

Human Services Board, Matt Harnett, and Alexandra Thayer

Daniel Jerman, Hearing Officer

November 22, 1994

Laura McClure, Fair Hearing No. 12,694

INTRODUCTION

The petitioner applies to the Board for an Order requiring the Department of Social and Rehabilitation Services (SRS) to retrieve, expunge, and destroy all records pertaining to the petitioner in connection with a report of child sexual abuse. The matter has twice previously been submitted to the Board in the form of a Stipulation by the parties. Both times the Board declined to enter an Order; the first time because the parties' proposed order at that time implicated other parties not subject to the Board's jurisdiction, the second time because the Board did not perceive there to be a case in controversy between the petitioner and SRS. On October 12, 1994, the attorneys for the parties appeared before the hearing officer to further explain their positions.

PROPOSED FINDINGS OF FACT

The facts are not in dispute. The petitioner is a twenty-year-old woman, born on August 18, 1974. On April 8, 1986, when the petitioner was twelve, SRS substantiated a report that the petitioner had been sexually abused.

The petitioner turned eighteen on August 18, 1992. On September 7, 1993, SRS made the report of the petitioner's sexual abuse, with the petitioner's name still on it, available to law enforcement officials in connection with the prosecution of the perpetrator of that abuse for a similar but unrelated alleged crime against another individual.

SRS has now removed and destroyed the record from its registry. However, a copy of the report remains in the hands of the states attorney and the perpetrator's attorney in the ongoing prosecution of the perpetrator for the other alleged crime. The petitioner faces being called as a witness in that prosecution, something she does not wish to do.

RECOMMENDATION

SRS should be ordered to seek and retrieve all records of abuse pertaining to the petitioner and to expunge and destroy those records.

REASONS

33 V.S.A. § 4916(g) includes the following provisions:

A person may, at any time, apply to the human services board for relief if he or she has reasonable cause to believe that contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority.

...

SRS does not dispute that under the above statute it should have destroyed the record in question as soon as the petitioner turned eighteen, and that it should not have made copies of that record available to law enforcement after that date. The parties also agree that SRS has requested the return of the copies of the report now in the possession of the states attorney and the perpetrator's attorney. To date, those individuals have not relinquished their copies of the report.⁽¹⁾

A problem with this case is that it is not clear whether the Board has the legal authority under the above statute to order those individuals to return their copies of the report to SRS so that the record pertaining to the petitioner can be destroyed. Even if it did, however, the parties admit that due process would require the Board to at least notify those individuals before it considers any such action. The petitioner and SRS agree, however, and so does the hearing officer, that the rights of the states attorney and the

perpetrator vis-a-vis the report in question are best left to the court that has jurisdiction over the pending prosecution of the perpetrator.

The essence of the petitioner's "grievance" before the Board at this time is her concern that there be no question that she has exhausted her administrative remedies against SRS, and that there be no question in the court's mind as to a "final" administrative position regarding SRS's legal responsibilities in the matter. Although SRS does not dispute the petitioner's legal position in this matter, the petitioner, with SRS's agreement, deems it essential to her interests that the Board issue an order that effectively "binds" SRS in any court proceedings concerning the records in question. The hearing officer concludes that this is a sufficient "case in controversy" to justify the Board's issuance of the order sought by the petitioner in this matter.

Inasmuch as there is no dispute that the record in question is being "misused" according to the above statute, the petitioner's request that SRS retrieve, expunge, and destroy it should be granted.

THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING IN MONTPELIER ON WEDNESDAY, DECEMBER 7, 1994. THE MEETING WILL BE HELD AT THE LABOR RELATIONS BOARD CONFERENCE ROOM, 13 BALDWIN STREET, AND WILL BEGIN AT 9:30 A.M.

1. The parties agree that the perpetrator's attorney would be most happy to relinquish his copy of the report and have it destroyed--provided the states attorney does likewise and the report is not used against the perpetrator in the prosecution he is currently facing.