

**Fr. B**

141. *Fr. B* was ordained in 1988.<sup>22</sup> As early as 1995, the Diocesan Corporation was on notice of a substantial likelihood that *Fr. B* had engaged in inappropriate behavior with minors. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation: (a) failed to properly investigate sexual abuse allegations; (b) misled its beneficiaries about the true reasons for *Fr. B*'s removal from ministry; and (c) falsely attested to a third party that it had no information that would render *Fr. B* unsuitable to work with minors when it approved *Fr. B*'s ministry outside the Diocese. The Diocesan Corporation's actions protected *Fr. B* from an adjudication of his alleged actions and wasted charitable resources.

*Pre-2002 Notice of and Response to Sexual Abuse Allegations*

142. Prior to 2002, *Fr. B* was generally assigned to parish ministry. During that time, on at least two occasions, concerns were raised about his conduct. In October 1994, Auxiliary

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<sup>22</sup> Unless otherwise noted, the allegations against *Fr. B* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. B* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

Bishop Grosz met with *Fr. B's* former pastor to discuss the pastor's concern about *Fr. B's* relationship with two teens:

[The pastor] indicated he felt this relationship was an expression of imprudence on the part of Father [B]. [He] noted an over familiarity between Father [B] and the two teenagers.

. . . For example, Father [B] carried the two kids on his shoulders in the mall.

[The pastor] then indicated that there is a rumor . . . that Father [B] is having a love affair with the two teens.

143. In February 1995, Vicar General Cunningham documented a call he received about *Fr. B* from a captain in a police department:

[The captain] wanted me to know as a private citizen, not as a member of the Police Department, that [*Fr. B*] was stopped twice in mid-December with a 16-year old boy in the car. These events took place on the same night in mid-December. . . .

No charged [sic] were filed; no subpoena was issued; and there was nothing that he had done wrong. But, the police were concerned about a priest being parked in a car with a 16-year old boy twice on one night.

Two months later, Bishop Head confronted *Fr. B* about the report, and *Fr. B* maintained that he was teaching the teen how to drive. *Fr. B* remained in ministry.

*Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties*

144. In June 2002, after the *Charter* was adopted, the Diocesan Corporation failed to investigate or, alternatively, sufficiently investigate the above allegations pursuant to the *Charter* and the *Essential Norms*. *Fr. B* remained in ministry.

145. On September 4, 2009, Auxiliary Bishop Grosz and *Fr. B* met to discuss a complaint that *Fr. B* had taken a minor, about fourteen-years old, to a Sabres game followed by a tour of the church, without the approval of the boy's parents. *Fr. B* acknowledged that about twice a year, he would take the teen out and that he was encouraging the teen to consider the priesthood. *Fr. B* denied any wrongdoing and agreed "to refrain from any kind of relationship

one on one with [the boy] or any young person.” Despite *Fr. B*’s history of alleged improper relationships with young boys, the Diocesan Corporation again failed to adequately investigate these allegations pursuant to the *Charter* and the *Essential Norms*.

146. On September 16, 2009, a diocesan attorney recommended to his law partner that the DRB’s advice should be sought with respect to *Fr. B*:

Bishop Grosz said that Fr. [B] has a history of . . . conduct [similar to *Fr. B*’s outings with the fourteen-year-old]. About 10 years ago, [*Fr. B*’s] pastor . . . told Bishop Grosz that Fr. [B] was taking teenaged boys up to Fr. [B]’s] bedroom. There was no evidence that anything inappropriate occurred . . . .

. . .

In sum, we have a history of a priest being alone with a young person in inappropriate situations (in a parked car at night; in a closed church; in the priest’s room), but we have absolutely no indication that anything else inappropriate—or anything sexual—ever took place. The priest has agreed not to be alone with teenagers, but he agreed twice before—in 1995 and about 10 years ago—not to do so and he apparently nevertheless repeated this behavior. I think it is appropriate to ask the [DRB] for advice in this regard.

147. A diocesan attorney drafted a one-page memo to his file recording the DRB’s purported discussion of *Fr. B*:

On September 17, 2009, I discussed Father [B]’s case at the [DRB].

Several of the members were concerned indicating that they saw “red flags all over the place.”

At first, it was suggested that we talk to [the complainant, who reported the September 2009 information]. Others suggested that we talk to the mother of the teenager, but we advised them that she had declined to speak to us at this time.

There was much discussion about an evaluation and eventually we decided to have Bishop Kmiec bring him into his office, discuss the situation with him and consider whether or not the Bishop should have Father [B] evaluated.

148. In January 2010, Bishop Kmiec and Auxiliary Bishop Grosz confronted *Fr. B* with three e-mails in which *Fr. B* purportedly solicited oral sex on Craigslist in late 2007. *Fr.*

*B*'s file contains three hardcopies of the e-mails with footers indicating that they were printed on September 28, 2009. Documents in the file note: “[*Fr. B* seemed perplexed and] indicated he did not know what would have been the source of those particular e-mails.” During this meeting *Fr. B* agreed to a mental health evaluation at Southdown.

149. *Fr. B* underwent a psychological assessment at Southdown and agreed to begin residential treatment in April 2010.

150. In mid-March 2010, Auxiliary Bishop Grosz documented a meeting with Bishop Kmiec regarding *Fr. B*'s status. In a memo of the meeting, Grosz stated that Kmiec had decided that *Fr. B* would resign his pastorate, enter residential treatment at Southdown for several months, and “then look forward” to another assignment. Grosz's memo also briefly notes Kmiec's update that the DRB agreed that *Fr. B* seek residential treatment. However, the Diocesan Corporation failed to reasonably document the DRB's assessment.

151. In late April 2010, Auxiliary Bishop Grosz reported to Bishop Kmiec that *Fr. B* was prepared to publicly announce his leave of absence: “[*Fr. B*] will inform his parishioners that he will be taking a sabbatical of several months. He will make that announcement from the pulpit the weekend of May 22-23 and for the following week, that is, May 29-30, place an announcement in the bulletin confirming his time of sabbatical.” This public announcement was false or misleading because *Fr. B* did not take a sabbatical. In fact, *Fr. B* entered residential, mental health treatment for conduct related to his alleged, inappropriate behavior with minors.

152. On August 16, 2010, a diocesan attorney reported to his law partner that: (a) Auxiliary Bishop Grosz had attended an evaluation of *Fr. B* at Southdown and was informed that “[*Fr. B*] is not at risk of inappropriate activity with minors”; (b) “Southdown believe[s] that [*Fr. B*] has now taken responsibility and ownership of the inappropriate emails that he sent”; and (c)

“[*Fr. B*] has never been accused of any incident of sexual abuse[; thus] . . . the Bishop and the [DRB] found that there was no reason to remove Fr. [*B*] but there was reason to have him evaluated.” This internal law-firm memo between two diocesan attorneys is the only documentation in the file referencing this DRB finding and fails to reasonably document this DRB assessment.

153. On August 20, 2010, Bishop Kmiec certified *Fr. B*'s fitness to officiate an out-of-state wedding and stated in a certification that: (a) “[*Fr. B*] is a person of good moral character and reputation” and (b) “I am unaware of anything in [*Fr. B*'s] background which would render him unsuitable to work with minor children.”

154. On August 27, 2010, Complainant 1's attorney alleged to the Diocesan Corporation that in about 1999, when the Complainant was thirteen-years old, he became friends with *Fr. B*, who: (a) discussed inappropriate topics with the boy, such as oral sex; (b) inappropriately touched the boy's face in a “sexual way”; and (c) took the boy to a pornographic movie. Roughly one week later, Auxiliary Bishop Grosz met with *Fr. B*, who claimed that the Complainant fabricated the allegations because *Fr. B* had accused the boy of accessing *Fr. B*'s e-mail without authorization.

155. Two months later, in early November 2010, a diocesan attorney forwarded Auxiliary Bishop Grosz a “lengthy memorandum . . . prepared after . . . meetings with [Complainant 1] and Fr. [*B*].” The attorney notes in his cover letter to Grosz that “there is a great deal more to [the Complainant]'s complaint than was apparent” and asks Grosz to call to discuss soon. There is no documentation of a DRB assessment.

156. Two days after the diocesan attorney's November 2010 letter, Bishop Kmiec certified *Fr. B*'s fitness to serve as chaplain in a government hospital and stated in his

certification that “[he was] unaware of anything in [*Fr. B*’s] background which would render him unsuitable to work with minor children.”

157. In January 2011, Auxiliary Bishop Grosz met with *Fr. B* and his diocesan counselor to discuss *Fr. B*’s counseling and the previous allegations against *Fr. B*. In Grosz’s written summary of this meeting, he notes that: the DRB would be meeting in three days; several DRB members recommended that *Fr. B* be removed as pastor and possibly transferred to another assignment; and some DRB members recommended that *Fr. B* be removed for further investigation. There is no further documentation of the DRB’s assessment. Grosz’s note is not reasonable or adequate documentation.

158. On February 1, 2011, Auxiliary Bishop Grosz and Bishop Kmiec met with *Fr. B* to discuss the DRB’s recommendations. In a memo to Kmiec dated the same day, Grosz recorded that Kmiec had related that the DRB “saw [one specific report] as a ‘Strike’ against [*Fr. B*] according to the Charter” and that “[o]ne member of the [DRB] noted that it appears Father [*B*] was actually grooming [Complainant 1] for a long period of time.” The Diocesan Corporation failed to reasonably document these assessments by the DRB. In the same February 1 meeting, Kmiec urged *Fr. B* to resign his pastorate and submit to another mental health evaluation by the St. Luke Institute in light of Complainant 1’s allegations. The St. Luke Institute, like Southdown, is a mental health facility that treated priests accused of sexual abuse.

159. Days later Bishop Kmiec and Auxiliary Bishop Grosz met with *Fr. B*. Grosz directed *Fr. B* to submit to a “second opinion” by the St. Luke Institute. Kmiec decided that *Fr. B* would resign his pastorate. *Fr. B* agreed to publicly announce his resignation as a medical leave and to move into the Sheehan Residence, a retirement home for priests in Buffalo. In a February 15, 2011 letter, Kmiec accepted *Fr. B*’s resignation as pastor and “approve[d his]

medical leave of absence.” The Diocesan Corporation misled the public by announcing that *Fr. B* was taking a medical leave of absence. In fact, the Diocese removed him from ministry because of allegations of inappropriate conduct with a minor.

160. It was not until after a complainant publicly disclosed his allegations against *Fr. B* that the Diocesan Corporation issued a formal statement on March 3, 2011, acknowledging that *Fr. B* had been accused of inappropriate conduct:

Whenever there is an allegation of inappropriate conduct against a priest . . . , certain policies and procedures are followed. This case is no different.

Fr. [B] has denied the allegations and he has been placed on administrative leave . . . pending completion of our investigation. The decision to place Fr. [B] on administrative leave does not imply any determination as to the validity of the allegation.

...

Once the investigation is concluded, the Bishop will determine whether or not Father [B] will receive another ministerial assignment.

This announcement demonstrated the misleading nature of the Diocesan Corporation’s prior statement that *Fr. B* was taking a medical leave.

161. On March 5, 2011, Bishop Kmiec issued a Decree of Suspension to *Fr. B* that “placed [him] on administrative leave,” “temporarily relieved [him] of [his] responsibilities,” and, until further notice, revoked his faculties and barred him from publicly officiating Mass, dressing in clerical attire, and holding himself out as a priest.

162. In February 2012, Bishop Kmiec prepared a six-page letter to *Fr. B* to confirm that the DRB had met to reconsider his case at *Fr. B*’s request. Kmiec reaffirmed his decision to remove *Fr. B* from active ministry:

[Y]ou have established a pattern of imprudent and inappropriate behavior that has been going on for more than a decade without any apparent correction. You have been counseled and given opportunities to change, but you have not taken

advantage of those opportunities. Your behavior . . . subjects the Diocese to potential liability if you ever cross the line from inappropriate and imprudent behavior to something worse.

. . .

Taken in conjunction with your history of inappropriate behavior and the recommendation of the [DRB], the warnings issued by the experts at St. Luke Institute make it impossible for the Diocese to return you to active service.

163. In March 2012, Bishop Kmiec informed *Fr. B* that residents of the Sheehan Residence had “justly raised” that they, but not *Fr. B*, were required to pay room and board. Kmiec gave *Fr. B* until May to leave the Sheehan Residence and noted that he had suggested that *Fr. B* “seriously consider the possibility of laicization.”

164. In June 2012, *Fr. B*’s canon law adviser submitted a letter to Bishop Kmiec that requested a new mental health evaluation of *Fr. B* and a formal determination of *Fr. B*’s status. The adviser’s letter challenges the Diocesan Corporation’s factual basis for *Fr. B*’s removal and notes multiple, positive recommendations from Southdown and the Diocesan Corporation that post-dated complaints against *Fr. B*. The letter also states that the adviser was unaware of any internal investigation into *Fr. B* even though the basis for *Fr. B*’s administrative leave was to allow for such an investigation.

165. To respond to *Fr. B*’s canon law adviser, diocesan records indicate that Bishop Malone began a review of *Fr. B* almost immediately upon his installation. In a September 2012 memo to Malone, Vicar General David Slubecky provided Malone with background information and remarked that “no formal process has been followed or initiated, and it is understood that our response [to *Fr. B*’s adviser] may lead to a formal request for a formal hearing under church law.” Malone contacted *Fr. B*’s adviser in October 2012, writing that he had taken “a close look at Fr. [B]’s file” in order to prepare a response to the adviser’s recent inquiries. Malone’s letter



to the adviser affirms Kmiec’s conclusions. Malone emphasized that the DRB had found that *Fr. B* had engaged in “‘grooming’” and disclosed that the St. Luke Institute had recommended that *Fr. B* “‘have ‘no one-to-one contact with minors . . . and no ministry to minors.’”

166. Diocesan records for *Fr. B* indicate that the allegations against him were under review by Fr. Zilliox for referral to the CDF no later than 2015—years after Bishop Malone’s installation. In an outline of documents in *Fr. B*’s file, Zilliox identified some of his concerns, which included: (a) “‘Where is the decree of suspension based on [the *Essential Norms*]? All we have is a decree indicating ‘Administrative Leave’”; (b) “‘What about the [internal] Investigation?’”; and (c) “‘Where was the Promoter of Justice in this case?’”

167. In about September 2019, seven years after Bishop Malone first reviewed the allegations against *Fr. B*, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. B* to the CDF, confirming that Malone had not done so before that time.

168. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct sufficient, independent internal investigations of the allegations against *Fr. B*; failing to properly document the DRB’s assessments; and failing to refer *Fr. B* to the CDF. Instead, it prepared false or misleading business records and made misrepresentations to the public and third parties, concealing *Fr. B*’s conduct. The Diocesan Corporation’s actions placed its beneficiaries at risk.