

IN THE MATTER OF

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BEFORE THE

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MARYLAND STATE BOARD

A. ROY SMITH, PH.D.

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OF EXAMINERS

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OF PSYCHOLOGISTS

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FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

BACKGROUND AND PROCEDURAL HISTORY

Complaints from Patients A and B,¹ dated February 19, 1985, respectively, were filed with the Maryland State Board of Examiners of Psychologists (the "Board") regarding the psychological practice of A. ROY SMITH, PH.D. (the "Respondent"). Based on these two complaints, the Board requested a report from the Investigative Unit of the Department of Health and Mental Hygiene. In light of the complaints and initial investigative reports, the Board voted to charge Respondent at its meeting of November 22, 1985, with violation of the Maryland Psychology Practice Act, Title 16 of the Health Occupations Article of the Annotated Code of Maryland (the "Act"). Violation of the Maryland Psychology Practice Act, Title 16 of the Health Occupations Article of the Annotated Code of Maryland, (the "Act"). In particular, the Board charged that the Respondent

¹ Patients' names are indexed in the file on this case kept by the Board, and are not revealed in order to protect the patients' identity.

violated Section §16-312(7) of the Act, specifically principle 1, principle 2f, principle 3, 3c, principle 6a, and principle 7d. The Board requested an administrative prosecutor, and one was assigned. Meanwhile, supplemental investigations requested by the Board were ongoing; the last of the series of investigative reports was received on July 8, 1986.

Respondent was notified of the charge by letter dated October 6, 1986. A prehearing conference was scheduled and held on Friday, November 7, 1986. Stephen Winters, Ph.D., was present as the Board's designee. Also in attendance were Respondent, Respondent's attorney, Benjamin R. Wolman, Esquire, Barbara Hull Foster, Assistant Attorney General, counsel to the Board, and Roslyn Blankman, Executive Director of the Board. The parties reached an agreement embodied in a Consent Order, but the Consent Order was rejected by the full Board at a meeting on December 19, 1986. A hearing on the charges was scheduled for and took place on June 2, 1987. Sherman Ross, Ph.D., Chairman of the Board of Psychology Examiners, presided as hearing officer at the hearing. Also present were Paul O'Connell, Assistant Attorney General, Administrative Prosecutor, Susan B. Feldman, Assistant Attorney General, Acting Counsel to the Board, and Roslyn Blankman, Executive Director to the Board. Neither Respondent nor his counsel were present at the hearing.

On the morning of the first day of the hearing, Respondent telephoned the Administrative Prosecutor to request a

one-day postponement to allow him to conclude family business in California. This was his first and only request for extension and was in fact the first indication by or on behalf of Dr. Smith that he intended to appear or be represented at the hearing. Respondent took exception to his ruling. Correspondence on the record (Board Exhibit #3) indicates that Respondent had received actual notice of the hearing before March 24, 1987. On that day, he addressed a letter to the Board acknowledging the notice and hearing date, stating inability to afford counsel, and inquiring whether he could be represented by a public defender. (Board inquiries with that office and the Legal Aid Bureau of Maryland proved unavailing). Respondent also alleges that the Board communicated directly with his attorney after Mr. Wolman was no longer representing him. However, the Board notes the following:

- (1) The Board's first notice of this apparent fact was in the March 24, 1987 letter;
- (2) Correspondence from Mr. Wolman dated April 13, and April 16, 1987 (Board Exhibit 7, Attachment Nos. 4 & 5 respectively) indicates that both the Board and Respondent relied on Mr. Wolman's services in representing Dr. Smith;
- (3) Respondent does not allege - and the record would not support an allegation - that Mr. Wolman misrepresented Respondent's position or disserved him in any way;
- (4) There is no charge that the Board's communication with Mr. Wolman prejudiced the Respondent in terms of notice and scheduling of the evidentiary hearing or in any other way; and

- (5) The Board essentially heard Respondent's case on the merits at its September 4, 1987 exceptions hearing, at which the thrust of Dr. Smith's argument was in mitigation of the penalty rather than on the substance of the charges against him, and at which the Board admitted documents offered by Respondent into evidence despite the procedural irregularity of doing so.

For these reasons and the sound factual and legal arguments in the State's Response to Exceptions, the Board's denial of the request for a continuance was proper at the time and in the retrospect.

Following opening statements, the administrative prosecutor presented the State's case. Testimony was heard from the following persons: Complainant/Patient A; Olga Ryan, Chief Investigator, Department of Health and Mental Hygiene; and Lawrence Donner, Ph.D. Complainant B did not testify. The following documentary evidence was introduced.

BOARD EXHIBITS

Board Exhibit #1 - Charge letter dated October 6, 1986 with attachments.

Board Exhibit #2 - certified receipt dated October 9, 1986 indicating charge letter was served upon Respondent.

Board Exhibit #3 - Letter dated March 24, 1987 to Roslyn Blankman from Respondent.

Board Exhibit #4 - Letter dated May 21, 1987 from Barbara H. Foster, Assistant Attorney General to Respondent.

Board Exhibit #5 - Memorandum dated May 21, 1987 from Barbara H. Foster, Counsel to Board of Psychologists, to Ms. Blankman requesting that Exhibit #4 be hand-delivered to respondent.

Board Exhibit #6 - Memorandum dated May 22, 1987 from Olga Ryan to Barbara H. Foster, attaching an affidavit of service indicating that Exhibit #4 was hand-delivered to Respondent's wife.

Board Exhibit #7 - Certified letter dated May 21, 1987 with attachments to respondent from Barbara H. Foster, Assistant Attorney General and counsel to the Board.

Attachments to Exhibit #7 -

Attachment #1 - memorandum dated March 6, 1987 from Barbara H. Foster to Paul O'Connell, Esquire and Benjamin Wolman, Esquire.

Attachment #2 - letter dated March 22, 1987 to Mr. Wolman from Roslyn Blackman.

Attachment #3 - Letter dated March 13, 1987 to Mr. Wolman.

Attachment #4 - Letter dated April 16, 1987 to Dr. Ross from Mr. Wolman.

Attachment #5 - Letter dated April 13, 1987 - to Mr. Wolman from Dr. Ross.

Attachment #6 - Letter dated April 22, 1987 to Mr. Wolman from Dr. Ross.

Attachment #7 - Letter dated May 1, 1987 from Mr. Wolman to Dr. Ross.

STATE'S EXHIBITS

State's Exhibit's #1 - Transcript of Deposition dated November 4, 1986 of A. Roy Smith in the matter of Murphy vs. Dr. A. Roy Smith. (Superior Court of the District of Columbia, Civil Action No. 3900-86.)

State Exhibit #2 - Transcript of Deposition dated December 5, 1986 of A. Roy Smith in the matter of Murphy vs. Dr. A. Roy Smith, supra.

Respondent filed exceptions by letter to the Board dated June 29, 1987. The Administrative Prosecutor filed a response on September 2, 1987. An exceptions hearing was noted

by certified letter dated July 16, 1987, and was held on September 4, 1987, at 1:30 p.m. At the hearing, before a quorum of the Board, Respondent appeared pro se. Paul O'Connell, AAG, appeared as administrative prosecutor. Harry J. Matz, AAG, served as counsel to the Board. A stenographer was present. The Board granted Dr. Smith's request to open the hearing to allow his wife, Lois Smith, to be present. At the exceptions hearing, the Board ruled that it would admit certain documents offered by Dr. Smith into the record, in light of Respondent's absence from the June 2 evidentiary hearing.

Those documents include:

Respondent Exhibit #1: Letter dated November 6, 1986 from Priscilla Cogan to Benjamin Wolman, Esquire

Respondent Exhibit #2: Letter dated January 5, 1987 from Dr. C.W. Duncan, Executive Director of Tri-County Youth Services, to the Board.

Each party was given one hour to address the Board orally at the exceptions hearing. After oral argument, the Board adjourned into executive session. The Board voted to revoke the Respondent's license.

FINDINGS OF FACT

Based on the information and evidence on the record, the Board finds:

1. At all times Respondent was a psychologist licensed to practice psychology in Maryland.

2. While working with Patient A, Respondent engaged in physical contact with Patient A. Respondent requested Patient A to lie down. Respondent then laid down on top of her, put his hand on her stomach and began pushing up and down.

3. The acts described in paragraph 2 are outside the scope of acceptable psychological practice.

4. While working with Patient A, Respondent confused the role of therapist with that of friend and engaged in dual relationships.

5. While working with Patient A, Respondent indulged in excessive self-revelation over a protracted period of time that was not for the benefit of the patient.

6. While working with Patient A, Respondent made repeated and unwanted inquiries to her concerning her sex life despite Patient's A's unwillingness and repeated refusals to discuss this topic.

7. From 1983 to 1984, while practicing as a psychologist, Respondent used inappropriate, improper, unsupported and untested techniques in treating a patient, hereinafter referred to as Patient B.

8. On five or more occasions during 1983 and 1984, Respondent engaged in physical contact with Patient B. Such physical contact involved inserting his finger into Patient B's vagina, and sucking on Patient B's breasts.

9. Although Respondent was charged with assaulting Patient B on two occasions, he claimed that he inserted his finger into her vagina on five to ten occasions from 1983 to 1984 in an attempt to legitimize these assaults as a form of treatment.

10. The procedures and techniques employed by Respondent in treating patients A and B were neither customary nor reasonable. Physical contact with the sexual organs of a patient is outside the scope of legitimate and acceptable psychological practice.

11. Respondent admits that his conduct with respect to Patient B was inappropriate and unethical.

12. Respondent admits he had no prior experience with the techniques he engaged in with Patient A and B and sought no supervision or consultation for the use of these techniques.

13. Respondent admits he engaged in physical contact with Patients A and B as described in Findings of Fact Numbers 2 through and including 9 above.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Officer finds that Respondent violated Section 16-312(7) of the Act, by violating Principle 1; Principle 2(f); Principle 3; and Principle 6(a) and Principle 7(d). Respondent is guilty of violating Section 16-312(7) of the Act, which allows the Board to impose disciplinary sanctions on a licensee who:

Subsection (7): Violates the code of ethics adopted by the Board under §16-311 of this title.

The Principles violated as set forth in Board regulation, are as follows:

Principle 1: Responsibility. In providing services, psychologists maintain the highest standards of their profession.

Principle 2: Competence. (f) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity, when they become aware of their problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

Principle 3: Moral and Legal Standards.
Preamble: Psychologists' moral and ethical standards of behavior are a personal matter to some degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities, or reduce the public trust in psychology and psychologists. Regarding their own behavior, psychologists are sensitive to prevailing community standards and to the possible impact that conformity to or deviation from these standards may have upon the quality of their performance as psychologists. Psychologists are also aware of the possible impact of their public behavior upon the ability of colleagues to perform their professional duties.

(c) In their professional roles, psychologists avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by their actions.

Principle 6: Welfare of the Consumer. (a) Psychologists are continually cognizant of their own needs and of their potentially influential positions ... vis-a-vis persons such as clients.... They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships ... which could increase the risk of exploitation. Sexual intimacies with clients are unethical.

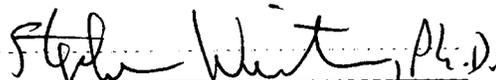
Principle 7: Professional Relationships.

(d) Psychologists do not ... engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient. COMAR 10.36.01.09.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is this 11th day of September, 1987,

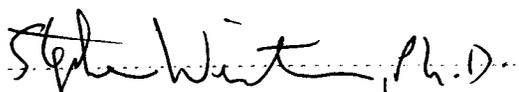
ORDERED by the Board of Examiners of Psychologists that the license of **A. ROY SMITH, PH.D.**, an individual licensed to practice psychology in Maryland, be **REVOKED**.



Stephen Winters, Ph.D.
Chair, Board of Examiners of
Psychologists,

NOTICE OF RIGHT TO APPEAL

Pursuant to Health Occupations Article, 16-314(b) any person aggrieved by a final decision of the Board under Health Occupations Article, 16-312 may take a judicial appeal. The judicial appeal of this final decision may be made as provided in the Administrative Procedure Act, State Government Article, Annotated Code of Maryland, §10-215.



Stephen Winters, Ph.D.
Chair, Board of Examiners of
Psychologists, Hearing Officer