



Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Parris N. Glendening, Governor - Kathleen Kennedy Townsend, Lt. Governor - Georges C. Benjamin, M.D., Secretary

Board of Professional Counselors and Therapists
June 13, 2002

VIA CERTIFIED MAIL
Return Receipt Requested
Cert #7001 2510 0006 0265 7170

Michael K. Wiggins, Esquire
Wharton, Levin, Ehrmantraut,
Klein & Nash, PA
104 West Street
P.O. Box 551
Annapolis, MD 21404-0551

Victoria H. Pepper, Esquire
Assistant Attorney General
Office of the Attorney General
300 West Preston Street, Suite 302
Baltimore, MD 21201

Re: Kevin Barwick, L.C.P.C.
License # LC0255

Dear Counsel:

Enclosed please find the Board of Professional Counselors and Therapists Final Decision and Order in the above-referenced case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aileen Taylor".

Aileen Taylor
Administrator
Board of Professional Counselors and Therapists

Enclosure

cc: Sharon Cheston, Ed.D., L.C.P.C.
Noreen M. Rubin, Board Counsel
Timothy J. Paulus, Assistant Attorney General, Deputy Counsel
Kevin Barwick, L.C.P.C., Respondent

IN THE MATTER OF * BEFORE THE MARYLAND
KEVIN D. BARWICK, L.C.P.C., * STATE BOARD OF PROFESSIONAL
Respondent. * COUNSELORS AND THERAPISTS
License Number: LC0255 *

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On November 16, 2001, the Maryland State Board of Professional Counselors and Therapists (the "Board") charged the Respondent, Kevin Barwick, L.C.P.C., a professional counselor licensed by the Board, with violating the Maryland Professional Counselors Act (the "Act"), Md. Code Ann., Health Occupations ("HO") § 17-101 et seq., (2000), by engaging in sexual conduct with a female patient, Patient B,¹ during an individual marital therapy session on October 31, 2000. Following its investigation of a complaint received from Patient B, the Board issued charges pursuant to its authority under HO § 17-3A-13 which provides:

(a) In General. – The Board, on an affirmative vote of a majority of its members then serving, may deny a license to an applicant, suspend or revoke a license of a licensee, reprimand a licensee, or place a licensee on probation, if the applicant or licensee has committed any of the acts proscribed in § 17-313 of this title, subject to the provisions in §§ 17-314 and 17-315 of this title.

The Board charged Mr. Barwick with the following violations proscribed by HO § 17-313, which permits the Board to impose disciplinary action if a certificate holder:

- (4) Violates the code of ethics adopted by the Board; or
- (9) Violates any rule or regulation adopted by the Board.

¹ For purposes of confidentiality, the two patients involved in this case are referred to as Patient A and Patient B throughout this Final Decision and Order. Patient A, who was also receiving marital therapy from Mr. Barwick, is the husband of Patient B.

The Board also charged Mr. Barwick with violating Code Md. Regs. ("COMAR")

– Code of Ethics tit. § 10.58.03.03, which provides as follows:

B. Concurrent Sexual Relationships. The licensee or certificate holder may not engage in either consensual or forced sexual behavior with:

(1) a client;

and COMAR – Ethical Responsibilities tit. §10.58.03.06

A. A certified professional counselor may not:

(5) Exploit a relationship with a client or patient for personal advantage or satisfaction.

A Case Resolution Conference was held on January 18, 2002 before representatives of the Board. On March 8, 2002, a quorum of the Board conducted a contested case hearing pursuant to HO § 17-314 and the Administrative Procedure Act, Md. Code Ann., State Gov't ("SG") § 10-201 *et seq.* At the hearing, Mr. Barwick admitted his violation, but argued that a suspension or revocation of his professional counseling license was not warranted by the particular facts of the case. The substantive issue before the Board was the sanction to be applied to Mr. Barwick for his violation of the Act.

The Board convened to deliberate on March 15, 2002, and concluded by a preponderance of the evidence that Mr. Barwick had violated the Act as charged. After consideration of the testimonial and documentary evidence in the record, the Board voted to uphold the charges and to impose the sanctions contained in this Final Decision and Order. On June 13, 2002, the Board approved and adopted this Final Decision and Order.

SUMMARY OF EVIDENCE

A. Documents

The following documents were admitted into evidence.

State's Exhibits 1-8 (Amended March 1, 2002)

- Exhibit 1 Charges Under the Maryland Professional Counselors Act, issued November 16, 2001.
- Exhibit 2 Application for Statement of Charges filed in the District Court of Maryland for Baltimore County on January 2, 2001.
- Exhibit 3 Board of Professional Counselors Complaint form, dated January 18, 2001.
- Exhibit 4a Trial Docket Sheets and Defendant Trial Summary in *State of Maryland v. Kevin Barwick*, Case # 3C00145239.
- Exhibit 4b Report by the Office of Forensic Services, Neil Blumberg, M.D., Department of Health & Mental Hygiene, issued March 14, 2001.
- Exhibit 5 Transcript of March 5, 2001 hearing: *State of Md. v. Kevin Barwick*.
- Exhibit 6 Patient A's file: New Life Clinics.
- Exhibit 7 Letter from Patient B to Jim Yeager, Regional Director, New Life Clinics, dated November 3, 2000.
- Exhibit 8 Letter from Patient A to Jim Yeager, Regional Director, New Life Clinics, dated November 3, 2000.

Respondent's Exhibits 1-14

- Exhibit 1 Supervising Therapist's letters (James R. David, Ph.D, L.C.S.W.-C), dated 9/8/01; 3/8/01.
- Exhibit 2 Kevin Barwick Letters, dated 6/23/01; 5/9/01.
- Exhibit 3 Certificate of Completion – Ethics Course, dated 3/24/01.
- Exhibit 4 David Hartman, MSW Letter, dated 3/9/01.
- Exhibit 5 Pastor Neil Gladen Letter, dated 3/6/01.

- Exhibit 6 Rev. Mark Barwick Letter, dated 3/25/01.
- Exhibit 7 Mark Buttell, M.A., L.C.P.C. Letter, dated 4/26/01.
- Exhibit 8 Linda Diaz, MSW, Letter, undated.
- Exhibit 9 Debbie Barwick Letter, dated 5/9/01.
- Exhibit 10 Index of BPQA Offenses, Opinions, and Orders.
- Exhibit 11 McDonnell v. Commission on Medical Discipline, 301 Md. 426, 483 A.2d 76 (1984).
- Exhibit 12 Curriculum Vitae of Kevin Barwick, L.C.P.C.
- Exhibit 13 Curriculum Vitae of James R. David, Ph.D., L.C.S.W.-C.
- Exhibit 14 Curriculum Vitae of Susan Fiester, M.D.

Stipulations

The parties stipulated to the following facts:

1. Mr. Barwick is a licensed Professional Counselor.
2. Mr. Barwick was employed at New Life Clinics at the time of the incident at issue.
3. Mr. Barwick began treating Patient A on September 26, 2000.
4. On January 2, 2001, Patient B filed a Statement of Charges against Mr. Barwick in the District Court of Maryland for Baltimore County.
5. On June 1, 2001, District Court Judge G. Darrell Russell, Jr. found Mr Barwick not guilty of a charge of assault in the second degree and guilty of a fourth degree sexual offense charge. Judge Russell granted Mr. Barwick probation before judgment, placed him on probation for three (3) years, and ordered that the Court was to receive quarterly reports from the Respondent's therapist for the entire probationary period.
6. The Board of Professional Counselors has not received any complaints against Mr. Barwick prior to or subsequent to the complaint filed in the instant case.
7. The Board of Professional Counselors had not taken any action against Mr. Barwick's license prior to the receipt of the instant complaint and has not taken any action against Mr. Barwick's license for any other action subsequent to receipt of the instant complaint.

8. In its investigation of the case, the Board did not interview James R. David, Ph.D.

B. Summary of Witness Testimony

Mr. Barwick's former patients at New Life Clinics, Patient B and her husband, Patient A, testified for the State. Patient B testified that in September and October of 2000, her husband attended counseling sessions with Mr. Barwick for serious anger control problems. (T. 21, 52) She stated that on Oct. 19, 2000, Mr. Barwick saw her husband and herself in one joint session for marital therapy and that they both developed a great deal of confidence and trust in his ability to help them. (T. 21-22, 51)

Following an incident that occurred with her husband on October 30, 2000, Patient B stated that she was devastated and telephoned Mr. Barwick. He set up an appointment for her to have an individual therapy session with him on Oct. 31, 2000 at 4:00 pm. (T. 22-23) Patient B testified that Mr. Barwick was alone in his office when she arrived (T. 23-24), and that during the session, sexual contact occurred as follows:

She was extremely distraught and Mr. Barwick encouraged her to relax, take a nap, let him do a massage, and put her head in his lap so that she could access her "child component." He requested that Patient B stand up and close her eyes while he walked around her in increasingly smaller circles and spoke to her. He got closer and closer, massaged her face and shoulders, kissed her on the cheek, asked her to lean back against him, then kissed her on the lips and inserted his tongue in her mouth. (State's Exh. 1; T. 24-27, 50) Patient B testified that she pulled away but did not leave at that time because she was confused, in denial, and unwilling to relinquish a therapeutic process that she believed was beneficial to her husband (T. 27-30, 50, 51)

Patient B then sat down with Mr. Barwick on a sofa, and discussed specific feelings of inferiority related to a physical handicap. (T. 28-29). While telling her she was beautiful and sensual and that her husband did not appreciate her, Mr Barwick continued to make sexual advances, touched her breast and crotch area, placed her hand on his erect penis and asked her to relieve his erection. (State's Exh. 1; T. 29-31, 51) Patient B refused and got up to leave. (T. 31) Mr. Barwick did not apologize for the incident, but asked her to return or call him the next day. (T. 31-32) Patient B estimated that her individual session with Mr. Barwick lasted for over an hour. (T. 51)

When she arrived home, Patient B stated that she told her husband what had happened. (T. 33) In telephone conversations with Mr. Barwick on November 1 and 2, 2000, Mr. Barwick repeated to her what had happened between them on October 31, 2000, as recounted by Patient B in her testimony. (T. 32-34). He told her he had "lost focus," his wife was out of the country, and asked her not to inform her husband of the incident but to "put it on the shelf," because it would impair her husband's healing process. (T. 33) On the evening of November 2, Patient B went with her husband to confront Mr. Barwick, and he again admitted his actions to both of them. (T. 34)

Patient B testified that several days after the incident, her husband contacted Mr. Jim Yeager, regional director of New Life Ministries and Mr. Barwick's supervisor. (T. 35) In response to a request from Mr. Yeager, Patient B and her husband provided written narratives of the incident and their subsequent interactions with Mr. Barwick. (State's Exhs. 7 & 8; T. 36) On November 13, 2000, she and her husband, Patient A, met with Mr. Barwick and Mr. Yeager, and Mr. Barwick again agreed that the events as summarized by Patients A and B in the November 3 narratives were true. (T. 36-38) At

this time, Mr. Yeager informed them that Mr. Barwick had been fired from his position at New Life Clinics. (T. 38) Patient B further testified that Mr. Barwick's testimony at his criminal trial on March 5, 2001, contradicted all of his previous statements to Mr. Yeager, her husband and herself in November, 2000.² (State's Exh. 5) Mr. Barwick changed his story about the sexual contact that had occurred, and described it as consensual. (Exhs. 4b, 5; T. 42-43)

Patient A testified that he initially sought help from and trusted Mr. Barwick because of the Christian values and religious focus of New Life Ministries, Mr. Barwick's employer. (T. 53-55) Patient A corroborated his wife's account of the sexual encounter between her and Mr. Barwick, as communicated by her after her individual session on October 31, 2000. (T. 56-59) He also described his anger and feelings of betrayal on learning of Mr. Barwick's actions. (T. 59-60)

Patient A testified that when both he and his wife confronted Mr. Barwick in person on November 2, 2000, Mr. Barwick confirmed that Patient B did not willingly participate in the sexual contact, and accepted full responsibility for his actions. (T. 61-64) Patient A confirmed his wife's account of the November 13, 2000 meeting with Jim Yeager, and Mr. Barwick's agreement to and apology for the events as described in the written summaries provided to Mr. Yeager. (State's Exhs. 7 & 8; T. 65) Patient A also indicated that Mr. Barwick's testimony at the criminal trial contradicted his previous account of events in November of 2000. (T. 67-68) On cross-examination, Patient A testified that had the sexual contact been consensual, his wife could have confessed it to him without fearing for her safety. (T. 70-71)

² Patient B and her husband, Patient A, testified for the State at Mr. Barwick's criminal trial and were both present in the courtroom during Mr. Barwick's testimony.

Following Patient A's testimony, on agreement by the parties, the State's and Respondent's Exhibits were admitted into evidence all at once. (T. 73) The State objected to Respondent's Exhibits #10 and #11, and the parties deferred the issue of their admissibility until later in the proceedings.

Susan Fiester, M.D., a practicing forensic psychiatrist licensed in the State of Maryland, testified as an expert witness on behalf of Mr. Barwick. (T. 75-99) Based on a five-hour psychiatric evaluation of Mr. Barwick conducted on February 20, 2002, and a review of the information contained in all of the Respondent's documentary exhibits, Dr. Fiester testified regarding Mr. Barwick's childhood, adolescence, his medical, marital and family history, as well as his mental status. (T. 78-79, 87-88)

Dr. Fiester disagreed with the conclusions in the report of Neil Blumberg, M.D., who conducted a psychiatric evaluation and examination of Mr. Barwick for the criminal court. (State's Exh. 4b; T. 80) Specifically, she opposed the idea that Mr. Barwick's personal therapy with Dr. James David was too sporadic and inadequate to deal with whatever psychological issues prompted his boundary violation. (State's Exh. 4b; T. 79-81) Dr. Fiester also stated that her assessment did not reveal any aberrant sexual or predatory behavior, past or current psychiatric disorders, or an underlying personality disturbance. (T. 80-84)

Dr. Fiester testified that Mr. Barwick's childhood and adolescence were notable for the divorce of his parents, emotional and financial abandonment by his father, and his mother's unavailability due to her preoccupation with providing for the family. Dr. Fiester also noted sexual abuse by a male cousin on one occasion, the death of a significant father figure in his life at the age of thirteen, and a six-month period of

depression after this loss. (T. 81-82) She opined that this series of betrayals by men and insufficient parental guidance was somewhat remarkable. (T. 82)

Dr. Fiester believed that there were no ongoing psychological issues to warrant suspension of Mr. Barwick's license to practice. In her opinion, Mr. Barwick had a stable marriage, was involved in therapy and spiritual pursuits, and there were no risk factors to indicate the possibility of a repeat offense. (T. 84-85) She did state that his practice should be closely supervised, with an emphasis on regular meetings with an experienced clinician and discussion about boundary and ethical issues (T. 85)

In her testimony, Dr. Fiester described Mr. Barwick's account of the event leading to Patient B's visit to him on October 31, 2000, the dysfunctional marital relationship of Patients A and B, and Patient B's anger toward her husband. Mr. Barwick reported to her that the sexual encounter between him and Patient B was consensual and that he "was lost in the moment." (T. 90-92) Dr. Fiester also stated that she performed no objective psychological tests on Mr. Barwick, but relied on the Respondent's self-report, Dr. David's treatment notes, and the information in Mr. Barwick's documentary exhibits. (T. 88, 93, 97) She acknowledged that counselors have a professional and ethical obligation to maintain appropriate boundaries regardless of sexual provocation from patients. (T. 98-99)

Dr. James David, Mr. Barwick's treating therapist, testified by videotaped statement for the Board. (T. 100-103) He stated that Mr. Barwick had attended 13 therapy sessions in the 10 months preceding the sexual misconduct on October 31, 2000. (T. 101-102) Dr. David also testified that the childhood and adolescent traumas of Mr. Barwick were addressed in therapy. (T. 101) In Dr. David's view, based on 28

therapy sessions attended by Mr. Barwick in the 16 months since October 31, 2000, Mr. Barwick was mentally healthy and there were no outstanding clinical concerns. (T. 102) Dr. David stated that Mr. Barwick had reported the sexual incident as initiated by Patient B and consensual in nature, but that Mr. Barwick had responded appropriately by stopping the physical intimacy. (T.102) Dr. David opined that Mr. Barwick had made great progress in therapy and in his practice, that he presented no danger to the public, and that his license should not be suspended or revoked. (T. 103)

Mr. Barwick testified on his own behalf. He testified regarding his marriage, family, education, professional experience, and his current private practice as an outpatient therapist. (T. 105-106) He further testified about the nature of the marital difficulties of Patients A and B, and disputed Patient B's version of the sexual contact that had occurred between Patient B and himself, contending it was entirely consensual and lasted fifteen minutes. (T. 111-113)

Mr. Barwick stated that they kissed once while sitting on the couch, that Patient B laid her head on his chest and he touched her breast and crotch. (T. 111-112) According to Mr. Barwick, Patient B dropped her pants, pulled them back up when he did not respond, straddled him, they kissed again, and at that point they both decided to end the encounter. (T. 92, 112-113) Mr. Barwick denied that his behavior with Patient B was premeditated and described his educational and therapeutic efforts to rehabilitate himself since the incident. (T. 113-114) He stated that he concurred with Patient B's version of events and agreed with the written summaries in November, 2000, because of the anger and abusive tendencies of her husband, Patient A, and his fear for her safety. (T. 114, 134)

On cross-examination, Mr. Barwick testified that he probably would not touched Patient B in a physically inappropriate way or initiated any kind of contact if Patient B had not been willing or responsive. (T. 117-118) He also testified about his familiarity with the concept of transference, the dynamic of intense or sexually-oriented emotions that can occur during therapy sessions, and his awareness of his professional responsibility to maintain boundaries. (T. 118) In his testimony, Mr. Barwick agreed that he had omitted his employment term with New Life Clinics from his current C.V. (Resp.'s Exh. 12; T. 119)

In response to questions from Board members, Mr. Barwick testified that after Patient B fell back and he had touched her shoulders and stroked her face, he was "tempted" or "aroused" on a sexual level. He sat down next to Patient B on the sofa and let the sexual contact continue when he knew it was wrong professionally and ethically. (T. 122-123) He stated that he realized they had to stop after Patient B straddled him and placed her hand on his penis, and that he ended the intimate touching at that point. (T. 124) He conceded that he believed Patient B needed "comfort" when she called to set up her individual session with him, but agreed that "guidance" was a more appropriate term for Patient B's emotional needs. (State's Exhibit 6; T. 125-126).

With regard to a safety plan for Patient B, Mr. Barwick testified that he had spoken to Patient B about the need for her to have a backup plan to take her children at a moment's notice and "stash money" for a motel. (T. 127) Mr. Barwick also stated that as long as he was not a threat to the public, his license should not be suspended or revoked. (T. 127-128) With regard to couples counseling, he testified that half of his

current practice is with couples, that he is more aware of boundary issues, but that he was not practicing much differently. (T. 128-129)

When he responded to a question about how he had used the basic defense mechanisms of projection, denial, and displacement in defending his violation, Mr. Barwick agreed that his characterization of the incident as a seduction by Patient B was partly a projection of the act on to the patient. (T. 131) He also agreed about the validity of the Board's concern about his use of displacement at his criminal trial when he stated that "*my hand . . . went to her crotch*" rather than the more direct "I touched her crotch." (State's Exh. 5, p. 44; T. 131) In direct contrast to his testimony at his criminal trial, Mr. Barwick testified to the Board that he had not really massaged Patient B, but merely moved his hand and touched her face. (State's Exh. 5, p. 43; T. 133, 135) He conceded that he knew that he was also seducing Patient B, but reiterated that he had never denied full responsibility for his violation. (T. 133) With regard to touching patients, especially female patients, Mr. B. testified that he is now so acutely aware of boundary issues that he rarely touches his patients or shakes hands. (T. 136)

Mr. Barwick's wife testified about the remorse of her husband over the sexual incident with Patient B. (T. 142) She also testified that she did not remember exactly when Mr. Barwick had first informed her about the incident. (T. 143)

At the conclusion of all testimony, the Board admitted Respondent's Exhibits #10 and #11 into evidence. (T. 143-144)

FINDINGS OF FACT

The Board adopts the Stipulations of Fact agreed upon by the parties as findings by the Board. The Board's records also indicate that Kevin Barwick was originally

gave in to temptation. (T. 16, 18, 19,152) From Mr. Barwick's perspective, he was "only" a "guilty participant" in a seduction by Patient B. (T. 19, 110-113, 117-118, 133) At the same time, Mr. Barwick admitted his wrongdoing and declared that he accepts full responsibility for its occurrence. (T. 15, 123)

Mr. Barwick's undue emphasis on the seduction by Patient B belies an acceptance of full responsibility for his sexual transgression. (T. 19, 111-114, 117-118) Simply admitting a violation does not equate with meaningful acceptance of responsibility. His assertion that he merely yielded to seduction misses the point. Even if there had been seductive moves on the part of Patient B, Mr. Barwick's legal and ethical obligation was to resist seduction. The Board is unreceptive to the idea that seduction by a distraught female patient justifies subsequent sexual misconduct by her therapist. Under Maryland law, the Board finds that seduction or attempted seduction never justifies a response in kind from a licensee, and is not a mitigating factor.

In his portrayal of his physical contact with Patient B, Mr. Barwick sought to further diminish his responsibility for his behavior. For example, he contradicted earlier testimony at his criminal trial (State's Exh. 5, p. 43) and insisted he did not massage Patient B's face, but merely moved his hand to touch it. (T. 133) Again, the change in his testimony undermines his credibility. The Board finds that his overall characterization of the specifics of physical touching at the hearing was essentially an attempt to minimize the sexual nature of his actions. Sexual misconduct disguised as therapy is not legitimate. In addition, the Board finds that there is no valid counseling therapy involving casual, prolonged, or intimate touching between a treating therapist and a patient during the course of individual or joint marital therapy sessions. (T.135-136) His

7. Mr. Barwick engaged in sexual contact with Patient B during a counseling session against her wishes and without her consent. In so doing, Mr. Barwick violated the Board's Code of Ethics and his own legal and ethical obligations, and exploited his relationship with Patient B for his own personal satisfaction. (State's Exhs. 1, 7, 8; T. 21-51, 111-114)

DISCUSSION

Mr. Barwick's Credibility, Competency, and Denial of Full Responsibility

Mr. Barwick's altered testimony and his rationale for the change between November, 2000, and his criminal trial raises three issues for the Board. First, the Board finds that Mr. Barwick's disingenuous explanation for his original agreement with Patient B's description is implausible. When facing criminal charges, the loss of his license, and the totality of negative repercussions from the incident, it defies credibility that that he would lie to protect Patient B and not defend himself at that time by telling the truth about the purported seduction. (T. 133, 145). His rationale for his initial agreement is not credible. His lack of integrity and candor disturbs the Board.

Second, even if Mr. Barwick indeed had told a deliberate lie to protect Patient B from her husband, he became part of the dysfunctional marital system of this troubled couple, an action contraindicated by the tenets of his profession. In his response to Board members' questions on this issue, he seemed unaware that such a lie by a therapist in this particular marital situation would be wholly inappropriate from a professional standpoint. (T. 133-135) The Board finds that his lack of awareness raises the separate issue of his competency as a therapist.

Third, the Board is deeply concerned with Mr. Barwick's inability or unwillingness to accept full responsibility for his actions. In his testimony, Mr. Barwick referred to his sexual impropriety as an unfortunate isolated incident in which he lost his judgment, and

licensed by the Board on February 19, 1999. Based on the testimonial and documentary evidence presented at the hearing, the Board makes additional factual findings by a preponderance of the evidence as follows:

1. The State did not allege, and the Board does not find, that Mr. Barwick is a sexual predator or that he poses an imminent threat to the public. Mr. Barwick has no prior history of complaints with the Board and no disciplinary actions against his license. (Stipulations 6 & 7; T. 83-84, 150, 153)
2. In September-October, 2000, Patient A sought and received counseling from Mr. Barwick for anger control issues and marital difficulties. On October 19, 2000, Mr. Barwick also saw Patient A and his wife, Patient B, for a joint marital therapy session. Patient B saw Mr. Barwick for an individual counseling session on October 31, 2000, because she was distraught over an incident that involved her husband. (State's Exh. 1, pp. 2-3; T. 21-24, 52, 53-55)
3. During the individual session, inappropriate sexual contact occurred between Mr. Barwick and Patient B. The parties gave conflicting accounts of the sexual encounter. Patient B contended that Mr. Barwick initiated and continued sexual contact against her wishes. (State's Exh. 1, pp. 3-4; T. 24-31, 50) Mr. Barwick admitted his participation in unlawful sexual activity but claimed that Patient B seduced him, and was a willing and responsive partner in a consensual act. (T. 19, 111-114, 118, 134)
4. In November, 2000, in statements made to Patients A and B, and to his supervisor, Mr. Barwick initially agreed with Patient B's description of the incident as non-consensual. His testimony at his criminal trial and at the Board hearing contradicted these earlier statements. (State's Exhs. 5, 7, 8; T. 32-38, 61-64, 111-114, 118, 134)
5. Mr. Barwick claimed that he did not reveal the seduction by Patient B in November, 2000 because he feared for Patient B's safety due to the anger and abusive propensities of her husband, Patient A. (T. 118, 134)
6. Based on the entire body of testimonial and documentary evidence, particularly the testimony of Patient B and Mr. Barwick, the Board finds that Mr. Barwick's version of the incident is not credible. (State's Exhs. 1-5, 7-8; T. 21-51, 105-137, 144-154) The Board further finds that the "safety" rationale for his initial agreement with Patient B's non-consensual account is far-fetched and exceedingly dishonest. (T. 111-114, 118, 134)

touching technique on this occasion was unconventional, and again raises the separate issue of his competence as a counselor and marital therapist.

Mr. Barwick conceded that he realized, even under his version of events, that he, too, was seducing. (T. 133) He agreed that his portrayal of the incident as a seduction by Patient B was partly a projection of the act on to the patient. He validated the Board's concern about his use of the basic defense mechanisms of projection and displacement in his testimony. (T. 130-131) The Board finds that his use of these mechanisms is also inconsistent with an acceptance of meaningful responsibility. Overall, despite his assertion of full responsibility, Mr. Barwick's testimony was replete with vigorous efforts to justify and mitigate his misconduct, and indicated to the Board that he is still in a state of denial about his accountability as a mental health professional. (T. 132)

Dr. Fiester, Mr. Barwick's evaluating psychiatrist and expert witness, stated that counselors have a professional and ethical obligation to maintain appropriate boundaries regardless of sexual provocation from patients. (T. 98-99) The Board agrees. In this respect, Mr. Barwick's testimony and attempted justification also demonstrated a serious lack of understanding of the nature of the professional counselor – patient relationship. Mr. Barwick did not appear to realize that a patient's trust, emotional vulnerability, and reliance on the ethical standards and knowledge of the therapist create an inherent power asymmetry between patient and treating therapist. Although he stated that he was familiar with transference phenomena, (T. 118) Mr. Barwick's seduction narrative showed no understanding of how transference issues contribute to this imbalance of power.

In addition, Mr. Barwick testified that he was not exploitative. (T. 16, 19) The Board finds otherwise. In his testimony, he failed to grasp that an initiation of inappropriate physical contact, or, even a response to sexual provocation is essentially an exploitation of the power differential between therapist and patient. Because the Board recognizes that a vulnerable or distraught patient is incapable of giving informed consent to sexual contact with a therapist or counselor, the Board's regulations forbid either *consensual* or forced sexual behavior in patient-counselor relationships.

Assuming for the sake of argument that the sexual contact was consensual as Mr. Barwick contends, he exploited Patient B. As a licensed counselor, Mr. Barwick was responsible for holding the line, and was obligated not to yield to seduction. (T. 98-99, 147) A patient's consent is no defense. The Board infers from his testimony that he does not yet fully appreciate his professional and ethical obligation to maintain appropriate boundaries regardless of sexual provocation from patients.

The Board also finds that a counselor who consents to or participates in a sexual encounter initiated by a patient is inherently deficient in knowledge of boundary violation prevention techniques and modalities. (T. 121-137) An appropriate professional response to seductive behavior by a female patient should take the form of firm repudiation, or immediate referral of the patient. Besides its concern with the illegality of Mr. Barwick's sexual abuse of Patient B, the Board finds that his professional technique in this individual therapy session was outdated, grossly inept, and revealed a basic lack of proficiency in his chosen field.

Mr. Barwick's obvious knowledge gap in competent practice standards cannot be explained as a momentary loss of focus or a one-time error of judgment. His justification

testimony at the hearing further illuminated his counseling deficiencies. These professional shortcomings are a source of considerable disquiet to the Board, because of the Board's duty to ensure that professional counselors and therapists are fit to hold a license to practice. Mr. Barwick's testimony did not alleviate the Board's concerns with regard to his competency.

As a licensee, Mr. Barwick is subject to the standards and policies adopted by the Board and embodied in the law. Despite being "tempted" or "aroused" during an individual session with Patient B, (T. 122-123), Mr. Barwick's ethical responsibilities precluded indulging his sexual urges. The nature of the dysfunctional marital relationship between Patients A and B, and Patient B's distraught condition, required Mr. Barwick's vigilance about the impact of his conduct on her well-being. His failure to exercise his professional obligations violated the law and the ethical boundaries and standards of his profession.

Lack of Insight into Causes

Apart from Mr. Barwick's continued justifications and lack of accountability, the most striking aspect of his testimony was his manifest lack of insight into the causes of his violation. (T. 14-19, 104-139, 149-153) Sixteen months after Mr. Barwick's admitted sexual misconduct with Patient B, the question of why he did it remains unanswered. More significantly, neither Dr. Fiester nor Dr. David, Mr. Barwick's treating therapist since 1999, offered any definitive explanations for the underlying causes of his breach of the Act. (T. 75-99, 100-103)

Dr. Fiester opined that Mr. Barwick's childhood and adolescent losses and a succession of betrayals by men in his family were somewhat remarkable, but disagreed

with the conclusions in the March, 2001, report of Neil Blumberg, M.D.³ (T. 80-82) For instance, she did not agree with Dr. Blumberg that Mr. Barwick might have an underlying personality disturbance or psychiatric disorder, or that his therapy with Dr. David was too infrequent. (T. 80, 84)

Other than a review of the DSM-IV criteria, Dr. Fiester herself did not perform any objective psychological tests on Mr. Barwick but based her evaluation and conclusions on Mr. Barwick's self-report, Dr. David's treatment notes, and information in Mr. Barwick's documentary exhibits. (T. 88, 93, 96-97). She stated that Mr. Barwick had no risk factors to warrant concerns of a repeat offense and that his license should not be suspended. Nevertheless, Dr. Fiester did suggest close supervision of his practice. (T. 84-85) In a similar vein, Dr. David performed no objective psychological tests on Mr. Barwick. According to Dr. David, there were no outstanding psychiatric concerns in Mr. Barwick's case, Mr. Barwick's childhood traumas and losses were already addressed in therapy, and a suspension of Mr. Barwick's license was unwarranted. (T. 100-103) Neither witness provided any in-depth psychological basis for their opinions.

The Board finds that the conclusions of Dr. Fiester and Dr. David on the questions of Mr. Barwick's mental health and the crucial safety issue were without sufficient foundation. Thus the Board is not reassured by their views. Both of these professionals adopted Mr. Barwick's theories of temptation, sexual arousal, seduction, poor judgment, and a momentary loss of focus as explanations for his sexual abuse of Patient B. (T. 15-19, 90-92, 100-103, 110-113, 122-123, 151-152) After weighing their

³ Dr. Blumberg, of the Office of Forensic Services, Maryland Dept. of Health & Mental Hygiene, conducted a psychiatric evaluation and examination of Mr. Barwick for the criminal court. (State's Exh. 4b)

testimony and that of Mr. Barwick, the Board rejects these superficial theories as motivations for Mr. Barwick's sexual misconduct.

Like Dr. Fiester, Dr. David, and Dr. Blumberg, the Board finds that Mr. Barwick's childhood and adolescent traumas are significant. Unlike Dr. Fiester and Dr. David, however, the Board finds that the therapy to address Mr. Barwick's problems has been inadequate. Mr. Barwick's belief that he has no diagnosable disorder to resolve may be sincere, (T. 151) but the Board finds that his unresolved psychological issues impair his mental health and his ability to practice counseling and marital therapy safely.

Mr. Barwick testified he had "lost his way momentarily." (T. 152) Neither Mr. Barwick, Dr. Fiester nor Dr. David offered enlightenment on the crucial issue of why he lost his way on this occasion with this particular patient. In applying its expertise, the Board finds that at the very least, and in the interests of public safety, Mr. Barwick's admitted sexual misconduct with Patient B warranted objective psychological testing and intensive counseling therapy. Yet, since the date of his boundary violation, this type of diagnostic or rehabilitative regimen has not been pursued. (T. 100-103) Without an objective mental health assessment and diagnosis of Mr. Barwick's risk factors, the causes of Mr. Barwick's sexual abuse of Patient B will remain elusive. Without knowledge of and insight into the causes, a repeat offense cannot be ruled out.

Lack of Integration

The Board finds that Mr. Barwick's overall testimony demonstrated only a very superficial understanding and insight into his own unconscious motivations and risk factors.(T. 14-19, 104-139, 149-153) His introspection and rehabilitation since the time of the violation are inadequate to deal with its causes. Despite individual, group, and

accountability therapy sessions, and his other efforts to improve himself, (T. 132-133) the Board finds that Mr. Barwick has not yet integrated his professional and ethical responsibilities with his own psychological risk factors and unconscious motivations. Without this integration, Mr. Barwick cannot practice counseling safely.

Conclusion

The Board's objective evaluation of the undisputed evidence and Mr. Barwick's own testimony weigh heavily against Mr. Barwick. His sexual contact with Patient B violated the law and exploited the patient on October 31, 2000. He remains unwilling or unable to accept full responsibility for his actions, and sixteen months later, he has no meaningful insight into the causes of his violation. His abuse of this particular patient is not only a reflection of poor professional judgment and counseling deficiencies, but of unresolved psychological issues and impaired mental health.

Mr. Barwick has not integrated his professional and ethical responsibilities with his own psychological risk factors. His lack of candor and ongoing justifications show a complete disregard for the unique nature of his profession or the impact on his patients, and an unwillingness to come to terms with his actions. His rehabilitation is essential to guarantee the safety of his patients and maintain the integrity of the professional counseling profession in the State of Maryland.

CONCLUSIONS OF LAW

Based on the foregoing Summary of Evidence, Findings of Fact, and Discussion, the Board concludes that Mr. Barwick violated HO § 17-313 (4) and (9), and COMAR 10.58.03.03 B (1) and 10.58.03.06 A (5), by engaging in nonconsensual sexual

behavior with Patient B, and by exploiting his professional relationship with Patient B for personal advantage or satisfaction.

SANCTION

Despite Mr. Barwick's partial admission of his sexual misconduct, he asks the Board to treat his breach of the Act as a one-time occurrence and impose no suspension. (T. 15-19, 151-153) This the Board cannot do if it is to perform its duty of protecting the public and rehabilitating Mr. Barwick. Further, the sharply-contested issue of an appropriate sanction requires that the Board consider the nature of Mr. Barwick's violation, the specific facts and testimony in this case, and tailor a sanction accordingly. Neither the general public nor the counseling profession would be served if the Board ignores its deterrent function.

A temporary suspension of Mr. Barwick's license followed by a probationary period is necessary to accomplish the Board's goals. The Board agrees with Dr. Fiester that an intense period of supervision of his practice is required, and incorporates this recommendation into Mr. Barwick's probation.

In deciding on an appropriate sanction for Mr. Barwick, the Board considered the commendable aspects of his career, and the personal, financial, and legal consequences of his misconduct. After considering the entire record in this case, and weighing the appropriate factors and circumstances, the Board finds that Mr. Barwick's admission of a sexual boundary violation was not accompanied by any meaningful sense of responsibility for his actions. Mr. Barwick compromised his professional integrity by engaging in sexual contact with a patient who was also the wife of another

patient. He abused the trust of two patients, and his misconduct was hardly the kind of therapy commensurate with a solution to their marital problems.

A review of his testimony reveals that Mr. Barwick has no explanation for the causes of his actions, only justifications. His sexual abuse of a patient and attempted justifications are inimical to the standards of the counseling profession. The Board does not find Mr. Barwick's seduction rationale believable. Seduction by or consent of a patient is not mitigating in any case, and it would not justify a lesser sanction.

Generally, Mr. Barwick's testimony demonstrated a lack of candor, knowledge, competency, insight, and integration that deeply troubles the Board. His admission of a violation and acceptance of responsibility is superficial, as is his insight and integration. Mr. Barwick's justifications for his offense and continued lack of insight into its causes warrant a sanction that addresses the seriousness of his exploitation of Patient B, his personal and professional mental impairment, and the deficiencies in his counseling skills. Thus, the Board's sanction includes therapeutic and educational components.

Based on the report by Dr. Blumberg and the testimony of Dr. Fiester and Dr. David about Mr. Barwick's childhood and adolescent traumas, the Board has serious concerns about his current fitness to provide counseling to women. Mr. Barwick's own testimony showed that the frequency and intensity of his therapy with Dr. David has been inadequate to diagnose or treat his complex unconscious motivations. Mr. Barwick does not pose an imminent threat to the public, but the Board rejects the conclusions of Dr. Fiester and Dr. David that Mr. Barwick is now risk-free. Conclusions made without objective psychological testing, and on the basis of Mr. Barwick's self-reporting and

justifications are unacceptable when the safety of patients is at stake. Given its mission of public protection, the Board must ensure that its licensees pose no public risk.

A suspension of Mr. Barwick's license is geared primarily to Mr. Barwick's personal and professional rehabilitation. Taking time out from exposure to the psychological needs of others is an indispensable component of Mr. Barwick's own reparative needs. Mr. Barwick requires a comprehensive mental health assessment, objective psychological testing, and intensive self-focused psychodynamic therapy with a counselor other than Dr. James David. Mr. Barwick must also address the educational gaps in his counseling knowledge, and his superficial understanding of ethical and boundary issues.

The Board's suspension is a mechanism to remove Mr. Barwick from the working counseling environment so he can focus exclusively on his own psychological needs. He must gain insights into the causes of his violation, and integrate his own psychological risks with his professional responsibilities. The Board also recommends that he reassess his technique with regard to touching patients, and educate himself about mechanisms for dealing with the occupational hazard of seductive behavior by female patients. Only with such knowledge will Mr. Barwick be able to continue in his chosen profession and provide competent professional counseling to individuals and couples.

ORDER

Based on the foregoing, it is this 13th day of June 2002, by a majority of the full authorized membership of the Board:

ORDERED that the license of Kevin Barwick, L.C.P.C., License Number LC0255 be **SUSPENDED** for **eighteen (18) months**, beginning twenty (20) days from the execution of this Final Order, but the suspension may be **STAYED** after **twelve (12) months** if Mr. Barwick satisfies the following conditions:

1. Mr. Barwick shall undergo, at his own expense, a mental health assessment by a Board-approved licensed clinical professional counselor.
2. Mr. Barwick shall provide the Board-approved professional counselor who conducts the assessment a copy of the charging document, Final Order, records from his court-ordered evaluating psychiatrist and prior treating counselor, and any other documents that the Board deems relevant to this case.
3. The assessing counselor shall perform the Millon and Minnesota Multiphasic Personality Inventory ("MMPI") tests, and other psychological tests that the assessing counselor, in his or her discretion, deems relevant and necessary.
4. Mr. Barwick shall be responsible for ensuring that the Board receives a written report from the assessing counselor.
5. Mr. Barwick shall comply with any treatment recommendations made by the assessing counselor that are subsequently approved by the Board and shall continue to comply with any treatment recommendations throughout the two (2) year probationary period imposed below.
6. Mr. Barwick shall begin weekly psychodynamic treatment and psychotherapy with a separate Board-approved licensed clinical professional counselor. Mr. Barwick's therapy must be delivered by a counselor other than Dr. James David. The therapy shall address the specific recommendations made by the assessing counselor.
7. Mr. Barwick shall enroll in the following Board-approved graduate level courses from accredited colleges or universities at his own expense. At the conclusion of each course, Mr. Barwick shall submit to the Board proof of classroom attendance and a transcript verifying successful completion

of the course. The Board requires that Mr. Barwick successfully complete Board-approved courses in all of the following subject areas :

- (a) Professional Ethics
- (b) Couples Counseling or Marriage and Family Therapy
- (c) Human Sexuality
- (d) Trauma and Abuse

8. After one (1) year, Mr. Barwick may petition the Board in writing for a termination of the suspension, and shall appear before the Board's Case Resolution Conference ("CRC") to establish that he has complied with the Board's conditions. Mr. Barwick shall also provide satisfactory evidence that he is competent to practice professional counseling and marital therapy safely, and has gained significant insights into the unconscious motivations that caused the boundary violation resulting in the Board's charges, findings of fact, and conclusions of law; and it is further

ORDERED that upon completion of all eight (8) of the above conditions, but no earlier than twelve (12) months from the date of the execution of this Final Order, the Board will stay the suspension; and it is further

ORDERED, that upon termination of the active suspension, Mr. Barwick will be placed on **PROBATION** for a period of **two (2) years**, subject to the following terms and conditions:

1. Mr. Barwick's practice shall be supervised, at his own expense, by a Board-approved licensed clinical professional counselor or therapist with experience and expertise in the field.
 - (a) The supervising counselor shall notify the Board in writing of his/her acceptance of the supervisory role of Mr. Barwick.
 - (b) The supervision shall continue weekly for the entire two-year probationary period and must include discussion about maintaining boundaries and ethical standards in Mr. Barwick's practice.
 - (c) The supervisor shall meet with Mr. Barwick on a weekly basis, and submit quarterly reports to the Board.
 - (d) Mr. Barwick has sole responsibility for ensuring that the supervising counselor submit the required quarterly reports.

- (e) The Board has sole authority over any changes in supervision and must approve and ratify any changes in supervision.
2. Mr. Barwick shall arrange to videotape and/or audiotape his sessions with patients in a manner that assures their privacy and safeguards their identity. Mr. Barwick shall provide at least one videotape or alternatively, three audiotapes per month to his practice supervisor.
 3. The first year of Mr. Barwick's probationary practice shall include couples counseling, but no individual female patients.
 4. During the second year of probation, Mr. Barwick's practice may include female patients as well as couples counseling. Mr. Barwick's supervision shall continue on a weekly basis, with quarterly reports to be submitted to the Board.
 5. During Mr. Barwick's entire probation, his individual therapy shall continue on a weekly basis, with quarterly reports submitted by his treating therapist to the Board; and it is further

ORDERED that the Board reserves the right to review and reassess the frequency of Mr. Barwick's therapy and supervision each year; and be it further

ORDERED, that if Mr. Barwick fails to comply with the terms and conditions of probation, the Board may, after notice of the alleged violation and a hearing, and a determination of violation, may impose any disciplinary sanction it deems appropriate under HO § 17-3A-13, said violation being proved by a preponderance of the evidence; and it is further

ORDERED, that at the end of the two-year probationary period, Mr. Barwick may petition the Board for the termination of probation and full reinstatement of his Maryland professional counseling license, provided that, at that time, Mr. Barwick is not under investigation, or no charges have been issued against him; and it is further

ORDERED, that Mr. Barwick shall not petition the Board for an early termination of the suspension or probation; and it is further

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

June 13, 2002
Date

Sharon E. Cheston
Sharon E. Cheston, Ed.D.
Chair
Maryland State Board of Professional Counselors and Therapists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., HO § 17-315, Mr. Barwick has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the 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 § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.