

IN THE MATTER OF	*	BEFORE THE MARYLAND
GALEN MARBURG, PH.D., ED.D	*	STATE BOARD OF EXAMINERS
LICENSE NO. 0989	*	OF PSYCHOLOGISTS

\* \* \* \* \*

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Examiners of Psychologists (the "Board"), and subject to Health Occupations Article, §18-315, Annotated Code of Maryland (the "Act"), the Board charged Galen Marburg, (the "Respondent") with violations of §18-313 of the Act:

(7) Violates the code of ethics adopted by the Board under §18-311 of this subtitle;

(9) Submits a false statement to collect a fee;

(10) Willfully makes or files a false report or record in the practice of psychology;

(12) Violates any rule or regulation adopted by the Board;

(14) Is professionally, physically, or mentally incompetent; or

(17) Commits an act of unprofessional conduct in the practice of psychology.

The Code of Ethics adopted by the Board under COMAR

10.36.01.09A provides:

Principle 6d. Psychologists make advance financial arrangements that safeguard the best interests of and are clearly understood by their clients. They neither give nor receive any remuneration for referring clients for professional services. They contribute a portion of their services to work for which they receive little or no financial return.

Principle 8c. In reporting assessment results, psychologists indicate any reservations that exist regarding validity or reliability because of the circumstances of the assessment or the inappropriateness of the norms for the person tested. Psychologists strive to ensure that the results of assessments and their interpretation are not misused by others.

The Respondent was given notice of the charges and the issues underlying those charges by letter and charging documents sent to Respondent on September 1, 1991. A prehearing conference on those charges was held on September 25, 1991 and was attended by Lawrence Donner, Ph.D., President of the Board, Roslyn Blankman, Executive Director of the Board and Susan Steinberg, Board Counsel. Also in attendance were the Respondent and his attorneys, Gerard Martin and Laura Katz, and the Administrative Prosecutor, Roberta L. Gill.

#### FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was and is licensed to practice psychology in Maryland.

#### Patient A

2. Patient A, a minor child (7 years old), was referred to Respondent for psychological evaluation due to "numerous problems at school". Materials on Patient A were received from Patient A's school counselor prior to or coincident with Patient A's first appointment on or about January 15, 1988. These materials indicated that Patient A "is having difficulty in the areas of attention, written expression and handwriting". A determination was sought to whether Patient A had an "attention deficit".

3. Although the referral was not of an emergency nature, Respondent billed Patient A's insurance company under the CPT Code 90801 for "crisis intervention" provided on January 5, 1988 for the initial interview of Patient A's mother. CPT 90801 states that a psychiatric diagnostic interview examination "may include communication with family or other sources . . . . In certain circumstances other informants will be seen in lieu of the patient." Thus the information gathered from Patient A's mother about her minor child should not have been billed to the mother as crisis intervention but was a part of the routine information source contemplated by CPT 90801 for diagnosing Patient A.

4. Although the minor child, Patient A, was the patient, Respondent viewed Patient A's mother as a Patient and billed for "psychotherapy" for Patient A's mother from January 21, 1988 through April 4, 1988. Respondent diagnosed Patient A's mother as having an "anxiety disorder" yet did not adequately document that separate psychotherapy sessions lasting 45-50 minutes, were held for her.

5. Similarly, Patient A's father was diagnosed by Respondent as having "an anxiety disorder" and his insurance company was billed by Respondent for psychotherapy provided from January 16, 1988 through April 4, 1988. Respondent also billed the insurance company under CPT Code 90801 "crisis intervention" for Patient A's father for the initial consultation held on January 15, 1988.

6. There was a lack of documentation that either Patient A's mother or father, in fact, received psychotherapy from Respondent on the dates billed.

- a) Specifically, Patient A's mother first consulted with Respondent about Patient A on January 15, 1988 and not on January 5, 1988, as billed by Respondent.
- b) Respondent billed for psychotherapy under CPT 90844 (which specifies a time of 45-50 minutes) for both Patient A's mother and father on January 21, 1988. Respondent did not provide psychotherapy to either person on that date.
- c) Respondent administered the Millon Clinical Multiaxial Inventory and the Minnesota Multi Phasic Personality Inventory tests to both parents on January 22, 1988. Yet, Respondent billed for administering the tests to Patient A's father on January 21, 1988. These tests were billed under CPT 90830 and are self-administered and computer graded: the practitioner is paid by the hour and payment includes the written report. Yet Respondent billed separately as "psychotherapy" for integrating, scoring and interpreting the test.
- d) Respondent billed for providing psychotherapy to Patient A's father on January 16, 1988 when, in fact, Respondent wrote a letter to Patient A's pediatrician. Patient A's father was on a family vacation in Virginia on that date.
- e) Respondent billed Patient A's mother for psychotherapy sessions on February 16, 1988; Respondent billed Patient A for psychotherapy sessions on February 13, 1988, February 15, 1988, February 19, 1988 and February 22, 1988. Both Patient A and his mother were on a family vacation in Florida from February 13, 1988 through February 20, 1988 and, in fact, did not receive psychotherapy from Respondent on those dates billed.

- f) Towards the end of each psychotherapy session with Patient A, Respondent would ask Patient A's parent(s) to join the session for the last 10-15 minutes, yet Respondent billed Patient A, his mother and/or his father separately under CPT 90844, individual psychotherapy, indicating that each had received separate therapy sessions lasting approximately 45-50 minutes when in fact, neither Patient A's mother nor father received psychotherapy for an anxiety disorder from Respondent on the dates when their minor child received psychotherapy.
- (g) Respondent billed Patient A's parents for psychotherapy on April 4, 1988. Patient A's parents did not, in fact, receive psychotherapy from Respondent on that date; rather Patient A's mother cancelled the appointment and did not go to Respondent's office.
- (h) Respondent continued to require Patient A's parents to pay a \$15 co-pay fee for Patient A after the insurance company paid 100% of the services billed. At the same time, Respondent waived any co-pays due for Patient A's parents due to "professional courtesy".
- (i) Respondent billed under CPT 90844 for psychotherapy when in reality he was preparing a report for Patient A's pediatrician. The preparation of such a report should have been billed under the lesser paying, flat rate CPT 90889 rather than the hourly rate of CPT 90844.

7. It is standard practice to review, whenever available, pertinent information on a school-aged patient from a school counselor prior to the patient's appointment. Respondent did not document that he reviewed school reports and reports of previous evaluations sent to him prior to Patient A's initial interview with the parents concerning Patient A.

8. Administering in-depth psychological tests to both parents of Patient A is not the standard practice in evaluating a child's potential attention or learning disorder. Not only did Respondent administer in-depth computerized tests to the parents of Patient A, but Respondent failed to document that he properly conducted the initial interview with the parents, as per CPT 90801, which includes obtaining and assessing potential biological influences through birth, developmental, medical and relevant genetic histories.

9. Rather, Respondent interpreted the computerized results of the personality tests administered to the parents to formulate a diagnosis of both parents as having an anxiety disorder. The Respondent then used this result to bill the insurance company for the "treatment" of both parents who were told by Respondent that they had to become his patients as a condition of treating their child. Respondent did not provide adequate documentation that he provided therapy to the father of Patient A coincident with his diagnosis of "anxiety disorder". Respondent also deviated from standard practice by conducting 6 hours of psychological testing of the parents before the child (the actual patient) was even tested.

10. A notice on the personality tests administered by the Respondent to both parents of Patient A warns that the test is to be used "as only one fact of a comprehensive psychological assessment" and "appraised in conjunction with other clinical data such as current life circumstances, observed behavior,

biographic history, interview responses and information from their tests" for "patients experiencing either genuine emotional discomforts or social difficulties." There is no indication by Respondent that the parents of Patient A fit this norm.

11. In addition to testing the parents of Patient A, Respondent administered tests to Patient A. These tests were inappropriate because:

- a) Tests were administered that were not developed for, normed for or recommended for children of Patient A's age. Specifically:
  - 1) Respondent administered the Rahe Stress Inventory test to Patient A, a 7 year old child. The Rahe Stress Inventory is applicable to adults.
  - 2) Respondent administered the Rotter Incomplete Sentence Blank Test to Patient A; said test is applicable to high school to adult aged persons.
  - 3) Respondent claimed that he administered the Wechsler Memory Test to Patient A. The Wechsler Memory Scale Test is obsolete. If Respondent administered the Wechsler Memory Scale-Revised Test to Patient A, said test is applicable to mid-adolescents to adults.
  - 4) Respondent claims to have administered the Personality Inventory for Children Test. The Personality Inventory for Children Test is conducted by having the parent answer questions through an interview format. The child does not take this test. Respondent had no record that Patient A's parents were administered the test.
- b) The tests administered by Respondent to Patient A took over 9 hours according to Respondent's billing records. The estimated time required for a therapist to administer, score and record those

tests applicable to children is a maximum of 5 hours and 20 minutes.

- c) When reporting test results, Respondent did not acknowledge that several of these tests were not standardized for use with children, in violation of the Code of Ethics adopted by the Board.
- d) Respondent billed Patient A's insurance company under CPT 90830 for administering tests to Patient A on February 6, 1988, February 11, 1988 and February 12, 1988. However, Patient A was tested on February 8, 1988, February 9, 1988 and February 10, 1988. CPT code 90830 includes the administration, analysis and written report of psychological testing. On February 13, 1988 and February 15, 1988, Respondent billed under the better paying CPT code 90844 (the psychotherapy code) for analysis and preparing a written report of the tests administered to Patient A on February 8, February 9 and February 10, 1988. Thus, Respondent billed for 6 days of testing-related services when only 3 days worth were actually provided.
- (e) Respondent failed to administer appropriate tests to determine if Patient A had a learning disability, for which Patient A was referred to Respondent. Although Respondent diagnosed Patient A as having a learning disability, Respondent failed to administer tests which would concentrate on measures of academic achievement. Respondent failed to document a difference between intellectual abilities and demonstrated skill achievement, as is standard practice. Administering 13 personality tests to Patient A and his parents were inappropriate as a means of determining the source of Patient A's school based problems and reason for referral.
- (f) Testing was excessive in that 9 personality tests were administered to Patient A by Respondent. Many of these tests were repetitious such as the House-Tree-Person Test and Human Figure Drawing. Respondent billed for two

separate Bender-Gestalt tests but the tests are actually one test. In addition to the 9 tests given to Patient A, Respondent administered 4 personality tests to the parents of Patient A. Contrary to standard practice, Respondent provided no rationale as to why so many tests were given nor are pertinent test scales referred to in Respondent's report on Patient A and his parents.

12. Respondent diagnosed Patient A as having a "learning disability". The standard diagnostic manual, DSMIII-R, does not recognize a diagnosis of "learning disability" but recognizes, instead, specific types of developmental disorders such as "developmental arithmetic disorder".

13. By discarding the test results of Patient A as well as clinical profiles, drawings and verbatim responses to projective tests, it is not possible to determine if all tests billed for were actually administered and whether the interpretations were based on valid measures and procedures, especially for those tests that were administered to Patient A that were not standardized for children.

Patient B

14. In a separate incident, a 3 year old child, Patient B, was referred to Respondent by Patient B's pediatrician for an evaluation of Patient B's "behavioral problems."

15. Standard practice in the evaluation and treatment of a 3 year old child is to conduct interviews with the parents to obtain information on biological and developmental factors, temperamental characteristics, past and present psychosocial influences and to observe the parent and child interactions and assess the evaluator and child interactions. Medical records should be reviewed as well. Respondent deviated from standard practice by neither documenting any basic historical data on Patient B nor documenting formal behavioral analysis. Contrary to standard practice, Respondent administered in-depth personality tests to the parents before making an objective assessment of Patient B, as described above.

16. Respondent deviated from the accepted standards of care by administering personality tests to and diagnosing Patient B's mother as well as billing for psychotherapy on Patient B's mother who had already been in treatment with another psychologist for several years prior to bringing her son in to seek treatment from Respondent. Patient B's mother was unaware that Respondent was claiming her as a patient and billing the insurance company for providing psychotherapy when none was provided. Respondent made a diagnosis of Patient B's mother as having a "depressive disorder" on the basis of computerized personality tests which

warn against the use of those tests alone to make a comprehensive psychological assessment. Psychological tests should not have been administered nor a diagnosis made of Patient B without prior consultation with Patient B's psychologist.

17. Respondent violated the Code of Ethics adopted by the Board by billing Patient B's mother for two psychotherapy sessions on September 29, 1989 and October 2, 1989 when Respondent knew that Patient B's mother was under the care of another therapist. In addition, Patient B's mother stated that the "sessions" which occurred towards the end of each session with Patient B were not psychotherapy directed at her or for her benefit. Instead, Respondent would ask her to join them to aid Respondent's treatment of Patient B. Respondent then billed for Patient B and for Patient B's mother under CPT 90844, for separate and individual psychotherapy sessions lasting approximately 45-50 minutes each when, in fact, only one session took place.

18. Respondent required each parent to become a patient as a condition of treating the 3 year old child, Patient B. Respondent administered personality tests to each parent. These tests are usually used in a clinic setting to assess adult psychopathology rather than to evaluate a 3 year old child.

19. Respondent further deviated from standard practice by billing Patient B and his parents for separate psychotherapy sessions prior to determining whether therapy services were agreed to by the parents. Any information gathered from the

parents of Patient B should have been used as collateral input regarding Patient B's treatment and should not have been used to incorrectly characterize (and bill for) each parent as separate patient.

20. Respondent billed Patient B's father for an initial consultation on September 28, 1989, for psychotherapy on September 29, 1989 and October 2, 1989 and for personality tests on September 30, 1989. Respondent diagnosed Patient B's father as having a "mood disorder." Documentation does not substantiate, however, that four separate interviews (two separate interviews with each parent on September 28 and September 29, 1989) were conducted. Nor does documentation substantiate that the father of Patient B received treatment from Respondent for the "mood disorder" diagnosed by Respondent.

21. Respondent charged Patient B's family a total of \$1280 for 7 sessions over a 5 day period. Of that amount, Respondent billed as separate sessions the initial interview with the parents and continued to bill under the individual psychotherapy (45-50 minutes) CTP code 90844 for each parent separately as a patient when the parent would only join in at the end of Patient B's session at Respondent's request. Furthermore, Respondent billed the father of Patient B for psychotherapy sessions on October 2, 1989 when, in fact, no psychotherapy was rendered to the father of Patient B on that date. Respondent billed the insurance company for telephone consultation with Patient B's mother as psychotherapy lasting 45-50 minutes, when that

psychotherapy was not, in fact, provided. Respondent also billed the insurance company for psychotherapy when, in fact, he only prepared a report to the referring pediatrician. Finally, Respondent administered personality tests on September 29, 1989 to the parents of Patient B yet billed these as psychotherapy; Respondent then billed for administering the tests on September 30, 1989 (the date same were scored). CPT 90830 covers the administration of psychological testing and includes the scoring and written report of the test results. The tests billed for by Respondent were self-administered and their interpretation was computer-scored.

#### CONCLUSIONS OF LAW

A. Respondent's above described actions violated the Code of Ethics adopted by the Board by failing to use appropriate psychological measurement, by not disclosing financial arrangements in an adequate manner, by not indicating any reservations that existed regarding the validity of test results and without consultation with Patient B's mother's treating psychologist by sending a "diagnosis" of her psychological problems to her son's pediatrician.

B. Respondent submitted a false statement to collect a fee and made a false report in the practice of psychology by billing the insurance companies of Patients A and B for individual psychotherapy sessions for both parents of Patients A and B when no separate psychotherapy was documented as given to both parents, by billing for testing that was not done on the date

billed, by billing for psychotherapy when no psychotherapy was provided on the date billed, by billing for psychotherapy for merely writing a consultative report and by billing for psychotherapy for telephone conversations with the parents of Patient A and Patient B.

C. Respondent violated a regulation of the Board by not adhering to the provisions of the Act in the interests of the welfare of his patients, as described above.

D. Respondent is professionally incompetent in that he administered tests not designed for the age of his patient, did not document why these non-standardized tests were used, discarded the test results, administered tests to parents that were inconsistent with the problems of their children, administered personality tests to the parents of his patients and then used those tests as the sole means of diagnosing the parents, failed to document that appropriate background information was elicited in order to reach a proper diagnosis for problems presented by Patients A and B and rendered an initial diagnosis of the parents of Patient A and B without benefit of a proper evaluation or therapist patient relationship.

E. In purporting to diagnose a person who was already under the care of another therapist without consulting with that therapist, by rendering a diagnosis based on the results of two personality tests that were not designed for the problems presented to Respondent, by requiring the parents to become his "patients" when they initially sought Respondent's services

solely for the evaluation of their minor children and by billing them separately for sessions that actually comprised therapy sessions for their children, and billing the insurance company for services not rendered, Respondent committed acts of unprofessional conduct in the practice of psychology in violation of the Act.

Based on the foregoing, the Board concludes that Respondent violated Health Occupations Article, Maryland Annotated Code, §§18-313(7), (9), (10), (12), (14) and (17) and COMAR 10.36.01.09B and 10.36.01.09A, Principle 6d and Principle 8c.

ORDER

**ORDERED** that the license of Respondent to practice Psychology in Maryland be **SUSPENDED** effective November 15, 1991 for one year (November 14, 1992) or until completion of the following courses, whichever represents a longer period of time and be it further

**ORDERED** that during the period of suspension, the Respondent shall:

1. Take and complete six (6) graduate credit hours in psychological assessment of children and adolescents; and
2. Take and complete three (3) graduate credit hours of professional ethics and practice.

Said course work is to be approved in an expeditious manner by the Board prior to matriculation. Documentation of completion of the courses is to be sent to the Board; and be it further

**ORDERED** that if Respondent violates any of the foregoing conditions during the suspension, the Board, after notification, a hearing and determination of violation, may impose any lawful disciplinary sanctions it deems appropriate; and be it further

**ORDERED** that Respondent may petition the Board for reinstatement to practice psychology if on or after November 15, 1992 Respondent demonstrates to the Board's satisfaction that he has complied with the terms and conditions of suspension. If the Board determines that Respondent has not complied with the terms and conditions of suspension, the Board may deny the petition or may modify one or more of the foregoing conditions of Respondent's suspension; and be it further

**ORDERED** that for purposes of public disclosure as permitted by §10-617(b), State Government Article, Annotated Code of Maryland, this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order.

11-8-91  
Date

Lawrence Donner, Ph.D.  
Lawrence Donner, Ph.D.  
Chair, Board of Examiners of  
Psychologists

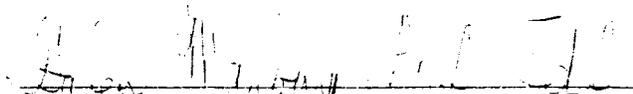
CONSENT OF GALEN MARBURG

I, Galen Marburg, by affixing my signature hereto, acknowledge that:

1. I am represented by attorneys Gerard Martin and Laura Katz and have been advised by them of the legal implications of signing this Consent Order. Although I have signed this Consent Order, I strongly disagree with and do not admit to the Board's Findings of Facts and Conclusions of Law in totality but am signing this to avoid protracted litigation. I acknowledge that in reaching this Consent, there has been no full evidentiary hearing on the merits at which I would be able to call witnesses on my own behalf and cross examine the State's witness.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board. By this Consent Order, I hereby consent and submit to the Order, provided the Board adopts the foregoing Final Consent Order in its entirety. By so doing, I waive my right to a formal hearing as set forth in §18-315 of the Act and §10-205 of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland and any right to appeal as set forth in §18-316 of the Act and §10-215 of the Administrative Procedure Act. I acknowledge that by failure to abide by the conditions set forth in this Order, and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice Psychology in the State of Maryland.

10-30-91  
Date

  
Galen Marburg, Ph.D., Ed.D.

STATE OF MARYLAND  
CITY/COUNTY OF:

I **HEREBY CERTIFY** that on this 30<sup>th</sup> day of October,  
1991, a Notary Public of the State and City/County aforesaid,  
personally appeared Galen Marburg, License No. 0989, and made  
oath in due form of law that signing the foregoing Consent Order  
was his voluntary act and deed, and the statements made herein  
are true and correct.

**AS WITNESSETH** my hand and notarial seal.

[Signature]  
Notary Public

My Commission Expires: 6/94