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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
BUREAU OF PUBLIC HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

In re: Paul L. Lockwood, R.S.

Petition No. 880316-35-001

CONSENT ORDER

WHEREAS, Paul L. Lockwood, R.S., of Jennifer Road, New Fairfield, Connecticut, has been issued license number 000230, to practice as a registered sanitarian by the Department of Health Services pursuant to Chapter 395 of the General Statutes of Connecticut, as amended; and

WHEREAS, Paul L. Lockwood, R.S., hereinafter referred to as the Respondent, hereby admits as follows:

1. That from December 6, 1977 until January 9, 1987, he was employed as the Sanitarian for the Town of New Fairfield.
2. That as Town Sanitarian, he inspected and approved subsurface sewage disposal systems for newly constructed and existing homes in New Fairfield.
3. That during his period, he failed to adhere to the detailed Technical Specifications contained in the Public Health Code of the State of Connecticut in inspecting and approving certain subsurface sewage disposal systems.
4. That his failure to adhere to the Public Health Code did not meet the accepted standard expected of registered sanitarians in the State of Connecticut.
5. That his failure to adhere to the Public Health Code was negligent.
6. That he denies that his failure to adhere to the Public Health Code was willful, wanton, malicious and/or unethical conduct.

7. That by his actions in (3) above he has violated the provisions of §20-363 of the General Statutes of Connecticut by failing to conform to the accepted standards of his profession.

NOW THEREFORE, pursuant to §19a-17 and §20-363 of the General Statutes of Connecticut, Paul L. Lockwood, R.S. hereby stipulates and agrees to the following:

1. That he waives his right to a compliance conference and a hearing on the merits of this matter;
2. That his license to practice as a registered sanitarian in Connecticut is hereby suspended for two years;
3. That he shall be assessed a \$1,000.00 penalty for failing to comply with the provisions of Section 20-363 of the Connecticut General Statutes.

Said penalty shall be paid to:

Treasurer, State of Connecticut
Department of Health Services
Public Health Hearing Office
150 Washington Street
Hartford, Connecticut 06106

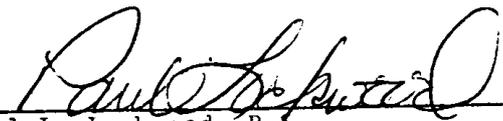
A certified check for this amount shall accompany this Consent Order upon execution by the Respondent.

4. That he is not practicing as a registered sanitarian in Connecticut and he will not seek employment in any Local Health Department in the State of Connecticut.
5. That this Consent Order is in settlement of the present action and any future actions brought by the Department of Health Services against the respondent charging him with misconduct which may have occurred while he was employed by the Town of New Fairfield.
6. That any deviation by the Respondent from the terms of this Consent Order shall constitute a violation and will result in the following procedure:

- a. That he will be notified in writing that the term(s) of this Consent Order have been violated provided no prior written consent for deviation from the term(s) had been granted by the Department of Health Services.
 - b. That said notification shall include the act(s) or omission(s) which violate the Consent Order.
 - c. That he will be allowed fifteen (15) days to demonstrate to the Department of Health Services that he was in compliance with the terms of this Consent Order or to cure the violation of the terms of this Consent Order.
 - d. That if he does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department of Health Services, his license shall be revoked or he shall be entitled to a hearing, at the Respondent's option.
 - e. He must initiate said hearing through a written request by certified mail to the Department of Health Services within fifteen (15) days from notification of violation.
 - f. He shall be entitled to a hearing before a duly appointed agent of the Commissioner of Health Services.
 - g. Evidence presented to said agent by either the Department of Health Services or Respondent shall be limited to the alleged violation(s) of the term(s) of this Consent Order.
7. That he understands that this Consent Order may be considered as evidence of the above admitted violations in any proceeding before a duly appointed agent of the Commissioner of Health Services when; (1) his compliance with this same order is at issue, or (2) when his compliance with §20-363 of the General Statutes of Connecticut, as amended, is at issue.

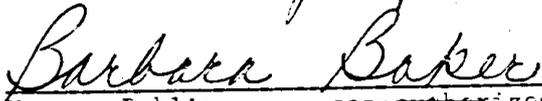
- 8. That this Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, that said order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive him of any rights that he may have under the laws of the State of Connecticut or of the United States.
- 9. That this Consent Order is effective the first day of the next month after which the seal of the last signatory is fixed to this document.
- 10. That he has consulted with an attorney prior to signing this document.

I, Paul L. Lockwood, R.S., have read the above Consent Order, and I agree and admit to the terms and allegations set forth therein. I further declare the execution of this Consent Order to be my free act and deed.



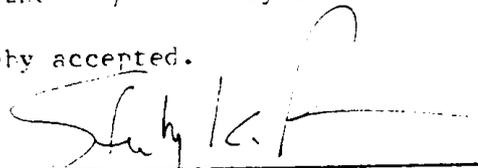
 Paul L. Lockwood, R.S.

Subscribed and sworn to before me this 16th day of July 1988.



 Notary Public ~~or person authorized~~
~~by law to administer an oath or~~
~~affirmation~~

The above Consent Order having been presented to the duly appointed agent of the Commissioner of Health Services on the 7th day of April 1988, it is hereby accepted.



 Stanley K. Feck, Director
 Division of Medical Quality Assurance

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DIVISION OF MEDICAL QUALITY
ASSURANCE
DEPT. OF HEALTH SERVICES

STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

In Re: Paul L. Lockwood, R.S.
Petition No. 880316-35-001

MEMORANDUM OF DECISION

The Respondent, Paul L. Lockwood, has moved to compel the execution of a negotiated consent order in settlement of this disciplinary proceeding. On September 16, 1988, the hearing officer Gordon T. Allen, issued a recommended decision, concluding that the consent order should be effectuated.

Notice is hereby given to the parties that the undersigned Deputy Commissioner of the Department of Health Services, having heard and fully considered the oral argument presented pursuant to Conn. Gen. Stat. sec. 4-179 on December 6, 1988, adopts as a final decision the September 16, 1988 Recommended Decision of the hearing officer, with the exception of the rationale expressed on page 5 thereof as to the doctrine of promissory estoppel. Without ruling on the applicability of promissory estoppel to this case, therefore, it is my final decision, based on the unique facts and equities of this case, that the consent order be executed and performed in full by the parties within thirty (30) days of the date of this decision.

March 28, 1989

Date


Dennis F. Kerrigan
Deputy Commissioner

September 16, 1988

State of Connecticut
Department of Health Services
Bureau of Health System Regulation
Division of Medical Quality Assurance

Re: Paul L. Lockwood, R.S.
Petition No.: 880316-35-001

MEMORANDUM OF RECOMMENDED DECISION

At issue is Motion by the above-referenced Respondent to Enforce a Settlement Agreement. The Agreement referred to was a document entitled Consent Order, captioned as above, which was forwarded to the respondent's attorney on July 12, 1988. The Consent Order was signed by the Respondent, notarized, and returned to the State along with a check for \$1,000.00, the penalty assessed by the State in the Consent Order. The Respondent now requests that an Order be issued implementing the Consent Order, as the State refused to sign the Order upon its return.

By way of background, the State issued a Summary Suspension Order on June 28, 1988, along with a Statement of Charges containing Four Counts, all dealing with the alleged failures of the Respondent, a licensed sanitarian, to conform to pertinent statutes and the Public Health Code. Pursuant to this license action the undersigned was designated to serve as Hearing Officer, and July 20, 1988 established as the date for argument on various procedural motions filed by the Respondent (See Record).

According to the record, it appears between June 28, 1988 and July 12, 1988, that telephone discussions were held between representatives for the State and Attorney

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William Laviano, Counsel for the Respondent. These resulted in a formal written offer of Settlement from Attorney Antoria Howard, Staff Attorney for the Public Health Hearing Office, which took the form of the Consent Order hereinabove referenced. The Respondent was requested to either execute the Consent Order, or if it were not acceptable, to be prepared to proceed with the July 20, 1988 scheduled hearing.

The Respondent executed the Consent Order on July 16, 1988 and it was returned to the State on July 18, 1988 via a covering letter from Attorney Laviano. Enclosed with that letter, which referred to Respondents "acceptance of the offer of Settlement," was a check for \$1,000.00 drawn on the Union Savings Bank and the Respondents license.

On or about July 19, 1988, the undersigned was advised by the State that a Settlement had been reached and therefore agreed to postpone the July 20, 1988 hearing. However, upon receiving the returned Consent Order, the State refused to sign same and instead elected to go on with these proceedings. As a result a hearing was held on August 4, 1988.

At the hearing various motions were heard and acted upon, as reflected in the transcript of the hearing. However, the Respondent's Attorney also made an oral motion at said hearing to compel the State to enforce or honor the "Settlement Agreement" which Respondent claimed to be in existence. Oral argument was heard regarding this issue, and at the undersigned's request, both parties submitted briefs in support of their respective positions. In reaching my decision, I have taken into consideration the record as of August 4, 1988, the oral agreement of counsel, and the Memorandums provided me by the parties along with the attached affidavits.

Both parties agree that ordinary contract principles of law apply to administrative consent decrees and settlement agreements. Connecticut Pharmaceutical Association, Inc. v. Milano, 191 Conn. 555 (1983); Owsiejko v. American Hardware Corp. 137 Conn. 185 (1950). It is claimed by the State, however, that its offer was made in ignorance of the fact that a criminal investigation of the Respondent was underway. When made aware of this fact on or about July 20, 1988, the State withdrew its offer. It claims that the Consent Order, or contract, was voidable on account of the failure of the Respondent to disclose this information.

It is true that a contract may be voidable because of "fraud, duress, mistake or other invalidating cause." Restatement of Contracts, 2d Sec. 19 (3). The state cites cases for the proposition that a conscious failure to disclose a material fact, Jackson v. Jackson, 194 Conn. 805 (1984), or fraud in the inducement of a contract, Kavaico v. T.S.E., Inc., 2 Conn. 157, 70A2d 109(1949), permits the misled party to rescind. Respondent does not argue this point of law; instead Respondent affirmatively asserts (1) that the State either did know, or should have known of the criminal investigation and/or (2) he had no duty to disclose this fact during the negotiations.

Therefore, the issue is largely factual in nature. Since it is undisputed that Settlement had been agreed to, and the State is the party seeking the rescission, the burden should be and is on the State to establish its claim. The briefs and affidavits, and the August 4th hearing, reveal considerable differences as to same facts. For example, Mr Laviano claims that Attorney Howard was aware of a criminal

complaint (p. 7, Respondents Brief of 8/11/88 and p. 4 of Mr. Laviano's affidavit), and that David Paris, Chief of the Public Health Hearing Office was as well (p. 2 Respondents Reply to Objection to Oral Motion to Compel). Both Mr. Paris and Attorney Howard deny having such knowledge before July 20, 1988 in their respective affidavits.

It is not necessary to resolve these particular discrepancies given other factors available from the record. For instance, Frank Schaub, Chief on the States On-Site Sewage Disposal Section was aware that the States Attorneys office was investigating the Respondent as early as February 1988. Newspaper coverage of this matter had been extensive, and in several articles prominent reference had been made to such a criminal investigation (e.g. March 2, 1988 edition of New Fairfield Citizen News; July 15, 1988 edition of Danbury, News Times). Mr. Lavianos insistence in his Settlement negotiations that the Consent Order settle present and future actions for Misconduct (authors emphasis), not just negligence (see paragraph 5 page 2 of the Consent Order) should have reasonably have put the State on notice of his intentions.

Based on these facts it is difficult to argue with Respondent counsel's claim that he had every reason to believe that the State knew, or should have known, what it was doing when it made its offer. It shouldn't be the burden of the Respondent in this situation to prove what state officials told each other at various times. It is also not clear to the undersigned that the Respondent had a duty in the first place to disclose that he was under investigation by the States Attorney, and none of the cases cited by the State deal, in my opinion, with similar factual situations.

It also appears to the undersigned that the Respondent acted reasonably in reliance on the fact that a Settlement Agreement had been reached, and that the contract doctrine known as Promissory Estopped bars the State from repudiating this agreement. The Respondent signed the Consent Order, thereby publicly admitting under oath facts detrimental to himself and his case; he surrendered his license; he withdrew \$1,000.00 by bank check and paid same to the State; and he agreed to the consellation of the July 20th hearing date, all in reliance on their being an agreement with the State. See Restaurant of Contracts, 2nd Sec. 90, D'Ulesse-Cupo v. Board of Directors of Notre Dame High School, 202 Conn. 206 (1987) re Promissory Estopped.

There would appear to be public policy reasons for enforcing this settlement as well. The negotiation of consent decrees and settlements are inevitable in the course of the Department of Health's licensing function, and future counsel should certainly feel that their clients can rely on the validity of settlements reached with the State after good faith negotiations.

For these reasons, then, it is my conclusion that the State should honor and implement the Consent Order executed by the Respondent on July 16, 1988. However, I do not agree with Respondents belief that I, as hearing officer, have the authority to order the Department to execute same. As pointed out by Attorney Howard in her brief a "hearing officer shall render proposed findings of fact...to the Commissioner for

decision "Section 19-2a-30 of the Department of Regulations. The Commissioner may accept or reject a hearing officers proposed findings.

RECOMMENDED DECISION

It is therefore my finding that a valid settlement was entered into between the Department of Health Services, Bureau of Health System Regulation, Division of Medical Quality Assurance, and the Respondent Paul L. Lockwood, R.S., as embodied in the Consent Order hereinabove referenced. It is my recommendation that the Commissioner have the Consent Order executed and performed by the State.

Respectfully Submitted,

Gordon T. Allen
Hearing Officer