9, 1999). Accordingly, the Board advised Mr. Dell of his right to request a hearing in this matter. (State's Exhibit 1A).

B. On February 28, 2000, Mr. Dell submitted a written hearing request. (State's Exhibit 1B).

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.

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B. On behalf of the Respondent: Mr. Dell, having been apprised of his right to attend the hearing or to be represented by counsel, did not appear in person or by representation. Instead, Mr. Dell presented his statements in writing.

EVIDENCE EXAMINED

I. Testimony Heard

No testimony was presented.

II. Exhibits Examined

Presented by the State

1. State's Exhibits 1A and 1C-1F: Procedural exhibits.

2. State's Exhibit 1B: A February 19, 2000, letter to the Board from Mr. Dell requesting a hearing and presenting his arguments in defense and/or mitigation.

3. State's Exhibit 2A-2C: Certified copies of documents filed in the Ashtabula County Court of Common Pleas in *State of Ohio vs. Gary Dell,* Case No. 98-CR-262.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. On March 2, 1999, in the Court of Common Pleas, Ashtabula County, Ohio, Gary L. Dell, P.A., pleaded guilty to, and was found guilty of, one felony count of Sexual Battery, a violation of Section 2907.03(A)(5), Ohio Revised Code, and two felony counts of Gross Sexual Imposition, violations of Section 2907.05(A)(4), Ohio Revised Code. (St. Ex. 2A at 1; St. Ex. 3).

2. Section 2907.03(A)(5), Ohio Revised Code, provides as follows:

> No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: * * * The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

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R.C. § 2907.03(A)(5). Furthermore, Section 2907.05(A)(4), Ohio Revised Code, provides as follows:

> No person shall engage in sexual conduct with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies: * * * The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

R.C. § 2907.05(A)(4).

3. Mr. Dell appeared for sentencing on June 3, 1999. In the Judgment Entry, the court stated as follows:

> Because of the tender age of the victim, the serious psychological injury to her, the step parent relationship of [Mr. Dell], and the regular and continuing pattern of abuse over a period of years, the shortest term will demean the seriousness of the offenses; and consecutive sentences are necessary to adequately address the seriousness of the conduct and to protect the public from future crimes by [Mr. Dell]. The Court finds by clear and convincing evidence that [Mr. Dell] is a sexual predator.

(St. Ex. 2C at 1). The court sentenced Mr. Dell to imprisonment for three years on each count. The court further ordered that the terms of imprisonment run consecutively. Finally, the court found by clear and convincing evidence that Mr. Dell is a sexual predator pursuant to Section 2950.09(B), Ohio Revised Code. (St. Ex. 2C at 2).

4. In a letter to the Board dated February 19, 2000, Mr. Dell admitted that he had committed the offenses to which he had pleaded guilty. Nevertheless, Mr. Dell stated that his sexual contact with the child had consisted of nothing more than "simple touching." Furthermore, Mr. Dell stated that the actions had not occurred in the course of his practice as a physician assistant. In addition, Mr. Dell stated that he has already suffered extensively for his actions, and hoped that the loss of his certificate to practice as a physician assistant would not be a further consequence. (St. Ex. 1B).

   Finally, Mr. Dell stated that, since his incarceration, he has completed the State's Sex Offender Risk Reduction Program, and has worked as an Educational Tutor at the institution high school. Moreover, Mr. Dell has participated in continuous individual and group therapy. Mr. Dell further explained that, during the course of this therapy, he has come to realize that he suffers from Post Traumatic Stress Disorder as a result of abuse he had suffered as a child by members of his own family. Mr. Dell stated that he was not

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providing this information as an excuse, but as a possible explanation for his misconduct.(St. Ex. 1B).

FINDINGS OF FACT

1. On or about March 2, 1999, in the Court of Common Pleas, Ashtabula County, Ohio, Gary L. Dell, P.A., pleaded guilty to, and was found guilty of, one felony count of Sexual Battery, a violation of Section 2907.03(A)(5), Ohio Revised Code, and two felony counts of Gross Sexual Imposition, violations of Section 2907.05(A)(4), Ohio Revised Code. Mr. Dell's criminal conviction resulted from his having had sexual contact with a victim who was less than thirteen years of age, and to whom Mr. Dell was the natural or adoptive parent, stepparent, custodian, or to whom Mr. Dell stood in loco parentis.

2. Based upon the criminal convictions, Mr. Dell was sentenced to three years imprisonment on each of the three counts, with the sentences to be served consecutively. Further, the court found by clear and convincing evidence that Mr. Dell is a sexual predator pursuant to Section 2950.09(B), Ohio Revised Code.

CONCLUSIONS OF LAW

The criminal convictions of Gary L. Dell, P.A., as set forth in the Findings of Fact, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4730.25 (B)(11), Ohio Revised Code (as in effect prior to March 9, 1999).

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Gary L. Dell, P.A., to practice as a physician assistant in the State of Ohio is PERMANENTLY REVOKED.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

Sharon W. Murphy
Attorney Hearing Examiner

State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

NOTICE OF AUTOMATIC SUSPENSION
AND
OPPORTUNITY FOR HEARING

February 9, 2000

Gary L. Dell, P.A.
2008 W. 16th Street
Ashtabula, Ohio 44004

Dear Mr. Dell:

Pursuant to Section 4730.25 (G), Ohio Revised Code (as in effect prior to March 9, 1999), you are hereby notified that your certificate of registration as a physician assistant in the State of Ohio has been automatically suspended as of March 2, 1999, by operation of law. This automatic suspension is based upon your guilty pleas to, and conviction of, one (1) felony count of Sexual Battery and two (2) felony counts of Gross Sexual Imposition, as detailed below. Continued practice after this suspension shall be considered practicing without a certificate.

Furthermore, in accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate of registration as a physician assistant or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about March 2, 1999, in the Court of Common Pleas, Ashtabula County, Ohio, you pleaded guilty to, and were found guilty of, one (1) felony count of Sexual Battery, in violation of Section 2907.03(A)(5), Ohio Revised Code, and two (2) felony counts of Gross Sexual Imposition, in violation of Section 2907.05(A)(4), Ohio Revised Code.

Mailed 2/10/00

The acts underlying your pleas of guilty to, and judicial findings of guilt, include that, between July 1, 1996, and September 29, 1997, in the City of Ashtabula, Ohio, you did have sexual contact with another, not your spouse, and the victim was less than thirteen (13) years of age, and you were the other person's natural or adoptive parent, stepparent, custodian, or were in loco parentis of the person.

Based upon your guilty pleas to and the judicial findings of guilt of the three felony counts above, you were sentenced to three years imprisonment on each count with the sentences to run consecutively. Further, the Court found by clear and convincing evidence that you are a sexual predator pursuant to RC §2950.09(B). Copies of the Plea of Guilty, Conviction Judgment Entry (Change of Plea), and Sentencing Judgment Entry are attached hereto and incorporated herein by this reference.

Your guilty pleas and the judicial findings of guilt, as alleged in paragraph (1) through (3) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony;" as that clause is used in Section 4730.25 (B)(11), Ohio Revised Code (as in effect prior to March 9, 1999).

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

Your are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board shall, in your absence and upon consideration of this matter, enter a final order revoking your certificate of registration as a physician assistant.

Please note that, whether or not you request a hearing, Section 4730.25(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate of registration as a physician assistant to an applicant, revokes an individual's certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual's certificate of registration, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever

thereafter ineligible to hold a certificate of registration as a physicians assistant and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG:jag
Enclosures

CERTIFIED MAIL # Z 233 896 560
RETURN RECEIPT REQUESTED

cc: Gary L. Dell
Inmate No. 375595, c/o Records Office
Madison Correctional Institution
P.O. Box 740
London, Ohio 43140

CERTIFIED MAIL # Z 233 896 561
RETURN RECEIPT REQUESTED

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 98-CR-262
	)	
Plaintiff	)	JUDGE GARY L. YOST
	)	
vs.	)	
	)	
GARY DELL	)	PLEA OF GUILTY
	)	
Defendant	)	

COMMON PLEAS COURT
ASHTABULA COUNTY, OH
FILED
MAR 2 4 03 PM '99

I withdraw my former not guilty plea and enter a plea of GUILTY to one (1) Count of "SEXUAL BATTERY" in violation of Section 2907.03(A)(5) of the Ohio Revised Code, a felony of the 3rd degree, a lesser included offense under Count Twenty-four of the Indictment.

I withdraw my former not guilty plea and enter a plea of GUILTY to one (1) Count of "GROSS SEXUAL IMPOSITION" in violation of Section 2907.05(A)(4) of the Ohio Revised Code, a felony of the 3rd degree, under Count Twenty-two of the Indictment.

I withdraw my former not guilty plea and enter a plea of GUILTY to one (1) Count of "GROSS SEXUAL IMPOSITION" in violation of Section 2907.05(A)(4) of the Ohio Revised Code, a felony of the 3rd degree, under Count Twenty-five of the Indictment.

The state hereby dismisses Counts One through Twenty-one and Count Twenty-three of the Indictment.

I understand the MAXIMUM penalty COULD be: a maximum basic prison term for the felony of the 3rd degree of 1,2,3,4, or 5 years, of which -0- is mandatory, during which I am eligible for judicial release. The maximum fine possible is $10,000.00, of which $ -0- is mandatory. Restitution, other financial costs and probation is possible in my case. If I am now on felony probation or parole, this plea may result in revocation proceedings and any new sentence could be imposed consecutively.

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I know any prison term stated will be the term served without good time credit.

Bad Time. The Parole Board may extend my prison term if I commit any criminal offense under the laws of this state or the United States while serving the prison term. The extension will be done administratively as part of my sentence in accordance with Section 2967.11 of the Ohio Revised Code. The extension may be for fifteen, thirty, sixty or ninety days for each violation. All extensions of any stated prison term for all violations during the course of my term may not exceed one-half of my term's duration. The sentence imposed now automatically includes any extension(s) of this stated prison term issued by the Parole Board.

Post-Release Control. After I am released from prison, I (will, may) have a period of post-release control for five (5) years following my release from prison. If I violate a post-release control sanction imposed upon me, any one or more of the following may result.

(1) The Parole Board may impose a more restrictive post-release control sanction upon me; and

(2) The Parole Board may increase the duration of the post-release control subject to a specified maximum; and

(3) The more restrictive sanction that the Parole Board may impose may consist of a prison term, provided that the prison term cannot exceed nine months and the maximum cumulative prison term so imposed for all violations during the period of post-release control cannot exceed one-half of the stated prison term originally imposed upon me; and

(4) If the violation of the sanction is a felony, I may be prosecuted for the felony and, in addition to any sentence it imposes on me for the new felony, the Court may impose a prison term, subject to a specified maximum, for the violation.

I hereby certify the Court read to me, and gave to me in writing, the notice set forth herein.

If I am granted community control at any point in my sentence, and if I violate any of the conditions imposed, I could be given a longer period under court control, greater restrictions, or a prison term from the basic range. Community control could last five years.

I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice counsel and competence. I am not now under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement.

I understand by pleading guilty I give up my right to a jury trial or court trial, where I could see and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt.

By pleading guilty I admit committing the offense and will tell the Court the facts and circumstances of my guilt. I know the judge may either sentence me today or refer my case for a presentence report. I understand my right to appeal a maximum sentence, my other limited appellate rights and that any appeal must be filed within 30 days of my sentence. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this plea voluntarily.

Date: 3/2/99

Gary Dell, Defendant

Michael Peterson
Attorney for Defendant

Teri L. Burnside, 0067303
Assistant Prosecutor

IN THE COURT OF COMMON PLEAS

ASHTABULA COUNTY, OHIO

THE STATE OF OHIO	)	
	)	
Plaintiff	)	CASE NO. 98 CR 262
	)	
-vs-	)	JUDGMENT ENTRY
	)	
GARY DELL	)	
	)	
Defendant	)	

MAR 2 4 03 PM '99
COMMON PLEAS COURT
ASHTABULA CNTY, OH
FILED

PROCEEDINGS: Change of Plea

DATE: March 2, 1999

APPEARANCES: Teri Burnside on behalf of the State of Ohio.

Michael Peterson on behalf of the Defendant.

The defendant withdrew his former plea of not guilty and entered a plea of guilty to Sexual Battery (Count 24), R.C. 2907.03(A)(5), a felony of the third degree; and Gross Sexual Imposition (Counts 22 and 25), R.C. 2907.05(A)(4), felonies of the third degree.

The defendant was advised of his rights under Criminal Rule 11.

ORDER:

The plea negotiation is approved and the defendant stands convicted.

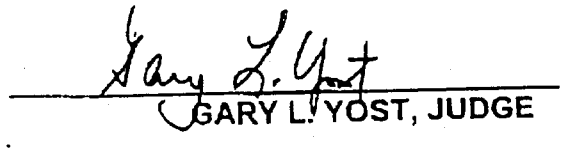
State of Ohio's motion to dismiss Counts 1 thru 21 and 23 is granted.

The defendant's request for a Pre-Sentence Investigation is granted.

Bond is hereby continued.

The clerk is directed to serve notice of this Judgment and its date of entry

upon the journal upon the following: Thomas L. Sartini, Michael Peterson and Adult Probation Department.



GARY L. YOST, JUDGE

March 2, 1999

IN THE COURT OF COMMON PLEAS

ASHTABULA COUNTY, OHIO

THE STATE OF OHIO	*	CASE NO. 98 CR 262
	*	
Plaintiff	*	JUDGE YOST
	*	
-vs-	*	JUDGMENT ENTRY
	*	
GARY DELL	*	
	*	
Defendant	*	

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CARGO ... COMMON PLEAS COURT ASHTABULA CNTY. OH. FILED

PROCEEDING: Sentencing

DATE: June 3, 1999

APPEARANCES: On Behalf of the State of Ohio, Teri Burnside. On Behalf of Defendant, Michael H. Peterson. Also present, Jan Amstutz, Adult Parole Officer.

The defendant pled guilty to Sexual Battery (Count 24), §2907,03(A)(5) and Gross Sexual Imposition (Counts 22 and 25), §2907.05(A)(4) on March 2, 1999.

The Court considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. The Court has also weighed the factors set forth in R.C. 2929.13 and 14. Because of the tender age of the victim, the serious psychological injury to her, the step parent relationship of the defendant, and the regular and continuing pattern of abuse over a period of years, the shortest term will demean the seriousness of the offenses and consecutive sentences are necessary to adequately address the seriousness of the conduct and to protect the public from future crimes by the defendant. The Court finds by clear and convincing evidence that the defendant is a sexual predator.

ORDER:

The defendant is sentenced to the Lorain Correctional Institution, Grafton, Ohio, or other facility designated by the Department of Rehabilitation and Correction, for a term of Three (3) years on Count 24; a term of Three (3) years on Count 22; a term of Three (3) years on Count 25. These sentences shall run consecutively.

The Ashtabula County Sheriff shall convey the defendant to the institution.

The defendant is given credit for two hundred ten (210) days served in the Ashtabula County Jail as of June 3, 1999.

No fine imposed. The defendant shall pay court costs.

The defendant is a sexual predator pursuant to R.C §2950.09(B).

The Court advised the defendant of his appellate rights and, upon inquiry, the Court finds that the defendant is an indigent person and , Jon Field, a member of the Bar of Ashtabula County, Ohio, is hereby appointed to and assigned as the defendant's counsel of record at this time to represent the defendant on appeal.

IT IS THE FURTHER ORDER of this Court that Jon Field shall be reimbursed by Ashtabula County in accordance with the schedule of fees adopted by the Board of County Commissioners on May 23, 1996, in their Resolution 96-667. Counsel shall maintain a complete and accurate accounting of time devoted to this action for submission to the Court to substantiate payment.

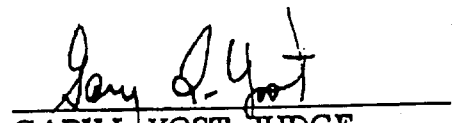
The bond is canceled.

THIS IS A FINAL APPEALABLE ORDER. Within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and the date upon every party who is not in default for failure to

appear and shall note the service in the appearance docket.

The clerk is directed to serve notice of this Judgment and its date of entry upon the journal upon the following: The Ashtabula County Prosecuting Attorney; Jon Field, Esq.; Michael Peterson, Esq.; The Adult Parole Authority; and The Ashtabula County Sheriff.

June 4, 1999



GARY L. YOST, JUDGE

CIV-I-13