

IN THE MATTER OF	*	BEFORE THE BOARD OF
MARC TABACKMAN, PH.D	*	PSYCHOLOGICAL EXAMINERS
Respondent	*	
License No. 1202	*	Case No. 90-001
* * * * *	*	* * * * *

**FINAL ORDER**

**PROCEDURAL BACKGROUND**

Based on information received with respect to the practice of Marc Tabackman, Ph.D (the "Respondent"), the Board of Psychological Examiners (the "Board") issued the following charges against the Respondent on April 8, 1992: §§18-313(5), (7), (9), (10) and (12) of the Maryland Health Occupations Code Ann. (the "Act"). §18-313 of the Act permits the Board to impose sanctions upon a licensee who:

- (5) Aids or abets an unauthorized person in practicing psychology or representing oneself to be a psychologist;
- (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.

A pre-hearing conference was conducted on September 23, 1992, and the hearing was conducted on December 21 and 22, 1992 at the Office of Administrative Hearings, 10753 Falls Road, Lutherville, Maryland 21093. Present at the hearing were: Roberta Gill, Esq., Assistant Attorney General on behalf of the

Board, the Respondent and [REDACTED] on behalf of Respondent. On January 8, 1993, the Administrative Law Judge, [REDACTED] issued a Recommended Decision. On January 29, 1993, the State filed exceptions to the Administrative Judge's Proposed Findings. The Respondent did not file written exceptions or a written response to the State's Exceptions. On March 12, 1993, the Board heard oral argument on the exceptions. The Board has issued a separate Board's Response to State's Exceptions.

Based upon the Board's review of the transcript, exhibits and the Administrative Law Judge's Recommended Decision, the Board makes the following Findings of Fact, Conclusions of Law and Order:

#### **BOARD'S FINDINGS OF FACT**

The Board accepts the Administrative Law Judge's Findings 1-9. In its own Findings and its Response to the State's Exceptions, the Board indicates disagreement with some of the Administrative Law Judge's other Findings. The Board specifically rejects the Administrative Law Judge's Finding No. 10.<sup>1</sup> Moreover, the Board did not rely on the Administrative Law Judge's Finding No.

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<sup>1</sup>Citing the Respondent's testimony, Finding of Fact 10 states that Respondent submitted the application for [REDACTED] exemption in April 1990 and that the Board denied the application in August 1990. Respondent testified, however, that the application for [REDACTED] exemption was submitted to the Board in May or June of 1990. Moreover, he admitted that his memory may not be accurate. He mistakenly recalled that [REDACTED] testified that the Board's denial occurred in August, 1990. T. 274. The Board's executive director in fact testified that the application was received on August 31, 1990 and that the Board rejected the application on October 3, 1990. T. 32.

12 during its deliberations or in making its Findings. The Board disagrees strongly with the portion of the Administrative Law Judge's "Discussion" which argues that, with the exception of [REDACTED], the prosecution did not prove that the persons supervised by the Respondent practiced psychology without a license or authorization. The Board sets forth its findings below that support the opposite view that these persons practiced psychology without authorization.

Based upon its review of the testimony and exhibits entered into evidence at the December 21 and 22, 1992 hearing and of the Administrative Law Judge's Proposed Decision (including the proposed Findings of Fact), the Board finds the following facts to be supported by the evidence:

1. At all times relevant to the charges in the instant case, the Respondent was licensed to practice psychology in the state of Maryland.

2. During 1990, the following nine non-licensed persons treated patients under the Respondent's supervision: [REDACTED],

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

T. 143-46; Board Exhibit 8.

3. With the exception of [REDACTED], none of these individuals possessed the education and training that would be equivalent to a doctoral degree in psychology or that would qualify them under the Board's statute and regulations to be psychology associates. For example, [REDACTED] has a Master's

degree in guidance and counselling, [REDACTED] has a master's in mental health, [REDACTED] has a Master's of Art in art therapy, [REDACTED] has a degree in school psychology and [REDACTED] has a Bachelor of Arts in Human Services. T. 246-57.

4. Of these individuals, only [REDACTED] has credentials that would allow the Board to grant an exemption from licensure as a psychology associate under Health Occupations Article, §18-301(b)(3). The Respondent understood that the other individuals did not have sufficient psychological training to obtain the psychology associate exemption. T. 415-6, 418.

5. There is no evidence in the record to indicate that any of the individuals listed in paragraph 3 above practices a profession that is a "recognized profession" under Health Occupations Article, §18-102.

6. There is no evidence in the record to indicate that any of these individuals is licensed as a social worker, physician, nurse psychotherapist or any other profession regulated by Health Occupations Article whose scope of practice includes psychological testing or diagnosis of mental disorders.

7. During 1990, Respondent allowed claims to be submitted to Blue Cross and Blue Shield of Maryland under his provider number for the psychological treatment provided by several of these individuals. T. 303-04. The claims were based upon Blue Cross claim forms that were imprinted or stamped with "M J Tabackman, Ph.D, 17 Warren Rd S8A, Balto, MD 0-G902-MJ-62" and upon invoices which were written on the Respondent's letterhead or

which listed him at the top of the page. The invoices also included the name of the unlicensed person who provided the service. Board Exhibit 8a-j.

8. [REDACTED], [REDACTED] and [REDACTED] paid the Respondent for his supervision by giving him 10% of the insurance payments made by Blue Cross and Blue Shield with respect to the claims filed by the Respondent for patients treated by [REDACTED] and [REDACTED]. T.143. He also received a monthly amount of sixty dollars per hour up to a maximum of three hundred dollars under a contractual arrangement with the Family Connection for being available as a consultant. T. 312-313. In return for his consulting services to the [REDACTED], he received free office space. T. 141.

9. The Board finds that it is improper for an unlicensed person to diagnose mental disorders and conduct psychological testing and notes the testimony of [REDACTED] as supporting that finding. T. 200-202.

10. The Board, which is primarily composed of licensed psychologists, uses its experience, technical competence and specialized knowlege to reject [REDACTED] testimony (T.342) to the effect that any person in the "mental health field" may properly diagnose a mental disorder using the DSM IIIR Manual. See Md. State Government Article, Code Ann., §10-208(h). Rather, the Board finds that the unlicensed persons in this case who treated patients by diagnosing a mental disorder and performing psychotherapy and who sought a fee from the patient's

insurance company using psychological terms of diagnosis have crossed the line into the unauthorized practice of psychology and have violated Health Occupations Article, §18-401. Likewise, the Board finds that the unlicensed persons in this case who performed psychological testing under similar circumstances also practiced psychology without authorization.

11. The Board finds that the policy decisions of Blue Cross and Blue Shield, a private company, in reimbursing the services of unlicensed persons supervised by the Respondent, are not probative with respect to the question of whether the Respondent violated §18-313(5).

**RESPONDENT'S SUPERVISION OF [REDACTED]**

12. Respondent told Investigator [REDACTED] that he supervised [REDACTED] by speaking with her over the phone once a week or more and by holding formal meetings once a month for one and a half hours. His supervision of [REDACTED] totaled four hours per month, and occurred either at his office or at her office located in Eldersburg, Maryland in Carroll County. T. 135-6, 317. Respondent stated that [REDACTED] saw fifteen to sixteen patients per week. T. 136.

13. Although applications for exemption became available in January, 1990 (T. 270), neither [REDACTED] nor Respondent applied to the Board to obtain an exemption for [REDACTED] to practice psychology under the supervision of the Respondent prior to August, 1990. T. 32. The Respondent's application on [REDACTED]

██████████ behalf was not received by the Board until August 31, 1990 and was denied by the Board because of the ongoing investigation on October 3, 1990. T. 32.

14. Under the Respondent's supervision, ██████████ performed psychological testing and diagnosis of mental disorders and submitted insurance claims for providing these services. T. 298; Board Exhibit 8.

15. Respondent assisted ██████████ to perform these functions by providing consultation to her, supervising her work and signing insurance claims which listed ██████████ name as therapist on his letterhead and set forth her diagnosis of the patient. T. 298; Board Exhibit 8d,f,h,i and j.

16. With respect to Patient D (Board Exhibit 8d,i and j), the Respondent allowed ██████████ to submit invoices on his letterhead to Blue Cross and Blue Shield for the services that she provided. ██████████ diagnosed Patient D as having a Code 309.89 mental disorder (Post-traumatic stress disorder) under the DSM III Manual and submitted four claims for group and individual psychotherapy. The first claim sought reimbursement in the amount of \$450.00 for the period of January 1-18, 1990. The second claim sought reimbursement in the amount of \$840.00 for eleven sessions from March 1 to April 6, 1990. Board Exhibit 8d. The third claim sought \$360.00 for four one hour sessions from June 8-28, 1990. Board Exhibit 8j. The fourth claim sought reimbursement in the amount of \$630.00 for seven sessions occurring from November 19 to December 19, 1990. Board Exhibit 8i.

17. ██████████ diagnosed Patient F as having a Code 300.40 mental disorder (Dysthymia) under the DSMIII Manual and wrote her name on Respondent's letterhead in submitting claims to Blue Cross and Blue Shield for the services that she provided. Board Exhibit 8f,g and h. The statements submitted with these claims listed services in the amount of \$360 for seven sessions during July 11-August 1, 1990, \$360 for four sessions during August 8-September 5, \$360 for four sessions during September 12-October 3 and \$270 for three sessions during October 10-30, 1990.

18. The Board finds that ██████████ practiced psychology in Maryland without a license and without authorization.

19. Especially after his application for psychology associate exemption was denied in October, 1990, the Respondent knew that ██████████ was not licensed or authorized to practice psychology in Maryland. As a licensed psychologist, the Respondent knew or should have known that ██████████ actions in administering psychological testing and diagnosing mental disorders during psychotherapy and using his letterhead and DSM III psychological terminology in billing the patient's insurance company to obtain a fee for that treatment constituted the practice of psychology without a license or authorization.

20. By the actions described above, the Respondent aided and abetted ██████████, an unauthorized person, in practicing psychology.

21. By the actions described above, the Respondent supervised ██████████ during 1990 as a psychology associate without first

following the procedures required by COMAR 10.36.01.07B(5) to obtain an exemption and continued to supervise her after the application for her exemption was denied by the Board.

**RESPONDENT'S SUPERVISION OF ██████████**

22. The Respondent told Investigator ██████████ that he supervised ██████████ only as needed for an average of two or three hours per month. T. 136. The supervision occurred either at the Respondent's office or ██████████ office in Baltimore County. T. 319. The Respondent stated that ██████████ saw twenty patients per week. T. 136.

23. ██████████ made diagnoses of mental disorders in patients and performed psychological testing and submitted insurance claims for these services. T. 296-7; Board Exhibit 8b and c.

24. Respondent assisted ██████████ by providing her with tests to which she did not have access, supervising her administration of these tests and her treatment and diagnosis of patients, listing her as therapist on his letterhead and allowing use of his stamp on her insurance claims. T. 297-8; Board Exhibit 8b,c.

25. With respect to Patient B, ██████████ listed a diagnosis of a Code 300.40 mental disorder (Dysthymia) from the DSMIIIR Manual on the claim form. Board Exhibit 8b and c. The claims submitted to Blue Cross and Blue Shield for Patient B sought reimbursement of \$720 for eight sessions of psychotherapy performed by ██████████ during January 4-25 and May 3-31, 1990.

26. The Board finds that ██████████ practiced psychology in

Maryland without a license and without authorization.

27. Respondent knew that [REDACTED] was not licensed or authorized to practice psychology in Maryland and, as a licensed psychologist, Respondent knew or should have known that [REDACTED] actions in administering psychological tests and diagnosing mental disorders during psychotherapy and using psychological terminology in billing the patient's insurance company to obtain a fee for that treatment constituted the practice of psychology without a license or authorization.

28. By his actions described above, Respondent aided and abetted [REDACTED], an unauthorized person, in practicing psychology.

**RESPONDENT'S SUPERVISION OF [REDACTED]**

29. The Respondent told Investigator [REDACTED] that he supervised [REDACTED] by meeting with her once a month for one to one and a half hours. The Respondent stated that [REDACTED] had an office in Baltimore City during 1990 and saw five patients per week. T. 136, 316.

30. On May 1, 10, 15, 22, and 29, 1990, [REDACTED] performed individual psychotherapy on Patient A. She diagnosed that Patient A was suffering from a Code 309.00 mental disorder (Adjustment disorder with depressed mood) under the DSM IIIR Manual. Board Exhibit 8a.

31. On June 1, 1990, the Respondent signed a Blue Cross and Blue Shield claim form (which was also signed by [REDACTED]) which sought reimbursement of ninety (90) dollars per hour for Patient

A's psychotherapy. Board Exhibit 8a.

32. The Board finds that [REDACTED] practiced psychology in Maryland without a license and without authorization.

33. Respondent knew that [REDACTED] was not licensed or authorized to practice psychology in Maryland and, as a licensed psychologist, Respondent knew or should have known that [REDACTED] actions in diagnosing mental disorders during psychotherapy and using DSM III psychological terminology in billing the patient's insurance company to obtain a fee for that treatment constituted the practice of psychology without a license or authorization.

34. By his actions described above, Respondent aided and abetted [REDACTED] an unauthorized person, in practicing psychology.

#### **RESPONDENT'S SUPERVISION OF** [REDACTED]

35. [REDACTED] is a certified alcoholism counselor and [REDACTED] has a Bachelor of Arts in Human Services. The Respondent did not testify as to what degree [REDACTED] possessed. There is nothing in the background or training of either [REDACTED] that would be equivalent to a master's degree in clinical psychology. T. 253.

36. Certified addictions counselors and mental health counselors are not authorized in Maryland to diagnose and treat mental disorders. T. 200.

37. The Respondent told Investigator [REDACTED] that he supervised the [REDACTED] informally with no formal supervisory

sessions. He stated that he was more of a consultant than a supervisor to the [REDACTED]. The Respondent stated that the [REDACTED] see forty-five to fifty patients per week. T. 136.

38. The Respondent allowed the [REDACTED] to use his provider number to submit two claims to Blue Cross and Blue Shield for numerous sessions of group therapy treatment for patient E. The [REDACTED] diagnosed Patient E as having DSMIII-R 300.40, which is a code for dysthymia. Board Exhibit 8e.

39. Respondent acknowledged that he did not diagnose or treat Patient E and did not recognize Patient E's name. T. 301-302. The Board rejects Respondent's rationalization that, because of his availability to the [REDACTED] and their access to the diagnostic manual and experience with symptoms, the [REDACTED] were qualified to diagnose mental disorders.

40. The Board finds that [REDACTED] practiced psychology in Maryland without a license and without authorization.

41. Respondent knew that neither of the [REDACTED] was licensed or authorized to practice psychology and, as a licensed psychologist, the Respondent knew or should have known that the actions of the [REDACTED] in diagnosing mental disorders during group psychotherapy and using DSM III psychological terminology in billing the patient's insurance company to obtain a fee for that treatment constituted the practice of psychology without a license.

42. By the actions described above, Respondent aided and abetted

[REDACTED] unauthorized persons, in the practice of psychology.

BOARD'S CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

1. According to Health Occupations Article, §18-101(e), the practice of psychology in Maryland includes

(1)(iii) Any service involving the application of psychological methods or psychological procedures for constructing, administering, or interpreting test of mental abilities, neuropsychological functioning, aptitudes, interests, attitudes, personality characteristics, emotions, or motivations, and

(2)(i) The application of psychological principles and psychological methods in the diagnosis, prevention, treatment, and amelioration of psychological problems, emotional conditions, or mental conditions of individuals or groups.

The Board finds that the [REDACTED], [REDACTED], [REDACTED] [REDACTED] practiced psychology as defined by §18-101(e)(2)(i) and that, in addition, [REDACTED] and [REDACTED] practiced psychology as defined in §18-101(e)(1)(iii) by administering psychological tests to patients.

2. The Board finds that [REDACTED], [REDACTED], [REDACTED] [REDACTED] are not licensed or

authorized to practice psychology under any section of Title 18 or of the Health Occupations Article<sup>2</sup>.

3. The Board finds that the Respondent aided and abetted<sup>3</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], all unauthorized persons, to practice psychology in violation of subsection 18-313(5)<sup>4</sup> of Health Occupations Article, Annotated Code of Maryland.

4. By supervising [REDACTED] in the practice of psychology after applications became available in January 1990 and prior to

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<sup>2</sup>Under §18-401, the Psychology Practice Act forbids a person from practicing psychology in Maryland without a license. The only exceptions to this restriction are persons who are exempted under §18-301, persons who are members of a "recognized profession" under §18-102, and persons who are licensed under Health Occupations Article and whose scope of practice overlaps the practice of psychology, as in §18-102(b)(1). The Board finds that none of the nine individuals supervised by the Respondent came within these exceptions.

Of the professionals regulated by the Health Occupations Article, only licensed physicians, psychologists, nurse psychotherapists and licensed certified social workers have a scope of practice that includes the diagnosis of mental disorders or psychological testing.

<sup>3</sup>"Aiding and abetting" means to assist a principal in the commission of an offense such as the practice of psychology without a license. It is not necessary that the principal be charged with or convicted of the offense in order for the aidor and abettor to be administratively prosecuted under Title 18.

<sup>4</sup>§18-313(5) provides that the Board may sanction a licensee who "aids or abets an unauthorized person in practicing psychology...." This section does not require that there be a referral by the Board for prosecution in order to prove a violation. Moreover, contrary to the apparent conclusion of the Administrative Law Judge, a bureaucratic decision not to refer an individual for prosecution does not indicate the absence of a violation where the hearing record contains evidence that the individual supervised by the licensee practiced psychology without authorization.

August 1990 when the Respondent finally submitted an application for [REDACTED] exemption under Health Occupations Article, §18-301(b)(3), the Respondent violated Health Occupations Article, Annotated Code of Maryland, §18-313(12) and the regulations pertaining to psychology associates, to-wit: COMAR 10.36.01.07B.

5. By continuing to supervise [REDACTED] in the practice of psychology after the Board denied the August 1990 application for psychology associate status for [REDACTED] the Respondent violated §18-315(12) and COMAR 10.36.01.09B, which requires that a licensed psychologist "be familiar with the provisions of the Health Occupations Article and its revisions, and shall adhere to those provisions....," to-wit: Health Occupations Article §18-301(b)(3).

6. The Respondent violated the code of ethics adopted by the Board under §18-311 of Health Occupations Article, Annotated Code of Maryland, to-wit: COMAR 10.36.01.09B by failing to adhere to the provisions of Health Occupations Article, §18-301(a) and (b)(3), §18-313(5) and §18-313(12).

7. With respect to the claims for treatment provided in 1990, there is insufficient evidence in the record to show by clear and convincing evidence that the Respondent submitted a false statement to collect a fee in violation of Health Occupations Article, §18-315(9).

8. With respect to the claims for treatment provided in 1990, there is insufficient evidence in the record to show by clear and

convincing evidence that the Respondent willfully made or filed a false report or record in the practice of psychology in violation of Health Occupations Article, §18-315(10).

9. The Administrative Law Judge permitted the Administrative Prosecutor to withdraw all charges involving claims based on treatment that occurred prior to 1990 without prejudice to the Board. T. 233-34. Consequently, this Order does not encompass those charges.

**ORDER OF THE BOARD**

**IT IS HEREBY ORDERED** on this 4th day of February, 1994, that the license to practice psychology of the Respondent, **MARC TABACKMAN, PH.D**, be **SUSPENDED** for the period of two years from the date of this Order, and be it further

**ORDERED** that said **SUSPENSION** be immediately **STAYED**, and be it further

**ORDERED** that the Respondent be placed on **PROBATION** for a period of two years under the following conditions:

1. That, in his private practice, the Respondent shall immediately cease supervising all therapists, including but not limited to nonlicensed persons;
2. That Respondent at his own expense arrange for, attend and successfully complete for credit a Board approved graduate level ethics course of three credit hours. Upon completing the course,

the Respondent shall provide a transcript documenting completion to the Board.

2/14/94  
Dated

W. Sherod Williams  
W. Sherod Williams, Ph.D  
Board Chairman

**NOTICE OF RIGHT TO APPEAL**

The Respondent may appeal this Order or any finding that the Respondent has violated the probation set forth by this Order under the provisions of Md. Health Occupations Article, Code Ann. §18-316 by taking a direct judicial appeal pursuant to Md. State Government Article, Code Ann. §10-215.