

SECOND DRAFT

August ___, 2010

New York State
Board of Examiners of Sex Offenders
4 Tower Place
Albany, New York 12203-3764

Re: Jeffrey Epstein
NYSID # OS1909

Dear _____:

This letter and the accompanying materials are submitted to the Board pursuant to its notice of August 2, 2010, concerning the risk level and designation determination to be made with respect to Jeffrey Epstein. Their purpose is to demonstrate to the Board that, based upon Mr. Epstein's history and personal characteristics, the circumstances of the offense which triggered the registration requirement, his acceptance of responsibility, his successful completion of his sentence and subsequent supervision, and the extraordinary unlikelihood of his ever again reoffending, the appropriate risk level designation is level 1.

Overview

Mr. Epstein, who is presently 58 years old, is a successful and respected investment advisor who also founded and heads a philanthropic organization, the C.O.U.Q. Foundation, which funds medical, educational, and advanced scientific research. The offense which led to the requirement that he register as a sex offender in Florida, which in turn triggered this state's reporting requirement, ended almost five years ago and involved consensual conduct with a young woman who, for all but a few months of the prostitution offense charged, was over the age of 17. Mr. Epstein pled guilty to that offense in the Circuit Court for Palm Beach County, Florida, and has fully and sincerely accepted responsibility for his conduct. There have been no subsequent incidents of criminal misconduct of any description.

Florida has classified Mr. Epstein as its lowest level sex offender, with the lowest level of reporting requirement, as verified by the attorney who represented Mr. Epstein in the Florida pleadings:

Under Florida's registration scheme there are two levels of registration available based on a risk assessment. Florida characterizes these two levels as sexual predator and sexual offender. The sexual predator designation is obviously the more serious classification.

Mr. Epstein, based on the offense on which his guilty plea was entered was classified as a sexual offender, Florida's lowest level of sexual registration. In fact, within the sexual offender designation there are two-sub-levels of reporting requirements. One

classification requires reporting to the local Sheriff's Office twice a year and one requires reporting four times a year. In Mr. Epstein's case, he is required to report at the lowest level, two times per year. Accordingly, under the Florida registration scheme, Mr. Epstein's registration requirements are at the lowest level for a person for whom registration is required.

Letter of Jack A. Goldberger, Esq., Ex. _____. That Florida authorities did not – and do not – believe that Mr. Epstein presented a risk of reoffense is evidenced not just by Mr. Epstein's lowest-level reporting designation but also by the fact that he was permitted, while serving his sentence in the West Palm Beach County Jail, to leave the jail on a daily basis on work release for most of the period of his 13-month incarceration and that during his subsequent year of community control supervision (a probationary-type sentence), both the court and his probation officer agreed to permit him to travel outside Florida for business purposes on a significant number of occasions. He has now completed his year of community control supervision, having fully complied with all the requirements and obligations imposed on him. ~~Had the state of Florida had any information, or even a founded suspicion, that Mr. Epstein could not be fully trusted to conform his conduct to the law—which he did—it would never have allowed him such discretionary privileges as work release while incarcerated and travel while serving his community control sentence.~~

In addition, Mr. Epstein has ~~for more than four years voluntarily participated in~~ ongoing/completed therapeutic treatment with a clinical psychologist, Stephen R. Alexander, Psy. D., who, based upon his 25 years of experience as a forensic psychologist, his intensive evaluation of Mr. Epstein, and his years of therapy sessions with Mr. Epstein, attests that Mr. Epstein presents no threat to the community and that the risk of his reoffending is “negligible”:

Since my initial assessment of Mr. Epstein he has been extremely cooperative with all of the services provided to him. He has spent a great deal of time and energy focusing on his behavior and the attitudes, beliefs and expectations that undergird his approach to life. He has examined his priorities and undergone a comprehensive self-exploration on more than one occasion, primarily because of the vast changes that have occurred in his life and the upheaval these events have caused. Throughout it all Mr. Epstein has remained willing to focus on himself and how to turn even the most dire personal experiences into productive experiences to the fullest extent possible. In my opinion Mr. Epstein has been highly cooperative with and benefitted from the treatment provided ~~over the last four years and there is no need for any additional compulsory treatment.~~ Relying upon my 25 years of experience as a forensic psychologist and the plethora of data gathered by me, *I state with confidence that Jeffrey Epstein poses no threat to himself or the community. It is abundantly clear that he has learned his lesson and the probability of his reoffending is negligible.* ~~In my professional opinion, Mr. Epstein does not require any compulsory or mandated treatment for his risk profile to remain at its present low level. Even so, he has expressed an interest in maintaining his counseling with me on a voluntary basis, which I have agreed to provide.~~ However, let me repeat that *Mr. Epstein poses no threat to either himself or the community, and he requires no additional ~~intervention or~~ treatment for his no-risk/low-risk status to be maintained in the future.*

Letter of Stephen R. Alexander, Psy. D., August 11, 2010, Ex. ____ (emphasis added).¹

All of these circumstances – Mr. Epstein’s low-risk classification in Florida, the state where the offense was committed, the low-risk assessment inherent in the decisions of Florida authorities responsible for the protection of the community who knew him first-hand to admit him to work release during his period of incarceration and to permit him to travel outside of Florida during his period of community control supervision, ~~his voluntary participation in ongoing therapy with Dr. Alexander, DD~~ Dr. Alexander’s well-supported judgment that Mr. Epstein presents little or no risk of reoffense, the fact that the offense ended almost five years ago, and there has been no subsequent criminal misconduct of any kind, and the fact that Mr. Epstein is a mature, responsible, professional adult who uses neither alcohol or drugs support the conclusion that the supervision which accompanies a level 1 designation will more than suffice to serve the purposes of SORA. That conclusion is supported by the calculation of Mr. Epstein’s risk assessment guidelines score.

The Conduct Underlying the Offense Triggering the Florida Registration Requirement

The offense which required Mr. Epstein to register as a sex offender in the state of Florida was a violation of Fla. Stat. §796.03, which criminalizes procuring a person under the age of 18 (the age of consent in Florida) for prostitution, specifically, here, one “A.D.” The nearest New York cognate among the registerable offenses listed in N.Y. Correction Law §168-a is N.Y. Penal Law §230.04 (patronizing a prostitute). The information to which Mr. Epstein pled guilty charged that the offense occurred between August 1, 2004, and October 9, 2005, *see* Information, Ex. ____, that latter date being the day before A.D.’s 18th birthday. Thus, for almost all of the duration of the charged offense, A.D. was over the age of 17, and the wholly consensual conduct, in exchange for money which occurred between the two would not even have been a registerable offense in New York. *See* §168-a(2)(a)(i)(§230.04 a registerable offense only if “person patronized” is in fact under 17 years old). Indeed, at the time of the offense at issue, the conduct which occurred after A.D. turned 17 years of age would not even have been a crime under that statute if the conduct had taken place in New York.² Mr. Epstein’s offense ranks among the least serious of those which trigger the requirement of SORA registration. The single Florida offense which required registration involved only one woman, and there was no force or violence involved at any time, nor did A.D. suffer from any mental disability, mental incapacity, or physical helplessness. The points attributable to the Current Offense factors (factors 1-7) total less than 70.

¹ Dr. Alexander’s CV is included in Ex. ____.

² In 2007, §230.04 was amended to extend its coverage to prostitution offenses involving individuals of any age, not just those under the age of 17, as the statute was written when Mr. Epstein’s offense was committed in 2004-05. Under §230.04 as written in 2004-05, the offense, to the extent that A.D. was in the last three months of her 16th year, would have been a misdemeanor had it been committed in New York.

Criminal History

Prior to the offense at issue, Mr. Epstein had no prior criminal history whatsoever. Mr. Epstein's date of birth is January 20, 1953, and he was, accordingly, more than twenty years of age when the offense at issue was committed. Mr. Epstein does not use alcohol or illegal drugs and has no history of either drug or alcohol abuse. Accordingly, Mr. Epstein should be scored at zero for the Criminal History factors (factors 8-11).

Post-Offense Behavior

On June 30, 2008, Mr. Epstein pled guilty to the offense which subjected him to the requirement that he register as a sex offender in Florida and has fully accepted responsibility for his conduct. Mr. Epstein served approximately 13 months in a West Palm Beach County jail (rather than in a state correctional facility). During most of his period of confinement, from, October 10, 2008, through July 22, 2009, the date of his release, Mr. Epstein participated in the jail's work release program, *see* Letter of Deputy K. Smith, Ex. ___, which permitted him to leave the jail in the morning six days a week for his place of employment, the Florida Science Foundation, and return in the evening. That he satisfactorily complied with the requirements of the program is evidenced by the fact that he remained in the work release program up to the time of his release from custody.

After his release on July 22, 2009, Mr. Epstein was subject to a one-year period of community control, which required, among other conditions, that he maintain contact with the probation office as required, that he be confined to his residence ~~subject to electronic monitoring~~ during the hours when he was not working or performing public service, that he not leave his county of residence without the consent of his probation officer, that he commit no further violations of the law, and that he maintain employment. During Mr. Epstein's period of community control from July ___, 2009, through July 21, 2010, he was permitted by the court, with the assent of his probation officer and without opposition by the state's attorney, to travel (including overnight stays) to New York and to the Virgin Islands for business purposes on a number of occasions, thus demonstrating a substantial level of trust by both the court and his supervising probation officer in Mr. Epstein's ability to refrain from unlawful conduct of any kind and to conform his conduct to the terms of his community control order and to the orders authorizing his travel, which he did on every such occasion.³ Mr. Epstein successfully completed his term of community control on July, 21, 2010, *see* Florida Department of Corrections Termination of Supervision notice, Ex. ___, having at all times fully complied with all obligations and restrictions imposed upon him.

~~Not only has~~ Mr. Epstein has never refused or been expelled from any treatment since the time of his sentencing (factor 12(2)), ~~he has, on the contrary, participated since 2006 in ongoing therapeutic treatment with~~ Clinical Psychologist Stephen R. Alexander, Psy. D, as described above. Based on his professional expertise and the substantial time he

³ One such travel order is attached as Ex. ___.

has spent with Mr. Epstein ~~over the course of more than four years~~, Dr. Alexander is able to state unequivocally that Mr. Epstein has learned his lesson and that there is little or no risk that he will ever reoffend. Accordingly, Mr. Epstein should be scored at zero for the Post-Offense Behavior factors (factors 12-13).

Release Environment

Factor 14 contemplates that the risk level assessment will be made, as required under New York law, prior to the offender's release from incarceration. Here, as the preceding section shows, Mr. Epstein was released from jail more than a year ago and was subject to close supervision for a period of one year afterwards. During the same time, he continued ~~his therapeutic treatment~~ sessions with Dr. Alexander, ~~which continue to this day~~. The score for factor 14 should, accordingly, be zero.

Mr. Epstein maintains a ~~vacation private~~ residence in Manhattan, which he owns, as well as residences in Florida and the Virgin Islands. **[how describe current employment?]** There is nothing in either Mr. Epstein's living or employment situations which could even remotely be considered "inappropriate." The score on factor 15 too should be zero.

Overrides

None of the listed factors are of any relevance or applicability to Mr. Epstein's risk level designation.

Conclusion

Based on all the relevant factors, Mr. Epstein should be classified as a level 1 sex offender. Even should the Board ~~somehow~~ conclude that Mr. Epstein's risk assessment guidelines score exceeds 70, the circumstances addressed in this letter differentiate this case so markedly from the norm of level 2 sex offenders that the Board should recommend a level 1 classification, as it is empowered to do under the Sex Offender Guidelines. The ultimate issue is the risk that the offender will reoffend, and the information provided to the Board with this letter persuasively demonstrates that such a risk is virtually nonexistent in this case.