

IN THE MATTER OF
HERBERT NICKEL

* BEFORE THE
* MARYLAND BOARD OF EXAMINERS
* OF PSYCHOLOGISTS

* * * * *

CHARGES UNDER THE MARYLAND PSYCHOLOGISTS ACT

Section 18-313 of Title 18 of the Health Occupations Article, Annotated Code of Maryland (1991 Repl. Vol.), the Maryland Psychologists Act (the "Act") provides that subject to the hearing provisions of §18-315 of the Act, the Board of Examiners of Psychologists (the "Board") may reprimand a licensee, place a licensee on probation or suspend or revoke the license of a licensee if the licensee:

Violates the Code of Ethics adopted by the Board under §18-311 of this subtitle. §18-313(7) of the Act.

Is professionally, physically or mentally incompetent. §18-313(14) of the Act.

Commits an act of unprofessional conduct in the practice of psychology. §18-313(17) of the Act.

Pursuant to Section 18-311 of the Act, the Board adopted a regulation COMAR 10.36.01.09(a) which states, in pertinent part:

A. All persons who represent themselves to be psychologists in the State shall adhere strictly to the Ethical Standards of Psychologists adopted and published by the American Psychological Association and to any subsequent revisions and additions. . .

Principle 1f of the "Ethical Principles of Psychologists" (formerly entitled "Ethical Standards of Psychologists") (1981 Revision) (hereinafter "Ethical

Principles") adopted and published by the American Psychological Association, provides:

As practitioners, psychologists know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial or political situations and pressures that might lead to misuse of their influence.

Principle 6a of the Ethical Principles provides:

Psychologists are continually cognizant of their own needs and of their potentially influential positions vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgment or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, supervisors, close friends or relatives. Sexual intimacies with clients are unethical.

Principle 6e of the Ethical Principles provides:

Psychologists terminate a clinical or consulting relationship when it is reasonably clear that the consumer is not benefitting from it. They offer to help the consumer locate alternative sources of assistance.

Principle 8 of the Ethical Principles provides:

In the development, publication, and utilization of psychological assessment techniques, psychologists make every effort to promote the welfare and best interests of the client. They guard against the misuse of assessment results. They respect the client's right to know the results, the interpretations made, and the bases for their conclusions and recommendations. Psychologists make every effort to maintain the security of tests and other assessment techniques within limits of legal mandates. They strive to ensure the appropriate use of assessment techniques by others.

The Board charges Herbert Nickel ("Respondent") with violating the Code of Ethics promulgated by the Board, to wit, Principles 1f, 6a, 6e and 8 of the Ethical Principles of Psychologists, thereby violating §18-313(7) of the Act, with being professionally incompetent, thereby violation §18-313(14) of the Act, and with committing acts of unprofessional conduct, and thereby violating §18-313(17) of the Act.

ALLEGATIONS OF FACT

1. At all times relevant to these charges, the Respondent was and is licensed to practice psychology in Maryland.
2. In or about early December, 1983, Respondent was retained as an expert by Paul Stein, the attorney appointed by the Court to represent the children of Marsha Torres and her former husband, Robert I. Henkin in a dispute involving his visitation rights.
3. In that capacity, Respondent evaluated the children on 12/19/83. As a result of Mr. Stein's request to their attorneys, Marsha Torres and Dr. Henkin also submitted to evaluations by Dr. Nickel. Marsha Torres was interviewed on 12/21/83 and 12/22/83 and Dr. Henkin was interviewed at length on 12/23/83 and 12/24/83.
4. On 12/28/83, Respondent administered the Cole Animal Test and the Rorschach Test to Dr. Henkin. These were the only tests administered to Dr. Henkin in the course of the evaluation.

5. As part of his evaluation of Dr. Henkin, Respondent reviewed letters which had been sent by Dr. Henkin to Mrs. Torres and, with Dr. Henkin's permission, spoke with Dr. Henkin's therapist.

6. Respondent did not prepare a written report on his evaluation of Dr. Henkin.

7. Respondent did not explain the results of the test to Dr. Henkin, nor did he take steps to assure that the results were properly explained to him.

8. On January 12, 1984, at a meeting with Mr. Stein, Mrs. Torres' two attorneys and Dr. Henkin's attorney, Respondent described the results of his family evaluation and responded to questions from the four attorneys. During that meeting, he described and explained his psychological evaluation of Dr. Henkin, including diagnosing him as Schizophrenia, paranoid type (295.3, DSM-II), Borderline, with a very poor prognosis.

9. At the meeting of January 12, 1984, Dr. Nickel also made recommendations as to future interactions between Respondent and the children and strongly recommended that "Dr. Henkin initiate psychotherapy appointments with an extremely competent therapist at the rate of at least 2 appointments per week."

10. On or about January 14, 1984, Respondent met with Ms. Torres, at her request. Among other things, they talked about the desirability of briefly and simply describing Dr. Henkin's psychological problems to the children to help them

intellectually cope with the anxieties, anger and frustrations of interacting with their father.

11. On January 23, 1984, Respondent met with the same four attorneys, and he and Mr. Stein met with the children for about 2 1/2 hours to discuss a visitation plan. Dr. Nickel talked to the children about Dr. Henkin's psychological problems including his diagnosis.

12. In discussing Dr. Henkin with the children, the diagnosis was not emphasized, rather the focus was upon his overtly incomprehensible, damaging and confusing behavior itself.

13. Respondent demonstrated a lack of the knowledge and judgment of a minimally competent psychologist with respect to evaluations. Respondent's evaluation of Dr. Henkin deviated from applicable professional standards in the following respects:

a) The administration of the Rorschach test was improper in that it was not given under sufficiently controlled circumstances and there were not enough follow-up inquiries;

b) The responses given in the test as administered were not consistent with the diagnosis of schizophrenia, paranoid type (295.3, DSM-II) Borderline;

c) The applicable standard of care required the administration of and reliance on at least two additional tests before diagnosing a client with the above diagnosis;

d) In 1983, the diagnosis of schizophrenia, paranoid type (295.3, DSM-II) Borderline was no longer a recognized

diagnosis. At that time, DSM-II (Diagnostic and Statistical Manual of Mental Disorders (Second Edition)) had already been superseded by DSM-III, which did not include the diagnoses used by Respondent.

14. In or about the end of January, 1984, Dr. Henkin's attorney requested that Dr. Nickel provide him with the underlying data for his conclusions. Dr. Henkin also personally requested those materials.

15. Despite repeated reminders by Dr. Henkin and his attorneys, the requested materials were not furnished until January, 1985, at which time they were sent in a letter to Dr. Henkin's attorney.

16. Respondent's delay in furnishing to Dr. Henkin or his attorney the underlying data for his conclusions when he was requested to do so constituted a violation of Principles 1f and 8 of the Ethical Standards of Psychologists and unprofessional conduct.

17. On June 8, 1984, Respondent began providing psychotherapy to Mrs. Torres.

18. Initially, Respondent saw Mrs. Torres approximately weekly, and the purpose was to help with Dr. Henkin and her children.

19. Beginning on or about August 1984, Mrs. Torres began seeing Respondent on an average of two to four times per week.

20. During the time he was providing therapy to Mrs. Torres, Respondent occasionally met professionally with several of her children. Specifically, he met with Hannah Henkin on November 23, 1984 and November 26, 1986; Elizabeth Henkin on November 23, 1984, December 11, 1984, and November 28, 1986; and Joshua Henkin on November 2, 1984, June 28, 1986, July 1, 1986, and July 3, 1986.

21. On July 4, 1985, both Mrs. Torres and her husband, Silvo Figulirelo-Torres, came to Respondent for therapy together; another joint session was held on November 27, 1986, at which time Respondent suggested that Mr. Torres have individual therapy rather than joint sessions.

22. Mr. Torres came to Respondent for individual psychotherapy sessions on December 3, 1986, and weekly thereafter through January 21, 1987. After that he met with him on February 4, February 11, and February 18, 1987. Telephone conversations or conferences were held on January 28th and 29th and on February 12th and February 19th.

23. On February 26, 1987, Mr. Torres telephoned Respondent and said he thought that Mrs. Torres did not want him to see Respondent anymore.

24. On February 26, 1987, at a session with Respondent, Mrs. Torres talked to Dr. Nickel about feeling very positive toward him. He acknowledged that he was fond of her too, and

then told her that he would not be able to be her therapist and develop romantic feelings toward her at the same time.

25. During her next visit on February 27, 1987, they decided that they would rather develop a personal relationship than continue a patient-therapist relationship, and that she should seriously consider receiving psychotherapy from another therapist.

26. On February 28, 1987, Respondent and Mrs. Torres went on a date.

27. During the evening of February 28, 1987, Respondent and Mrs. Torres were sexually intimate with each other.

28. Soon after February 28, 1987, Respondent and Mrs. Torres began living together, first at Respondent's house; and then on August 1, 1987, at Mrs. Torres' house.

29. On July 1, 1987, Mrs. Torres and Dr. Henkin signed a consent order granting custody of the children to Dr. Henkin with liberal rights of visitation to Mrs. Torres.

30. On December 14, 1987, Mr. and Mrs. Torres were divorced.

31. Respondent and Mrs. Torres married each other on December 16, 1987.

32. Respondent's conduct was unprofessional and in violation of Principle 6a for each of the following reasons:

a) He terminated, within a period of only two successive days, long-term intensive therapy with a client whose

husband he had also been counselling in regard to their sexual relationship, and began a close personal relationship with her on the following day.

b) He engaged in sexual intimacy with a client (Ms. Torres) on the day following termination of long-term intensive therapy.

c) He entered into a close personal relationship with the wife of a client (Mr. Torres).

33. Respondent's conduct was unprofessional and in violation of Principle 6e for each of the following reasons:

a) He terminated long-term intensive therapy with a client within a period of only two successive days and began a close personal relationship with her without ensuring that she was appropriately referred to a subsequent therapist and without any professional consultation.

b) He failed to make provisions for referral of the client's husband, whom he had also been counseling, to a subsequent therapist.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds cause to take action under §18-313 of the Act, the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, or reprimand, and may place the Respondent on probation.

NOTICE OF HEARING AND PREHEARING CONFERENCE

A hearing in this matter has been scheduled for May 18, 1992 at 9:00 a.m. at the Office of Administrative Hearings, Administrative Law Building, Greenspring Station, 10753 Falls Road, Lutherville, Maryland 21093.

In addition, a prehearing conference in this matter has been scheduled for April 3, 1992 at 10:00 a.m. in Room 301, at 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the prehearing is described in the attached letter to Respondent.

February 11, 1992
Date

Lawrence Donner Ph.D.
Lawrence Donner, Ph.D.
Chair

IN THE MATTER OF
HERBERT NICKEL, Ph.D.

* BEFORE THE
* MARYLAND BOARD OF EXAMINERS
* OF PSYCHOLOGISTS.

* * * * *

SUMMONS AND NOTICE OF HEARING

YOU ARE HEREBY SUMMONED to appear at a hearing before the Board of Psychologists (the "Board") to determine whether you have violated the Maryland Psychologists Act (the "Act") as described in the attached document "Charges Under the Maryland Psychologists Act" and what sanctions, if any, are appropriate. The hearing in this matter is scheduled for May 18, 1992 at 9:00 a.m. at the Office of Administrative Hearings, Administrative Law Building, Greenspring Station, 10753 Falls Road, Lutherville, Maryland 21093.

This hearing is held under the authority of §18-315 of the Health Occupations Article, and §10-201 et seq. of the State Government Article.

If you do not appear as required by this summons, the administrative law judge may hear and determine this matter in your absence, as provided under §18-315 of the Health Occupations Article.

February 11, 1992
Date

Lawrence Donner Ph.D.
Lawrence Donner, Ph.D.
Chair