

IN THE MATTER OF
JOHN L. SETARO, PH.D.
Respondent
(License No.: 2364)

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

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

I. SYNOPSIS OF CASE

This case came before the Maryland Board of Examiners of Psychologists (hereinafter "Board") as a result of charges filed against the Respondent, John L. Setaro, Ph.D. dated February 7, 1991 for violating various provisions of the Maryland Psychologists Act (hereinafter "Act"), §18-101 et seq. of the Health Occupations Article of the Annotated Code of Maryland. Specifically, the charges set forth grounds for discipline under §18-313(7) by violating the Code of Ethics adopted by the Board under §18-311 and under §18-313(17), by committing acts of unprofessional conduct in the practice of psychology.

Section 18-315 of the Act makes provision for a hearing utilizing the Administrative Procedure Act, codified at Md. State Gov't Code Ann. §10-201 et seq. Pursuant to the APA, the Board delegated its hearing function to the Office of Administrative Hearings. A hearing was held before Administrative Law Judge Suzanne Wagner on May 16, 17 and 22, 1991. Judith K. Sykes, Assistant Attorney General and F. James Kearney, Ph.D., Staff Attorney were the Administrative Prosecutors. Kathleen Howard Meredith, Esquire and Denise A. Greig, Esquire, represented the Respondent. The ALJ forwarded to the Board her proposed decision

in which she found the Respondent had committed ethical violations and unprofessional conduct. Exceptions were filed with the Board. The Board voted to impose the sanction of revocation. By a poll of its members by telephone on June 28, 1991, the Board accepted this Final Order.

II. EXHIBIT AND WITNESS LIST

Included in the file as State's Exhibits are:

- State Exh. 1 - A copy of the records for the complaining witness kept by Respondent in the course of his professional relationship with her.
- State Exh. 2 - A copy of the complaining witness's personal diary: first entry January 21, 1990, and last entry April 12, 1990.
- State Exh. 3 - a. A Valentine's Day card from Respondent to the complaining witness.
b. A greeting card from Respondent to complaining witness.
c. A greeting card from Respondent to complaining witness.
- State Exh. 4 - A copy of the medical records for the complaining witness from Fallston General Hospital.
- State Exh. 5 - A copy of "Stipulated Facts" signed by counsel for the Board and counsel for Respondent, undated.
- State Exh. 6 - A copy of the Curriculum Vitae for S. Michael Plaut, Ph.D., the expert witness for the Board.
- State Exh. 7 - A copy of the "Ethical Principles of Psychologists" (Amended June 2, 1989).

Included in the file as Respondent's Exhibits are:

- Respondent Exh. 1 - A copy of the Curriculum Vitae for Respondent.
- Respondent Exh. 2 - A copy of the Curriculum Vitae for John Gartner, Ph.D., the supervising psychologist for Respondent.

Respondent Exh. 3 - A copy of the Curriculum Vitae for Jesse M. Hellman, M.D., the treating psychiatrist for Respondent.

Testimony on behalf of the Board was presented by the complaining witness; S. Michael Plaut, Ph.D., who was stipulated as an expert in clinical psychology and human sexuality; and Detective Calvin I. Wink.

Testimony on behalf of Respondent was presented by Respondent; Jesse Hellman, M.D., Respondent's treating psychiatrist; and John Gartner, Ph.D. Chief James Patrick Judge, Chief Deputy Fire Chief, Baltimore County Fire Department; and Father Frank Richard Spencer, Associate Pastor of Sacred Heart Church in Glyndon.

III FINDINGS OF FACT

Based upon the evidence in the record of the above-captioned matter, the Board find that:

1. Respondent is, and was at all times referred to herein, a psychologist licensed to practice psychology in the State of Maryland.
2. At the time the events at issue in this proceeding occurred, the Respondent was employed by the Baltimore County Police Department as Director of the Psychological Service Section.
3. On or about September or October 1989, Respondent began providing psychological services to the complaining witness, the wife of an employee of the Baltimore County Police Department.
4. The complaining witness sought Respondent's professional services for treatment of postpartum depression and marital problems.
5. On or about October 1989, Respondent administered an MMPI test to the complaining witness.

6. Complaining witness saw Respondent for therapy once a week initially, then twice a week, then eventually daily.

7. During her initial consultation, complaining witness reported to Respondent a history of physical and verbal abuse by her husband.

8. On or about November 29, 1989, during the period the complaining witness was seeing Respondent for therapy, the complaining witness attempted suicide by ingesting a combination of drugs.

9. The complaining witness was treated at Francis Scott Key Hospital for the overdose, and then admitted to Saint Joseph Hospital as a voluntary inpatient on December 1, 1989. Respondent visited her at Saint Joseph Hospital.

10. After two weeks of inpatient treatment, the complaining witness was discharged on December 14, 1989, with a diagnosis of major depression with melancholia. Her follow-up care was to be provided by Respondent.

11. The complaining witness saw Respondent for therapy on December 15, 18, 21 and 22, 1989.

12. On the evening of December 19, 1989, the complaining witness cut her neck and wrists with a carpet knife. At about 1:30 a.m. on December 20, 1989, she was admitted as a voluntary inpatient to Fallston General Hospital where she remained until approximately 4:00 p.m. on December 20, 1989. She requested to be discharged, and she was discharged by Dr. Cann, who noted that her follow-up care was to be provided by Respondent and that medication follow-up would be provided by Dr. Cann.

13. During the therapy following her discharge, the complaining witness revealed to Respondent she had been sexually abused by her father, grandfather and father's friend.

14. On December 26, 1989, following the complaining witness' two suicide attempts and diagnosis of major depression, Respondent testified as the complaining witness's therapist at a hearing in the Baltimore County District Court on a motion brought by the complaining witness's husband for temporary custody of his and the complaining witness's child.

15. During the week of December 26, 1989, the complaining witness came to Respondent's office for therapy several times, they became more physically intimate, and they kissed each other there.

16. On January 5, 1990, Respondent and the complaining witness went to Loch Raven Reservoir in Respondent's police care where they fondled and kissed each other.

17. On January 8, 1990, Respondent had intercourse with the complaining witness while visiting her at her sister's home.

18. Subsequent to January 8, 1990, the Respondent and the complaining witness had intercourse in various locations, including: her apartment, his office, a hotel, and Ocean City, Maryland.

19. On January 19, 1990, the complaining witness moved into an apartment and Respondent visited her there on several occasions in January and February, 1990, and on numerous occasions they had sexual intercourse.

20. During the end of January, 1990, Respondent indicated to complaining witness that he intended to leave his wife and move in with her, and in February, 1990, Respondent began indicating to the complaining witness that he intended to marry her.

21. On or about January 23, 1990, Respondent administered a second MMPI to the complaining witness.

22. On or about January 23, 1990, Respondent wrote a letter dated January 23, 1990 on his office stationary to complaining witness's place of employment explaining her absence on January 13, 1990 and other dates, stating, among other things, that she "was advised not to attend work on the 13th."

23. On March 9, 1990, Respondent and the complaining witness drove to Ocean City, Maryland together in a borrowed automobile, and they were there together until March 11, 1990. While there, they were observed by Detective Wink to have resided in the same apartment.

24. On March 13, 1990, Respondent was admitted as an inpatient to Sheppard Pratt Hospital.

25. On or about March 23, 1990, at the request of the Respondent, the complaining witness went to meet with Respondent who informed her that their relationship could not continue and he told her he was sorry for what he had done to her.

IV. CONCLUSION OF LAW

The Maryland Psychologists Act, codified at Md. Health Occupations Code Ann. ("H.O.") §18-301 et seq., provides that subject to the hearing provisions of H.O. §18-315 of the Act, the Board of Examiners of Psychologists may impose certain disciplinary sanction including reprimand, probation, suspension or revocation of a license, if a licensee:

(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.
Section 18-311 of the Act provides in pertinent part:

a. The Board shall adopt a code of ethics for psychologists in this State. The code of ethics shall be designed to protect the public interest.

b. In adopting the code of ethics, the Board shall consider:

(1) The ethical standards of psychologists published by the American Psychological Association; and

(2) The professional character of psychological services.

Pursuant to §18-311 of the Act, the Board adopted as 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...

The pertinent principles at issue in this case, as extracted from State Exhibit 7, "Ethical Principles of Psychologists" (formerly entitled "Ethical Standards of Psychologists") (1981 Revision) (hereinafter "Ethical Principles") adopted and published by the American Psychological Association, provide:

(If) 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.

(6a) 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 judgement 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.

(6e) Psychologists terminate a clinical or consulting relationship when it is reasonably clear that the consumer is not benefiting from it. They offer to help the consumer locate alternative sources of assistance.

Respondent's unprofessional conduct and violation of H.G. §18-313(17) and failure to adhere to Ethical Principles 1f, 6a and 6e in violations of H.G. §18-313(7) is evidenced by:

1. Respondent's intimate personal and sexual relationships with an extremely vulnerable client.
2. Respondent's failure to discharge from his care, failure to offer the client an alternative source of assistance or make referrals to other mental health providers prior to and during the personal and sexual relationship with the client.
3. Respondent's failure to terminate the professional relationship when it became reasonably clear the complaining witness was no

longer benefiting from it, and failure to assist in locating alternative sources of follow-up care.

4. Respondent's failure to be alert to his personal situations and pressures including, depression and marital problems, that led him to misuse his influence and have an intimate relationship with a client.

5. Respondent's failure to be alert to the vulnerabilities and personal problems of the complaining witness, and thus his potentially influential position over the complaining witness.

V. DISPOSITION

Respondent does not dispute the fact that he had an intimate sexual relationship with a client and therefore is in violation of § 18-313(7) of the Psychologists Act by having failed to adhere to Ethical Principles 1f, 6a, and 6e and §18-313(17) for unprofessional conduct. Respondent at the hearing presented numerous allegations and arguments in mitigation, including:

1. At all times relevant, Respondent alleges he was suffering from depression and marital difficulties.

2. In the early stages of the professional relationships, Respondent allegedly informed the complaining witness of the inappropriateness of a personal relationship between the two of them.

3. Respondent alleges the complaining witness made statements to Respondent that she terminated the therapeutic relationship, and discharged him as her therapist.

4. Respondent alleges he believed he was in love with the complaining witness, and she with him.

5. Respondent alleges he experienced much guilt over the relationship with complaining witness.

6. Respondent alleges he voluntarily sought treatment and counselling from Jesse Hellman, M.D. At the sessions with Dr. Hellman, the complaining witness was told to seek a new therapist.

7. Since January 1991, Respondent has been supervised on a weekly basis on one case by John Gartner, Ph.D.

8. Respondent alleges he is deeply remorseful.

9. Respondent alleges he had not before nor since the relationship with the complaining witness been involved in similar conduct with clients.

10. The physical relationship was for a short period of time.

The Board has its doubts concerning the truth of these mitigating arguments. However, even if the Board finds that the mitigating statements were true, they do not excuse or justify Respondent's conduct, or justify a less severe sanction. The maintaining of a close personal or sexual relationship with a client is a most egregious act which the Board of Examiners of Psychologists cannot tolerate from one in its profession. The fact the client was known to be extremely vulnerable, suffering from postpartum depression, marital difficulties, and more importantly, had been previously subjected to sexual misconduct and abuse by trusted authority figures makes the act even more intolerable.

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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, pursuant to Md. Health Occupations Code Ann. §18-313, it is this day hereby

ORDERED that the Respondent's license to practice psychology in the State of Maryland is REVOKED; and it is further

ORDERED that this document shall become a Final Order and as such is a public document pursuant to Md. State Gov't Code Ann. §10-611 et. seq.; and it is further

ORDERED that the Respondent is not permitted to use the titles "psychology", "psychologist" or "psychological" in describing his qualifications, his services or himself. He will not offer to the public any services such as assessment, evaluation, or counseling that are included in the scope of practice of psychology as set forth in Md. Health Occupations Code Ann. §18-101, unless his conduct falls within a statutory exception.

July 11, 1991
Date

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