

**IN THE MATTER OF**  
**WILLIAM J. PICON, Ph.D.**

**Respondent**

**License No: 1244**

**\* BEFORE THE STATE**  
**\* BOARD OF EXAMINERS**  
**\* OF PSYCHOLOGISTS**  
**\* OAH NO. DHMH-BEP-85-200100002**

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**FINAL DECISION AND ORDER**

This case arose from a complaint filed by a psychiatric nurse specialist alleging that William J. Picon, Ph.D. (the "Respondent"), License Number 1244, engaged in sexual relations and other inappropriate behavior with a former patient ("Patient A"). Based on this information and pursuant to its authority under Md. Code Ann., Health Occ. ("H.O.") §18-301, et seq. (2000 Rep. Vol.), on August 15, 2001, the Maryland State Board of Examiners of Psychologists (the "Board") charged Respondent with violating the following provisions of H.O. §18-313:

Subject to the hearing provisions of §18-315 of this subtitle, the Board...may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of any licensee if the applicant or licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (7) Violates the code of ethics adopted by the Board under § 18-311 of this subtitle;
- (17) Commits an act of unprofessional conduct in the practice of psychology;
- (20) Does an act that is inconsistent with generally accepted professional standards in the practice of psychology.

The Board also charged Respondent for violations of the Code of Ethics and Professional Conduct, Code Md. Regs. tit. 10, § 36.05. The relevant provisions are as follows:

.05 Client Welfare

- A. Exploitation or Undue Influence. A psychologist shall:
- (1) Refrain from exploiting or harming clients, colleagues, students, research participants, or others;
  - (2) Refrain from sexual harassment of the psychologist's clients, supervisees, research participants, or employees, with "sexual harassment" defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature;
  - (3) Refrain from allowing personal, social, religious, organizational, financial, or political situations and pressures to lead to a misuse of the psychologist's influence;
  - (4) Avoid any action that violates or diminishes the legal and civil rights of clients or others who may be affected by the action; and
  - (5) Refrain from exploiting the trust and dependency of clients, students, and subordinates.
- B. Impaired Objectivity and Dual Relationships.
- (1) A psychologist may not undertake or continue a professional relationship with a client when objectivity is or could reasonably be expected to be impaired because of a present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or a relevant or legal representative with the client or a relevant person associated with a related to the client.
  - (2) A psychologist may not:
    - (a) Engage in an exploitative relationship with a past or a present client, including, but not limited to, any:
      - (i) Sexual intercourse or other sexual contact,
      - (ii) Verbal or physical behavior which is sexually seductive, demeaning, or harassing; or

- (b) Enter into a dual relationship with a past or present client.
- (3) Whether a relationship with a former client is exploitative is dependent on, but not limited to, the:
  - (a) Type of professional services rendered to the client;
  - (b) Length of the professional relationship;
  - (c) Length of time between the termination of the professional relationship and the initiation of the nonprofessional relationship; and
  - (d) Mental stability of the psychologist and former client.

A hearing on the merits of the case was held on April 9-10, June 4-6, June 20-21, August 14, and October 4, 2002. William L. England, Jr., Administrative Law Judge (the "ALJ"), presided over the hearing. On December 27, 2002, the ALJ issued a Proposed Decision wherein he concluded by a preponderance of the evidence that the Respondent violated H.O. §§18-313(1), (7), (17), and (20) of the Maryland Psychologists Act (the "Act"). The ALJ recommended that the Respondent receive a one year suspension, with all except for six months stayed, with the conditions that Respondent successfully complete a tutorial in psychotherapy patient record-keeping and a course in ethics and professional conduct.

By letter dated December 27, 2002, the ALJ informed the parties of the right to file exceptions to the Proposed Decision within 21 days of receipt of the Proposed Decision. The State filed exceptions with the Board and the Respondent's counsel filed a response to those exceptions. On May 16, 2003, a quorum of the Board held a hearing regarding the State's exceptions and Respondent's response. The Board deliberated on

that same date, May 16, 2003, and voted to adopt in part, modify in part, and reject in part the ALJ's Proposed Decision for the reasons set forth herein.

### **ISSUES AND SUMMARY OF EVIDENCE**

The Board adopts and incorporates by reference the Issues and Summary of Evidence made by the ALJ in his Proposed Decision, dated December 27, 2002. The entire Proposed Decision is attached and incorporated herein as Appendix A.

### **FINDINGS OF FACT**

The State filed numerous exceptions to the ALJ's Proposed Findings of Fact. The Board finds that many of the State's exceptions are, in fact, correct, and certainly could be relied upon by the Board. Additionally, the Board has the authority to modify or reject findings of fact, except those that are based on determinations of witness credibility. *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 298-99 (1994). However, in light of the voluminous undisputed record before the Board, and the fact that most of the ALJ's errors or omissions were, with one exception, immaterial, when considering the Respondent's admitted violations, the Board does not deem it necessary to modify the proposed findings of fact and will adopt and incorporate the ALJ's proposed findings of fact, with one addition.

The Board will add one finding to the ALJ's Proposed Findings of Fact, as it is set forth in the State's Exceptions. The Board finds that the Respondent occasionally consulted with his professional partner, Dr. Marilyn Sperling, in regard to his treatment of Patient A. (T. 1098) However, in December 1997, when Patient A terminated the therapeutic relationship, Respondent ceased discussing Patient A with Dr. Sperling. (T. 1108, 1334-1335) The Board agrees with the State that this fact suggests that

Respondent was aware that his post-termination relationship with Patient A was improper or else he would have certainly continued seeking professional guidance with respect to such serious boundary issues.

### DISCUSSION

Due to tensions that arose during the administrative hearing, the State's witness, Patient A, abruptly left the hearing while still under the Respondent's cross-examination. As a result, Respondent moved to dismiss not only all of Patient A's testimony admitted on direct examination, but in addition, all of the statements given by Patient A to other State witnesses, i.e., Patricia Walker, RN, Patricia Morris English, Board Investigator and Marc I Hafkin, LCSW-C. The ALJ granted Respondent's motion and therefore, in arriving at his proposed decision, the ALJ did not rely on any testimony, direct or hearsay, by Patient A. (Proposed Decision, pg. 13-14).

While the Board agrees with the ALJ's decision to strike Patient A's direct testimony because of her refusal to submit to a full cross-examination, the Board disagrees with the ALJ's determination regarding the admissibility of Patient A's hearsay statements.<sup>1</sup>

The statements made by Patient A to Patricia Walker, RN, Marc Hafkin, LCSW-C, and Patricia Morris English, Board Investigator, meet the standards for reliability and probative value as set forth in *Travers v. Baltimore Police Department*, 115 Md. App. 395 (1997).<sup>2</sup> First, Patient A's statements to Marc Hafkin and Patricia Walker were made

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<sup>1</sup> The State argued persuasively in exceptions that hearsay statements made by Patient A to her two therapists, Patricia Walker, RN, and Marc Hafkin, LCSW-C, as well as to the Board's investigator, were reliable irrespective of the fact that Patient A refused to submit to cross-examination. (State's Exceptions, pp. 15-30).

<sup>2</sup> *Travers* established factors to be examined in determining whether hearsay statements are probative and reliable. Those factors are whether the statements were made under oath, close in time to the incident, or can be corroborated. *Travers* at 413.

during and immediately after Patient A's romantic interactions with the Respondent. Secondly, all three of the above witnesses testified at the hearing and were subject to cross-examination. Thirdly, Patient A's statements to the above witnesses were completely consistent. And lastly, Patient A's statements to Patricia Walker and Marc Hafkin were made long before Patient A's contemplated civil action, and during confidential therapeutic sessions. Therefore, the timing and context in which the statements were made, the consistency of the statements, and the fact that three witnesses corroborated the statements, all lend to their reliability.

While the Board feels that it could certainly rely upon the hearsay statements made by Patient A regarding Respondent's sexual misconduct and other boundary violations, the Board has determined that it is unnecessary in light of the undisputed record in this case. The Respondent has admitted to not only sexual intercourse but also numerous other violations in his interactions with a very confused present and former patient. The Board finds that the evidence as admitted by the ALJ is a sufficient basis upon which to base its sanction.

Secondly, the Board is in agreement with the ALJ's rationale regarding his finding that the Respondent's post-termination relationship with Patient A was exploitative. However, the Board wishes to clarify that its finding of exploitation on the part of the Respondent is primarily based on review the factors set forth in COMAR 10.36.05.05B(3)<sup>3</sup>. The State's expert, Dr. Barnett, clearly and thoroughly applied these factors to the facts in this case and came to the conclusion, as did the ALJ, that the

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<sup>3</sup> Those factors are: (1) the type of professional services rendered to the client; (2) the length of the professional relationship; (3) the length of time between the termination of the professional relationship and the initiation of the nonprofessional relationship; and (d) the mental stability of the psychologist and former client. COMAR 10.36.05.05B(3).

Respondent's sexual relationship with Patient A after termination of the professional relationship was exploitative. (T. 513-18)

The Board adopts and incorporates by reference the remainder of the ALJ's Discussion in his Proposed Decision, dated December 27, 2002.

### CONCLUSIONS OF LAW

The Board adopts and incorporates by reference the Conclusions of Law made by the ALJ in his Proposed Decision, dated December 27, 2002.

### SANCTIONS

The Board rejects the ALJ's Proposed Disposition of this matter. The Respondent has admitted to having sexual relations with a former patient. The sexual relations were the culmination of a prolonged history of other admitted boundary violations that occurred both while the professional relationship was ongoing and after the termination of professional services.

The Respondent was not an inexperienced psychologist, but rather a seasoned psychologist with twenty years of experience treating patients with serious disorders. Knowing that Patient A had a history of familial sexual and physical abuse, the Respondent was, or should have been, fully aware of the probability that Patient A would experience transference and would begin to have amorous feelings toward the Respondent.<sup>4</sup> Respondent was at least initially concerned enough about Patient A's amorous feelings toward him to consult with a colleague, Dr. Sperling. However, his professional consultations with Dr. Sperling ceased when Patient A terminated therapy,

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<sup>4</sup> Transference occurs when "patients...act in ways that will replay dysfunctional patterns from past relationships or from past times in their life. And, in essence, transfer certain emotions, feelings, perceptions and behaviors toward the...psychologist, which are then for that psychologist to address in a therapeutic and appropriate manner." [Tr. 355-56, Testimony of Jeffrey Barnett, Ph.D.]

although the Respondent's relationship with Patient A began to progress to an even more social and romantic level shortly after termination.

Not only did Respondent engage in sexual intercourse with a former patient, the Respondent crossed myriad other boundaries throughout their relationship, such as laying on the floor with Patient A during therapy sessions, accompanying Patient A on errands, making highly personal disclosures to Patient A, and having lunch with Patient A and her children. All of these actions are highly unethical because they confuse the patient as to the appropriate boundaries of the professional relationship. As testified by both Dr. Barnett and Dr. Fago, patients with a history of sexual abuse, such as Patient A, have a propensity to challenge boundaries and experience transference of emotions, perceptions or behaviors towards the psychologist. For this very reason, the Respondent, who predominantly treats patients with a history of sexual abuse or other trauma, should have been fully prepared to handle boundary and transference issues. Otherwise, the Respondent should have referred Patient A to another therapist if he felt that he could not maintain appropriate boundaries. The Board fails to fathom why an experienced psychologist such as the Respondent failed to recognize blatant boundary violations, and then continued to compound those violations to the detriment of the patient's mental health.

The Respondent's failure to be forthright on his renewal application to the Board regarding this matter, together with his decision to stop seeking professional guidance when his relationship with Patient A transformed from professional to solely personal, evidence deceptive behavior by the Respondent. Of course, the Board's paramount concern is the protection of the public. The Respondent has shown no evidence that he

understands the magnitude of his ethical violations, or that he is mentally capable of handling another occurrence of transference should it arise again. This is particularly troubling since the Respondent is continuing to treat patients with histories of serious trauma, such as Patient A. Furthermore, as the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public", *McDonnell v. Commission on Medical Discipline*, 301 Md. 426, 436 (1984), it is imperative that psychologists understand that proper boundaries must be adhered to at all times, and that sexual relations with a present or former patient is an egregious violation of a psychologist's ethical duties.

The Respondent attempts to mitigate his violations by arguing that Patient A was the aggressor and initiated all romantic interactions. The fact that Patient A may have made sexual advances toward the Respondent is completely irrelevant. Because of the intimate nature of the therapeutic relationship, patients often develop amorous feelings toward their psychologist and may sometimes act upon them. It is incumbent upon the Respondent, as the trained healthcare professional in the therapeutic relationship, to maintain proper boundaries at all times. This defense demonstrates that the Respondent has no real understanding of a psychologist's ethical duties or the role of a psychologist in psychotherapy.

In cases such as this involving sexual misconduct, in order to protect the public, the Board has consistently imposed long periods of suspension or revocation. *See, e.g., In the Matter of James Edwards, Ph.D. (2000), aff'd by Circuit Court for Montgomery Co., Case No. 210683 (2000)* (revocation of license despite the licensee's subsequent marriage to former patient). Given the factors of the patient's history of sexual abuse, the Respondent's extensive experience as a psychologist, the Respondent's deceptive

behavior, and the Respondent's emotional problems that contributed to his impaired clinical judgment, the Board cannot trust the Respondent with the safe and proper treatment of vulnerable patients.

The Board acknowledges the Respondent's mitigating circumstances regarding the stressors in his personal life (Proposed Decision, pp.21-22) as well as the Respondent's own history of sexual abuse. Dr. Peter Fago, the Respondent's expert, testified that the Respondent's inability to adequately deal with own personal crises caused the Respondent to "lo[se] control of the treatment". (Tr. 850-51). While these circumstances have persuaded the Board not to revoke the Respondent's license, they also cause the Board great concern regarding the Respondent's ability to safely treat patients with very serious mental conditions. However, the Board does believe that rehabilitation may be possible and will therefore give the Respondent an opportunity to prove that he is trustworthy at a future date.

For the reasons stated above, the Board shall increase the Proposed Disposition offered by the ALJ. Specifically the Board shall impose a three (3) year period of suspension during which the Respondent shall undergo therapy with a Board-approved psychologist, maintain up-to-date continuing education credits, successfully complete a Board-approved tutorial focusing on boundary issues, and successfully complete a Board-approved course on recordkeeping. The Respondent may petition for reinstatement after three (3) years at which time the Respondent shall submit to a mental evaluation to insure competency to practice safely. The Board shall act on the Respondent's petition for reinstatement taking into account the results of the mental evaluation and any other evidence that may be provided.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 13<sup>th</sup> day of June, 2003, by a majority of the membership of the Board considering this case, under the authority of Health Occupations Article, §18-313, it is

**ORDERED** that the Respondent, WILLIAM J. PICON, Ph.D., is hereby SUSENDED for a period of at least three (3) years; and be it further,

**ORDERED** that during the suspension period, the Respondent shall undergo therapy with a Board-approved psychologist; and be it further,

**ORDERED** that during the suspension period, the Respondent shall enroll in and successfully complete an ethics tutorial focusing on boundary issues; and be it further,

**ORDERED** that during the suspension period, the Respondent shall enroll in and successfully complete a Board-approved course on treatment recordkeeping; and be it further,

**ORDERED** that during the suspension period, the Respondent shall maintain current continuing education credits; and be it further,

**ORDERED** that no earlier than three (3) years following the effective date of this Order, and provided that the Respondent has complied with this Order's conditions during Respondent's period of suspension, the Respondent may petition the Board to lift the suspension; and be it further,

**ORDERED** that the Respondent shall submit to a mental evaluation at the time of Respondent's petition for lifting the suspension; and be it further,

**ORDERED** that the Board may deny, grant, or grant with restrictions, the Respondent's petition for lifting the suspension based on the results of Respondent's mental evaluation and/or any other relevant evidence; and be it further,

**ORDERED** that this is a Final Order of the Board of Examiners of Psychologists and as such is a PUBLIC DOCUMENT pursuant to *Md. Code Ann.*, State Gov't §§10-611 *et seq.*.

6-13-03  
Date

  
Gayle O'Callaghan, Psy.D.  
Vice Chair  
Board of Examiners of Psychologists

**NOTICE OF RIGHT TO APPEAL**

Pursuant to *Md. Code Ann.*, Health Occ. §18-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, *Md. Code Ann.*, State Gov't §§10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules.