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COURT OF APPEALS  
DIVISION II

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NO. 39050-7-II

STATE OF WASHINGTON  
BY     

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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Servando Jasso,

Appellant,

v.

Department of Health,

Respondent.

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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

The Department of Health (Department) revoked Appellant Servando Jasso's registered counselor credential in 2007 finding that Mr. Jasso sexually abused his daughter, RJ, between 1986 and 1993, which constituted unprofessional conduct under the Uniform Disciplinary Act, chapter 18.130 RCW. The Department's decision was affirmed in Thurston County Superior Court on February 13, 2009. Mr. Jasso now seeks judicial review of the Department's revocation of his registered counselor credential in this Court.

## II. RESPONSE TO THE ASSIGNMENTS OF ERROR

Since this Court reviews the administrative decision in its appellate capacity under the Administrative Procedures Act, chapter 34.05 RCW<sup>1</sup>, the Department responds only to the Assignments of Error to the Department's decision and not the Assignments of Error alleged against the Superior Court.

In response to Mr. Jasso's assignments of error:

1. Were the Department's Findings of Fact supported by substantial evidence?
2. Did the Department commit an error of law when:

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<sup>1</sup> *Timberlane Mobile Home Park v. Washington State Human Rights Commission*, 122 Wn. App. 896, 95 P.3d 1288 (2004).

- (a) dismissing only the charges that pre-dated the Uniform Disciplinary Act, chapter 18.130 RCW;
- (b) admitting corroborating evidence of sexual abuse against RJ, including Exhibits D3 and D4;
- (c) admitting into evidence the opinion testimony of the Program's expert?

### III. STATEMENT OF THE CASE

In September 2004, the Department of Health received a letter of complaint against Servando Jasso, a registered counselor. AR 887-889<sup>2</sup>. The letter of complaint was from Mr. Jasso's youngest daughter, RJ, and it alleged that Mr. Jasso had sexually abused her as a child for many years. AR 887-889. The letter also contained allegations that RJ's half siblings had been abused by Mr. Jasso. AR 887. RJ wrote that some of her memories of the abuse were "recovered."<sup>3</sup> AR 888.

The Department investigated the complaint and filed a Statement of Charges against Mr. Jasso in October of 2006. AR 1-2. The Statement of Charges alleged that Mr. Jasso had sexually,

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<sup>2</sup> "AR" is the abbreviation for Administrative Record which was transmitted to the Court from the Thurston County Superior Court pursuant to RAP 9.7(c). The numbers refer to the bates stamp applied to the lower right hand corner of the page.

<sup>3</sup> She later testified that her memories of abuse were not "recovered" as mental health professionals would define them. Instead, she testified they were always there and that as she got older she began to piece them together. AR 1001-1040.

emotionally, and physically abused both of his daughters, RJ and AJ,<sup>4</sup> and that these acts constituted unprofessional conduct under the Uniform Disciplinary Act. AR 1-2.

Following the filing of the Statement of Charges, Mr. Jasso filed a prehearing Motion in Limine in which he challenged the admission of Department's Exhibits D3 and D4. AR 366-372, Motion in Limine. Department's Exhibit D3 is the deposition transcript of his oldest daughter, AJ, taken in 1987 during Mr. Jasso's divorce proceedings. AR 76-135. AJ described specific occasions on which Mr. Jasso sexually, emotionally, and physically abused her. AR 84-134 (AJ's deposition testimony). The sexual abuse of AJ was from an early age until the age of 12 or 13. AR 84-134. The abuse included Mr. Jasso going into AJ's bedroom at all hours of the night, waking her, tying or trying to tie her hands to the bed, taking off her pants, unzipping his own pants and touching her genitals and squeezing her breasts. AR 84-134. This occurred increasingly over time, eventually occurring at least once a week. AR 84-134. Mr. Jasso was represented by an attorney in that case and his attorney cross-examined AJ during the deposition. AR 74-135.

Department's Exhibit D4 is the Findings of Fact and Conclusions of Law from the divorce proceedings of Mr. Jasso and Pamela Jasso, RJ's

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<sup>4</sup> Mr. Jasso has two daughters from two marriages. AR 590. The oldest daughter, AJ, is now approximately 42 years old. RJ is now 26 years old. AR 590.

parents. AR 136-146. In Department's Exhibit D4, regarding AJ, the judge concluded: "Petitioner was responsible for a long-term, continuing pattern of emotional, physical and sexual abuse upon his daughter of his former marriage...." Regarding RJ, the judge wrote: "All but one of the experts in this case agree, and the Court finds, that the child of the parties was sexually abused. There is overwhelming evidence of at least one occasion of sexual abuse, and possibly more." The judge ordered that the visitation between Mr. Jasso and RJ be supervised. AR 140-141. Supervision was provided by RJ's maternal grandmother. AR 140-141. Mr. Jasso's Motion in Limine was denied and Exhibits D3 and D4 were admitted into evidence pursuant to Prehearing Order No. 2 by Presiding Officer Mitchell.<sup>5</sup> AR 433-431.

On the first day of the hearing, Mr. Jasso brought a Motion to Dismiss the allegations in the Statement of Charges which related to acts that occurred prior to the effective date of the Uniform Disciplinary Act (UDA), June 1, 1986. AR 985. Presiding Officer Caner took the matter under advisement, gave the Department time to brief the issue, and then partially granted the Motion to Dismiss. She dismissed the allegations which predated the UDA effective date for lack of jurisdiction. AR 589.

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<sup>5</sup> The case was reassigned to Presiding Officer Caner for the hearing.

The remaining allegations included only the abuse of RJ from June 2, 1986 through 1994. AR 589.

During the three day hearing, RJ testified that at the time she sent the complaint letter, she and her father had been estranged for many years. AR 1005-1006. Only upon seeing Mr. Jasso speak at a conference did she decide to write the letter. AR 1038-1039. Her intent in writing the letter was to help protect vulnerable people Mr. Jasso may be counseling from abuse at his hands. AR 887-889 and AR 1039-1040. RJ testified that Mr. Jasso sexually abused her starting at approximately age 2½ until she was 10 years old. AR 1001-1040.

The Presiding Officer also heard testimony from Mr. Jasso and Evelyn Galbreath, RJ's maternal grandmother and visitation supervisor. In addition, the Registered Counselor Program (Program) and Mr. Jasso each called experts to testify regarding RJ's memories and recollection. AR 1112-1322, AR 1407-1459, and AR 1472-1525.

Following the hearing, the Department issued the Final Order revoking Mr. Jasso's registered counselor credential. AR 587-604. In the Final Order the Presiding Officer made specific findings regarding the credibility of the testifying witnesses. AR 593-595. The Presiding Officer found RJ to be credible. AR 594, Finding 1.11. In contrast, she found Mr. Jasso and Evelyn Galbreath not to be credible. AR 593-595,

Findings 1.10 and 1.13. Based on the evidence presented at the hearing, the Presiding Officer found that RJ was sexually abused by Mr. Jasso. AR 591-592, Findings 1.4 and 1.7. Based on these findings, the Department concluded that Mr. Jasso committed unprofessional conduct. AR 599-600, Conclusion 2.6. The Presiding Officer considered the risk Mr. Jasso posed to the public and determined that revocation of his credential was the proper sanction.<sup>6</sup> AR 600, Conclusion 2.7.

Mr. Jasso sought judicial review of the Final Order before the Thurston County Superior Court. CP 4-34, Petition for Judicial Review. The Superior Court affirmed the agency's Final Order. CP 94.

#### **IV. ARGUMENT**

##### **A. Mr. Jasso Has The Burden To Show Error In The Department's Final Order**

This matter is before the Court for judicial review under the Washington Administrative Procedure Act (APA), chapter 34.05 RCW. Mr. Jasso seeks review of the Findings of Fact, Conclusions of Law and Final Order entered by the Department of Health which revoked his registered counselor credential and of the Thurston County Superior

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<sup>6</sup> The Final Order considered the following aggravating factors: "1. Prior discipline for sexual contact with a vulnerable client; 2. Prolonged sexual abuse of RJ, a vulnerable client; 3. Treatment failure for the Respondent's evasiveness and abusive behavior; 4. Multiple victims of sexual abuse; 5. Deceitful behavior; 6. Lack of remorse; and 7. Lack of empathy for his victims." AR 600, Conclusion 2.7.

Court ruling on judicial review. Since review of administrative decisions by the Court of Appeals applies the standards of the APA directly to the agency decision and record, sitting in the same position as the Superior Court, the Court does not need to address any of the errors Mr. Jasso assigned to the Superior Court. *Timberlane Mobile Home Park v. Washington State Human Rights Commission*, 122 Wn. App. 896, 95 P.3d 1288 (2004). Therefore, the Court reviews the errors assigned to the Department's Final Order pursuant to RAP 10.3(h).

When reviewing the Department of Health's Final Order, RCW 34.05.570(1) provides that the following four principles govern review of all forms of agency action:

- (a) **The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;**
- (b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;
- (c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and
- (d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

RCW 34.05.570(1) *Emphasis added.*

In the present case, Mr. Jasso, as Appellant, has the burden to establish that the Department's Final Order is invalid under the following subsections of RCW 34.05.570(3):

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

...

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; . . .

Therefore, Mr. Jasso bears the burden of demonstrating that the Final Order in this matter is invalid due to unlawful procedures, errors of law, or unsubstantial evidence to support the Final Order. Mr. Jasso fails to meet his burden in every instance.

**B. Substantial Evidence In The Record Supports The Findings Of Fact In The Final Order**

**1. The Substantial Evidence Standard**

Findings of fact are subject to review under the substantial evidence standard. RCW 34.05.570(3)(e); *Terry v. Employment Sec. Dep't*, 82 Wn. App. 745, 748, 919 P.2d 102 (1996). Under the substantial evidence standard, an agency's finding of fact will be upheld if supported by "evidence that is substantial when viewed in light of the whole record before the court." RCW 34.05.570(3)(e). "Substantial evidence" as used in RCW 34.05.570(3)(e) has been defined in court decisions as evidence in sufficient quantum to persuade a fair minded person of the truth of the declared premise. *See, e.g., Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 903 P.2d 433 (1995), *cert. denied*, 518 U.S. 1006, 116 S. Ct. 2526, 135 L. Ed. 2d 1051 (1996); *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 869 P.2d 1045 (1994).

The substantial evidence standard is "highly deferential" to the agency fact finder. *ARCO Prods. Co. v. Wash. Utils. & Transp. Comm'n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995). The Court will view the evidence in the light most favorable to the party who prevailed in the highest administrative forum to exercise fact-finding authority. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453

(2001). The Court will accept the fact-finder's determinations of witness credibility and the weight to be given to reasonable but competing inferences. *Id.*

The standard of proof at Mr. Jasso's disciplinary hearing was clear, cogent, and convincing evidence. *Ongom v. Department of Health*, 159 Wn.2d 132, 148 P.3d 1029 (2006). Mr. Jasso argues that the standard of review should also be clear, cogent, and convincing. However, where the standard of proof is clear and convincing evidence, the standard of review is the same substantial evidence standard. *Lang v. Washington Dep't of Health*, 138 Wn. App. 235, 243, 156 P.3d 919 (2007). The Final Order should be upheld if it is supported by substantial evidence that the Presiding Officer could have found met the required standard. *Disciplinary Proceeding Against Marshall*, 160 Wn.2d 317, 330, 157 P.3d 859 (2007).<sup>7</sup>

Therefore, the Court is to review the whole record and if there is sufficient evidence in the record from which a reasonable person could make the same finding as the agency, the agency's finding should

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<sup>7</sup> See also *State v. Fiser*, 99 Wn. App 714, 995 P.2d 107 (2000). Even in the criminal setting where the burden of proof is the highest standard, beyond a reasonable doubt, the Court reviews the evidence under the substantial evidence standard. "In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the state's case. *Id.* at 718, citing *State v. Galisia*, 63 Wn. App 833, 838, 822 P.2d 303, review denied, 119 Wn.2d 1003, 832 P.2d 487 (1992).

be upheld. This is so even if the reviewing Court would make a different finding from its reading of the record. *Callegod v. Wash. State Patrol*, 84 Wn. App. 663, 929 P.2d 510, *review denied*, 132 Wn.2d 1004 (1997).

In addition, determinations as to credibility are for the trier of fact, not the reviewing court. *Russell v. Human Rights Comm'n*, 70 Wn. App. 408, 421, 854 P.2d 1087 (1993). Credibility determinations will not be reversed on appeal. *Id.* As the fact finder, the Presiding Officer was in the best position to assess the evidence.

## **2. The Challenged Findings Are Supported By Substantial Evidence**

Mr. Jasso challenges the Department's Findings of Facts 1.4 and 1.14 through 1.17. The essence of his challenges to the Findings of Facts is that the testimony of RJ was not credible, RJ's memories were "recovered" and therefore unreliable, and that the Presiding Officer relied on inadmissible evidence.<sup>8</sup> As shown below, Mr. Jasso's challenges to the Findings of Facts should be rejected.

In this case, after considering all of the testimony and evidence and evaluating the credibility of each witness, the Department issued its Findings of Fact, Conclusions of Law and Final Order (Final Order). The Presiding Officer heard live factual testimony from his second

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<sup>8</sup> These arguments are refuted in sections C(2) and C(3) of this brief.

daughter, RJ, Mr. Jasso himself, and RJ's Grandmother. RJ testified in graphic detail about the sexual abuse she suffered at her father's hands. Mr. Jasso denied any sexual abuse of RJ or his first daughter, AJ.

The Presiding Officer specifically found Mr. Jasso's testimony not credible, in part because it was "not consistent with statements from reliable sources, such as the psychologists/psychiatrists, the guardian ad litem, Mr. Jasso's former supervisors, Mr. Jasso's son, and older daughter (AJ)." AR 595, Final Order at 9. It noted that Mr. Jasso's own expert "testified that he believed AJ's allegations of sexual abuse" by Mr. Jasso and therefore even Mr. Jasso's own expert "does not believe Mr. Jasso's denial" of sexually abusing AJ. AR 595-596, Final Order at 9-10. The Department also found RJ's grandmother not credible, citing the implausibility of her testimony that, in almost seven years, Mr. Jasso was never alone with RJ. AR 593, Final Order at 7.

In contrast, the Department found RJ credible "in light of her demeanor, her consistent prior statements, her ability to perceive and remember, her plausible description of events that are consistent with independent ascertainable facts, and other reliable sources." AR 594, Final Order at 8. Specifically, RJ's live testimony was "consistent with her written complaint, the guardian ad litem's report, and the psychological/psychiatric reports offered by both the Respondent and

the Department.” AR 594, Final Order at 8, fn.12. Further, the Presiding Officer noted that the Program’s expert “outlined in her testimony the numerous collaborating events, statements, and records that demonstrate RJ’s testimony is consistent, plausible, and reliable.” AR 594, Final Order at n. 13. In making this finding, the Department noted that RJ had no motive to lie, never pursued criminal charges or filed a civil complaint for monetary damages against Mr. Jasso, that there was no indication RJ had been unduly influenced by her mother or any counseling professionals “to fabricate the description of years of sexual abuse,” and that RJ contacted the Department and testified “in an attempt to protect vulnerable counseling clients from potential harm from her father.” AR 594, Final Order at 8.

Mr. Jasso argues that RJ had “repressed” and “recovered” memories of abuse and her testimony is therefore unbelievable. While RJ’s letter to the Department of Health contained the words “recovered memories,” she testified at hearing that at age 20 when she wrote her letter, she thought those words accurately described what she had experienced and that the lay person who received her letter would understand what she was trying to convey. AR 1042-1047. However, at hearing, RJ, the Program’s expert, and Mr. Jasso’s expert all testified that RJ did not actually have any “repressed” or “recovered” memories

as those terms are used by mental health practitioners. AR 1046-1047, 1131-1136, 1510. Because RJ did not actually have any “repressed” or “recovered” memories, based on all of the credible testimony in the record, this Court does not have to decide whether “repressed” and “recovered” memories exist or whether such memories are more or less accurate than other memories. This issue simply has no bearing on whether the Findings of Fact are supported by substantial evidence in the record.

Accordingly, Findings of Fact 1.4 and 1.14 through 1.17 are supported by substantial evidence in record. Even if the Departments Exhibits D3<sup>9</sup> and D4<sup>10</sup> and the opinion testimony of Dr. O’Shaunnesy were excluded as Mr. Jasso argues, there would still be substantial evidence to support the Final Order. The Presiding Officer observed and considered the testimony and demeanor of all of the witnesses, including Mr. Jasso. The Presiding Officer found RJ’s direct testimony of the abuse credible and convincing. As the standard requires, viewed in the light of the whole record before the Court, there is clearly more than substantial evidence — evidence in sufficient quantum to persuade a fair minded person of the truth of the declared premise — to support the

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<sup>9</sup> Department’s Exhibit D3 is the transcript of the deposition of Mr. Jasso’s oldest daughter, AJ.

<sup>10</sup> Department’s Exhibit D4 is the Findings of Fact, Conclusions of Law from Mr. Jasso’s divorce from his second wife, RJ’s mother.

Department's Findings of Fact in the Final Order. Mr. Jasso has failed to meet his burden and the Final Order should be affirmed.

**C. The Department Followed Lawful Procedures And Correctly Interpreted And Applied The Law**

Under the "error of law" standards in the Washington Administrative Procedure Act, RCW 34.05.570(3)(c) and (d), the Court engages in de novo review of the agency's legal conclusions. *Franklin Cy. Sheriff's Office v. Sellers*, 97 Wn.2d 317, 325, 646 P.2d 113 (1982), *cert. denied*, 459 U.S. 1106 (1983).

**1. The Department Correctly Followed The Law By Dismissing The Allegations Of Abuse Of AJ On October 2, 2007**

Despite the passing of a Motion cutoff date of May 3, 2007, AR 41<sup>11</sup>, on the morning of the first day of the hearing, September 17, 2007, Mr. Jasso brought a Motion to Dismiss the entire Statement of Charges and more specifically, the allegations relating to conduct that occurred before the effective date of the Uniform Disciplinary Act. That morning, Mr. Jasso argued that RCW 18.130.900 barred the Presiding Officer from considering – for any purpose – any evidence of abuse occurring before its effective date, including all of the evidence that Mr. Jasso had abused AJ (Exhibits D3 and D4) and some

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<sup>11</sup> See Scheduling Order.

of the evidence that Respondent abused RJ. Presiding Officer Caner took the Motion under advisement, proceeded with the hearing, and gave the Registered Counselor Program time to file a written response.

In its response to Mr. Jasso's Motion, the Department conceded that: 1) all of Mr. Jasso's emotional, physical, and sexual abuse of AJ, and *some* of his abuse of RJ, occurred before June 11, 1986; and 2) under the Uniform Disciplinary Act (UDA), RCW 18.130.900, the Department could not impose sanctions on Mr. Jasso solely and specifically for conduct occurring before that date. Thus, the Program did not oppose the Court striking that portion of the Statement of Charges referencing Mr. Jasso's abuse of AJ and RJ prior to the UDA effective date.

On October 2, 2007, the third day of the hearing, the Department dismissed all allegations of abuse of AJ and all of the allegations of RJ which occurred before June 1, 1986. The remaining charges related to Mr. Jasso's sexual abuse of RJ that occurred after June 1, 1986.<sup>12</sup>

Before this Court, Mr. Jasso argues that he has been prejudiced by the dismissed charges; however he makes no showing that he was

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<sup>12</sup> RJ was born July 11, 1983. She testified the sexual abuse started when she was approximately 2½ years old and ended when she was 10 years old. This would mean the abuse occurred from approximately 1985 to 1993.

prejudiced in any way. Upon Mr. Jasso's Motion, the Presiding Officer dismissed the allegations which occurred before the effective date of the UDA. Mr. Jasso has not shown under the relevant standard that an error occurred in dismissing the charges.

Mr. Jasso also argues prejudice exists because the charges were not dismissed until the third day of the hearing. After Mr. Jasso's untimely Motion was made to the Presiding Officer she dismissed the pre-UDA allegations and based her decision on the facts and law appropriately before her—as the Final Order reflects. Mr. Jasso has failed to meet his burden of proving that the Department committed an error of law in dismissing the pre-UDA allegations on October 2, 2007 and proceeding with the remaining charges.

**2. Department's Exhibits D3 And D4 Were Properly Admitted Into Evidence**

The standard of review for evidentiary rulings is abuse of discretion. *University of Washington Medical Center v. Washington State Department of Health*, 164 Wn.2d 95, 104, 187 P.3d 242 (2008) citing *State v. Myers*, 133 Wn.2d 26, 34, 941 P.2d 1102 (1997). The Presiding Officer properly admitted Department's Exhibits D3 and D4 and did not abuse its discretion.

**a. The Exhibits Establishing Mr. Jasso's Prior Abuse of His First Daughter (D3 And D4) Were Properly Admitted Under ER 404(b)**

The Washington Administrative Procedure Act sets out the rules of evidence for proceedings brought under the Act. Specifically, RCW 34.05.452 provides:

- (1) **Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.** The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- (2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as **guidelines** for evidentiary rulings. (Emphasis added.)

As guidelines, the Rules of Evidence are not mandatory in the adjudicative proceedings conducted by the Department of Health under the APA. This gives the Presiding Officer greater discretion in determining the admissibility of evidence. The standard in administrative hearings is, therefore, whether the evidence being offered is the kind of evidence a reasonably prudent person would rely on. However, even if the Rules of Evidence were more than *guidelines*, they were followed appropriately in this case.

“Rule 404(b) expresses the traditional rule that a person’s prior crimes, wrongs, or acts are inadmissible to demonstrate the person’s character or general propensities . . .” 5 Karl B. Tegland, *Washington Practice: Evidence* §404.20 (5<sup>th</sup> ed. 2007). Most frequently, the rule is invoked to bar evidence of prior misconduct offered in a criminal case to suggest that the defendant is a “criminal type” and thus likely to have committed the crime currently charged.” *Id.* The Rule goes on to carve out exceptions where the evidence is admissible for some purposes.

Evidence Rule 404(b) provides:

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

Rule of Evidence 404.

Before admitting evidence of other wrongs under ER 404(b), a trial court must: (1) find that a preponderance of evidence shows that the misconduct occurred; (2) identify the purpose for which the evidence is being introduced; (3) determine that the evidence is relevant; and (4) find that its probative value outweighs its prejudicial effect. *State v. Baker*, 89 Wn. App. 726, 731-32, 950 P.2d 486 (1997) citing *State v. Lough*, 125 Wn.2d 847, 852, 889 P.2d 487 (1995).

**(1) A Preponderance Of The Evidence Shows  
That The Misconduct Occurred**

First, in proving the prior bad acts by a preponderance of the evidence, we need only look to Department's Exhibits D3 and D4 themselves. In Exhibit D3, AJ testified under oath at her deposition that she was sexually, physically, and emotionally abused by Mr. Jasso. She was subject to cross-examination by Mr. Jasso's attorney at the deposition. In Exhibit D4, the Findings of Fact, Conclusions of Law in Mr. Jasso's second divorce, the Superior Court Judge in Yakima County, Washington found by a preponderance of the evidence (the standard used in dissolution cases) that Mr. Jasso was "responsible for a long-term, continuing pattern of emotional, physical and sexual abuse upon his daughter of his former marriage, AJ." AR 754. The prior bad acts were therefore proven by a preponderance of the evidence.

**(2) The Purpose Of Admitting The Evidence  
Of The Abuse Of AJ Was Identified As A  
Common Scheme Or Plan**

The second factor in the test is to define the purpose of admitting the evidence. In his Prehearing Order, Presiding Officer Mitchell identified the purpose of admitting Exhibits D3 and D4 as being to show a common scheme or plan. AR 440. Presiding Officer

Caner similarly identified in the Final Order the purpose as being a common scheme or plan in admitting the exhibits. AR 598-599.

Presiding Officer Caner admitted Exhibit D3 during the hearing and cited Presiding Officer Mitchell's ER 404(b) analysis in Prehearing Order No. 2. (Final Order at 2, n.2) Contrary to Mr. Jasso's claim, Presiding Officer Caner admitted Exhibit D3 under the "common plan or scheme" exception to ER 404(b):

**The 1987 deposition of AJ was admitted for the limited purpose to show a "common plan or scheme" regarding the Respondent's sexual abuse of his daughters. ER 404.** Courts have held that evidence of prior sexual abuse of children can be admitted to show common scheme or plan going back as far as 17 and 24 years. The deposition regarding abuse of AJ was not admitted or considered to prove the Respondent is a bad person or that he acted in conformity with the prior act. The evidence was admitted to help the presiding officer assess the credibility of the testimony regarding the alleged sexual abuse of RJ.

AR 598-599, Final Order at 12-13, emphasis added.

In her analysis, Presiding Officer Caner reiterated:

[E]vidence regarding the Respondent's sexual abuse of AJ was admitted under ER 404(b) to help the presiding officer assess the credibility of RJ. The evidence was not admitted to prove the dismissed charges (that predate the UDA), or to show that the Respondent is likely to have committed similar bad acts. The evidence regarding AJ was not admitted for dispositional purposes.

AR 596, Final Order at 10, fn.22. Therefore, evidence was being as admitted solely to prove a “common scheme or plan.”

**(3) The Evidence Of The Sexual Abuse Of AJ Is Relevant**

Under the relevancy analysis in the third element of the ER 404(b) test, there must be a similarity in the acts that are part of the common scheme or plan. *State v. DeVincentis*, 150 Wn.2d 11, 74 P.3d 119 (2003). However, the acts need not be a unique or atypical way of committing a crime in order to be similar to one another. *Id.* at 21. In *Sexsmith* the Court found sufficient similarities in the prior bad act of the Defendant where one victim was fondled, sodomized, made to perform oral sex, have oral sex performed on her, take nude pictures and watch pornographic videos while the other victim was fondled, made to watch pornographic videos, and take nude photographs. *State v. Sexsmith*, 138 Wn. App. 497, 157 P.3d 907 (2007).

Mr. Jasso argues that the abuse of his two daughters is dissimilar because the abuse of RJ was while she was an “infant” and that the AJ’s allegations of abuse “primarily focus on physical and emotional abuse during her teenage years.” Contrary to his arguments, RJ testified at the hearing in graphic detail to the sexual abuse her father

perpetrated on her between 1985 and 1993, when she was between 2½ to 10 years old, not an infant.

The abuse included Mr. Jasso inserting his finger into RJ's vagina, rubbing RJ's genitals over swimming suits or under dresses and RJ being directed by Mr. Jasso to touch him in the area of his genitals. AR 1001-1040. AJ testified in her deposition that she was sexually abused from an early age until 12 or 13. AR 84-88. The abuse included Mr. Jasso going into AJ's bedroom at all hours of the night, waking her, tying or trying to tie her hands to the bed, taking off her pants, unzipping his own pants, touching her genitals and squeezing her breasts. AR 84-100 and 128-134.

Mr. Jasso's sexual abuse of female children under his control and authority shows a common scheme or plan. The acts of sexual abuse were similar because AJ testified that Mr. Jasso sexually abused her during a time she resided with him, was in his care, and when he held a position of authority over her. Similarly, RJ testified at hearing that Mr. Jasso sexually abused her during a time she resided with him, was in his care, and when he held a position of authority over her. Both girls were abused from the time they were very young until ages 10 and 12 or 13. These acts of sexual abuse are very similar and, therefore, are sufficient to show Mr. Jasso engaged in a common scheme or plan.

To further analyze the common scheme or plan exception and whether a lapse in time would break up the plan, we must compare the case before us to the analogous case of *State v. Sexsmith*, 138 Wn. App. 497, 157 P.3d 907 (2007). Sexsmith was accused of sexually abusing C.H. while she was a minor. After C.H. turned 20, she sought counseling and revealed details of the abuse. She also told her step-sister, A.S., about the abuse. A.S. told C.H. that Sexsmith had also sexually abused her when she was a minor, in many of the same ways he abused C.H. Sexsmith was criminally charged. At trial, the Court allowed the state to present testimony from C.H. and evidence of Sexsmith's abuse of A.S., under the "common scheme or plan" exception to ER 404(b).

On appeal, the Court of Appeals upheld the trial Court's admission of the evidence concerning Sexsmith's abuse of A.S. The Court noted that although there was a "significant lapse of time between the sexual abuse of A.S. and the abuse of C.H.," that lapse of time was "not a determinative factor" in the ER 404(b) analysis. The Court cited Sexsmith's position of authority over both girls and the substantial similarities between the abuse he committed on each girl, and held that "the cumulative similarity between the two suggests a common plan rather than a coincidence." *Id.* at 24.

The same is true in the present case. Both Exhibits D3 and D4 were properly admitted under ER 404(b) to show Mr. Jasso's "common scheme or plan" to commit sexual abuse and misconduct on his daughters, AJ and RJ, while each resided with Mr. Jasso, were in his care, and while he held a position of authority over them.

Mr. Jasso argues the Department admitted Exhibit D3 for the *sole* purpose of assessing the credibility of RJ. This is untrue. The Presiding Officer states she admitted Exhibit D3 for the limited purpose to show a common scheme or plan, not for dispositional purposes. AR 598-599. Once Exhibit D3 was admitted, it demonstrated a common scheme or plan that by its nature lent greater credibility to RJ's testimony. Contrary to Mr. Jasso's contentions, the bolstering of the credibility of RJ was a subsequent result of the admission of Exhibits D3 and D4, not the reason for their admission.

**(4) The Evidence Of The Abuse Of AJ Is More Probative Than Prejudicial**

The fourth and final factor of the ER 404(b) test is whether the probative value of the evidence outweighed its prejudicial effect. Because of the unique nature of sexual abuse on children and the facts of this case, the evidence is more probative than prejudicial.

Prior similar acts of sex abuse can be very probative of a common scheme or plan. The need for such proof is

unusually great in child sex abuse cases, given the secrecy in which such acts take place, the vulnerability of the victims, the absence of physical proof of the crime, the degree of public opprobrium associated with the accusation, the unwillingness of some victims to testify, and a general lack of confidence in the ability of the jury to assess the credibility of child witnesses.

*State v. Krause*, 82 Wn. App 688, 696, 919 P.2d 123 (1996). In *Krause*, the Court held that evidence of prior misconduct was more probative than prejudicial when it considered the factors outlined above regarding child sexual abuse and the fact that the trial court gave the jury a limiting instruction. *Id.* at 697. This is also true in the present case. The evidence of Mr. Jasso's prior misconduct was more probative than prejudicial in light of the unique characteristics of child sexual abuse coupled with the fact that the Presiding Officer, not a jury, was able to limit her consideration of the evidence to the purpose of showing a common scheme or plan.

The evidence of Mr. Jasso's prior bad acts of sexually abusing his first daughter, AJ, meet all four factors and, therefore, the Presiding Officer correctly admitted Department's Exhibits D3 and D4 under ER 404(b) to show Mr. Jasso's common scheme or plan to sexually abuse both RJ and AJ. Mr. Jasso has failed to show that the Presiding Officer abused her discretion in admitting Exhibits D3 and D4.

**3. The Department Correctly Interpreted And Applied The Law By Considering Corroborating Evidence Of Sexual Abuse Against RJ**

“Cases involving crimes against children generally put in issue the credibility of the complaining witness, especially if defendant denies the acts charged and the child asserts their commission. An attack on the credibility of these witnesses, however slight, may justify corroborating evidence.” *State v. Petrich*, 101 Wn.2d 566, 575, 683 P.2d 173 (1984). Where the child’s credibility is put in issue, a court has broad discretion to admit evidence corroborating the child’s testimony. *State v. Kirkman*, 159 Wn.2d 918, 933, 155 P.3d 125 (2007).

In this case, RJ was a child at the time the sexual abuse occurred and her memories are based upon her recollections as a child. Mr. Jasso attacked her credibility in numerous ways. First, Mr. Jasso denies any sexual abuse of RJ. Second, he claims her memories are unreliable, “recovered” and subject to “well-known memory distorting factors.” As a victim of child sexual abuse and where her credibility had been attacked, the Presiding Officer had broad discretion to consider corroborating evidence when assessing RJ’s credibility. *Kirkman*, at 933.

Mr. Jasso alleges the Department’s use of *State v. Young* and corroborating evidence is erroneous. He alleges that the Department

made a finding of abuse of RJ through “independent corroboration of RJ’s allegation through [AJ’s] completely separate allegations . . .” Appellant’s Brief at 26. However, the Presiding Officer used corroborating evidence to assess RJ’s credibility regarding the abuse she testified was perpetrated upon her.

Mr. Jasso also argues that *State v. Young* does not apply to the current case because it is a criminal case. However, criminal cases have a higher burden of proof, beyond a reasonable doubt, than the administrative case here. Even with the higher burden of proof, evidence of a common scheme or plan is allowed in a criminal case if proven by a simple preponderance that the misconduct occurred. *State v. Baker*, 89 Wn. App. 726, 950 P.2d 486 (1997). The Appellant himself cites criminal cases in his brief, including *State v. Lough* and *State v. DeVincentis*, in attempts to further his arguments. The Department correctly interpreted and applied the law by considering corroborating evidence of sexual abuse against RJ.

**4. The Department Properly Admitted The Opinion Testimony Of The Program’s Expert**

**a. The Appellant Has Waived This Issue As He Did Not Raise It Contemporaneously At The Administrative Level Or At The Superior Court On Judicial Review**

For the first time on appeal, Mr. Jasso raises the issue of the Program’s expert opinion testimony regarding the abuse of RJ.

“[A]ppellate Courts will generally not consider issues raised for the first time on appeal. *State v. Williams*, 137 Wn.2d 746, 975 P.2d 963 (1999); RAP 2.5(a). RAP 2.5(a) provides in part:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction....

Rules of Appellate Procedure 2.5(a). Mr. Jasso did not raise this issue on judicial review before the Superior Court. He also did not exhaust his remedies by raising this issue contemporaneously at the hearing. Therefore, it should not be considered by this Court.

The only objection made by Mr. Jasso directly surrounding the testimony of Program expert Dr. O’Shaunnesy’s opinion that RJ had been sexually abused by Mr. Jasso was that there was “not a question before the witness.” AR 1223-1224. He made this objection following Dr. O’Shaunnesy’s detailed and lengthy answer to the question regarding her opinion. Program’s counsel responded that the expert witness was completing her answer and the Presiding Officer overruled the objection. AR 1224. There was no contemporaneous objection specifically regarding the expert’s opinion as to the abuse of RJ as to

foundation, incompetence, or speculation as Mr. Jasso argues now. The failure to make a contemporaneous objection waives any error unless the argument was “so flagrant and prejudicial as not to be subject to a curative instruction.” *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 333-34, 858 P.2d 1054 (1993).

**b. Mr. Jasso’s Brief Regarding The Issue Of Expert Testimony Is Insufficient And Does Not Cite Any Law To Support His Position, Therefore, It Should Not Be Considered**

Mr. Jasso fails to cite any authority, rule, or statute in his brief stating that the opinion testimony of Dr. O’Shaunnesy should be excluded.

Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. Courts ordinarily will not give consideration to such errors unless it is apparent without further research that the assignments of error presented are well taken.

*State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978), *cert. denied*, 439 U.S. 870, 99 S. Ct. 200 (1978). Since Mr. Jasso fails to cite any authority supporting his argument, the issue of Dr. O’Shaunnesy’s expert testimony regarding the abuse of AJ should not be considered by the Court.

**c. The Expert Testimony of Dr. Kathleen O'Shaunnesy Regarding Her Opinion As To Whether RJ Was Sexually Abused Was Properly Admitted**

If the challenge to this issue is considered on appeal, the expert's opinion testimony regarding the abuse of RJ was properly admitted under the APA and ER 702 and 703. A trial Court's decision regarding the admission or exclusion of expert testimony is reviewed for an abuse of discretion. *State v. Willis*, 151 Wn.2d 255, 262, 87 P.3d 1164 (2004). A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

As discussed above in section C(2)(a) of this brief, the Washington APA sets out the rules of evidence for proceedings brought under the Act. RCW 34.05.452 provides that the Rules of Evidence are not mandatory, but guidelines under which adjudicative proceedings conducted by the Department of Health operate. Again in this instance, even if the Evidence Rules were more than *guidelines*, they were followed appropriately regarding the admission of Dr. O'Shaunnesy's opinion testimony.

ER 702 provides:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in

issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

Rule of Evidence 702.

“ER 702 involves a two-step inquiry - whether the witness qualifies as an expert and whether the expert testimony would be helpful to the trier of fact.” *Reese v. Stroh*, 128 Wn.2d 300, 306, 907 P.2d 282 (1995).

First, the Program’s expert, Dr. Kathleen O’Shaunnesy, unquestionably qualifies as an expert in this case. She has been a clinical psychologist for 35 years and holds a bachelor’s degree and master’s degree in psychology and a Ph.D. in clinical psychology. AR 1112. She has been a licensed psychologist in Washington since 1982 and was previously licensed in both Michigan and Indiana. AR 1113. In addition, Dr. O’Shaunnesy has served on the Washington State Examining Board of Psychology and was its chairwoman in 1993. AR 1115. She has taught courses in psychology at Evergreen State College and two other colleges and presented workshops on child sex abuse for the Washington State Psychological Association. AR 1115. As an expert witness, Dr. O’Shaunnesy has testified approximately seven times in court regarding sexual or physical abuse of children. AR 1117. Dr. O’Shaunnesy is currently in private practice doing psychotherapy, divorce and custody mediations, psychological evaluations and consultations. AR 1115-1116.

The second factor requires that expert testimony be helpful to the trier of fact. In this case, both the Program and Mr. Jasso called experts to testify about human memory and their opinions on whether RJ was sexually abused by Mr. Jasso. The Program's expert was Dr. O'Shaunnesy, a clinical psychologist. Mr. Jasso's expert was Dr. August Piper, a psychiatrist. Both experts had specialized knowledge regarding human psychology and human memory which assisted the trier of fact to understand the evidence before it.

Since Dr. O'Shaunnesy is a qualified expert and her testimony was of assistance to the trier of fact, it meets the two part test of ER 702 and her opinions are admissible.

Mr. Jasso argues further that Dr. O'Shaunnesy's opinion that RJ was sexually abused lacks foundation. However, there was sufficient foundation for her opinion testimony. Dr. O'Shaunnesy is a well qualified expert who based her opinion on the types of evidence a psychologist would reasonably rely upon when rendering this type of opinion. In fact, both experts in this case relied upon the same documentary evidence provided to them prior to the hearing in forming their opinions. Dr. O'Shaunnesy also viewed RJ's live testimony at the administrative hearing. AR 1131. Psychologists and psychiatrists

regularly provide opinion testimony as to whether a child has been sexually abused.

The evidence that Dr. O'Shaunnesy based her opinion on was proper under ER 703. ER 703 provides:

“The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”

Rule of Evidence 703.

Dr. O'Shaunnesy relied upon an abundance of evidence when rendering her opinion. She testified at the hearing that the evidence and documents she reviewed and relied on were: RJ's live testimony; RJ's letter of complaint to the Department; Department's Exhibit D3 (deposition transcript of AJ) and D4 (Findings of Fact and Conclusions of Law in the Dissolution of Marriage); correspondence between Mr. Jasso and his second wife, Pamela; Pamela's journal entries from 1985 to 1986; the affidavit of RJ's child care provider; the Guardian Ad Litem report; letters and reports from mental health professionals who interviewed Mr. Jasso; a letter from Mr. Jasso's employer, Sea Mar, regarding supervision issues and complaints against Mr. Jasso; the deposition transcript of Mr. Jasso's expert, Dr. August Piper; a report

from counselor Muriel Templeton regarding RJ; evidence of Mr. Jasso's prior discipline for sexual misconduct with a client; Mr. Jasso's psychological evaluation reports from Dr. Bernard and Jimmye Angell, Ph.D.; various reports from Dr. Clay Jorgenson regarding RJ and visitation recommendations; a report of Dr. Couturiar regarding a physical examination of RJ, and the rest of the investigative file. AR 1139-1236. As she indicated, RJ's testimony and the documentary evidence along with her training and experience were the foundation for her opinion. This is the type of evidence regularly relied upon by psychologists in this type of case and was therefore properly considered by Dr. O'Shaunnesy.

Moreover, Mr. Jasso's own expert, Dr. Piper, based his opinions on the very same documents and investigative file. He too was asked whether he believed RJ's allegations of abuse to be true.

Finally, Mr. Jasso argues that Dr. O'Shaunnesy's opinion was somehow flawed because she never met with Mr. Jasso, RJ, or RJ's grandparents. However, personal knowledge is not required for an expert to opine. In *Marshall*, the expert based her opinion on whether the Defendant was likely to reoffend based solely on police reports, court records, psychological and psychiatric reports, juvenile records, Department of Corrections records, and medical records. *In re*

*Detention of Marshall*, 122 Wn. App. 132, 144, 90 P.3d 1081 (2004), *review granted* 153 Wn.2d 1001, 103 P.3d 1247, *affirmed* 156 Wn.2d 150, 125 P.3d 111(2005). In the present case, Dr. O'Shaunnesy based her opinion on the same sorts of records, but also upon the live testimony of the victim, RJ. Dr. O'Shaunnesy's opinion that RJ was sexually abused by Mr. Jasso was therefore properly admitted by the Presiding Officer. Mr. Jasso has again failed to meet his burden in showing the Presiding Officer abused her discretion.

**D. The Appellant Is Not Entitled To An Award Of Attorney's Fees And Expenses Under The Equal Access to Justice Act**

The purpose of the Equal Access to Justice Act (EAJA) is to allow an individual to recover attorney's fees and expenses when challenging an unreasonable governmental action. Washington's EAJA provides, in pertinent part:

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, **unless the court finds that the agency action was substantially justified** or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

RCW 4.84.350 (2009), emphasis added. The award of attorney's fees and expenses are limited to those incurred during judicial review and are not

awarded for fees at the administrative level. *Alpine Lakes Prot. Soc’y v. Dep’t of Natural Res.*, 102 Wn. App. 1, 979 P.2d 929 (1999).

The Department contends that its Final Order was proper and that Mr. Jasso should not prevail on appeal. Therefore, no fees should be awarded. If Mr. Jasso were to prevail, fees should be denied if the Court merely remands. In *Densley v. Dep’t of Retirement Systems*, the Supreme Court denied fees after finding the party did not “substantially prevail” because the Court reversed in part and affirmed in part and the party gained only part of the relief it requested on judicial review. *Densley v. Dep’t of Retirement Systems*, 162 Wn.2d 210, 173 P.3d 885 (2007). If the Court remands, Mr. Jasso has not yet prevailed.<sup>13</sup>

Finally, fees should be denied because the Department’s actions were reasonable both in law and in fact and therefore substantially justified. An award of attorney’s fees may be avoided if the agency’s action was reasonable and substantially justified, even if ultimately found incorrect. *Silverstreak, Inc. v. Washington State Dept. of Labor and Industries*, 125 Wn. App. 202, 104 P.3d 699 (2005), *review granted* 155 Wn.2d 1001, 122 P.3d 185, *affirmed on other grounds*, 159 Wn.2d 868, 154 P.3d 891 (2007). The term “substantially justified” means “justified

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<sup>13</sup> But see *Kettle Range Conservation Group v. Washington Dep’t of Natural Res.*, 120 Wn. App. 434, 85 P.3d 894 (2003), *amended on reconsideration* (2004). Washington courts have come to differing conclusions regarding whether a private party has “prevailed.”

to a degree that could satisfy a reasonable person.” *Kettle Range Conservation Group v. Washington Dept. of Natural Resources*, 120 Wn. App. 434, 85 P.3d 894 (2003).

In the present case, the Department was substantially justified in revoking Mr. Jasso’s registered counselor credential. The substantial evidence presented at the administrative hearing proved by clear, cogent, and convincing evidence that Mr. Jasso sexually abused his daughter, RJ from 1986 to 1993. The revocation was substantially justified due to the severity of the sexual abuse, prior discipline for sexual contact with a vulnerable client, and other aggravating factors.<sup>14</sup> AR 600. In addition, the Superior Court agreed that the Final Order was supported by substantial evidence and affirmed it. Therefore, Mr. Jasso is not entitled to an award of attorney’s fees under the EAJA.

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<sup>14</sup> See footnote 4 above.

**V. CONCLUSION**

The Department respectfully requests the Departments Final Order be affirmed. Appellant has failed to meet his burden of showing the invalidity of the Department's actions in this case.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of September 2009.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in black ink that reads "Heather Carter". The signature is written in a cursive style with a horizontal line underneath it.

HEATHER A. CARTER, WSBA #30477  
Assistant Attorney General  
Attorney for State of Washington  
Department of Health

**PROOF OF SERVICE**

I, Shirley Burrell, certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

**A. STEPHEN ANDERSON  
A. STEPHEN ANDERSON, P.S.  
999 N. NORTHLAKE WAY, SUITE 300  
SEATTLE, WA 98103**

- US Mail Postage Prepaid via Consolidated Mail Service
- Facsimile
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4<sup>th</sup> day of September 2009, at Olympia, Washington.

  
SHIRLEY BURRELL

THE  
COURT OF APPEALS  
DIVISION II  
09 SEP -8 AM 9:22  
STATE OF WASHINGTON  
BY   
DEPUTY

# Appendix A

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In the Matter of the Registration to	)	
Practice as a Counselor of:	)	Docket No. 06-06-B-1037RC
	)	
SERVANDO JASSO,	)	FINDINGS OF FACT,
Credential No. RC00014566,	)	CONCLUSIONS OF LAW
	)	AND FINAL ORDER
Respondent.	)	
<hr/>		

**APPEARANCES:**

Respondent, Servando Jasso, by  
A. Stephen Anderson, P.S., per  
A. Stephen Anderson, Attorney at Law

Department of Health Registered Counselor Program, by  
Office of the Attorney General, per  
Elizabeth A. Baker, Assistant Attorney General

**PRESIDING OFFICER:** Zimmie Caner, Health Law Judge

On September 17-18, 2007 and October 2, 2007, a hearing was held regarding allegations that the Respondent committed unprofessional misconduct.

**ISSUES**

1. Did the Respondent engage in unprofessional conduct as alleged under RCW 18.130.180(1)?
2. If unprofessional conduct occurred, what sanctions are appropriate under RCW 18.130.160?

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND FINAL ORDER

Page 1 of 16

Docket No. 06-06-B-1037RC

## SUMMARY OF THE PROCEEDINGS

During the hearing, the Respondent, Rebekka Van Der Does, Evelyn Gailbrath, Kathleen O'Shaunessy, Ph.D. and August Piper, M.D. testified. During the hearing and in Prehearing Order No. 2, the following exhibits were admitted:<sup>1</sup>

- Exhibit D-1: Agreed Findings of Fact, Conclusions of Law and Agreed Order (Case No. 96-01-24-235RC);
- Exhibit D-2: Order Denying Motion to Modify Agreed Findings of Fact, Conclusions of Law and Agreed Order (Case No. 96-11-B-1023RC);
- Exhibit D-3: Respondent's older daughter's deposition transcript (Yakima County Superior Court Case No. 85-3-00773-8);<sup>2</sup>
- Exhibit D-4: Findings of Fact and Conclusions of Law in Yakima County Superior Court (Case No. 85-3-00773-9);
- Exhibit R-1: Respondent's curriculum vitae;
- Exhibit R-2: Respondent's continuing education course certificates of completion;
- Exhibit R-4: Washington State Patrol/Department of Licensing record check regarding the Respondent;
- Exhibit R-6: September, 22 1986 letter from Gary Dale Smith, Psy.D.;
- Exhibit R-7: May 4, 1993 Report by E. Clay Jorgenson, Ph.D.;
- Exhibit R-9: February 23, 1994 Report by Herbert Ayers, MA, MHP;
- Exhibit R-10: March 27, 1996 Report by Herbert Ayers, MA, MHP;
- Exhibit R-11: December 3, 1998 Psychological Evaluation of the Respondent by Jimmye Angell, Ph.D.;

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<sup>1</sup> Exhibits D-1, D-2, and R-12 were admitted for dispositional purposes only. (Prehearing Order No. 2)

<sup>2</sup> Exhibit D-3 was admitted in Prehearing Order No. 2 under ER 404(b) analysis.

- Exhibit R-12: 1988-1993 correspondence between the Respondent and his second wife and daughter;
- Exhibit R-13: September 7, 2004 letter from the Respondent's younger daughter to the Department of Health;
- Exhibit R-14: May 1986 Guardian Ad Litem Report (85-3-00773-8);
- Exhibit R-15: March 21, 1987 report by E. Clay Jorgensen, Ph.D.;
- Exhibit R-16: March 18, 1988 report by E. Clay Jorgensen, Ph.D.;
- Exhibit R-22: August Piper, M.D., curriculum vitae; and
- Exhibit R-24: Journal entries of the Respondent's second wife.

During the hearing, the Respondent filed a motion to dismiss the statement of charges arguing that the Secretary of the Department of Health lacks jurisdiction over charges that allegedly occurred prior to June 1, 1986. The motion was granted in part on jurisdictional grounds. The charges related to alleged conduct occurring prior to the Uniform Disciplinary Act's June 1, 1986 effective date were dismissed for lack of jurisdiction.<sup>3</sup> Therefore, the sexual misconduct allegations related to the Respondent's older daughter (AJ) were dismissed since the alleged acts occurred prior to June 1, 1986. The sexual misconduct allegations related to the Respondent's younger daughter (RJ) were only partial dismissed since the allegations spanned from 1986 through 1994.

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<sup>3</sup> See Conclusion of Law 2.1 in this order.

## I. FINDINGS OF FACT

1.1 The Respondent was issued a registration to practice as a counselor by the State of Washington in 1990. The Respondent has practiced as a counselor for approximately 16 years.

1.2 The Respondent has two daughters and one son. During his first marriage, the oldest daughter (AJ) was born in October 1966 and his son in 1969. The first marriage dissolved in 1980. During the Respondent's second marriage, his second daughter (RJ) was born in July 1983. The Respondent's second marriage dissolved in May 1987. The Superior Court dissolution order awarded custody of RJ to the Respondent's wife and limited his visitations to supervised visitations because the court was concerned that the Respondent may have sexually abused RJ and may do so again.<sup>4</sup>

1.3 In September 2004, RJ filed a complaint with the Department of Health (Department) alleging that her father (Respondent) sexually abused her from approximately 1986 to 1993, when RJ stopped seeing her father at the age of ten. RJ did not file an earlier complaint with the Department because she did not realize her father was a Washington State registered counselor until she heard him speak at a conference. RJ filed her complaint soon after she learned that her father was a register

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<sup>4</sup> After the guardian ad litem learned that the Respondent had sexually abused his older daughter (AR) for a number of years, the guardian ad litem recommended that the mother be awarded custody of RJ and that the Respondent's visits with RJ be supervised. The guardian ad litem concluded that the risk was too great that the Respondent was sexually abusing RJ because the Respondent had sexually abused AR for many years. Pursuant to the guardian ad litem's report, the court concluded in the divorce proceedings that the Respondent's daughter had been sexually abused, and that the Respondent may have abused his daughter.

counselor because she was concerned that the Respondent may sexually abuse vulnerable counseling clients as he had abused her.

1.4 From a very young age, the Respondent touched RJ in a sexual manner. After the Respondent and his second wife separated in June of 1985, the Respondent was permitted visitation with RJ without supervision. In January 1986, the Respondent's visitations with RJ were limited to supervised visits because a concern had been raised that the Respondent had sexually abused RJ, who was only three years old.<sup>5</sup>

1.5 The Respondent sexually abused RJ during supervised visits from approximately 1987 to 1993 when RJ stopped seeing the Respondent.

1.6 The maternal grandparents, the Respondent's former in-laws, were the supervisors during the Respondent's visits with RJ. The grandparents did not always watch the Respondent and RJ. At times, the Respondent and RJ were out of the grandparents' view in the grandparents' home and on outings to parks or other locations.

1.7 During the supervised visitations, when the grandparents were not watching, the Respondent touched RJ's genitals and/or chest and directed RJ to touch him on his genitals and in the area of his genitals. For example, the Respondent inserted his finger into RJ's vagina while bathing her, rubbed RJ's genitals over her bathing suit

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<sup>5</sup> On May 27, 1987 when the court entered the divorce decree, it was not clear at that time to the court, the guardian ad litem, and the psychologist who sexually abusing RJ. RJ was only two or three years old when the abuse started and she demonstrated unusual behavior indicting sexual abuse. At this very young age, RJ expressed fear of her father (Daddy) and of her sitter's husband's (Danny). It is now clear that the Respondent sexually abused RJ for a number of years. In 1987, the experts did not have the benefit of observing RJ's adult testimony describing her father's sexual abuse spanning approximately seven years. After January 1986 when the Respondent and not the sitter's husband had access to RJ, the sexual abuse continued until 1994.

while swimming and over her underpants when she wore dresses, and directed RJ to touch him in the area of his genitals over his pants while "playing doctor."

1.8 Once the supervised visitation started, RJ did not tell her mother of the sexual abuse by her father (Respondent) because RJ did not feel her mother had any control.<sup>6</sup> Her grandmother who supervised the visitations made it clear to RJ that she trusted the Respondent and disciplined RJ when she did not permit her father (Respondent) to hug or touch her. Her grandmother would direct RJ to hug and show affection to her father, when she was trying not to touch him. The grandmother permitted the Respondent to be with RJ without anyone watching them. The grandparents permitted the Respondent, without supervision, to take his daughter on short drives, to change her cloths, and to give her baths. At the time the abuse occurred, RJ thought the abuse was her fault and that her father did not love her enough.<sup>7</sup> These are not unusual feelings of young victims of sexual abuse.

1.9 Prior to the supervised visits, or soon after they started, the grandmother concluded that the sitter's husband, Danny, not the Respondent, sexually abused RJ. It is clear that RJ was sexually abused when she was only two and three, and that abuse

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<sup>6</sup> The court designated the grandparents as the visitation supervisors. The mother and grandmother had a strained relationship for years. This relationship grew worse over time, and even Dr. Jorgensen requested that they all protect the child from the strain and disagreements between the grandmother and daughter. The visitations ended in 1994, after the grandmother struck the mother.

<sup>7</sup> The Respondent's daughter wrote a card to him in June 1991. In the card, RJ describes her goldfish, asks for more goldfish, and requests another trip to see the humming birds during her next visit. She signed the letter "sincerely" and on the back of the card "love." The love and sincerely may reflect her conflicted feelings for her father; that the sexual abuse is her fault and that her father does not love her enough. On the other hand, the card may merely demonstrate her request for more goldfish and for a fun outing. This card does not indicate that RJ is fabricating a story of sexual abuse.

continued after Danny was no longer in the child's life. The Respondent clearly sexually abused RJ during the years that the grandparents failed to closely supervise the visits.<sup>8</sup>

1.10 The grandmother claimed that she never let RJ and the Respondent out of her sight, and therefore, concluded that the Respondent never abused RJ. The grandmother's testimony is not credible for two reasons. First, it is not plausible that the grandmother<sup>9</sup> never let the Respondent and RJ out of her sight over approximately six to seven years of visitations, especially considering the activities such as the grandmother cooking dinner, the Respondent swimming with RJ, or walking down a trail in a park. Second, the grandmother did not believe that the Respondent had sexually abused RJ. Even Dr. Jorgensen, who saw RJ and her mother off and on from approximately 1987 through 1993,<sup>10</sup> stated in his May 1993 report that he was concerned that the grandparents are not taking their "supervision responsibility seriously" because they do not believe that the Respondent ever hurt RJ.<sup>11</sup> RJ confirms Dr. Jorgensen's concerns. RJ described various outings and activities, when her grandparents permitted the Respondent to be alone with her or out of eye sight, when the Respondent touched her in a sexual manner.

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<sup>8</sup> Prior to January 1986, the Respondent saw RJ in unsupervised visits. Danny only saw RJ with his wife when RJ was dropped off very early or picked up late. The mother and two babysitters reported RJ's disconcerting behavior indicating sexual abuse at the age of two or three, (i.e., the child pulling at her genitals and saying "Icky. Icky." or "Hurt. Hurt."), but not who sexually abused the child. At this very young age, RJ made negative statements regarding the Respondent and the sitter's husband, Danny. The mother did not tell the guardian ad litem or Dr. Jorgenson that she thought her husband rather than the sitter's husband sexually abused her daughter.

<sup>9</sup> At first, the grandmother supervised the visitation when her husband was working. After he retired, both grandparents supervised the visitation.

<sup>10</sup> The Respondent offered Dr. Jorgensen's three reports dated 1987, 1988, and 1993 as exhibits. Exhibits R-17, R-15, and R-16.

<sup>11</sup> Respondent's Exhibit R-7, Page 1-2.

1.11 RJ's testimony describing years of sexual abuse is credible in light of her demeanor, her consistent prior statements,<sup>12</sup> her ability to perceive and remember, her plausible description of events that are consistent with independent ascertainable facts, and other reliable sources.<sup>13</sup> In addition, RJ does not have a motive to lie. RJ filed her complaint and offered her testimony in an attempt to protect vulnerable counseling clients from potential harm from her father. There is no indication that RJ was unduly influenced by her mother or counseling professionals<sup>14</sup> to fabricate the description of years of sexual abuse. If RJ filed the complaint for secondary gain, to please her mother, why would she wait until she was a 26-year-old graduate student who did not file a civil complaint for monetary damages or a criminal complaint? The more logical explanation is the one RJ provided. RJ only recently learned that her father is a registered counselor, and therefore filed a complaint in an attempt to protect vulnerable counseling clients from risk of harm similar to the abuse she suffered as a child.

1.12 There is no dispute that RJ had the cognitive capacity to perceive and remember the events such as sexual abuse after the age of five or six. The Respondent asserts that RJ did not have the ability to store retrievable memories until the age of five or six.<sup>15</sup> The evidence clearly indicates that RJ had the capacity to store and retrieve

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<sup>12</sup> The daughter's testimony is consistent with her written complaint, the guardian ad litem's report, and the psychological/psychiatric reports offered by both the Respondent and the Department.

<sup>13</sup> The Department's expert, Dr O'Shaunessey, outlined in her testimony the numerous collaborating events, statements, and records that demonstrate RJ's testimony is consistent, plausible, and reliable.

<sup>14</sup> There is no indication that a counselor suggested to RJ that her father abused her. As a teenager and an adult she did not seek counseling to cope with her memories of sexual abuse. She used other methods to cope with her feelings and memories such as keeping a journal.

<sup>15</sup> The Respondent's expert, Dr. Piper, testified that one may not remember one's early memories prior to the age of five or six, and that RJ's memories of events after that age are corrupted by the undue influence of her counselor(s) and mother. The evidence does not support the undue influence theory.

memories from the age of three or four when the supervised visitation started. RJ “always held” her memories of sexual abuse even the early abuse starting at the age of three and a half.<sup>16</sup> The Respondent’s daughter did not use a counselor to retrieve, recover, or validate memories as the Respondent argues.

1.13 The Respondent’s testimony was not credible, because it is not consistent with statements from reliable sources, such as the psychologists/psychiatrist,<sup>17</sup> the guardian ad litem,<sup>18</sup> the Respondent’s former supervisors,<sup>19</sup> the Respondent’s son, and older daughter (AJ). The Respondent’s former supervisors and psychologists questioned the Respondent’s veracity and forthrightness.<sup>20</sup> Even his own expert, Dr. Piper, testified

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<sup>16</sup> Some very early memories when the Respondent’s daughter was two and a half came back to her later. (i.e., sexual abuse in the shower). She pieced together these very early memories with the memories she always held. Since these very early memories relate to events that predate June 1, 1986 (UDA effective date), it is not necessary in this order to determine whether those memories are reliable.

<sup>17</sup> For example, See Respondent’s Exhibit R-11, the 1998 report from Jimmye Angell, Ph.D. Dr. Angell notes that the Respondent “did leave out the unsavory circumstances under which he left this Sea Mar job in the summer of 1988, so his veracity and true forthcomingness is in some doubt. Also, he did not tell me of the existence of a previous mental health examination by Dr. Lowe.” The Respondent also failed to tell Dr. Angell of four written complaints regarding his counseling services at Sea Mar. Dr. Angell’s report indicates that the Respondent failed to tell his supervising psychiatrist, Maria Nochline, M.D. (supervision was required by the 1996 disciplinary order) of complaints from some of his clients. Dr. Nochline therefore refused to write the last evaluation at the end of her six months supervision of the Respondent in 1997-8.

<sup>18</sup> Exhibit R-14.

<sup>19</sup> Julia Ortiz, MSW, was the Respondent’s Sea Mar supervisor in 1998. She stated that the Respondent failed at first to inform her of his probationary status and the conditions of his probation. Under her supervision, four written complaints were filed against him that included complaints of vulgar behavior, humor involving sexual genitalia, and demeaning and intimidating behavior. Exhibit R-11

<sup>20</sup> Exhibit R-11.

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that he believed AJ's allegations of sexual abuse. Therefore, Dr. Piper does not believe the Respondent's denial of sexually abuse AJ.<sup>21</sup>

Sexual abuse of AJ<sup>22</sup>

1.14 In 1987, AJ was deposed during the custody proceeding regarding RJ. It is extremely clear from the deposition and from the Respondent's son, that the Respondent sexually abused AJ from an early age until the age of twelve or thirteen. At all hours of the night, the Respondent came into AJ's bedroom, woke her, tied or tried to tie her hands to the bed, took off her pants, and while unzipping his pants touched her genitals and squeezed her breasts. The frequency grew worse with time. By the time AJ was 11 years old, he was coming into her room at night at least once a week to sexually abuse her. AJ fought him off when she could, and when she was older, she would flee her home. The abuse only ended when AJ stopped seeing her father.

1996 Disciplinary Order<sup>23</sup>

1.15 In June 1996, the Respondent was disciplined for substandard care and sexual contact with a female counseling client. The Respondent had sexual contact with

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<sup>21</sup> Dr. Piper did not find the Respondent's denial of the sexual abuse of his older daughter (AJ) credible because the Respondent's son witnessed and corroborated his father's sexual abuse of his sister. Dr. Piper concluded that RJ's story of sexual abuse is not credible because it is not corroborated with an eye witness or with an admission by the Respondent. Often sexual abuse is committed with no witnesses for obvious reasons. For that reason, courts look to other corroborating evidence such as the evidence outlined in these findings and the evidence relied upon by Dr. O'Shaunessy.

<sup>22</sup> The clear and convincing evidence regarding the Respondent's sexual abuse of AJ was admitted under ER 404(b) to help the presiding officer assess the credibility of RJ. The evidence was not admitted to prove the dismissed charges (that predate the UDA), or to show that the Respondent is likely to have committed similar bad acts. The evidence regarding AJ was not admitted for dispositional purposes.

<sup>23</sup> The June 1996 disciplinary order was only considered for sanctioning purposes.

a very vulnerable counseling client in 1993. At the time, the counseling client suffered from "major depression, substance abuse, bulimia nervosa, and post traumatic stress."<sup>24</sup>

1.16 Pursuant to the 1996 disciplinary order, the Respondent received counseling to address his evasiveness, physiological defensiveness, and potential for emotional, physical and sexual abuse.<sup>25</sup> Despite the benefit of treatment and hindsight, the Respondent blames the client he abused, rather than recognizing his unprofessional conduct. The Respondent's attitude is particularly disconcerting because it is superimposed over a pattern of abusing vulnerable females of different ages under his control and/or guidance.

1.17 The Respondent's behavior demonstrates a pattern of abuse, denial, deceit, and a lack of remorse or empathy for his victims. After the Respondent abused RJ for approximately seven years, he was disciplined for sexual abuse of a very vulnerable counseling client and received counseling to address this unacceptable behavior. He now denies any past abuse. He blames his counseling victim for the sexual contact. He accuses his daughters, his son, and his former supervisors of lying. The Respondent's attitude and past behavior clearly indicates that the Respondent cannot be trusted with the vulnerable counseling population.

## **II. CONCLUSIONS OF LAW**

2.1 The Secretary of the Department of Health (and by delegation the Presiding Officer) has jurisdiction to discipline counselors for alleged misconduct that occurred after the June 1, 1986 effective date of the Uniform Disciplinary Act (UDA).

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<sup>24</sup> Exhibit D-1 was only considered for dispositional purposes.

<sup>25</sup> Exhibit R-1, Paragraph 3.12.

RCW 19.130.050. Prior to 1987, counselors were not required to obtain a registration from the State of Washington before practicing as a counselor. In 1987, the legislature adopted the Counselor Act (chapter 18.19 RCW) that required counselors to register. RCW 18.19.030. Through the Counselor Act, the legislature placed counselors under the Secretary's disciplinary authority that is outlined in the UDA. RCW 18.19.050(2).

2.2 The UDA only applies to conduct occurring on or after June 1, 1986.

RCW 18.130.900. The pre-June 1986 law is to be applied "in the same manner" as if the UDA had not been enacted. RCW 18.130.900(2)(3). Since there was no pre-UDA law that placed counselors under the disciplinary authority of the Secretary, the Secretary's jurisdiction is limited to the June 1, 1986 cut-off date. RCW 19.130.900. Therefore, the sexual misconduct charge related to AJ was dismissed, and the portion of the sexual misconduct charge related to RJ from 1995 to June 1986 was dismissed. The remaining charge relates to the Respondent's sexual abuse of RJ that occurred after June 1, 1986.

2.3 The 1987 deposition of AJ was admitted for the limited purpose to show a "common scheme or plan" regarding the Respondent's sexual abuse of his daughters. ER 404.<sup>26</sup> Courts have held that evidence of prior sexual abuse of children can be admitted to show common scheme or plan going back as far as 17 and 24 years.<sup>27</sup> The

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<sup>26</sup> Counsel represented the Respondent during the deposition. His counsel cross-examined AJ. The Respondent had the opportunity and similar motive to develop AJ's testimony during the deposition. For additional analysis see Prehearing Order No. 2 regarding the admission of the deposition. In this order, Judge Mitchell denied the Respondent's motion in limine regarding the deposition and other evidence.

<sup>27</sup> For example: *State v. Maestas*, 224 N.W.2d 248 (Iowa 1974) (Evidence was admitted regarding the defendant's abuse of his two older sisters that occurred 6 and 10 years prior to the alleged abuse.); *People v. Sabin*, 614 N.W.2d 888 (Mich. 2000) (Evidence was admitted regarding the defendant's sexual abuse of his stepdaughter 9 to 17 years prior to the alleged abuse.); *State v. McIntosh*, 534 S.E.2d 757 (W.Va. 2000) (Evidence was admitted regarding a teacher's abuse of other students occurring 3 to 21 years ago in

deposition regarding abuse of AJ was not admitted or considered to prove the Respondent is a bad person or that he acted in conformity with the prior act. The evidence was admitted to help the presiding officer assess the credibility of the testimony regarding the alleged sexual abuse of RJ.

2.4 As the Washington Supreme Court stated, child abuse may be proven with corroborating evidence in criminal cases. *State v. Young*, 160 Wn.2d 799, 811-912 (2007).<sup>28</sup> Corroborating evidence may be satisfied through indirect evidence such as: 1. motive to lie; 2. character and demeanor of the witness; 3. likelihood of faulty recollection (the capacity to perceive and remember); 4. relationship between the declarant and alleged perpetrator; 5. timing of the statement, 6. consistency with prior statements; 7. consistency with statements from reliable sources; 8. consistency with independent ascertainable facts; and 9. plausibility of allegations. *Id.* These factors were considered in assessing the credibility of the Respondent's and AJ's testimony.

2.5 The standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006) cert. denied 127 S.Ct. 2115 (2007).

2.6 The Department proved with clear and convincing evidence that the Respondent sexually abused RJ from approximately June 1986 to 1993, and that such conduct constitutes unprofessional conduct as defined under RCW 18.130.180(1):

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a case regarding sexual abuse that occurred 7 to 8 years prior to the filing of the charges. The other acts and the charges were not found too remote in time, not unduly prejudicial.) *State v. Jackson*, 625 So.2d 146 (La 1993) (Evidence of other acts occurring 15 to 24 years prior to pending allegation was admitted.)

<sup>28</sup> In *State v. Young*, the court evaluated corroborating circumstances to assess the trustworthiness of a child's hearsay statement that was admitted when the child was not available. In the case at hand, the child, now a young adult, testified.

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The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. ...

The Department's evidence is clear and convincing because RJ's testimony is credible and supported by the types of corroborating evidence that the Supreme Court outlined in *State v. Young (supra)*.

2.7 In determining appropriate sanctions, protection of the public must be considered before the rehabilitation of the counselor. RCW 18.130.160. Prior disciplinary orders should be considered when assessing the risk the Respondent poses to the public. *Id.* As a result, there are a number of aggravating factors to assess in determining appropriate sanctions: 1. prior discipline for sexual contact with a vulnerable client; 2. prolonged sexual abuse of RJ, a vulnerable child.; 3. treatment failure for the Respondent's evasiveness and abusive behavior; 4. multiple victims of sexual abuse; 5. deceitful behavior; 6. lack of remorse; and 7. lack of empathy for his victims. These aggravating factors clearly demonstrate that the Respondent poses a great risk to public safety. Therefore, the Respondent's registration must be revoked to protect the public from risk of harm.

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### III. ORDER

The Respondent's registration to practice as a counselor is REVOKED. The Respondent may not apply for reinstatement for a minimum of 20 years from the date of this order.

Dated this 20<sup>th</sup> day of November, 2007.



ZIMMIE CANER, Health Law Judge  
Presiding Officer

FOR INTERNAL USE ONLY: (Internal tracking numbers)  
Program No. 2004-09-0004

### CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(1)	Violated

### NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either Party may file a petition for **reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit  
PO Box 47879  
Olympia, WA 98504-7879

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and a copy must be sent to:

Registered Counselors Program  
PO Box 47869  
Olympia, WA 98504-7869

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

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