

IN THE CHANCERY COURT OF WASHINGTON COUNTY,
TENNESSEE AT JONESBOROUGH

DAN A. NICOLAU,
Plaintiff,

v.

CITIZENS COMMISSION ON HUMAN RIGHTS
OF NASHVILLE,

and

CITIZENS COMMISSION ON HUMAN RIGHTS,

Defendants.

Civil Action No.:

19-CV-0139

AMENDED COMPLAINT

COMES NOW, by and through counsel and in the above-styled format, your plaintiff DAN A. NICOLAU, and would show unto this Court as follows:

JURISDICTION.

1. During the Defendant's acts which gave rise to this matter the Plaintiff was a resident of Washington County, Tennessee.
2. Jurisdiction is proper. Defendant disseminated the defamatory language online with heavy use of location-specific language. Defendant knew the effect of its actions and intended to reach Plaintiff's patients and potential patients and thereby cause harm to the Plaintiff. Defendant's record of similar acts towards psychiatrists is further evidence of this intent.

FACTS.

3. Plaintiff Dan A. Nicolau, MD is a psychiatrist practicing in and around the Tri-Cities Region of upper-East Tennessee. Dr. Nicolau has served as the medical director at Woodridge Mental Hospital in Johnson City, Tennessee for the geriatric psych unit and as an assistant professor at East Tennessee State University teaching residents and medical students.

FILED

JUL 30 2019
at 3:38 P.M.

Sarah Lawson, Clerk and Master

4. On or about the 21st day of January, 2019, the plaintiff discovered that defendants, which defendants are both part of the Church of Scientology, and which defendants communicate with one another and are aware of each other's actions and publications, did defame, malign, and vilify the plaintiff by making false statements about the plaintiff which statements were publicized and spread in multiple publications and on the internet as follows:

a. That defendant CITIZENS COMMISSION ON HUMAN RIGHTS OF NASHVILLE did falsely accuse or indicate plaintiff of sexual misconduct and other miscreant and deviant behavior by the language in the content of an article accessible to the public by url <https://cchrnashville.org/johnson-city-psychiatrist-dan-nicolau-disciplined-by-state> (Exhibit A), to-wit:

i. That a caption below a picture of plaintiff bears the language "Who's that with Johnson City Psychiatrist Dan Nicolau? It might be his chaperone..." next to a picture as described below.

ii. That the article features a picture of a banged-up Dan Nicolau, and portrays Plaintiff in a false light, as though he had committed or had been accused of committing sexual misconduct, sexual assault, and/or sexual abuse or other abuse.

1. That the plaintiff has never committed sexual assault or sexual abuse

2. That the plaintiff has never been accused of committing sexual assault or sexual abuse or abuse of any kind.

iii. That the article intentionally mischaracterizes criminal court proceedings.

iv. That the article accuses or implies that the plaintiff is haphazard and abusive.

b. That defendant CITIZENS COMMISSION ON HUMAN RIGHTS did falsely portray the plaintiff as a "sexual predator" in the title of an article found at url "<https://www.ccrint.org/2017/10/31/sexual-abuse-in-the-mental-health-system>" (Exhibit A), and did further defame the defendant, to-wit:

- i. The language “sexual assault”, “sexual abuse”, “and other, further defamatory language is pervasive throughout the article and is part of a bigger campaign by the Church of Scientology and its various sub-organizations to malign the practice of psychiatry.
 - ii. That the plaintiff has never been accused of committing sexual assault, sexual misconduct, or sexual abuse, or of being a sexual predator.
 - iii. That the plaintiff has never committed sexual assault or sexual abuse, and has never been a sexual predator.
5. That this statement has caused serious pecuniary injury to the plaintiff who has been denied multiple jobs due to the false statements the defendant made as provided above and elsewhere.
6. That the plaintiff has been deprived of lucrative opportunities as the direct result of the defendant’s statements, which statements caused plaintiff to be denied by multiple insurance carriers and therefore unable to operate at all within certain fields of practice.
7. The Plaintiff is currently 38 years of age and plans to retire at age 65. Plaintiff as a direct and proximate result of Defendant’s defamatory actions has suffered a decrease to Plaintiff’s current and projected average income from three hundred fifty thousand USD (\$350,000) to less than one hundred thousand USD (\$100,000) per year.
8. Plaintiff has suffered damages and is entitled to relief as the direct and proximate result of Defendant’s intentional, knowing, and/or negligent publication of false and/or injurious statements against Plaintiff.

RULE OF LAW

9. Defamation is a cause of action alleging that (1) a defendant published a statement; (2) with knowledge that the statement was false or injuring to the reputation of the plaintiff; (3) and the defendant was negligent for failing to ascertain the truth of the statement or the defendant

acted with reckless disregard for the truth of the statement. *Brown v. Christian Bros. Univ.*,
428 S.W.3d 38, 50 (Tenn. Ct. App. 2013).

ANALYSIS

10. Defendant published the defamatory statements outlined above and attached hereto as Exhibit A with knowledge that they were false and/or with intent to injure the plaintiff. Defendant knew or should have known, or did not care, whether and to what degree its statements were true. Plaintiff suffered damages as outlined above as a direct result of defendant's actions stated herein.
11. Plaintiff is entitled to relief arising from the Defendant's publication of false and/or injurious statements about the Plaintiff.

WHEREFORE, your plaintiff respectfully prays as follows:


1. Award to plaintiff compensatory damages for plaintiff's actual damages in the amount of eight million one hundred thousand USD (\$8,100,000.00).
2. Award to plaintiff punitive damages in an amount to which this Court is proper.
3. Tax the costs of this cause to the defendant.
4. Grant to plaintiff any such other, further and general relief which to this Court is proper.

Respectfully submitted:



DAN A. NICOLAU

By:



Richard Phillips, TN BPR no 028975
The Law Office of Richard Phillips, PLLC
104 East Jackson Boulevard Ste no 4
Jonesborough, Tennessee 37659
Tel: (423) 341-8204
Fax: (423) 328-1718
Email: rjpmilligan@comcast.net

STATE OF TENNESSEE)
)
COUNTY OF Washington)

Personally appeared before me, the undersigned notary public, the above-named plaintiff Dan A. Nicolau who, after having been duly sworn according to law, did state that he had read the foregoing complaint, the content of which is true and correct to the best of his knowledge, information, and belief.

This 30th day of July, 2019.

Sheri Baldwin
Notary Public

My commission expires:
June 27, 2023





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Betrayal Under the Guise of Help—Sexual Predators Pervasive in Mental Health Industry

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“Sexual contact between a doctor and a patient, even if ostensibly consensual, is strictly forbidden. In ethical terms, it’s a never event. In a legal sense, it can be a crime. Physicians know it’s a line that can’t be crossed — it’s a prohibition as old as the Hippocratic Oath.” —*The Atlanta Journal-Constitution* article *Licensed to Betray*

Online database documents sexual assault committed by psychiatrists, psychologists and other mental health professionals

By CCHR International

The Mental Health Industry Watchdog

October 31, 2017

Citizens Commission on Human Rights (CCHR), a mental health industry watchdog, says that amidst the growing reports of sexual abuse and intimidation coming out of the entertainment industry, the systemic sexual abuse of patients within the mental health industry must be brought to public attention. According to CCHR, since allegations of sexual abuse against Harvey Weinstein broke, 15 psychiatrists and psychologists have committed sexual violations, including those criminally charged or found guilty, had their licenses to practice suspended or revoked, or had civil charges brought against them for sexual violations.* CCHR urges all victims of sexual assault committed by mental health professionals to speak out.

The group says in its public database of criminal and disciplinary actions committed by mental health industry personnel, nearly a third of criminal convictions are for sexual abuse committed by psychiatrists, psychologists, therapists and counselors including the sexual assault of children. In 2016, an *Atlanta Journal-Constitution* investigation culminated in an article headlined, “Licensed to Betray,” the journalists noted that while society condemns sexual misconduct when committed by citizens and demands punishment, yet when a physician is the perpetrator, the nation often looks the other way. It further stated that “layer upon layer of secrecy makes it nearly impossible for the public” to know the extent of the abuse.[1]

According to a study published in the *Bulletin of the American Academy of Psychiatry Law*, “While estimates vary across studies, it is widely held that 7 to 10 percent of male and 1 to 3 percent of female therapists report having had sexual intercourse with one or more patients. Those therapists who report having sex with their patients are often repeat offenders with some surveys noting over 50 percent of male therapists reporting sexual involvement with more than one patient.”[2]

Kenneth S. Pope, Ph.D., reported in his book, *Sexual Involvement with Therapists: Patient Assessment, Subsequent Therapy, Forensics*, that research studies also suggest that at least 50 percent of all therapists will encounter a least one patient who has been sexually abused by a previous therapist.[3]

Until the passage of state laws in the United States—many of which CCHR worked to obtain—making it a criminal offense for psychiatrists and psychologists to have sexual relationships with their patients, mental health professionals could abuse patients entrusted to their care with impunity or claim it was “consensual.”

There are now 26 U.S. states that have criminalized various aspects of psychiatrist, psychologist and psychotherapist sexual contact with patients.[4] Consent is not a valid excuse. Of a sample of 120 mental health practitioners that CCHR documented in recent years who were convicted for sexual crimes in the U.S., more than two-thirds of the offenders were in states that have enacted such statutes.

Several of the sexual assaults in the sample were against children, one as young as nine years old while one was only four years old. Dr. Pope says that in a national survey of therapist-client sex involving minors revealed girls as young as three and boys as young as seven were abused.[5]

Psychiatric-psychologist abuse of patients may often be referred to licensing boards, not courts. Public Citizen, an advocacy group, conducted a study of physician sexual misconduct in the National Practitioner Data Bank over a period of 10 years ending in 2013. Published in 2016, it concluded that a full two-thirds of those doctors with strong evidence of sexual misconduct against them had not been disciplined by medical boards.[6] This is evidence, CCHR adds, of the continued secrecy and complicity shrouding such abuse. The national repository is where state medical boards, peer review committees and malpractice insurers report physician wrongdoing. The data bank was established by Congress, but is meant to be used by hospitals and other health care organizations before hiring a doctor.[7]

“Sex Addiction” is not an Excuse for Abuse

CCHR says that the prevalence of sexual misconduct against actors/actresses in Hollywood is now becoming transparent and the same disclosure and discussion should take place where it is happening in other sectors of society. The parallel to therapist-patient abuse is that the psychiatrist or psychologist has a position of power, which can be used to intimidate the patient.

Therapists often excuse such conduct in much the same as some perpetrators in Hollywood use “sex addiction” to excuse their behavior. In a U.S. survey of psychiatrist-patient sex, 73 percent of psychiatrists who admitted they had sexual contact with their patients claimed it was committed in the name of “love” or “pleasure;” 19 percent said it was, for example, to “enhance the patient’s self-esteem” or provide a “restitutive [compensatory] emotional experience for the patient,” while others said it was merely a “judgment lapse.”[8]

Current Psychiatry also referred to psychiatrist-patient sexual contact as “crossing boundaries or “boundary violations.” It acknowledged that such contact with patients is “inherently harmful to patients, always unethical, and usually illegal.”[9]

CCHR advises that perpetrators of patient sexual abuse should not have their behavior excused as “misconduct” or the result of a “sex addiction.” David J. Ley Ph.D., writing in *Psychology Today* said that “sex addiction” is a “pseudo-scientific pop psychology phenomenon.” Explaining further, he wrote: “Using the sex addiction label with offenders puts the blame and responsibility for these sexual crimes on the perpetrator’s supposed addiction and on the effects of a disease process rather than placing responsibility on the individuals themselves.” Furthermore, “I’m a sex addict, it’s not my fault” should not be a “get out of jail free card.”[10]

The Atlanta Journal reported, “Sexual contact between a doctor and a patient, even if ostensibly consensual, is strictly forbidden. In ethical terms, it’s a never event. In a legal

sense, it can be a crime. Physicians know it's a line that can't be crossed — it's a prohibition as old as the Hippocratic Oath."

Laura S. Brown, a clinical professor of psychology at the University of Washington, said any sex between therapist and patient "is an abuse of a vulnerable person by a person that should know by virtue of their training that this is harmful." Further, "This is not just an affair."^[11] In other words, there are no excuses, CCHR says.

Blaming the Victim

Some psychiatrists claim that the patient is at fault because of their mental illness — "masochistic personality disorder" — that drives their therapist to abuse them. Dr. Richard Simons contended to *The New York Times* in 1985 that it was important to identify "masochistic personality disorder" in women, which can take the form, for example, of her repeatedly choosing boyfriends who beat her up.^[12] Dr. Simons further described the example of "patients who unconsciously provoke therapists either to give up on them, or sadistically abuse them..." Whatever the "unconscious motives may be in an individual case the final behavioral outcome is the achievement of... 'victory through defeat,' and often the defeat is failed psychiatric treatment," Simons stated.^[13] CCHR's co-founder, the late Dr. Thomas Szasz, professor of psychiatry emeritus summed up psychiatric-therapist sexual abuse of patients as: "This is intellectual bankruptcy compounded by moral paralysis. The assertion that sexual contact... may be therapeutic for the patient is self-serving and stupid. Using it to justify such sexual contacts is illogical and immoral." Sexual abuse of anyone is self-serving, immoral and wrong, adds CCHR. It offers its Report Abuse hotline should anyone wish to confidentially report any act of sexual abuse by a mental health therapist. [Click here](#) to report abuse online or call 1-800-869-2247.

***Psychiatrists/Psychologists with Action Taken Against Them for Sexual Violations in the Last Five Weeks**

There have been 15 psychiatrists and psychologists who were criminally charged or found guilty, had their licenses suspended or revoked, or had civil charges brought against them for sexual violations with patients since early September 2017:

1. Sept. 9, 2017: Kenneth Breslin, a child psychologist in northern California, was scheduled to be sentenced in October for possession of child pornography, including images of children under age 12.^[14]
2. Sept. 21, 2017: Psychiatrist Joshua Gibson surrendered his medical license to the Medical Board of California after the Board discovered he'd settled a lawsuit brought by a female former patient for sexual battery, sexual contact and other charges on the agreement that neither party would cooperate with the Medical Board's investigation into his sexual relationship with her.^[15]
3. Sept. 29, 2017: The Florida Board of Medicine suspended psychiatrist Ely Pelta's license for sexual misconduct involving a patient to whom he sent sexually suggestive text messages. In 2006, Pelta came under criminal prosecution for trading treatment for sex with a female whom he plied with tranquilizers. The case fell apart when the patient declined to testify.^[16]

4. Oct. 2, 2017: Australian psychiatrist Robert Hampshire lost his appeal to be able to continue practicing while under investigation for making a number of lewd and sexually-related comments to a patient via phone and text.[17]
5. Oct. 4, 2017: Michigan psychologist Joseph Jeney was charged with criminal sexual conduct for engaging in a sexual relationship with a former patient for more than a month.[18]
6. Oct. 5, 2017: The UK General Medical Council revoked the license of psychiatrist Thomas Jenkins after he was arrested for “inciting a boy of 13 to engage in sexual activity” via the internet. A judge placed Jenkins on the sex offender registry for five years.[19]
7. Oct. 5, 2017: Psychologist Timothy Murphy, who is also an eight-term Pennsylvania state representative, announced his resignation from Congress, after it was revealed that he’d had an extramarital affair with woman whom he’d asked to have an abortion.[20]
8. Oct. 6, 2017: Wyoming psychologist Joshua Popkin was convicted of sexual assault charges, stemming from accusations by two female patients that he used his position of authority as a psychologist to have sex with them.[21]
9. Oct. 6, 2017: Massachusetts psychiatrist Timothy Bunton lost his medical license following a criminal conviction for using a computer to solicit a minor.[22]
10. Oct. 12, 2017: Twelve female former patient filed a civil lawsuit against New Mexico psychiatrist Alan Emamdee, accusing him of sexual abuses and assaults. (The suit follows his July 2017 arrest on charges of criminal sexual penetration involving a 40-year-old female patient.)[23]
11. Oct. 12, 2017: California Medical Board filed summarily suspended psychiatrist Leon Fajerman's license relative to complaints of sexual assault by three patients.[24]
12. Oct. 12, 2017: Blaise Wolfrum, Illinois psychiatrist, license summarily suspended for “inappropriate contact” with minor patient.[25]
13. Oct. 19, 2017: French psychiatrist Jean-Paul Guittet was suspended for three months on charges that he raped a female patient in 1989.[26]
14. Oct. 23, 2017: Ontario psychiatrist Ravi Shenava was in court on trial on charges of sexual assault involving five female former patients. One plaintiff testified that she had sex with Shenava in exchange for his signature so that she could obtain disability benefits.[27]

15. Oct. 23, 2017: The Tennessee Board of Medical Examiners placed psychiatrist Dan Nicolau on indefinite probation for charges including having been convicted of aggravated burglary and stalking of a female patient with whom he'd "entered into a romantic relationship."^[28]

References:

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[3] <http://www.apa.org/pubs/books/4317430.aspx>.

[4] <http://www.nbcnewyork.com/news/local/Sex-Abuse-Loophole-Closed-Assembly-Lawmakers-159867655.html>.

[5] Kenneth Pope, "Sex Between Therapists and Clients," *Encyclopedia of Women and Gender: Sex Similarities and Differences and the Impact of Society on Gender*, (Academic Press, Oct. 2001).

[6] Susan Cutti, "Report on physician sexual abuse stirs alarm," *CNN*, 12 July 2016, <http://www.cnn.com/2016/07/11/health/doctor-sexual-abuse/index.html>.

[7] *Ibid.*

[8] Nanette Gartrell, M.D., Judith Herman, M.D., et al., "Psychiatrist-Patient Sexual Contact: Results of a National Survey, I: Prevalence," *American Journal of Psychiatry*, Vol. 143 No. 9, Sept. 1986, p. 1128.

[9] "Psychiatrist/patient boundaries: When it's OK to stretch the line," *Current Psychiatry*, 2008 August;7(8):53-62, <http://www.mdedge.com/currentpsychiatry/article/63241/psychiatrist/patient-boundaries-when-its-ok-stretch-line>.

[10] David J. Ley Ph.D, "Sex Addiction Should Not Be a 'Get out of jail free,' Card," *Psychology Today*, 16 Aug. 2012, <https://www.psychologytoday.com/blog/women-who-stray/201208/sex-addiction-should-not-be-get-out-jail-free-card>.

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[13] Herb Kutchins & Stuart A. Kirk, *Making Us Crazy: The Psychiatric Bible and the Creation of Mental Disorders*, (The Free Press, New York, 1997), pp. 129-130..

[14] <http://www.eastbaytimes.com/2017/09/20/judge-releases-child-psychologist-after-flagrant-violation-in-child-porn-case-its-a-disease/>.

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- [27] <http://windsor.ctvnews.ca/windsor-psychiatrist-pleads-not-guilty-to-sexual-assault-charges-1.3639445>.
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Johnson City Psychiatrist Dan Nicolau Disciplined by State



*Who's that with Johnson City Psychiatrist **Dan Nicolau**? It might be his chaperone...*

The Johnson City Press reported on Oct 16, 2017:

Dan Nicolau, Johnson City. After entering into a romantic relationship with an acquaintance to whom he prescribed drugs and later stalked, Nicolau's medical license was placed on probation for two years. The stipulations of fact:

- ***On September 2015, Nicolau wrote one prescription for Percocet for an acquaintance referred to in the document as "C.B." Later in November, Nicolau wrote "C.B." one prescription for oxycodone. Nicolau's relationship with "C.B." was not pursuant to a doctor-patient relationship.***
- ***On or around June 2016, Nicolau and "C.B." entered into a romantic relationship that ended in August.***
- ***On or about Aug. 27, 2016, "C.B" received text messages from another user's Facebook account after blocking Nicolau from contacting her on Facebook. Later that evening, Nicolau showed up in her bedroom and woke her up after finding a spare key under the mat of the front door.***
- ***After entering her home, Nicolau grabbed her and attempted to hug and kiss her. "C.B." then screamed for him to leave, called 911 and ran outside her home to meet Johnson City police officers who***

responded to the call. As "C.B" spoke to officers, Nicolau used his cell phone to call and text her as she spoke with them.

On Aug. 23, Nicolau appeared in Washington County Criminal Court and was placed on probation for 11 months and 29 days for one count of aggravated criminal trespassing and one count of stalking.

Nicolau was ordered by the court to pay costs, complete a treatment plan established by the TBME and have no contact with "C.B." After a multidisciplinary assessment, it was recommended Nicolau refrain from consuming alcohol for one year, participate in a Tennessee Medical Foundation boundary course for six months, participate in a continuing medical education prescription boundaries course within six months, utilize a chaperone when seeing females in addiction treatment and engage in weekly therapy. Nicolau has been ordered to pay a civil penalty of \$2,000 and other fees up to \$3,000.

State Board of Medical Examiners Order

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Johnson City Press

✎ EditSign

Knoxville News Sentinel

✎ EditSign

More Information

Dan Adrian Nicolau has had a work relationship with Woodridge Hospital in Johnson City as well as the ETSU Dept of Psychiatry.

He was trained by the Texas Tech Health Services Center School of Medicine in Lubbock, Texas, graduating in 2007. He his residency at East Tennessee State University (ETSU) from 2011 to 2013. It took him less than three years to blow his entire career and reputation.

Report Abuse

CCHR Nashville investigates abuse in the field of mental health. If you have further information you believe would be interesting or useful, please contact us.