

IN THE MATTER OF
JAMES EDWARDS Ph.D.
License No. 02937

* BEFORE THE STATE BOARD OF
* EXAMINERS OF PSYCHOLOGISTS
* OAH NO. 99-DHMH-BEP-85-060

* * * * *

FINAL ORDER

Procedural History

This case arose from allegations that James Edwards, Ph.D. (the "Respondent"), License Number 02937, engaged in a sexual relationship with a recently terminated patient. Based on this information and pursuant to its authority under the Maryland Psychologists Act, Md. Code Ann., Health Occ. ("H.O.") §18-101 *et seq.* (the "Practice Act"), the Board of Examiners of Psychologists (the "Board") charged Respondent with violating H.O. §18-313, which provides in pertinent part:

- (12) Violates any rule or regulation adopted by the Board;
- (14) Is professionally, physically, or mentally incompetent;
- (16) Behaves immorally in the practice of psychology; and
- (17) Commits an act of unprofessional conduct in the practice of psychology.

A Case Resolution Conference was scheduled for April 9, 1999. No settlement of the case was reached at that time and the case was forwarded to the Office of Administrative Hearings for prosecution.

A hearing on the merits of the case was held on June 8 and 9, 1999. Francine Silver Taylor, Administrative Law Judge (the "ALJ"), presided over the hearing. On September 17, 1999, the ALJ issued a Proposed Decision ("Proposed Decision") wherein she concluded by a preponderance of the evidence that Respondent had violated H.O. §18-313(12), (14), and (17), by engaging in an exploitative relationship with a patient ("Patient A"), improperly terminating Patient A's therapy in order to commence a sexual relationship with Patient A, and taking Patient A to the mall in lieu of a scheduled therapy session. The ALJ's recommended sanction was that Respondent's license to practice psychology be revoked.

By letter dated September 17, 1999, the ALJ informed the parties of the right to file exceptions to the ALJ's Proposed Decision. The Respondent filed exceptions on October 7, 1999. The State filed exceptions on October 12, 1999, and filed a Response to Respondent's exceptions on November 2, 1999.

On January 14, 2000, the parties appeared before a quorum of the Board for a hearing on the exceptions. On that same date, January 14, 2000, the Board convened for a final decision in the case.

STATEMENT OF THE CASE

The Board adopts and incorporates by reference the proposed Statement of the Case set forth by the ALJ in the Proposed Decision issued on September 17, 1999, as the Board's final Statement of the Case. The entire Proposed Decision is attached hereto as Appendix

A.¹

ISSUE

The Board adopts and incorporates by reference the proposed Issues set forth by the ALJ in her Proposed Decision issued on September 17, 1999.

SUMMARY OF THE EVIDENCE

The Board adopts and incorporates by reference the proposed Summary of the Evidence made by the ALJ in the Proposed Decision issued on September 17, 1999, as the Board's final Summary of the Evidence.

FINDINGS OF FACT

The Board adopts and incorporates by reference the proposed Findings of Fact made by the ALJ in the Proposed Decision issued on September 17, 1999, as the Board's final Findings of Fact.

DISCUSSION

The Board modifies the ALJ's proposed Discussion in the Proposed Decision, dated September 17, 1999, as set forth below.

At the time of Respondent's violations, the Board had required psychologists to comply with two Codes of Ethics: one issued by the American Psychological Association

¹ In order to protect confidentiality, the Proposed Decision has been redacted to remove identifying information.

“APA”) and one promulgated by the Board and set forth at COMAR 10.36.05.² Both Codes prohibit psychologists from engaging in exploitative sexual relationships with former patients. Respondent has taken issue with an apparent conflict between the relevant provisions of the two codes and argues that this discrepancy denied Respondent notice of prohibitive conduct. As the Board will discuss *infra*, the Board finds that the provisions in the two codes are not conflicting, and to the extent that they do differ, Respondent’s conduct has so clearly violated both as to render the notice issue moot.

The Board’s Code of Ethics prohibits a psychologist from engaging in an exploitative relationship with a past or present client, which includes a sexual relationship. COMAR 10.36.05.05B(2). The express wording of the regulation clearly indicates that this prohibition is perpetual. The determination of an exploitative relationship is dependent on: (i) the type of professional services rendered to the client; (ii) the length of the professional relationship; (iii) the length of time between the termination of the professional relationship and the initiation of the nonprofessional relationship; and (iv) the mental stability of the psychologist and former client. COMAR 10.36.05.05B(3).

The APA Ethical Principles of Psychologists and Code of Conduct (“APA Code”) prohibits a psychologist from engaging in sexual intimacies with former patients for at least two years after cessation of the professional services. APA Code §4.07(a). The APA Code

² At the time of the Respondent’s conduct, COMAR 10.36.01.09 required psychologists to comply with the APA Code of Conduct. The Board has since changed its regulations, effective January 1, 2000, to omit any reference to the APA Code of Conduct. However, as the Respondent’s conduct occurred prior to the regulatory change, the Board will consider both codes.

goes further, however, by stating that even after the expiration of the two year period, a psychologist "bears the burden of demonstrating that there has been no exploitation". APA Code §4.07(b). The APA Code considers the following factors in determining whether a relationship is exploitative:

1. The amount of time that has passed since therapy terminated;
2. The nature and duration of the therapy;
3. The circumstances of termination;
4. The patient's or client's personal history;
5. The patient's or client's current mental status;
6. The likelihood of adverse impact on the patient or client or others; and
7. Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client.

APA Code §4.07(b). Therefore, both codes strictly prohibit exploitative relationships in perpetuity. The primary difference between the two codes is that the Board's Code of Ethics imposes a greater burden of proof on the Board by requiring it to prove exploitation within the immediate two year period after the termination of services, while the APA Code imposes an outright prohibition within the two year period. In situations in which the two codes may conflict, it is the Board's position that the Board's Code of Ethics controls. The Board's promulgation of a regulation that specifically addresses an issue supersedes any general reference to the APA standards. *See Geico v. Insurance Commissioner*, 332 Md. 124 (1993)(ruling that two statutes that conflict with regard to a common subject may be reconciled by viewing the more specific statute as an exception to the more general one).

However, Respondent's conduct so patently violated both codes that it is not

necessary to argue for the enforcement of one code over the other. The primary issue with respect to Respondent's violation is whether Respondent's sexual relationship with Patient A was exploitative. In considering the factors enumerated in either the Board's Code or the APA Code, Respondent's conduct so precisely qualifies that it appears as if the codes were drafted with Respondent's case in mind.

In considering the type of professional services rendered, COMAR 10.36.05.05B(3)(a), APA Code §4.07(b)(2), the Respondent provided psychological services to Patient A to treat Patient A for depression. Transcript ("Tr.") 201. Patient A testified that she was feeling depressed and overwhelmed, and was having problems dealing with school issues related to her oldest son. Tr. 164. In addition, Patient A had a history of postpartum depression and family violence. Tr. 164, 207. The State's expert, Dr. Poirier, testified regarding the differences between various levels of therapy in the context of the risk of exploitation. The more benign types of therapy, such as smoking cessation and biofeedback therapy, present very little likelihood of transference, and therefore the risk of exploitation is minimal. However, the more involved types of therapy, such as that provided to Patient A, pose a greater risk of exploitation because the therapy is "for a longer period of time with greater frequency, where it was predictably a dependency relationship on the part of the patient and the therapist". Tr. 132-33.

The length of the professional relationship, COMAR 10.36.05.05B(3)(b), APA Code §4.07(b)(2), was approximately one year, beginning in January, 1997 and ending in

February, 1998. Tr. 211. Furthermore, over the course of the one year period, Respondent and Patient A held therapy sessions at least twice a week. Tr. 238. Thus, the professional relationship did not consist of a limited number of sessions, but rather involved intense therapy over a protracted period of time.

The length of time between the termination of the professional relationship and the commencement of the personal and sexual relationship was a little over one week. COMAR 10.36.05.05B(3)(c), APA Code §4.07(b)(1) Tr. 185-190. Despite Patient A's history of severe depression and family violence, Respondent believed that because Patient A was an adult, one week was adequate time to distinguish between the two relationships so as not to be exploitative. Tr. 262. Given the serious condition of Patient A and the intense treatment she underwent, the Board, in its expertise and professional judgment, concludes that a one week separation period is exploitative. Respondent failed to provide any persuasive evidence to the contrary. However, the one week separation period was merely a pretense since Respondent admittedly terminated the professional relationship for the very purpose of initiating a sexual relationship with Patient A. Tr. 214..

In considering Patient A's mental stability, COMAR 10.36.05.05B(3)(c), APA Code §4.07(b)(4), it appears that Patient A had sought therapy, at her husband's urging, because Patient A was depressed. Tr. 180. Thus, it is understandable how Patient A may have transferred amorous feelings to Respondent, with whom Patient A felt was supportive and understanding. However, it was Respondent's responsibility to deal with Patient A's

transference issues in a professional manner rather than exploiting Patient A's perhaps misguided feelings to Respondent's own benefit. Dr. Poirier testified that "because of the nature of the professional relationship, there is a hierarchy, and at any point the psychologist breaches an appropriate boundary, that's exploitation; [e]ven if we assume that the patient wants it". Tr. 147.

The likelihood that such relationship would have an adverse impact on others was inevitable in this case. APA Code §4.07(b)(6). Since both Respondent and Patient A were married with children, both of their respective families were undoubtedly affected. In addition, one of Patient A's children was a former patient of the Respondent. Tr. 160-62. Patient A's ex-husband testified about the effect Respondent's conduct had on him stating, "This was a man that we thought was going to help us....Initially, helping my wife get better, and...in the marriage...he was going to help us get better. And all of a sudden I'm not there, and he is. I mean, he lives with my children,...obviously today it's still difficult. It's been bad, a bad time". Tr. 107-108. Therefore, in providing therapy to Patient A to address her issues with her family, Respondent actually created more.

Lastly, Respondent engaged in conduct and made statements to Patient A that suggested the possibility of a post-termination personal relationship. APA Code §4.07(b)(7). Respondent took Patient A, as he often did, to the mall during a scheduled therapy session to shop for Valentine's Day gifts. Tr. 185; State's Ex. 4A, Bates 45. Two days afterwards, Respondent and Patient A met for a scheduled therapy session and discussed their feelings

for one another. Tr. 214. This conduct occurred while the professional relationship was still ongoing and ultimately lead to the termination of that relationship.

Based on the consideration of the above factors, the Board finds that Respondent engaged in an exploitative relationship with Patient A in violation of both the Board's Code of Ethics and the APA Code of Conduct. However, the Board is only imposing discipline for the Respondent's violation of the Board's Code of Ethics.³

A secondary issue in this case involves Respondent's improper termination of Respondent's services to Patient A. It is evident from the discussion above that Respondent terminated the professional relationship for the sole purpose of commencing a sexual relationship with Patient A. It was only when Respondent decided to act on his feelings for Patient A that he suggested terminating the professional relationship. Tr. 214. The Board infers that Respondent developed personal feelings for Patient A during the course of their professional relationship, much earlier than the date on which Respondent and Patient A decided to terminate therapy. Board bases this inference on the visits to the mall during therapy sessions, State's Ex. 4A, Bates 45, Respondent's willingness to have a "therapy session" at the beach with Patient A, Tr. 247-49, and the expediency with which Respondent decided to leave his wife to pursue a relationship with Patient A, Tr. 186-87. Pursuant to the Board's Code of Ethics, Respondent had a duty to terminate the professional relationship

³ While the APA Code is not controlling in this case, it does illuminate the potential multi-faceted damages to patients and their families that can result from post-termination personal relationships, which tragic consequences are so amply demonstrated in this case.

as soon as a dual relationship developed. COMAR 10.36.05.05C(2)(b). Thus, as soon as Respondent began to experience feelings for Patient A, he had an obligation to terminate *all* relationships. Terminating professional services because of the development of a dual relationship, and then immediately initiating a sexual relationship, renders the ethical obligation meaningless.

Aside from the obvious ethical violation involved in Respondent's untimely termination, Respondent failed to fulfill his ethical duties in numerous other respects. The Board's Code of Ethics requires that a psychologist terminate the professional relationship in an appropriate manner, i.e., by notifying the client in writing and assisting the client in obtaining services from another professional: COMAR 10.36.05.05C(2). Respondent failed to do either. Respondent and Patient A decided jointly to end their professional relationship. Tr. 186. The termination was not documented in Patient A's files, nor was the reason for the termination. Tr. 129-130. In addition, Respondent did not encourage Patient A to continue treatment with another professional because Patient A felt that she was "done". Tr. 167. Considering the diagnosis of Patient A and the potential issues that were going to arise as a result of their personal relationship, Respondent had an ethical obligation to at least discuss the continuation of therapy and make a proper referral to another mental health professional.

Lastly, the Board concurs with the ALJ that Respondent's conduct was unprofessional in taking Patient A to the mall during a scheduled therapy session.

Respondent testified that, in fact, no therapy was conducted during the mall visit. Tr. 252-53. Taking Patient A outside the office setting had no therapeutic value but rather served only as a social outing. Respondent thus committed an act of unprofessional conduct in this regard and the Board affirms the ALJ's finding that the Respondent violated H.O. §18-313(17).

While the State presented evidence that concerned Respondent's countertransference issues, inadequate recordkeeping and immoral conduct, the Board declines to address such issues. While the Board is not satisfied with the ALJ's analysis of these issues, and could remand the case to the ALJ for reconsideration and to admit further evidence, a finding on such issues is not critical to the disposition of this case. Rather, the Board's findings above are more than sufficient to address the most important issues in this case. Therefore, without adopting the ALJ's rationale or findings thereto, the charges regarding Md.Code Ann., Health Occ. §§18-313(14) and (16) are dismissed.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, and after consideration of the hearing record, Respondent's exceptions, the State's response thereto, and the State's exceptions, the Board affirms the ALJ's Conclusions of Law with respect to Md. Code Ann., Health Occ. §18-313(12) and (17). However, the Board does not affirm the ALJ's conclusion that Respondent violated Md. Code. Ann., Health Occ. §18-313(14).⁴

⁴ Although the ALJ concluded that Respondent violated H.O. §18-313(14), the Board believes that such conclusion was a typographical error based on the ALJ's discussion of the relevant

SANCTIONS

The Respondent is guilty of serious violations of the Practice Act. Notwithstanding Respondent's admitted culpability in the aforesaid violations, Respondent displays absolutely no remorse for his conduct. Respondent remains unwilling to recognize that his personal relationship with Patient A, while consensual and still ongoing to date, was exploitative from its inception and a clear breach of Respondent's ethical and professional duties. The Respondent has betrayed the public trust by engaging in an exploitative relationship with Patient A and terminating Patient A's therapy in order to commence a sexual relationship with her. Respondent at no time recognized that his feelings toward his patient were completely inappropriate and may be detrimental to Patient A's therapy. Respondent at no time attempted to seek assistance or guidance from a colleague as to how to deal with his feelings for Patient A or Patient A's feelings for him. Due to Respondent's complete disregard of his duties under the Practice Act, the Board believes that a revocation is necessary to prevent further misconduct by the Respondent and to deter similar misconduct by other psychologists who may be tempted to abdicate their responsibilities to practice psychology in an ethical and responsible manner. *See McDonnell v. Commission on Medical Discipline*, 301 Md. 426 (1984).

It is for these reasons that the Board has determined to adopt the sanction of revocation proposed by the ALJ as the appropriate sanction for such conduct.

findings of fact. Proposed Decision, pp. 11-12.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of March, 2000, by a majority of the full authorized membership of the Board considering this case, that under the authority of Health Occupations Article, §18-313, it is

ORDERED that the license of Respondent, **JAMES EDWARDS, Ph.D.**, is hereby REVOKED; and be it further,

ORDERED that Respondent return to the Board the wall and wallet certificates evidencing Respondent's license in psychology; and be it further,

ORDERED that Respondent appropriately terminate and refer his clients immediately; and be it further,

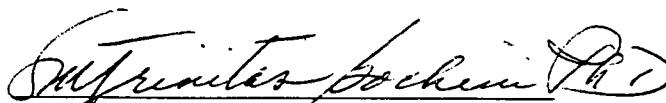
ORDERED that this is a Final Order of the Board of Examiners of Psychologists and as such is a PUBLIC DOCUMENT pursuant to *Md. Code Ann.*, State Gov't §§10-611 *et seq.*, including the Board's Rulings on Exceptions herein.

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. §18-316, you have a 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 a 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.

March 15, 2000

Date



M. Trinitas Bochini, Ph.D.,

Board Vice-Chair

Board of Examiners of Psychologists