

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
MARK PALMISANO, PH. D.	*	BOARD OF EXAMINERS
Respondent	*	OF PSYCHOLOGISTS
License Number: 3154	*	Case Number: 2010- 026

\* \* \* \* \*

**CONSENT ORDER**

On or about May 14, 2012, the Maryland Board of Examiners of Psychologists (the "Board") charged **Mark Palmisiano, Ph.D., ("the Respondent") (D.O.B. 10/21/1944), License Number 3154**, under the Maryland Psychologists Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 18-101 *et seq.* (2009 Repl. Vol. and 2011 Supp.)

Specifically, the Board charged the Respondent with violations of the following provisions of the Act:

**§ 18-313. Denials, reprimands, suspensions, and revocations -- Grounds**  
 Subject to the hearing provisions of § 18-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of any licensee if the applicant or licensee:

- (7) Violates the code of ethics adopted by the Board under § 18-311 of this subtitle;
- (17) Commits an act of unprofessional conduct in the practice of psychology; and
- (20) Does an act that is inconsistent with generally accepted professional standards in the practice of psychology.

**§ 18-311. Code of Ethics**

- (a) In general—The Board shall adopt a code of ethics for psychologists in this State. The code of ethics shall be designed to protect the public interest.

The Board also charged the Respondent with violating one or more of the following provisions of the Code of Ethics and Professional Conduct, as set forth in Code Md. Regs. ("COMAR") tit. 10 §36.05.

**10 § 36.05 Code of Ethics and Professional Conduct:**

**03. Responsibilities and Requirements.**

A. In General.

(1) A psychologist shall:

(f) Interact with individuals in the workplace in a respectful manner without engaging in behavior that is harassing or demeaning;

**04. Competence.**

B. Impaired Competence.

(2) A psychologist may not:

(a) Undertake or continue a professional relationship with a client when the competence or objectivity of the psychologist is or could reasonably be expected to be impaired due to:

(ii) The psychologist's present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or a person associated with or related to the client; or

(b) Engage in other relationships that could limit the psychologist's objectivity or create a conflict of interest or the appearance of a conflict of interest.

**07. Client Welfare.**

A. A psychologist shall:

(1) Take appropriate steps to disclose to all involved parties conflicts of interest that arise, with respect to a psychologist's clients, in a manner that is consistent with applicable confidentiality requirements;

B. Exploitation. A psychologist may not:

- (4) Allow personal, social, religious, organizational, financial, or political situations and pressures to lead to a misuse of their influence;

C. Sexual Misconduct. A psychologist may not:

- (1) Engage in sexual intimacies with a former client:
  - (a) For at least 2 years following the cessation of termination of professional services[.]

**.08 Confidentiality and Client Records.**

A. A psychologist shall:

- (1) Maintain confidentiality regarding information obtained from a client in the course of the psychologist's work.

The Board also charged the Respondent with violations of COMAR tit. 10 §01.16.

**.04 Maintenance of Medical Records.**

- A. A health care provider shall develop and maintain a records retention schedule compatible with the requirements...of this chapter.
- B. Except as provided in Regulations .06 and .07 of this chapter, a health care provider shall maintain medical records for all patients in the health care provider's care for a minimum of 5 years after the medical record is made...

The Board further charged the Respondent with violations of the following provisions of the Confidentiality of Medical Records Act, Md. Code Ann., Health Gen. ("H.G."):

**§ 4-301. Definitions**

(h) *Medical record*.—(1) "Medical record" means any oral, written, or other transmission in any form or medium of information that:

- (ii) Identifies or can readily be associated with the identity of the patient...

**§ 4-302. Confidentiality and disclosure generally.**

(a) *In general.*—A health care provider shall:

(1) Keep the medical record of a patient...confidential[.]

Based on information obtained subsequent to the Board's issuance of Charges, on or about June 5, 2012, the Board issued a second subpoena to the Respondent seeking production of Patient B's medical records. The Respondent produced the requested records by letter dated June 12, 2012. After receiving the medical records of Patient B, the State advised Respondent of its intention to issue Amended Charges pursuant to H.O. § 18-313 (19), failure to cooperate with a lawful Board investigation.

The Respondent, through counsel, advised the State that the Respondent was agreeable to consideration and potential resolution of H.O. § 18-313 (19), without the necessity of formal Amended Charges. Accordingly, on or about September 14, 2012, the Respondent appeared before the Case Resolution Conference Committee ("the CRC") of the Board in order to explore a mutually agreeable resolution of both the issued Charges and the allegations contemplated in the Amended Charges. During the CRC, the Respondent and the CRC Committee reached a mutually agreeable resolution of all outstanding issues. On October 12, 2012, a quorum of the Board voted to accept the recommended joint proposal.

**FINDINGS OF FACT**

**I. BACKGROUND**

1. On or about June 2, 1995, the Respondent was initially licensed by the Board to practice psychology in the State of Maryland, under License Number 3154. The Respondent presently holds an active license due to expire March 31, 2014.

2. At all times relevant to these charges, the Respondent was licensed as a psychologist in the State of Maryland and maintained a private practice with offices located in Frederick, Maryland 21701.

## II. THE COMPLAINT

3. On or about May 18, 2010, the Board received a Complaint filed by a former patient of the Respondent ("Patient A"). The Respondent treated Patient A on two (2) occasions for stress related issues resulting from marital conflict.

4. The Complaint alleged<sup>1</sup>, among other things, that the Respondent:
- a) discussed details of his personal divorce proceedings during Patient A's first therapy session;
  - b) referred Patient A to an attorney ("Attorney A") for the purposes of determining her legal rights but failed to disclose that Attorney A was the Respondent's live-in girlfriend and/or fiancé;
  - c) hugged Patient A on two (2) occasions in an inappropriately intimate manner;
  - d) divulged to Attorney A that Patient A was seeking treatment from the Respondent; and
  - e) made an inappropriate provocative remark to Patient A regarding her appearance.

5. In or around June 7, 2010, the Board initiated an investigation of the Respondent's practice, including but not limited to, the allegations set forth in the Complaint. In furtherance of the investigation, the Board interviewed the Respondent and several witnesses and issued subpoenas for patient records.

6. The results of the Board's investigation are set forth *infra*.

## III. THE BOARD'S INVESTIGATION

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<sup>1</sup> The Administrative Prosecutor has summarized and paraphrased the allegations into an abridged format for purposes of clarity and succinctness.

## **A. Patient A**

7. The Board's investigation revealed that in early May 2010, Patient A sought treatment from Respondent regarding her ongoing marital conflict. During Patient A's first therapy session, Respondent discussed details of his impending divorce and advised Patient A that she should seek legal advice.

8. Respondent recommended that Patient A contact Attorney A to discuss her legal rights should her marital discord lead to divorce. He provided Patient A with Attorney A's telephone number but failed to disclose that Attorney A was a former patient with whom he had developed a romantic, personal relationship. He further failed to disclose that Respondent and Attorney A lived together and that they intended to get married once his divorce was final.

9. Shortly after her first therapy session, Patient A scheduled an appointment with Attorney A per Respondent's suggestion. The meeting was scheduled to take place in Attorney A's home office. During the meeting, Attorney A casually stated that she and Respondent were living together and involved in an intimate relationship.

10. Shortly thereafter, Respondent entered the room, spoke with Attorney A about household matters and, in Attorney A's presence, asked the Complainant if her next therapy appointment scheduled for later that day could be moved to a different time. The Complainant agreed to the new time.

11. Respondent subsequently called Attorney A and requested that she relay a message to Patient A that due to a cancellation, the original appointment time would be fine. Respondent failed to preserve the confidentiality of Patient A's identity and the

nature of her treatment by divulging the existence of a therapeutic relationship to his fiancée'.

12. During two (2) treatment sessions with Patient A, Respondent initiated bodily contact. Patient A alleges that Respondent attempted to solicit embraces and Respondent alleges that he placed his arm on Patient A's back.

13. After the second appointment, the Complainant did not return to Respondent for treatment.

**B. Patient B**

14. The Board's investigation revealed that Attorney A (also "Patient B"), Respondent's fiancée' at the time of the investigation, was once a former patient.

15. Respondent initially provided treatment to Attorney A beginning in March 2004. He provided intermittent individual therapy to both Attorney A and her ex-husband from March 2004 to the Spring of 2005

16. Beginning on January 28, 2008, Respondent began individual treatment of Patient B. In his records, he documented several DSM IV diagnoses. Respondent provided continued therapy and psychological treatment to Patient B on sixty-five (65) occasions from January 28, 2008 through July 28, 2009.

17. On June 23, 2009, approximately one (1) month prior to his termination of Patient B's treatment, Respondent advised Patient B that he had developed personal feelings for her and that those feelings had compromised his objectivity. He treated her on four (4) additional occasions until July 28, 2009 when he terminated care.

18. In or around early August 2009, Respondent was a guest at Patient B's beach house. During that time, Respondent and Patient B entered into a sexual

relationship. In September 2009, the Respondent moved into Patient B's home and continued their intimate, sexual relationship. The Respondent and Patient B are currently married.

**C. Failure to cooperate with Board Investigation**

19. On or about August 30, 2010, Respondent was interviewed, under oath, by the Board investigator. He stated at that time that he had treated Patient B "a couple of times" in 2008/2009 for the sole purpose of making a referral to another mental health care provider. He further stated that he did not have a therapeutic relationship with Patient B in 2008-2009.

20. In a letter dated December 1, 2010, Respondent acknowledged to the Board that he had received its subpoena for his treatment records of Patient B. He stated that those records were not in his possession and that the Board should seek production of those records from his former employer, ("Practice A").

21. On March 30, 2010, the Board issued a subpoena to Practice A. Its response revealed that Respondent terminated his employment with Practice A in the Spring of 2007, prior to his treatment of Patient B<sup>2</sup>.

22. Respondent was untruthful in his letter of December 1, 2010 in stating that his previous employer had Patient B's medical records as he knew or should have known that his professional affiliation with Practice A terminated prior to his initiation of Patient B's treatment.

23. On or about June 5, 2012, the Board issued a second subpoena to Respondent once again requesting that he produce the treatment and billing records for Patient B from 2007-2009. Pursuant to the second subpoena, by letter dated June 12,

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<sup>2</sup> Respondent's medical records document that he began treating Patient B on January 28, 2008.

2012, Respondent produced the requested records. The records revealed that Respondent treated Patient B on sixty-five (65) occasions and billed a total of \$6,975.00 for psychological services provided between January 28, 200 - June 28, 2009.

24. Respondent failed to cooperate with the Board's investigation.

#### **IV. SUMMARY**

25. The Respondent's actions towards Patient A were unprofessional, unethical and inconsistent with the generally accepted standards in the practice of psychology. He violated the ethical boundaries necessary for a therapeutic relationship when he initiated unsolicited bodily contact with Patient A. The Respondent also failed to disclose the existence of a conflict of interest when he referred Patient A to seek the legal services of his fiance'.

26. The Respondent's personal relationship with Attorney A/Patient B compromised his objectivity and resulted in a breach of confidentiality. Without Patient A's approval or consent, the Respondent divulged to Attorney A/Patient B that he was providing psychological services to Patient A. He further disclosed the general nature of the treatment as being related to the stressors caused by Patient A's marital discord.

27. The Respondent engaged in an intimate, sexual relationship with Patient B less than two (2) years from the cessation of the therapeutic relationship. Respondent further failed to cooperate with a Board investigation through his deceptive and untruthful statements that he did not treat Patient B and that he saw her on 3-4 occasions solely for the purposes of referral. Those statements were directly contradicted by his treatment and billing records produced pursuant to the Board's second subpoena.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated H.O. §18-313 (7), (17), (19) and (20); H.G. §§ 4-301(h)(ii) and 4-302(a)(1); COMAR tit.10 §§ 36.05.03A (1)(f), 36.05.04B (2)(a)(ii), 36.05.04B (2)(b), 36.05.07A (1), 36.05.07B (4), 36.05.07C(2)(a) 36.05.08A (1). The Board dismisses the charges under COMAR tit.10 §§ 01.16.04A and B.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 1<sup>st</sup> day of November 2012, by a majority of the Board considering this case:

**ORDERED** that Respondent's license to practice psychology shall be **SUSPENDED** for a period of **TWO** (2) years effective the date that this Consent Order is executed by both parties; and it is further

**ORDERED** that unless otherwise stated below, Respondent must fully satisfy the following conditions:

1. Prior to commencement of Respondent's suspension of his license, he shall give appropriate notice to all patients and shall provide a referral to a mental health care provider in order to maintain continuity of care to his patients.
2. Respondent shall, within one (1) year of the effective date of the Consent Order, enroll in<sup>3</sup> and satisfactorily complete a Board-approved tutorial in professional ethics. Such tutorial shall cover all aspects of professional ethics and shall address client confidentiality and maintenance of therapeutic boundaries.
3. The Respondent shall authorize the Board to provide the tutor with the entire investigative file, including all investigative interviews and investigative reports, the Board's Disciplinary Charges and the Consent Order. Respondent

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<sup>3</sup> For purposes of this provision, "enroll in" means to contact and retain a Board approved tutor for the professional ethics tutorial.

shall authorize the tutor to send reports to and communicate regularly with the Board and/or its agents.

4. Respondent shall ensure that the tutor submits to the Board written documentation of the contractual tutorial arrangement between the Respondent and the tutor. Respondent shall be responsible for ensuring that the tutor submits to the Board interim report of attendance, participation and completion of assignments. Respondent shall provide the Board with documentation of his successful completion of the ethics tutorial.

5. Within one (1) year of the effective date of the Consent Order, Respondent shall successfully complete a Board-approved law course designed to educate the Respondent about the requirements of licensure under the Act and pertinent regulations. Respondent shall provide the Board with documentation of his successful completion of the law course.

6. The Respondent is responsible for renewing his license during the suspension period.

**ORDERED** that upon compliance with the terms of the suspension, the Respondent shall be placed on **PROBATION** for a period of **TWO (2) YEARS**, effective the date that Respondent's license is reinstated under the following terms and conditions:

1. The Board reserves the right to conduct a peer review by an appropriate peer review entity, or a chart review by a Board designee, to be determined at the discretion of the Board.

2. The Respondent be issued a fine of two thousand five hundred (\$2,500) dollars to be payable to the Board prior to the end of the probationary period.

**ORDERED** that after the conclusion of the two (2) year period of probation, the Respondent may file a written petition for termination of his probationary status. After consideration of his petition, the probation may be terminated through an order of the Board or designated Board committee. The Respondent may be required to appear before the Board or designated Board committee. The Board, or designated Board committee, shall grant the termination only if the Respondent has fully and satisfactorily

complied with all of the probationary terms and conditions of this Consent Order, including the expiration of the two (2) year period of probation, and if there are no outstanding complaints similar to or related to the current charges before the Board; and it is further

**ORDERED** that any Continuing Education requirements required by this Consent Order shall not count toward fulfilling other continuing education requirements that the Respondent must fulfill in order to renew his license to practice psychology; and it is further

**ORDERED** that the Respondent shall practice at all times, in accordance with the Maryland Psychologists Act and with all applicable laws, statutes, and regulations pertaining to the practice of psychology. Any violation of the Act may constitute grounds for violation of probation; and it is further

**ORDERED** that if Respondent violates any of the terms and conditions of this probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Board or an Administrative Law Judge or after an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under the Maryland Psychologists Act, including a reprimand, probation, suspension, revocation and/or a monetary fine, said violation being proved by a preponderance of the evidence; and it is further

**ORDERED** that Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

**ORDERED** that this Consent Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. Vol. and 2011 Supp.).

11/2/12  
Date

  
Steven Sobleman, Ph.D  
Chair, Board of Examiners of Psychologists

**CONSENT OF MARK PALMISANO, Ph.D**

I, Mark Palmisiano, Ph.D. acknowledge that I have had the opportunity to consult with my counsel, Richard Bloch, Esquire, before signing this document. By this Consent, I agree and accept to be bound by the foregoing Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce the Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

11-1-12  
Date

[Signature]  
Mark Palmisano, Ph.D.  
Respondent

Read and approved by:  
[Signature]  
Richard Bloch, Esq., Attorney for the Respondent

**NOTARY**

**STATE OF MARYLAND**

**CITY/COUNTY OF Baltimore :**

I HEREBY CERTIFY that on this 1st day of November, 2012, before me, a Notary Public of the foregoing State personally appeared Mark Palmisano Ph.D. License Number 3154, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

[Signature]  
Notary Public

My Commission Expires: 10/13/2015

