

IN THE MATTER OF	*	BEFORE THE STATE
JOHN BRESKIN, Ph.D.	*	BOARD OF EXAMINERS
LICENSE NO. 11603	*	OF PSYCHOLOGISTS

* * * * *

FINAL ORDER

Based on information received by the Maryland State Board of Examiners of Psychologists (the "Board"), the Board charged JOHN BRESKIN, Ph.D (the "Respondent"), with violations of Md. Health Occupations Article, Code Ann. §18-313(7), (12) and (17). §18-313 provides that the Board may sanction a licensee who:

(7) Violates the code of ethics adopted by the Board under §18-311 of this subtitle, to-wit:

COMAR 10.36.01.09, Code of Ethics, Ethical Principles of Fsychologists, amended June 2, 1989, of the American Psychological Association states:

Principle 5. Confidentiality. Psychologists have a primary obligation to respect the confidentiality of information obtained from persons in the course of their work as psychologists. They reveal such information to others only with the consent of the person or the person's legal representative, except in those unusual circumstances in which not to do so would result in clear danger to the person or to others. Where appropriate, psychologists inform their clients of the legal limits of confidentiality.

a. Information obtained in clinical or consulting relationships, or evaluative data concerning children, students, employees, and others, is discussed only for professional purposes and only with persons clearly concerned with the case. Written and oral reports present only data germane to the purposes of the evaluation, and every effort is made to avoid undue invasion of privacy.

c. Psychologists make provisions for maintaining confidentiality in the storage and disposal of records.

(12) Violates any rule or regulation adopted by the Board, to-wit: The Code of Maryland Regulations 10.36.01.09.

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

A pre-hearing conference was conducted on April 16, 1993, and the hearing was conducted on November 3, 1993 before a quorum of the Board at 4201 Patterson Avenue, Baltimore, Maryland. Also present at the hearing were: Roberta Gill, Assistant Attorney General and Administrative Prosecutor, Nancy P. Tennis, Assistant Attorney General and Counsel to the Board, the Respondent and Gary Courtois, Esq. on behalf of Respondent.

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice psychology in Maryland. At all times relevant hereto, Respondent was the Clinical Director and staff psychologist at the Camp Springs, Maryland office of Clinical Associates. As the director of the Camp Springs office, Respondent helped evaluate case intakes and had access to all of the patients' files.
2. The Respondent's wife, hereinafter referred to as "Dr. B", is also a licensed psychologist and was also employed as a staff psychologist at the Camp Springs office of Clinical Associates.
3. During a therapy session that the couple had with Dr. B's therapist in December 1991, Dr. B decided to end their fifteen year marriage. T. 83.

4. Shortly before April 1992, Respondent became suspicious that his estranged wife was having an affair with one of the patients who was being treated at the clinic. He consequently searched through the patient files of several of the Veteran's Administration clients at the Camp Springs office in an attempt to determine the patient's identity.

5. The Respondent also hired a private investigator to follow his wife. The Respondent told the investigator the name of the person he suspected and the investigator confirmed that the Respondent's wife was having an affair with that individual (Patient A¹). T. 89.

6. The Respondent then telephoned four of his wife's relatives, including her mother, daughter, son-in-law and son.

7. During these calls, Respondent divulged selected information from Patient A's file, such as the fact that Patient A was a Vietnam veteran with a criminal record of sexually abusing his stepdaughter and that he was on medications, was hallucinating and had a serious alcohol problem. T. 144.

8. Respondent told Dr. B's daughter, Jeanne, that Patient A had a criminal background, was an alcoholic and a danger. Respondent did not reveal Patient A's name to Jeanne, but she discovered his identity from other family members. T. 43, 45-6.

9. On or about May 4, 1992, Respondent divulged the same type of information from Patient A's files to Holly Wright, an office

¹Patients' names are confidential but have been disclosed to the Respondent and are maintained in a file by the Board.

worker at the Camp Springs offices who was his wife's close friend. Respondent told Ms. Wright that Patient A had the worst psychological profile of any client that he had seen at the clinic, that Patient A actively hallucinated and saw snipers in the trees, that Patient A had been in and out of jail several times and had been convicted of sexually molesting his stepdaughter. T. 28-9. Although Clinical Associates had been purchased by American Mental Health Professionals (T. 19), there is no indication that the Respondent notified that organization of any allegation that Patient A was dangerous.

10. In October, 1992, the Respondent acknowledged to an investigator with the Department of Health and Mental Hygiene that he had divulged confidential patient information from Patient A's files to his wife's relatives and her friend. T. 39.

11. The Respondent's defense that he divulged confidential information in order to warn his stepfamily of the danger presented by Patient A, who had been convicted of sexual child abuse, is belied by the circumstances of this case. The Respondent did not merely inform his stepdaughter, the mother of his stepgrandchildren²; in addition, he told his mother-in-law and his stepson. His stepson, John, was in the military and at that time located in another state. T. 139. Clearly, the testimony does not indicate that the Respondent's stepson or

²Respondent acknowledged that his stepdaughter took his stepgrandchildren for visits to Dr. Urban and Patient A despite his warnings about Patient A's conviction for sexual child abuse. T. 141.

mother-in-law were in danger in any way. Moreover, Respondent also told an office co-worker who was unconnected to his stepfamily. Although the Respondent may well have acted in part out of concern for his stepgrandchildren, a prime motivation for his divulging confidential patient information to his stepfamily and co-workers appears to be an effort to obtain his stepfamily's allegiance.³ Another personal motive was revealed during the hearing when the Respondent stated that "he thought he had a partner who believed in sexual fidelity" who turned out to "be false" and that he "felt betrayed." T. 98.

12. In apparent contradiction of his claim that he was afraid that Patient A would become violent toward him, the Respondent informed his wife by letter that he (Respondent) would escort Patient A out of the building if Patient A showed up again at the clinic. T. 145. Respondent also acknowledged during the hearing that he had insufficient basis to contact the police. T.130-31. Moreover, Respondent did not find it necessary to tell the private investigator that Patient A's Vietnam experience or alleged paranoid and psychotic symptoms made him potentially dangerous to follow. T. 139-40. Nor did Respondent discuss the possibility that Patient A might be dangerous with Patient A's psychiatrist, Dr. Andreason. T. 143.

³Respondent repeatedly stated that he was very close to his stepfamily and that he considered his stepchildren to be his children as much as they were Dr. B's. T. 83-4; 94. He also stated that, as a result of what happened between him and his wife, he lost the only family he'd ever known. T. 94.

13. Despite the Respondent's professed concern, no evidence was presented at hearing that indicated an intent by Patient A to harm any individual in particular.

14. Respondent acknowledged that Patient A did not have psychotic symptoms as of March 1992, was being treated with antidepressant medication and had made no threats against Respondent or his family. T. 128-30. Respondent also acknowledged that Patient A had successfully completed a stay at Coatesville, a nationally recognized Veteran's Administration center for post-traumatic stress disorder. T.112.

15. The Respondent acknowledged that he did not notify the contracting agency (the Veteran's Administration) of his alleged belief that Patient A posed a risk to others. T. 156-57.

16. Respondent also acknowledged that at no time did anyone, including other psychologists, advise him to breach patient confidentiality in order to resolve his dilemma over his estranged wife having an affair with a patient who had a history of dangerous behavior. T. 143.

17. The Respondent acknowledged that, unlike his decision to report Dr. B to the Board, he did not discuss his decision to reveal patient confidentiality in advance with Dr. B, his colleagues, his attorney, or his therapist. T. 109; 141.

18. The Board concludes that, although Patient A had serious psychological problems, he had not indicated an intention to inflict imminent physical injury upon a specified victim or group of victims and did not present a clear danger to Respondent or

his stepfamily. Therefore, the Board further concludes that there was no justification under Md. Courts and Judicial Proceedings Code Ann. §5-316 or under the Code of Ethics for the Respondent to reveal confidential patient information and notes that the testimony of the State's expert witness, Dr. Joseph Poirer, supports this conclusion. T. 55-7.

19. A psychologist who, without a patient's permission, divulges information from that patient's files to those who have no clinical need to know such information does so in violation of the Code of Ethics and the Act. Disclosing confidential information to the relatives of a patient's therapist and an office co-worker from the file of a patient who receives counselling at the clinic where one serves as clinical director is an act of unprofessional conduct, in violation of the Act.

20. The Board also concludes that Respondent breached the ethical duty of confidentiality and committed an act of unprofessional conduct in reviewing the patient records of several Vietnam veterans for the purpose of deducing which one might be his wife's lover. The Board notes the testimony of Dr. Joseph Poirer in support of this conclusion. T. 62.

CONCLUSIONS OF LAW

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

1. The Respondent is guilty of violating of violating Md. Health Occupations Article, Code Ann. §18-313(7), "Violates the code of

ethics adopted by the Board under §18-311 of this subtitle," to-wit: Code of Maryland Regulations (COMAR 10.36.01.09), Ethical Principles of Psychologists, American Psychological Association, Principle 5 ("Confidentiality").

2. The Respondent is guilty of violating Md. Health Occupations Article, Code Ann. §18-313(12), "Violates any rule or regulation adopted by the Board," to-wit: Code of Maryland Regulations (COMAR) 10.36.01.09.

3. The Respondent is guilty of violating Md. Health Occupations Article, Code Ann. §18-313(17), "Commits an act of unprofessional conduct in the practice of psychology."

ORDER

On this 1st day of April 1994, it is hereby **ORDERED** by a majority of a quorum of the Board, that the **RESPONDENT'S** license to practice psychology in Maryland is hereby **SUSPENDED** and be it further

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

ORDERED that the **RESPONDENT** is immediately placed on **PROBATION** for a period of two years under the following conditions:

1. The Respondent shall submit all of his cases to a Board-approved supervisor for review on a bi-weekly basis. The Respondent shall be responsible for paying the cost of the supervision and for advising patients of the supervision. The

Respondent shall follow any recommendations made by the supervisor with respect to his clinical practice.

2. The Respondent will perform no clinical supervision of any other person.

3. The Respondent shall provide a copy of this Findings of Fact, Conclusions of Law and Order to any persons or entities with whom he has contracts or by whom he is employed to perform clinical or psychological services.

4. If the Respondent violates any condition of this **PROBATION**, the Board may, after providing the Respondent with an opportunity to be heard, lift the stay and impose the **SUSPENSION** of his license.

4/11/94
Date

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

NOTICE OF APPEAL RIGHTS

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.