BEFORE THE STATE OF NEVADA

BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

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In Re: HARVEY BIGELESEN
Applicant for Licensure as
Homeopathic Medical Doctor

SATURDAY, JULY 19, 2003

Washoe County Library
2325 Robb Drive
Reno, Nevada

Reported by: ERIC V. NELSON, CCR #57, RPR, CM

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and homeopathic licenses, which he did. He was then --
there was restitution ordered at that time. There were
fines ordered at that time. There was probation ordered
at that time, which was successfully completed.

He comes back before you today, and there is
a statute obviously under the Homeopathic Act which says a
basis for denial of license can be, one, conviction of a
felony; two, conviction of a crime or an act involving
moral turpitude. What I would like to do, and I have done
it somewhat in the papers I have presented, I wanted to
just do a quick summary of that.

As I think I pointed out, that with regards
to the issue of felony, there is no doubt it was a felony
under federal law. If that case were prosecuted in Nevada
it would be prosecuted in federal courts and it would be a
felony under Nevada law.

Some boards have looked at those issues, at
the felony issues, and they said, okay, let's take a look
to see how serious this crime really is, what does it
really mean.

As I pointed out in my documents, the actual
harm, that is there are three counts involving patient
care and billings for patient care. Now again, it appears
that these were billings that were sent in by the patients
themselves, since Dr. Bigelsen appears not to have been a
licensed provider at the time these occurred. So presumably the patients came to him, he filled out documentation so his patients could then get paid for the services that were being provided in this health care facility that he was the director of, and obviously he didn't provide all the services. Some services were provided by other people who were on staff at that time.

And on that basis, on the basis that the services performed were not compensable under Medicare, on that basis then he was charged with and pled guilty to violations of those statutes.

The fourth one involves medical records, and we'll talk about that for a moment.

My point with regards to the felony issue is this. Dr. Bigelsen thought it was about $70. I add up about $140 in total charges based upon the pleadings. Maybe it's 155.

The point I want to make is that theft of less than $250 in the state of Nevada is a misdemeanor. Indeed, Medicaid fraud under the Nevada state statutes for less than $250 is a misdemeanor.

So therefore, I think the Board can take note of the seriousness, the actual factual seriousness of that charge in terms of the nature of the billings and the amount of the billings that were made.
Secondly, and I can't prove this, all I know is if you take a look at the indictment and you take a look at what the plea was, those three counts don't actually match up. Sometimes the patients don't match, sometimes the treatment doesn't match.

I can speculate as we sometimes do in the criminal justice system that he might have pled to essentially a legal fiction, that is he didn't admit to what was in the indictment but he admitted to something else. I can't actually prove that. I can just say the facts alleged in the plea agreement don't match the facts alleged in the indictment.

But he pled to them, and that really brings us, I would suggest now, to the moral turpitude issue. I'm sorry. That is wrong. I haven't talked about the records.

Apparently what happened in this case was once this task force went after Dr. Bigelsen, and I think you heard all that at the last meeting, clearly he was a targeted defendant, once the task force went after him, they went into his office to specifically get certain records because they were looking for presumably Medicare fraud or something like that. At some point there apparently was a grand jury subpoena issued to Dr. Bigelsen, and he produced records in compliance with
that.

I will say this candidly because it's in those documents. Dr. Bigelsen's record keeping has not always been the top drawer quality. He was -- the Board of Medical Examiners in Arizona actually went after him twice for illegible writing.

Dr. Bigelsen will tell you that any additions to the records that he made in response to the grand jury subpoena were in fact documented things that he hadn't seen this client or hadn't been done. Where he made his mistake, of course, is he didn't indicate on the records that this was an after-the-fact addition to the record. And because it is obviously in response to grand jury subpoena, it looks bad.

There is no way to sugarcoat it except for the fact that Dr. Bigelsen would say these services were performed. What I was really doing was putting the records in the condition they should have been in in the first place, and on that, that's what the fourth count is.

Now, I will say parenthetically, of course, that it's interesting that the fourth count relates to record keeping. Of course, the Board of Medical Examiners on at least two occasions, of course, had gone after him for exactly that issue. So what influence that had on the members of the Board of that had with regard to bringing
that charge, I could only speculate.

VICE CHAIRMAN KENNEDY: Mr. Taylor, may I stop you for just a moment, I have a question.

MR. TAYLOR: Please, any time you want.

VICE CHAIRMAN KENNEDY: You stated that other boards had chosen to ignore felony or charges. Could you tell me what boards you are speaking of?

MR. TAYLOR: Sure. If you take a look in my document, on page 7, footnote 12, for instance, I mentioned the Rothstein case, it is a Florida case, and in that case because the felony charge was in fact a felony under federal law, because it could not result in the death or imprisonment in a state penitentiary, they distinguished the federal felony from a state felony under state law.

And there are -- and the cases go both ways. There are other cases, State Board of Examiners versus Weinstein, W-e-i-n-s-t-e-i-n, Tennessee Appellate, 638 Southwest Second 406, license suspension predicated on a conviction for federal income tax evasion was reversed. Board's rule to allow disciplinary action for professional conduct if convicted of a felony in this state or any other state, by definition the federal crime fell outside the rule.

Likewise, in Dragon, D-r-a-g-o-n, versus
Commissioner of Education, 530 N.Y.S. 896, that means New York Supreme Court is the trial court but there is an intermediate appellate level, that is what that would be, again finding that acts which a physician was convicted of in Connecticut -- no finding that the acts upon which the physician was convicted of in Connecticut would have been a crime in New York.

But you have got cases that go the other way. You have got cases that go the other way.

So what I'm really asking, what Dr. Bigelsen is really asking you to do is to look at the nature of the crimes alleged, and that really goes to the moral turpitude issue.

And I'm going to do this. I'm going to assume for a moment -- I'm going to assume I'm not going to turn into a sweat ball before this is over. Let's assume this set of facts because I think it's consistent with this case.

Dr. Bigelsen has clients coming to his health care facilities who want to take advantage of the benefits of homeopathic treatment. Those treatments may or may not fit within the quite, as you know, somewhat allopathic-biased categories under Medicare. Indeed, allopathic doctors get into trouble all the time because they put this code down or their offices put this code
down rather than that code down. It is a fairly common complaint among allopathic physicians, also.

So let's assume that Dr. Bigelsen wants to give treatment to these clients. And they take a look at these codes. And they say, this treatment looks like this code, and that's the code they put down, and that's the code which the client then submits.

So what you have got here is Dr. Bigelsen trying to provide homeopathic, or in this case there is also I think massage services, providing services to clients in order to help them get well for relatively minor amounts of money which he will tell you he never saw. That is they apparently -- if they were paid, they went to the client. And these tend to be elderly people who don't have funds for a lot of medical care. So his intention is to try to get care to his patients.

I would suggest that if that is his intent, if that was what he's trying to do, then that does not constitute a base and vile crime. If you take a look in the dictionary, turpitude is baseless. I have given you a couple of wise descriptions in the paper. Moral turpitude is something where somebody is trying to do something wrong.

I am suggesting to you that if you take a look at Dr. Bigelsen's intent to provide care for these
patients as a motivation for what happened, then at that point you are not really talking about a crime of moral turpitude. You may be talking about a crime of misdirected turpitude or mistaken turpitude, but not moral turpitude.

I think you are going to hear some testimony later on from people who worked for Dr. Bigelsen regarding his morals and his ethics. I am suggesting to the Court -- I'm sorry -- suggesting to the Board that I think that's a good way to look at that.

In Nevada the courts, for instance, when they are looking at a state bar matter where somebody is facing disciplinary action, they have been convicted of a crime, the Court has said it remains this Court's obligation to explore the actual conduct of the attorney that resulted in that conviction, after all, the question to the extent of the discipline to be imposed centers around the attorney's conduct efforts, not merely the fact of conviction. "That the defendant act without justifiable excuse, without ground for believing his acts were unlawful or in careless disregard of the lawfulness of his acts does not necessarily involve moral turpitude."

The decision as to whether or not the facts alleged and pled to in Arizona constitute moral turpitude such that Dr. Bigelsen should not be allowed the
opportunity to provide services under license in Nevada falls strictly within the Board's province. Your Board counsel has said with regards to this issue that is a football that ends up right in your lap. The whole issue of liability doesn't even come into play here because he said that is a decision that you make.

We are hoping that you take a look at those factual allegations, acknowledging that they are felonies under federal law and make a determination that in terms of seriousness and in terms of care to the patient, because there was none, that in fact those crimes should not stand as an absolute impediment to Dr. Bigelsen becoming licensed in the state of Nevada.

Likewise, that the nature of the crimes, because they are billing-type crimes, they are not patient-care crimes, they are billing-type crimes, do not in and of themselves indicate that Dr. Bigelsen if licensed in the state of Nevada would in fact be a threat to the health, safety and welfare of the public, these are money crimes from nine years ago.

And I have even suggested some ways in which you could limit, if you have some concerns about that, that in issuing an advanced homeopathic practice license you could put some conditions on it. You could acknowledge the fact that they occurred. But also
acknowledge the fact that this is somebody who has put a
great deal of effort into promoting the practice of
homeopathy and alternative medicine in the United States,
in Arizona, widely published, widely lectured. I don't
think it's too much to say a leader in his field. At
which point this Board can in a sense give him some of his
pride back that he lost by being the target of what I
would term a conspiracy in Arizona.

He pled to the crimes. We're not denying
that. We can argue he was beaten down, and people plead
to crimes all the time because at some point you just get
tired of fighting. We can argue that, but we can't argue
that didn't occur.

What we can argue and look at is the essence
of the crime. Make a determination that because of the
amount of money involved, because of the fact that he
fully complied with his probationary term, because the
term, it did not involve health care, it is a big type
crime, it is a money type crime, that in fact Dr. Bigelsen
should not be precluded from having a license in Nevada
based upon these felony convictions.

We would certainly hope that that would be
the finding of the Board, and at that point I think I have
talked enough. I'm sure the Board has questions, and we
would certainly welcome questions from the Board at this
Q Now Grace Gaines was also -- apparently did massage therapy.

A Uh-huh.

Q Did you bill Medicare for physical medicine codes for her services?

A Number one, it was a massage, it was done by Don Layman, who was a graduate of the Santa Fe School of Acupuncture, and basically we were doing cupping, that type of acupuncture work. That was the closest code that we fit to. And that was part of our physical therapy file.

Q Well, how do you feel about the indictments and the judgments? Do you feel that you did anything wrong or do you have any remorse? Where are we with this with you?

A I feel I have done absolutely nothing wrong. I totally feel that I was a target. It would be crazy for me, high political profile with a huge practice, to make such stupid mistakes like that. It would be absolute insanity to me, and I stand on I did everything as honest as possible.

That was the way I stood, and frankly, this is just a sham. And the only time I ever lied in my life is when I told the judge I was guilty.

Q Okay. Beginning with the closure of your
practice in Arizona, please describe in detail covering all time periods what you have been doing up and to the present time.

A Well, I had to make a living. So I set up a clinic in Mexico, late 1993, early '94, when I saw the ax coming down. I had that clinic. It grew to I had five physicians work with me, 30 staff, and seven years I had that clinic in Mexico.

Finally, if you have ever been to Tijuana, seven years is more than a lifetime in hell, and it was just time to leave that and come back to the United States and come back to my freedom. I worked in Tijuana for those seven years.

During that time I authored one book. I have a second book coming out. I had an editorial column in a professional journal. I gave numerous lectures. I have wrote a manual, put on workshops during that time.

Q So that would put you up to what, 2001?

A I moved to Lake Tahoe in 2001, coming back to the United States to try to get my freedoms.

Q So what have you been doing since you got back to Lake Tahoe in terms of earning a living and so forth?

A Well, first of all, I tried to get one here, and I have been getting whatever is going on here, so I
had to change. In fact, when I came to this Board I said I wanted to simply do something, life has been stressful. I'd like to have a simple little practice and help this state.

Well, because I couldn't get a license from this Board I had to find another way. Opened -- I have a consulting business in California, full team of biographical consulting. I work in a clinic in California with two physicians that work side by side with me, and if any treatments need to be done, they do the treatments, and all I do is consult and talk to the patient.

Q Did you have any kind of disciplinary problems in Mexico?

A Absolutely not.

BOARD MEMBER EDWARDS: Were you licensed in Mexico?

THE WITNESS: No, Mexico you -- essentially it is a -- I call it an honest dishonesty. You can almost buy your way to get anything. So I had a physician that fronted me, and I had working papers that I had, so I was totally legal to work there.

BOARD MEMBER EDWARDS: So you were legally working there but you were not licensed there.

THE WITNESS: Frankly, I could have bought a license for $20,000 with a medical school diploma with a
dean's signature on it and a transcript.

MR. TAYLOR: But you didn't do that.

THE WITNESS: I didn't do that. I'm just telling you.

MR. TAYLOR: I'm sorry. I had to ask.

BY BOARD MEMBER F. ROYAL:

Q While you were in Mexico, did you ever say or imply that you would never return to the United States to work?

A I can't recall that. This is my country. I mean, why would I not? I mean, this is the free country. This is where I live.

If I said that anyplace over there, it may be just in an moment of frustration, because Mexico had a very free practice, I can do anything I wanted to in Mexico. But no, I wouldn't do that.

Q Okay. Well, I want you to explain what you mean in your 1999 copyrighted article, quote, "The truth as I see it: What is it? Beating cancer with the Bigelsen protocol." End of quote. You present yourself as Harvey Bigelsen, M.D., USA. The author of this article published in the Explorer, volume 9, number 2, wherein you discuss your treatments of cancer from 1994 to 1999.

In the article you are quoted as saying,
"I have often been asked, would you come back to work in the United States? I was thrown out. I would equate this as if I would be Jewish in 1938 Germany and I moved to London. Would I move back to Germany in 1942? Why would I ever return to the United States? I feel like I'm in heaven already. I will only come back to work in the United States if they make me Surgeon General."

End of quote. Is that a correct quote?

MR. TAYLOR: Is there a question pending?

THE WITNESS: Is there a question? I asked, is there a question?

MR. TAYLOR: Let me ask that question. Is there a question pending? Is there a question pending?

THE WITNESS: Is there a question pending?

BY BOARD MEMBER F. ROYAL:

Q Is this an accurate quote?

A At that time, yes, and what I was talking about at that time -- he asked the question.

MR. TAYLOR: Fine, answer the question. I'm simply putting the objection on point that all we're here about is felony, moral turpitude, related to the charges in Arizona, and any other licensing issues. It's irrelevant. I just want to make my record.
MR. REED: I want to say that I think everything is on the table here. I think that the issue of his felony conviction in Arizona leads to the question of rehabilitation, and then I think that's of significant importance to the Board. So everything that has occurred since the felony convictions is relevant.

MR. TAYLOR: So you're saying that you believe that an editorial article by somebody who has been driven out of the country is relevant to the issue of rehabilitation? That is the basis that you would advise the Board to allow this question?

MR. REED: Yes.

MR. TAYLOR: Go ahead and answer the question.

THE WITNESS: I'll answer the question very clearly. First of all, I was talking about an allopathic board. There are only two homeopathic boards.

For me to sit in front of an allopathic board is like sitting in front of Nazi Germany. That's why the only way I would come back is the Surgeon General thing in the allopathic community. I came back to Nevada, which is supposed to be my friend, and a Homeopathic Board is what I applied to. That article was very bitter about the allopathic community.

As far as the Mexico heaven, again, I can do
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VICE CHAIRMAN KENNEDY: I'd like to call the hearing for Dr. Bigelsen back in session.

With Dr. Bigelsen already being sworn in, so we can continue.

BY BOARD MEMBER F. ROYAL:

Q Dr. Bigelsen, why in the world would you ever agree never to try and retain or regain your license to practice homeopathy in Arizona? I have a hard time understanding why you would sign what to me looks like an egregious -- is that the right world? -- a terrible document where you can't go back to them and get your license back as an HMD.

A Well, I think it is a very simple answer, because Arizona I had such a problem and I was so burnt out. We're now living in California. Both the Arizona Medical Board and the Arizona Homeopathic Board were going to take my license. The Arizona Medical Board said we need you to come back for a hearing. The Medical Board said no problem.

I was not going to go back for hearing. I didn't want to go back to Arizona for the rest of my life. I said, hey, I don't want to go back for a hearing, I'll
A  Ambien, five or ten milligrams.
Q  Do you drink alcohol?
A  Very rarely more than one drink because I have had surgery because I have surgery.

Can I ask a question on this? Is this a typical question that's asked all candidates? I'm just asking this question.

MR. TAYLOR: Just answer the question. There is nothing here that we're hiding.

THE WITNESS: Uh-huh.

MR. TAYLOR: Just don't worry about it. Just answer the question.

BY BOARD MEMBER F. ROYAL:
Q  Do you use marijuana?
A  Occasionally.
Q  How often?

MR. TAYLOR: Objection. That you can't ask. That you can't ask. Constitutionally you can't ask it.

BOARD MEMBER F. ROYAL: We have to sit here and make a decision.

MR. TAYLOR: Constitutionally you cannot ask that question.

BOARD MEMBER F. ROYAL: I cannot ask?
MR. REED: Under what basis?
MR. TAYLOR: Fifth Amendment. He's got the
He sued me for quackery, and that even never got to court.

Q Did the oncologist sue you for quackery?
A No, the patient did and it never got to court. It never went through the deposition phase, and they just dropped it.

MR. TAYLOR: He did sue in New Jersey, and it was dismissed for lack of jurisdiction.

BY BOARD MEMBER F. ROYAL:

Q Dr. Bigelsen, why do you think this Board should render you a license to practice homeopathic medicine? Give us your reasons.
A I'm a darn good physician. I have done nothing wrong. I only help people. I have had nothing against me medically. No one has ever talked about my medical ability and now negative it is.

In fact, I like to tell people when I call them a legend, people have heard of me. They don't know what I do but they know I get really good results.

I have been dedicated to the community. Even a judge said that due to my extraordinary service to the state of Arizona. So I have been -- this is my life. I am a healer. My life is dedicated to service. That's what I do.

I'm living in the United States as a free country. To me, these are freedoms. I have the right to
pursue my work.

I see no reason being a danger. I have never proven myself to be a danger. I haven't had patient complaints through the years. The only complaints I have had is things like fees and handwriting from the Medical Board.

So I see myself as an excellent quality physician. I have had four licensed physicians in the state of Nevada are students of mine. So I have been a teacher. I have been a pioneer in this field.

I don't see any reason why I should not be allowed to. I have passed every single qualification with flying colors. No one questions my competence. And I have never harmed anyone. I cannot understand for the life of me why anyone would stop me from working.

BOARD MEMBER F. ROYAL: Thank you.

THE WITNESS: You know, to me -- let me just finish this, too. I believe in the Constitution. We have the right -- this is a free country -- to pursue our happiness, to pursue our right to work. A license is a property right. We have a right to property.

And I feel that this country has blacklisted me, has wrongly convicted me. I feel like now that I am being on trial the second time for a crime I never committed in the first.
And I'm very upset about the United States. I'm very upset about this tap dance because I think I have been a good guy.

The only ones who say I'm not a good guy are the allopaths who hate me because I broke their monopoly and I caused a problem for them. They had no other reason.

VICE CHAIRMAN KENNEDY: Are there any other questions?

BOARD MEMBER READ: I don't think so.

MR. TAYLOR: I have three brief witnesses. I would call Dr. Tim Fraser, please.

TIMOTHY FRASER

having been sworn, testified as follows:

EXAMINATION

BY MR. TAYLOR:

Q Dr. Fraser, you have been previously sworn. I called you doctor. What sort of a doctor are you?

A Dentist.

Q You are a dentist? Would you give your full name and spell it, please?

A Timothy Wallace Fraser, F-r-a-s-e-r.

Q First of all, would you tell the Board what you do?
STATE OF NEVADA,  )
 ) ss.
COUNTY OF WASHOE.  )

I, ERIC V. NELSON, Certified Court Reporter and a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That I was present at the meeting of the STATE OF NEVADA, BOARD OF HOMEOPATHIC MEDICAL EXAMINERS on Saturday, July 19, 2003, and thereafter took stenotype notes of the proceedings, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing partial transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

Dated at Reno, Nevada, this 19th day of June, 2005.

ERIC V. NELSON, CCR #57

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