

CLIFFORD R. DUNNING

FINAL ORDER

IN THE MATTER OF

*

BEFORE THE MARYLAND

CLIFFORD R. DUNNING, Ph.D.,
LCPC, LCMFT

*

STATE BOARD OF PROFESSIONAL

*

COUNSELORS AND THERAPISTS

Respondent.

*

License Nos: LCO443 and LCM091

* * * * *

FINAL DECISION AND ORDER

On March 21, 2003, the Maryland State Board of Professional Counselors and Therapists (the "Board") charged the Respondent, Clifford R. Dunning, ("Dr. Dunning") Ph.D., LCMFT, LCPC, a clinical professional counselor and clinical marriage and family therapist licensed by the Board, with the violation of certain provisions of the Maryland Professional Counselors Act (the "Act"), Md. Code Ann., Health Occupations ("HO") § 17-101 *et seq.*, (Repl. Vol. 2000). Following its investigation of a complaint received from Patient A,¹ 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 Dr. Dunning 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;
- (5) Knowingly violates any provision of this title; or
- (9) Violates any rule or regulation adopted by the Board.

¹ For purposes of confidentiality, the patient involved in this case is referred to as Patient A throughout this Final Decision and Order.



STATE OF MARYLAND

DHMH

Board of Professional Counselors and Therapists

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – Nelson J. Sabatini, Secretary

January 15, 2004

VIA CERTIFIED MAIL
Return Receipt Requested

Joseph Ashley, Esquire
926 Houcksville Road
Hampstead, MD 21074

Sherrai V. Hamm
Assistant Attorney General
Office of the Attorney General
300 West Preston Street
Room 302
Baltimore, MD 21201

Re: Clifford Dunning, L.C.P.C.
License #LC0443

Dear Counsel:

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

Sincerely,

Aileen Taylor
Administrator

Board of Professional Counselors and Therapists

Enclosure

cc: Joanne Faber, M.Ed., L.C.P.C.
Noreen M. Rubin, Board Counsel
Timothy J. Paulus, Assistant Attorney General, Deputy Counsel
Clifford Dunning, L.C.P.C., Respondent

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Web Site: www.dhmh.state.md.us/bopc/



The Board also charged Dr. Dunning with violating Code Md. Regs. ("COMAR") tit. 10, § 58.03, Code of Ethics which provides as follows:

04. Ethical Responsibilities

B. A counselor may not:

(3) Enter into a relationship that could compromise a counselor's relationship or create a conflict of interest.

05. The Counseling Relationship

A. Client Welfare and Rights

(2) A counselor may not:

(a) Place or participate in placing clients in positions that may result in damaging the interests and the welfare of clients, employees, employers, or the public.

(d) Foster dependent counseling relationships.

08. Records, Confidentiality, and Informed Consent

A. A counselor shall:

(1) Maintain the privacy and confidentiality of a client and a client's records.

09. Sexual Misconduct

A. A counselor may not engage in sexual misconduct with a client or supervisee. Sexual misconduct includes but is not limited to:

(1) Inappropriate sexual language;

(2) Sexual exploitation;

(3) Sexual behavior, and

(4) Therapeutic deception.

B. Concurrent Sexual Relationships. A counselor may not engage in either consensual or forced sexual behavior with:

(1) A client.

Pursuant to HO § 17-314 and the Administrative Procedure Act, Md. Code Ann., State Gov't ("SG") § 10-201 *et seq.*, the Board conducted a contested case hearing on the merits of the Board's charges on October 17, 2003.

SUMMARY OF EVIDENCE

A. Documents

The State submitted the following exhibits, which were admitted into evidence:

State's Exhibits A-G

- State's Exhibit A: Complaint dated March 18, 2001.
- State's Exhibit B: Interview transcript of Patient A.
- State's Exhibit C: Interview transcript of Barbetta Jones.
- State's Exhibit D: Interview transcript of Respondent Clifford R. Dunning, Ph.D.
- State's Exhibit E: Dr. Dunning's session/progress notes of Patient A.
- State's Exhibit F: Board's Investigative Report (amended), including July 8, 2003 cover letter and Supplemental Statement from Dr. Dunning to Rick Kenney, Board Investigator.
- State's Exhibit G: Charges Under the Maryland Professional Counselors and Therapists Act, issued March 21, 2003.

Respondent's Exhibits 1- 8

The Respondent submitted the following exhibits, which were admitted into evidence:

- Resp's Exhibit 1: Floor plan of Dr. Dunning's entire office suite at 3930 Knowles Ave., Kensington, MD 20895.
- Resp's Exhibit 2: Four photos and floor plan of Dr. Dunning's individual office space.
- Resp's Exhibit 3: Curriculum Vitae of Dr. Dunning.

- Resp's Exhibit 4: Synopsis of Dr. Dunning's therapy sessions with Patient A.
- Resp's Exhibit 5: Letters of Reference and Authors' relationships to Dr. Dunning.
- Resp's Exhibit 6: Curriculum Vitae of Thomas C. Goldman, M.D.
- Resp's Exhibit 7: List of dates Dr. Dunning saw Patient A at his office from Sept., 2001, to Jan. 2002.
- Resp's Exhibit 8: Signed Expert Report of Dr. Thomas Goldman, dated Aug. 14, 2003.

B. Witness Testimony

The following witnesses testified on behalf of the State:

1. Patient A.
2. Barbetta Jones, friend of Patient A.

The following witnesses testified on behalf of the Respondent:

1. Howard (Rick) Kenney (adverse witness).
2. Paula Meads.
3. Peter C. Wilcox, LCSW-C.
4. Sheila Gart, LCSW-C.
5. Clifford Dunning, Ph.D, LCMFT, LCPC.
6. Thomas C. Goldman, M.D.

FINDINGS OF FACT

Having considered all of the documentary and testimonial evidence presented at the October 17, 2003 hearing, the Board finds the following facts by a preponderance of the evidence:

Factual and Procedural Background

1. At all times relevant to the charges in this case, Dr. Dunning was and is licensed to practice as (1) a clinical professional counselor, and (2) a clinical marriage and family therapist in the State of Maryland. (T. 187) Dr. Dunning was originally licensed to practice as a clinical professional counselor on April 12, 1999, under License Number LC0443, and as a clinical marriage and family therapist on October 18, 1999, under License Number LCM091. Dr. Dunning has no prior history of complaints with the Board and no disciplinary actions against his license. (T. 225)

2. At all times relevant to the Board's charges, Dr. Dunning maintained a practice at 3930 Knowles Avenue, Kensington, Maryland 20895. (St. Exh. D, p. 3)

3. In March, 2002, the Board received a complaint from a female patient, Patient A, who had been treated by Dr. Dunning. The complaint alleged that Dr. Dunning engaged in inappropriate sexual advances and activity during therapy sessions with Patient A. (St. Exh. A)

4. The Board conducted an investigation of Patient A's complaint. The Board's investigation included taped interviews with Patient A, a female friend of Patient A, and Dr. Dunning. (St. Exhs. B, C, D, F) The Board also obtained Dr. Dunning's session notes pertaining to Patient A's treatment from September 18, 2001, through January 31, 2002. (St. Exh. E)

Specific Findings Regarding Patient A

Patient A was diagnosed with "major depression" by Dr. Gary Palys, a psychiatrist, prior to her referral to Dr. Dunning for counseling therapy. (St. Exh. E) Dr. Dunning administered a Beck's Depressive Inventory,² which also revealed that Patient A was severely depressed. (St. Exh. E; T. 195-97) Throughout her counseling sessions with Dr. Dunning, Patient A generally saw Dr. Dunning in his office on a weekly basis.³ (St. Exh. E; Resp's Exhs. 4 and 7) Patient A cancelled her therapy session scheduled for January 31, 2002, and discontinued all therapy sessions with Dr. Dunning after that date. (St. Exh. E; Resp's Exhs. 4 and 7; T. 222)

In his progress notes for Patient A, Dr. Dunning documented her psychiatric history, as recounted by Patient A. (St. Exh. E) Dr. Dunning accepted as true Patient A's verbal account of her serious long-term psychiatric problems and the details of her previous hospitalization at Chestnut Lodge psychiatric facility. (T. 242) During his initial assessment of Patient A on September 18, 2001, Dr. Dunning documented a working diagnosis of "Adjustment Disorder." (St. Exh. E)

Throughout October, November and December of 2001, Patient A experienced worsening anxiety symptoms and increasing mental distress. In her therapy sessions with Dr. Dunning, she described "flashbacks" about her time as a patient in Chestnut Lodge and auditory hallucinations of her mother's voice.⁴ (St. Exh. D, pp. 16-17; St. Exh.

² A Beck's Depressive Inventory is a written series of questions geared to measuring the severity of a patient's underlying depression. (T. 233)

³ During the weeks of November 5 and December 17, 2001, Patient A had therapy sessions with Dr. Dunning twice weekly. (St. Exh. E; Resp's Exhs. 4 and 7)

⁴ Dr. Dunning testified that he concluded that Patient A's Borderline Personality Disorder was associated with her "terrible relationship with her mother." T. 201. There is no documentation of this "possible" diagnosis in Patient A's progress notes until November 20, 2001, however. (St. Exh. E)

E; T. 208-10) Patient A also detailed ongoing marital discord and sexual issues with her husband. (St. Exh. E) In his taped interview during the Board's investigation, Dr. Dunning reported significant transference⁵ feelings in Patient A, and their discussions about those feelings, but did not document this issue at all in his progress notes. (St. Exh. D, p. 28; St. Exh. E) Dr. Dunning did include in his notes his observation of cuts and scratches on Patient A's arms during therapy sessions, as well as her description of her urges and actions to burn and cut herself in those areas. (St. Exh. E)

At the hearing, Dr. Dunning admitted to breaching Patient A's right to privacy and confidentiality when he informed her friend, Barbetta Jones, about his patient's self-mutilating propensities. (T. 242-43) Dr. Dunning conveyed this information to Ms. Jones after Ms. Jones notified Dr. Dunning that she feared Patient A might be suicidal. (T. 95, 220) Dr. Dunning testified, however, that he felt "vindicated" in imparting the information to Patient A's friend because of "the duty to warn." (T. 220) Dr. Dunning never documented Patient A's potential for suicide in his progress notes on the patient, nor did he list a suicide prevention procedure or plan for Patient A. (St. Exh. E) According to his testimony, Dr. Dunning did not believe Patient A would commit suicide. (T. 269-75)

On November 20, 2001, Dr. Dunning documented "possible Borderline Personality Disorder" in Patient A's progress notes. (St. Exh. E) These notes, however, do not contain any other definitive identification of this disorder by Dr. Dunning for

⁵ Transference is a psychoanalytic concept in which a patient's feelings, thoughts, and fantasies may shift from a significant person in the patient's past life to a treating therapist or psychiatrist.

Patient A, or a written assessment of the psychiatric risks associated with such a diagnosis. Other than a reference to "cognitive restructuring,"⁶ which Dr. Dunning documented on November 13, 2001, (St. Exh. E) Patient A's progress notes show no suitable treatment plan or treatment goals by Dr. Dunning to deal with her self-injurious thoughts and behavior. (*Id.*) Dr. Dunning also documented that Patient A saw Dr. Palys for medication monitoring, but that she was generally non-compliant with the medications he prescribed. (St. Exh. E; T. 207-08) Despite these written concerns, Dr. Dunning did not consult with Dr. Palys or refer Patient A to another mental health specialist. (St. Exh. E; T. 269-71)

Dr. Thomas Goldman, a psychiatrist licensed in the State of Maryland, testified as an expert witness for Dr. Dunning. At the hearing and in his expert report, Dr. Goldman stated that Dr. Dunning's progress notes were "sketchy." (Resp's Exh. 8, p. 2; T. 297) The Board concurs with Dr. Goldman's opinion. Dr. Dunning's cursory documentation of his treatment sessions with Patient A do not sufficiently detail Dr. Dunning's diagnostic assessment or the therapeutic process. In light of even a "possible" diagnosis of Borderline Personality Disorder, the Board finds that Dr. Dunning's vague notes fail to meet appropriate documentation standards for the practice of counseling, and compromised his patient's interests and welfare.

In addition, Dr. Dunning's written comments reveal his ignorance of the nature of Borderline Personality Disorder and the significance of Patient A's classic symptoms. Dr. Dunning failed to connect Patient A's self-destructive conduct and her inability to discern fantasy from reality to an ultimate diagnosis of this disorder. Dr. Dunning also failed to

⁶ Dr. Dunning testified that his "cognitive restructuring approach" with Patient A consisted of "marital counseling" and "family therapy in conjunction with the individual therapy." (T. 239)

appreciate the suicide risks associated with the disorder. Dr. Dunning stated that he had “just a treatment plan in my mind.” (T. 275) Otherwise Dr. Dunning had no documented treatment plan, suicide prevention procedure, or goals to address Patient A’s complex psychopathology. Given Patient A’s presenting psychiatric history of severe chronic depression and self-destructive complications, Dr. Dunning’s so-called “cognitive restructuring” strategy consisting of marital or family therapy was completely inadequate to address her individual psychiatric needs.

At a minimum, Dr. Dunning’s knowledge of Patient A’s suicide potential, and her refusal to take appropriate medications, warranted consultation with either Dr. Palys or another mental health colleague. At the very least, Dr. Dunning’s self-professed “duty to warn” also included a responsibility to notify Patient A’s husband. His disregard of Patient A’s obvious risk factors highlights Dr. Dunning’s general lack of basic counseling knowledge, and the concomitant danger to his patient’s interests and welfare.

At the hearing, Patient A and Dr. Dunning gave different characterizations of physical contact that occurred during counseling sessions. (T. 19-44, 80-85, 222-224, 248-268) Patient A stated that Dr. Dunning hugged and kissed her, and initiated other physical contact, all of which she portrayed as sexual in nature. (T. 19-44, 80-85) Dr. Dunning admitted to physical contact with Patient A, but categorically denied sexual misconduct. (St. Exh. D, pp. 23-29; T. 191-92, 209, 222-24, 248-68) He testified that he expressly asked Patient A if she needed a hug, that he hugged her three or four times, (T. 222-223, 248) kissed her on the cheek, and gave her a “peck” on the lips. (T. 224, 250, 261) Dr. Dunning also testified that he held Patient A’s arm and touched her face and hair to comfort her when she became upset during therapy sessions. (T. 257-261) He acknowledged that kissing Patient A was a mistake on his part, but also defended

his therapeutic approach as compassionate, (T. 264) stating his belief that his physical contact with Patient A “gave her confidence” and “strength.” (T. 268)

Peter Wilcox, a licensed clinical social worker in Maryland, and Dr. Goldman, who testified on Dr. Dunning’s behalf, stated that kissing or hugging a patient is almost always inappropriate, and especially improper in Patient A’s situation. (T. 160, 295-97, 315) In Dr. Goldman’s view, Dr. Dunning “made serious mistakes” in his attempts to treat Patient A. (Resp’s Exh. 8, p. 5) The Board agrees. It is undisputed that Dr. Dunning hugged Patient A, kissed her on the mouth, and breached counselor-patient confidentiality principles.

The Board finds that Dr. Dunning’s efforts to provide sympathy, support and confidence to Patient A in this manner were utterly misguided. Based on the entire body of testimonial and documentary evidence, however, particularly the testimony of Patient A and Dr. Dunning, the Board does not find that Dr. Dunning engaged in sexual misconduct with Patient A. Similarly, the Board does not find that Dr. Dunning’s therapeutic relationship with Patient A compromised his objectivity or created a conflict of interest with respect to his patient.

Casual or comfort touching between a treating therapist and a patient during the course of individual therapy sessions nevertheless constitutes invalid counseling therapy. Dr. Dunning’s physically-oriented technique with Patient A -- a patient manifesting classic symptoms of Borderline Personality Disorder -- was unconventional, violated therapist-patient boundaries, and raises the critically important issue of his professional competence as a counselor and therapist. Dr. Dunning apparently never considered the potential for harm to Patient A as a result of the power differential

between himself as therapist and Patient A, due to her dependency, emotional vulnerability, and reliance on his therapeutic knowledge, training and experience.

Overall, Dr. Dunning simply failed to diagnose or appreciate the inherent risks of Patient A's Borderline Personality Disorder, bungled her treatment, and failed to consult with or refer her to a skilled and experienced mental health specialist. Dr. Dunning's ineptitude placed Patient A in a position that endangered her interests and welfare. Dr. Dunning's actions also fostered a dependent counseling relationship with Patient A. Moreover, Dr. Dunning violated Patient A's privacy and confidentiality by divulging specific facts about her condition to her friend. In so doing, Dr. Dunning violated the Professional Counselors and Therapists Act and the ethical standards of his profession.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and after considering the entire record in this case, the Board concludes that Dr. Dunning violated HO § 17-313 (4) and (9), by failing to meet substantially the standards of practice adopted by the Board by regulation: **(1)** by engaging in unconventional physical contact with Patient A, and jeopardizing her mental health interests and welfare, in violation of COMAR 10.58.03.05 A (2)(a) and (d); and **(2)** by breaching counselor-patient confidentiality, in violation of COMAR 10.58.03.08(A)(1). The Board concludes that Dr. Dunning did not engage in sexual misconduct with his patient, or violate HO § 17-313(5), COMAR 10.58.03.09 or 10.58.03.04.

SANCTION

A counselor who initiates, consents to or participates in a physical encounter with a patient is inherently deficient in knowledge of boundary violation prevention techniques and modalities. The nature of Patient A's Borderline Personality Disorder

required Dr. Dunning's vigilance about the impact of his conduct on her well-being. It was incumbent on Dr. Dunning to act in a way that could not be interpreted as seductive or sexually-oriented by his patient. Simply put, Dr. Dunning's ethical responsibilities precluded physical contact with his patient. Dr. Dunning's professional technique with Patient A was outdated, grossly inept, and revealed a basic lack of counseling proficiency.

Dr. Dunning's testimony at the hearing further illuminated his counseling deficiencies, and demonstrated only a very superficial understanding of Borderline Personality Disorder's well-recognized dynamics. Even if Dr. Dunning was familiar with an appropriate therapeutic approach, he failed to integrate any knowledge into his treatment or to consult with or refer Patient A to an appropriate mental health provider. His failure to exercise his confidential professional obligations also violated the law and the ethical boundaries and standards of his profession. These professional shortcomings are a source of considerable disquiet to the Board, because of the Board's mandate to protect patients, and to ensure that professional counselors and therapists are fit to hold a license to practice.

As a licensee, Dr. Dunning is subject to the standards and policies adopted by the Board and embodied in the law. It is imperative that Dr. Dunning reassess his technique with regard to touching patients, and educate himself about mechanisms for dealing with the phenomenon of transference by patients. Only with such knowledge will Dr. Dunning be able to provide competent counseling and marital and family therapy.

The Board will impose a sanction of probation on Dr. Dunning, to include formal supervision of his practice by a therapist other than Dr. Dunning's personal psychotherapist. The completion of specific graduate course work will also be required.

The Board's sanction will address the educational and training deficits in Dr. Dunning's counseling knowledge, as well as his superficial understanding of severe psychopathology issues related to personality disorders.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15TH day of January, 2004, by a majority of the full authorized membership of the Board:

ORDERED that the charges filed against Clifford R. Dunning, Ph.D., LCPC, LCMFT, License Numbers LCO443 and LCM091, under Md. Code Ann., HO § 17-313(5) and COMAR 10.58.03.09(A) and (B), and 10.58.03.04 B (3) be **DISMISSED**; and it is further

ORDERED that the charges filed against Clifford R. Dunning, Ph.D., LCPC, LCMFT, License Numbers LCO443 and LCM091, under Md. Code Ann., HO § 17-313(4) and (9), 10.58.03.05 A (2)(a) and (d), and 10.58.03.08 (A)(1) be **UPHELD**; and it is further

ORDERED that Dr. Dunning will be placed on **PROBATION** for a period of **ONE (1) YEAR**, subject to the following terms and conditions:

1. Dr. Dunning shall submit the name and professional credentials of a proposed supervising therapist to the Board for the Board's approval of this therapist as a supervisor of Dr. Dunning's practice. Dr. Dunning shall provide the Board-approved supervising therapist with a copy of the charging document, Final Order, and any other documents that the Board deems relevant to his case. Supervision of Dr. Dunning's practice by this Board-approved supervisor shall continue on a **weekly** basis for the entire one-year probationary period.
 - (a) The supervising therapist shall notify the Board in writing of his/her acceptance of the supervisory role of Dr. Dunning.
 - (b) The purpose of supervision shall be to monitor Dr. Dunning's practice; to focus on appropriate diagnosis and treatment

modalities; to discuss the maintenance of professional boundaries and the development of more appropriate therapist-patient relationships.

- (c) The supervising therapist shall submit quarterly reports to the Board.
 - (d) Dr. Dunning has sole responsibility for ensuring that the supervising therapist 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. Within the one-year probationary period, Dr. Dunning shall enroll in and successfully complete a 3-credit graduate level Board approved course in psychopathology from an accredited college or university. Dr. Dunning shall submit to the Board written documentation regarding the particular course he proposes as fulfillment of this condition. The Board reserves the right to require Dr. Dunning to provide further information regarding the course he proposes, and further reserves the right to reject his proposed course and require submission of an alternative proposal. The Board will approve a course only if it deems the curriculum and the duration of the course adequate to fulfill the need. Dr. Dunning shall be responsible for all costs incurred in fulfilling this course requirement and for submitting to the Board proof of classroom attendance and written documentation of his successful completion of the course.
3. Within the one-year probationary period, Dr. Dunning shall also enroll in and successfully complete six (6) hours of continuing education courses in risk management.

ORDERED, that at the end of the one-year probationary period, Dr. Dunning may petition the Board for the termination of probation, provided that, at that time, Dr. Dunning has complied with all conditions of this Order, is not under investigation, and no charges have been issued against him; and it is further

ORDERED, that there shall be no early termination of the probation; and it is further

ORDERED that Dr. Dunning shall be responsible for all costs necessary to comply with this Final Order; and it is further

ORDERED, that if Dr. Dunning 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 this is a Final Order and as such is a **PUBLIC** document pursuant to Md. State Gov't Code Ann. §§ 10-611 et seq. (1999 Repl. Vol.)

January 15, 2004

Date

Joanne Faber

Joanne Faber, M.Ed., LCPC, Chair
Maryland State Board of Professional
Counselors and Therapists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., HO § 17-315, Dr. Dunning 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.

If Dr. Dunning files an appeal, the Board is a party and must be served with the court's process. In addition, Dr. Dunning is requested to send a copy to the Board's counsel, Noreen M. Rubin, Esq., at the Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is no longer a party to these proceedings at this point and need not be served or copied.