

**BEFORE THE WEST VIRGINIA  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

**IN THE MATTER OF:**

**TAMMIE SMITH, M.A.  
W. Va. Psychology License No. 753**

**COMPLAINT NO.: 2009-16**

**CONSENT DECREE**

Now comes Respondent, Tammie Smith, M.A. and the West Virginia Board of Examiners of Psychologists (“Board”), for the purpose of resolving Board Complaint Number 2009-16, against Ms. Smith. As reflected in this Consent Decree, the parties have reached an agreement in which Ms. Smith hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

**FINDINGS OF FACT**

1. Smith is a licensee of the Board, holding Board License Number 753, and, as such, she is subject to the jurisdiction and authority of the Board.
2. On December 14, 2009, the Board received a complaint alleging that Smith engaged in a multiple relationship with the Complainant by providing treatment to a child patient after participating in a mediation between Complainant and his ex-wife; had failed to timely provide a copy of treatment records of the child patient to Complainant who had joint custody and had executed a release authorization for said records; and had violated the patient’s privacy rights pursuant to HIPAA.

3. Smith filed a timely response to the complaint and denied the allegations made against her. The Board investigated the complaint which included obtaining an independent review by an outside licensed psychologist.

4. The Board has reviewed this entire matter and investigation in detail and has determined that further education and training of Smith is desirable and necessary under the circumstances.

### CONCLUSIONS OF LAW

1. The Board is a state entity created pursuant to W. Va. Code § 30-21-1 *et seq.*, and is a regulatory board created for the purpose of regulating the practice psychology. See W. Va. Code § 30-21-1 *et seq.*

2. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke, or otherwise discipline an individual's psychology and/or school psychology license, pursuant to the authority granted to the Board by W. Va. Code § 30-21-10.

3. The Board adopted the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct ("Code of Conduct"). Failure of a licensed psychologist to comply with the Code of Conduct constitutes a violation of W. Va. Code R. § 17-3-6 and may be grounds for disciplinary action by the Board pursuant to W. Va. Code § 30-21-10 and W. Va. Code R. § 17-4-4.

4. Pursuant to Rule 10.02(b) of the Code of Conduct, in the event a psychologist is called upon "to perform potentially conflicting roles, psychologists must subsequently take reasonable steps to clarify and modify, or withdraw from, roles appropriately."

5. The Board has determined that probable cause may exist to substantiate allegations that Smith failed to take reasonable steps to clarify and modify her role while treating the Patient, or instead withdraw from treating the Patient in potential violation of Rule 10.02(b) of the Code of Conduct.

6. Pursuant to Rule 4.05(a) of the Code of Conduct, “psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.”

7. The Health Insurance Portability and Accountability Act (“HIPAA”) provides, in pertinent part, that a psychologist “must act on a request for access [to medical records] no later than 30 days after receipt of the request.”

8. The Board has determined that probable cause may exist to substantiate allegations that Smith failed to timely provide records of the Patient requested by the father in potential violation of Rule 4.05(a) of the Code of Conduct and HIPAA.

9. The Board has determined that it is appropriate and in the public interest and for the health and welfare of patients to enter into this Consent Decree in order to resolve the charges against Smith, provided that she complies with the requirements of this Consent Decree.

#### **CONSENT OF LICENSEE**

Smith, both in her individual capacity and as a licensed psychologist, by the execution hereof, agrees to the following:

1. Smith has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress, and mindful that it has legal

consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Smith to make this settlement other than as set forth herein. Smith acknowledges that she is aware that she may pursue this matter through appropriate administrative and/or court proceedings and is aware of her legal rights regarding this matter but intelligently and voluntarily waives such rights.

2. Smith consents to the entry of the following Order affecting her conduct as a licensed psychologist.

### **ORDER**

On the basis of the foregoing Findings of Fact and Conclusions of Law of the Board and on the basis of the Consent of Smith, the West Virginia Board of Examiners of Psychologists hereby ORDERS as follows.

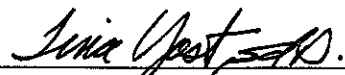
1. The Board hereby REPRIMANDS Smith for her conduct relating to this matter.
2. Within one (1) year of the entry of this Consent Decree, Smith shall successfully complete, and provide to the Board all proper documentation reflecting the same, the following continuing educational courses: a Board approved, nine (9) hour continuing educational course relating to mental health and the law or a three (3) hour graduate course on the same subject matter; and a Board approved, three (3) hour course, or training, relating to HIPAA compliance. Such courses shall be completed in addition to any continuing educational course required to obtain and/or maintain licensure or renewal of licensure.
3. Smith shall pay to the Board the amount of one thousand, two hundred and sixty-six dollars (\$1,266.00). Such payment by Smith shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number 2009-16, and the

subsequent reimbursement to the Board thereof. Such payment shall be paid to the Board in full within 90 days of the date of entry of the instant Consent Decree.


ENTERED into the records of the Board this 19, day of April, 2013.

WEST VIRGINIA BOARD OF  
EXAMINERS OF  
PSYCHOLOGISTS,

By,

  
\_\_\_\_\_  
Tina Yost, Ed.D., President

AGREED TO BY:

  
\_\_\_\_\_  
Tammie Smith, M.A.  
W. Va. Psychology License No. 753

State of West Virginia  
Board of Examiners of Psychologists  
PO Box 3955  
Charleston, WV 25339-3955



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May 1, 2013

Tammie Smith, MA  
New Horizons Psych Assoc  
105 Gott Road  
Princeton, WV 24740

**FORMAL LETTER OF REPRIMAND - Ethical Inquiry #2009-16 – Tammie Smith, MA**

Dear Ms. Smith:

As denoted in the 4/19/2013 Consent Decree, you are hereby reprimanded for violating the Board's Ethical Code [The American Psychological Association Ethical Principles of Psychologists and Code of Conduct], specifically ethical standards 10.02(b), and 4.05(a). It was also determined that you violated the Health Insurance Portability & Accountability Act [HIPAA], and violated W.Va. Code R. § 30-21-10.

Ethical standard 10.02(b) states, "If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately." In regard to 10.02(b) of the Code of Conduct, it is expected that in the future you shall immediately withdraw yourself from further court testimony if you are confronted with a possible conflict of interest.

Ethical standard 4.05(a) states "Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law." As to 4.05(a), it is the Board's expectation that you shall in the future provide records to a parent who has legal rights to such records in a timely fashion according to the Code of Conduct and HIPAA. In addition, it is expected that you shall acquire and review child custody court orders before you initiate treatment of a child subject to such orders.

According to W.Va. Code R. § 30-21-10, it is expected that you shall comply with the Code of Conduct.

Finally it is expected that you shall provide documentation that you have successfully completed the continuing education training as described in paragraph 2 of the Order section of the 4/19/2013 Consent Decree, and that you will pay the fee according paragraph 3.

Sincerely,

  
Jeffrey Harlow, Ph.D.  
Executive Director

CC: Ethics file #2009-16