



**STATE OF OHIO  
COUNSELOR AND SOCIAL WORKER BOARD**

ADJUDICATION ORDER  
in the Matter of:

Michael Fisher  
River City Correctional Center  
3220 Colerain Avenue  
Cincinnati, OH 45225

IN THE MATTER OF MICHAEL FISHER TO PRACTICE AS A LICENSED INDEPENDENT SOCIAL WORKER COUNSELOR IN THE STATE OF OHIO.

THE MATTER OF MICHAEL FISHER CAME BEFORE THE FOLLOWING MEMBERS OF THE SOCIAL WORKER PROFESSIONAL STANDARDS COMMITTEE OF THE OHIO COUNSELOR AND SOCIAL WORKER BOARD: CHESTER PARTYKA, ROCKY BLACK, GWENDOLYN DACONS-TAYLOR, JANE DAROFF AND PENNY WYMAN.

**FINDINGS, ORDER, AND JOURNAL ENTRY**

This matter came for consideration after a Notice of Opportunity for Hearing was issued to Michael Fisher by the Social Worker Professional Standards Committee on July 23, 2001.

Pursuant to R.C. 119.07 licensees are entitled to a hearing before the Board if such a hearing is requested within thirty days of the mailing of the Notice of Opportunity for Hearing. In this case, Michael Fisher failed to make a timely request for such a hearing, therefore pursuant to *Goldman v. State Medical Board* (March 29, 1996) Franklin County Court of Appeals, 95 APE 10-1358 a hearing was held on October 10, 2001, in front of Hearing Examiner Ronda Shamansky, Esq. At this hearing the Board by and through their Assistant Attorney General, Barbara Petrella, presented evidence in support of the Notice of Opportunity for Hearing. Michael Fisher was not present.

**Summary of Evidence**

State's Exhibits

1. Notice of Opportunity for Hearing to Michael Fisher, dated July 23, 2001, and copy of Certified Mail Receipt 70993400001392619658.
2. Letter dated August 3, 2001, from Michael Fisher to the Board.

3. Letter dated August 27, 2001, from the Board to Mr. Fisher scheduling a hearing on October 10, 2001, pursuant to *Goldman v. State Medical Board* (March 29, 1996) Franklin County Court of Appeals, 95 APE 10-1358.
4. Copy of a computer printout generated by the Board showing the status of Mr. Fisher's license.
5. Judgment Entry from the Court of Common Pleas, Hamilton County, Ohio in *State of Ohio vs. Michael Fisher*.
6. Letter dated June 23, 2001, to the Board from Michael Fisher.
7. Testimony of William L. Hegarty, Investigative Supervisor, for the Ohio Counselor and Social Worker Board.
8. Testimony of Jason Schutte, Investigator, for the Ohio Counselor and Social Worker Board.

### **Conclusions of Law**

Ohio Revised Code Section 4757.36(A)(5) provides that the Ohio Counselor and Social Worker Board may take disciplinary action against a licensee who has been convicted in Ohio of any crime that is a felony in Ohio.

### **Discussion**

As required in the case of *Goldman v. State Medical Board* (March 29, 1996) Franklin County Court of Appeals 95APE10-1358, all cases where a Board issues a Notice for Opportunity for Hearing and the individual does not request a hearing, the Board still must review evidence presented to it and make specific findings of fact. In this case, Mr. Fisher did not request a hearing after receipt of his Notice for Opportunity for Hearing.

The Social Worker Professional Standards Committee has reviewed the Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Committee has also reviewed the response to the Hearing Officer Report and Recommendations submitted by Mr. Fisher. The Committee adopts in its entirety the Findings of Fact. A copy of the Hearing Officer Report and Recommendations is attached to this Adjudication Order. The Committee modifies the Hearing Officer's recommendation to suspend Mr. Fisher's license to practice social work in the State of Ohio and in its place **REVOKES** Mr. Fisher's license to practice social work. As Ordered by the Social Worker Professional Standards Committee of the Ohio Counselor and Social Worker Board.

Motion carried by order of the Social Worker Professional Standards Committee of the Ohio Counselor and Social Worker Board.

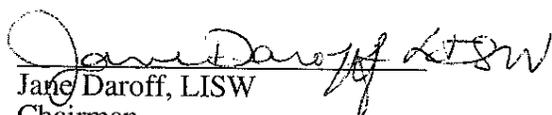
It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

## APPEAL RIGHTS

Pursuant to Section 119.12 of the Ohio Revised Code, you may appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to the court in the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State of Ohio Counselor and Social Worker Board and the appropriate Court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

By Order of the State of Ohio Counselor and Social Worker Board.

  
Jane Daroff, LISW  
Chairman

STATE OF OHIO

COUNSELOR AND SOCIAL WORKER BOARD

IN THE MATTER OF THE  
LICENSURE OF

REPORT AND RECOMMENDATION OF  
HEARING EXAMINER

Michael Fisher

October 29, 2001

AS A SOCIAL WORKER  
IN THE STATE OF OHIO

**FOR THE LICENSEE:**

No appearance

**HEARING EXAMINER:**

Ronda S. Shamansky  
245 East Gay Street  
Columbus, Ohio 43215-3210  
614/224-9078

**FOR THE BOARD:**

Barbara Petrella  
Assistant Attorney General  
Health & Human Services Section  
30 E. Broad St., 26th Floor  
Columbus, Ohio 43215  
614/466-8600

**FINDINGS OF FACT:**

1. The hearing on this matter was held on Wednesday, October 10, 2001 commencing at 11:00 a.m. in the offices of the Counselor and Social Worker Board, 77 South High Street, Columbus, Ohio. The Board was represented by Barbara Petrella. The licensee, Michael Fisher, had not requested a hearing and did not appear. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made.
2. The Board has proposed disciplinary action against Mr. Fisher's license to practice social work because of his conviction in the Hamilton County Court of Common Pleas of "Corrupting Another with Drugs," a fourth degree felony on one count and a third degree felony on another count. R.C. 4757.36(A)(5) provides the Board with the authority to take action against a licensee who is convicted of a felony, and the State in this case is asking for a revocation of Mr. Fisher's license.
3. At the hearing, the State called Investigative Supervisor William Hegarty to identify documents. He testified that the Board issued its Notice of Opportunity for Hearing on July 23, 2001, informing Mr. Fisher of his right to request a hearing. (State's Exhibit 1) He testified that Mr. Fisher's letter which appears at State's Exhibit 2 was received in the Board office on August 8, 2001. He discussed the letter with the Board's Executive Director, Beth Farnsworth, and it was decided that this was not a request for a hearing but rather a notification that the licensee would not be attending the hearing because he was incarcerated.
4. The State also called Investigator Jason Schutte to testify and identify documents. Mr. Schutte testified that he investigated the complaint against this licensee and found that Mr. Fisher had been convicted of a felony. He identified State's Exhibit 5 as a certified copy of the Judgment Entry of the Hamilton County Court of Common Pleas, through which Mr. Fisher was convicted and sentenced to one year in prison, followed by six months in a residential treatment facility. (State's Exhibit 5). Mr. Schutte also identified State's Exhibit 6 as the letter he received from Mr. Fisher explaining his position.

5. Although Mr. Fisher did not appear at the hearing, his position is set forth at length in his letter to the Board, which appears at State's Exhibit 6. Mr. Fisher insists in the letter that he is innocent of the crime he was convicted of, and describes a most unusual chain of events that led to his arrest and conviction. He states that on Monday, August 7, 2000, he spent the day doing mowing and painting work on his new residence in the neighborhood where he had just moved. Sometime between noon and 5 p.m., he believes his prescriptions of Xanax and Effexor were stolen from his apartment. He explains that he was at times mowing the front lawn where he could not see his back door, and at other times painting a second floor bedroom with the door closed and a room air-conditioner being used in that room, so that he did not see or hear a break-in. He states that because it was very hot on that day, he had his front and back doors open for ventilation, and the screen doors were unlocked. Thus, someone could have come into the kitchen, where he kept his medication on top of the refrigerator, and taken the medication without his knowledge. He was taking Effexor as an anti-depressant and Xanax on a PRN basis, pursuant to legal prescriptions for those drugs.
  
6. Mr. Fisher states in his letter that he first became aware that his medicine was missing at about 6 p.m. that evening, when a young man came to his door and accused him of giving drugs to neighborhood teenagers. They exchanged words and finally Mr. Fisher closed the door on the man. A rock was thrown through Mr. Fisher's window and at that point, Mr. Fisher called the police. Mr. Fisher states in his letter that on that evening, a teenager in the neighborhood had apparently been found with some of his medications, was taken to the hospital and tested positive for marijuana and cocaine, but he did not know this at the time he spoke with the police. When he discovered his medication was missing, he contacted the police again and provided them with that information. Several days later, Mr. Fisher was arrested and accused of having provided the teenager with Xanax, cocaine, and marijuana. The teenager gave the police a statement saying that Mr. Fisher had hosted a drug and alcohol party at his home and had furnished drugs to other teens in the neighborhood. Mr. Fisher states that the first time this was presented to a grand jury, in late August, he was not indicted. However, it was presented to the grand jury again on October 12, 2000, after the teenage accuser produced

two other neighborhood teenagers who claimed to be present at the alleged "party," but denied consuming any drugs or alcohol. This time the grand jury indicted him.

7. Mr. Fisher states in his letter that he initially entered a plea of not guilty and wanted to have a jury trial. However, he explains that at that point, he had very little faith in the Hamilton County justice system and was very worried about the possibility that if he were sentenced to a long prison term, he would be separated from his young children for a long period of time. On the advice of his attorney, he later decided to accept a plea bargain and plead guilty. He states that he "agonized" over this decision for two months, and that it was the hardest decision he has ever had to make.

### DISCUSSION

There is no question that Mr. Fisher was convicted of a felony, and that on that basis alone, the Board has the authority to take whatever action it deems appropriate against his license, including revocation.

However, as the trier of fact, I found Mr. Fisher's letter very compelling, and I urge the Board to give some consideration to his account of the facts in addition to the objective fact that he was convicted of a crime. It is true that it is not the Board's position to examine every conviction to determine if a licensee should or should not have been convicted of the crime. However, no one would disagree that the criminal justice system is not perfect and that on occasion, an innocent person serves time in prison. Because of the possibility that Mr. Fisher is serving time for a crime he did not commit and now stands to lose his professional license because of the same incident, this case warrants careful consideration.

State's Exhibit 4 shows that Mr. Fisher has a master's degree in social work, and that there appear to be no prior criminal convictions or actions against his license. Although his letter was not considered a request for a hearing, I do not believe that Mr. Fisher is in any way "uninterested" in his licensure. It appears to me from his letter at State's Exhibit 2 that Mr. Fisher believed that a hearing would have been within a short period of time, and that he would not have been able to come because he was not scheduled for release from prison until October 9, 2001. Further, accord-

ing to the Court's judgment entry, he was required to complete six months in a residential treatment facility following his release from prison, so even though this hearing took place on October 10, 2001, one day after his release from prison, he still would not have been able to attend. For these reasons, neither his failure to request a hearing nor his failure to appear at the hearing suggest that he is not concerned about his license. He states in both of his letters that he wishes to continue practicing as a social worker and that he will cooperate with the Board in any investigation it wishes to pursue.

I believe it is possible that the teenager who was found with the drugs might very well have agreed to testify against Mr. Fisher, in exchange for a lesser charge or perhaps no criminal charge at all, even if that testimony were false. It is also suspect that the two other teenagers who were willing to testify that they attended the alleged "party" were, according to Mr. Fisher's account, quick to add in their statements that they had not actually consumed any drugs or alcohol. I believe it is also quite possible that an innocent person would agree to plead guilty to a lesser charge when faced with the possibility of a long prison sentence, and the consequent separation from his or her young children for a long period of time. I recognize that these incidents were contained in Mr. Fisher's account of the facts, and that no witnesses testified at the hearing as to these events. However, because I found Mr. Fisher's letter so compelling, I believe the Board should impose a lesser penalty than revocation, at least until such time as Mr. Fisher can appear before the Board so that the Board members can make a determination about whether revoking his license is the just thing to do in this case. I recommend that the Board suspend Mr. Fisher's license for one year, and after that time, that the Board permit Mr. Fisher to appear before it to ask reinstatement of his license.

This is an important matter, worthy of some extra time and consideration by the Board. Mr. Fisher has served a year in prison and now he stands to lose his livelihood as well. If it is true, as he insists in his letter, that he is innocent of this crime, then it would be tragic to revoke his license without even having the opportunity to hear his account of these events.

#### CONCLUSION OF LAW

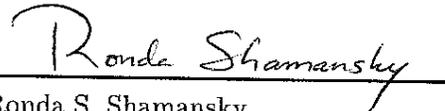
I conclude that the Michael Fisher was convicted of two counts of a

felony in the Hamilton County Court of Common Pleas, and that on that basis, R.C. 4757.36(A)(5) gives the Board the authority to take whatever action it finds appropriate against his license.

However, because of the unusual events described in Mr. Fisher's letter to the Board, and the fact that he was not able to appear at a hearing because of his incarceration, I recommend that the Board suspend the license for one year. After that time, I recommend that Mr. Fisher be permitted to appear before the Board to ask for the reinstatement of his license.

**RECOMMENDATION**

For the reasons detailed in this report, I recommend that the Board suspend Michael Fisher's license to practice social work for a period of one year. After one year, I recommend that he be permitted to appear before the Board to seek reinstatement of his license.



Ronda S. Shamansky  
Hearing Examiner