

BEFORE THE WEST VIRGINIA BOARD OF EXAMINERS OF PSYCHOLOGISTS

**WEST VIRGINIA BOARD OF
EXAMINERS OF PSYCHOLOGISTS,**

Complainant,

v.

Case No. 2012-6

MICHAEL McCARTY, Ph. D.,
WV Psychology License No. 1036

Respondent.

AGREEMENT AND CONSENT ORDER

After due investigation of a written complaint, the West Virginia Board of Examiners of Psychologists (Board) determined that there was probable cause to believe that Michael McCarty, Ph.D. (Respondent) engaged in unprofessional conduct in the practice of psychology, in violation of the provisions of West Virginia Code § 30-21-1 *et seq.* and the Rules of the Board, 17 C.S.R. 3. The Respondent was provided with written notice of the allegations against him, pursuant to the Rules of the Board and the laws of the State.

Now, in lieu of a hearing, the parties have reached an agreement for the resolution of this case matter and the parties agree to the entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. In September 2011, the Respondent, Michael McCarty, Ph.D., was granted a regular license through reciprocity in September 2011, License No. 1036. He has continuously maintained his license since then and he is subject to the license requirements of the Board.
2. Prior to May 2011, the Respondent practiced as a psychologist in West Virginia for the United States Veterans Administration under authority provided by Federal law.
3. During his work for the Veterans Administration, the Respondent evaluated and provided therapy to a veteran, who shall be referenced as (FT) in this Agreement and Consent Order. By doing so, the Respondent established a client-therapist relationship with FT.
4. In August 2010, the Respondent reports he retired from the Veterans Administration. In March 2011, he applied for licensure in West Virginia via reciprocity based on his being a licensed psychologist in California.
5. Approximately six months following the Respondent's retirement from the Veterans Administration, he developed a personal relationship with FT.
6. The individual, FT, reported that he benefited from this ongoing relationship and that the Respondent provided communication and support that reinforced the therapy the Respondent had provided prior to retiring from the Veterans Administration.
7. When FT needed a sum of money to complete some renovation and repairs to his property, the Respondent agreed to loan \$2500.00 to FT, receiving some jewelry as

collateral. The Respondent and FT have since developed a disagreement regarding the terms of this loan and the return of FT's jewelry.

8. As a result of the continued conflict between the Respondent and FT, the patient FT reports that he has become confused and upset over the circumstances between them and FT reports that this has had a negative effect upon his state of mind and upon his ability to trust a therapist.
9. Under the provisions of West Virginia Code § 30-21-10 (b), the Board may take disciplinary action against a license when the Board finds that the holder of the license has violated the rules and regulations governing the practice of psychology in WV.
10. In Section 17-3-6 of the Board's rule, "Requirements for Licensure as a Psychologist and/or a School Psychologist," the Board has adopted and incorporated the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct" (hereinafter referenced as the "APA Code of Conduct") as ethical standards for the practice of psychology in the state of West Virginia.
11. Section 3.05 of the APA Code of Conduct provides as follows:

"A(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person. A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists. Multiple relationships that would not reasonably be expected to cause impairment or risk

exploitation or harm are not unethical. (b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.”

12. By developing and maintaining a personal relationship with FT, who had only recently been a professional client, and by not establishing clear boundaries to the relationship, the Board finds probable cause that the Respondent created a multiple relationship with this person and breached the provisions of the APA Code of Conduct as set out in Section 3.05.
13. This determination of the Board was made after the Respondent had an opportunity to answer the allegations of the Complainant and after the Board conducted a timely and sufficient investigation of the allegations in the complaint.

CONCLUSIONS OF LAW

The Board hereby makes the following conclusions:

1. The Board is a state agency, created by W. Va. Code § 30-21-1 *et seq.*, and has been established for the purpose of regulating the practice of psychology in West Virginia.
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 because of the authority granted to it by W. Va. Code § 30-21-10.
3. In section § 17-3-6 of the Board’s rule, “Requirements for Licensure as a Psychologist and/or a School Psychologist,” the Board has adopted and incorporated the American Psychological Association’s “Ethical Principles of

Psychologists and Code of Conduct” as ethical standards for the practice of psychology in the state of West Virginia.

4. By its adoption and incorporation of the APA Code of Conduct in the Board’s rule, 17 CSR 3, the Board has promulgated a legislative rule defining malpractice pursuant to the provisions of W. Va. Code § 30-20-10(b)(3).
5. The Respondent’s violation of Section 3.05 of the APA Code of Ethics is a basis for disciplinary action pursuant to W. Va. Code § 30-20-10 (b).
6. Pursuant to W. Va. Code § 30-1-8 (g), the Board may enter into consent orders for the resolution of complaints when the Board finds that a violation of the terms of practice has occurred.

CONSENT OF LICENSEE

The Respondent, Michael McCarty, Ph.D., by affixing his signature hereto, agrees to, and acknowledges the following provisions of law:

1. This is a legally binding document that affects his rights and privileges.
2. He has the right to consult a lawyer concerning the terms of this agreement and the legal rights and remedies that may otherwise be available to him.
3. No person or agency has made any promise or given any inducement, other than the terms set out in this document, to encourage him to enter into this Agreement and Consent Order.
4. He understands that he has a right to a hearing regarding any allegations against him or any action taken against his license. The West Virginia Board of Examiners of Psychologists may not suspend, revoke or take any other disciplinary action

regarding his license unless the Board proves its charges against him or unless he gives his consent to entry of an order restricting, suspending or revoking his license.

5. He understands that, instead of signing this Agreement and Consent Order, he may demand that the Board of Examiners of Psychologists prove the charges against him by presenting evidence in a hearing conducted under law. In a hearing, he may present evidence in his own behalf and he would have the right to cross-examine any witnesses who might testify against him.
6. He also understands that he would have the right to subpoena witnesses and records in order to compel their production at the hearing.
7. He acknowledges that this agreement is a legally binding order.
8. He understands that this Agreement and Consent Order is a public document and that the Board is legally obligated to allow any person to review this document. He also understands that this action and order may be reported to other jurisdictions.

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 Dr. McCarty, the West Virginia Board of Examiners of Psychologists hereby ORDERS and DECREES as follows:

1. The Respondent is hereby REPRIMANDED for his actions in this matter as outlined in the Findings of Facts above.
2. a. Within one (1) year of the entry of this Order, the Respondent shall successfully complete, and provide to the Board all proper documentation reflecting the same, twelve (12) in-person credit hours of continuing education course(s),

approved by the Board, in the subject matter of ethics and patient boundaries. Such course(s) shall be completed in addition to any continuing education courses required to obtain and/or maintain licensure, or renewal of licensure. In lieu of these twelve credit hours of continuing education, the Respondent may take a three (3) hour in-person graduate level course in ethics.

b. At the conclusion of one year, the Respondent shall meet with the Board and describe his education in the areas of ethics and patient boundaries and the ethical issues that he has reviewed and addressed; and

c. The Respondent shall reimburse the Board in full for its administrative expenses in the investigation and resolution of this complaint, which total \$1,461.00.

3. If the Respondent fails to comply with the terms and conditions set forth above or if the Respondent fails to abide by the Ethical Principles and Code of Conduct adopted by the Board, the license of the Respondent may be suspended, or the Board may take other such action as it deems appropriate after a full investigation.

It is so ORDERED this 5th day of September 2013.

WEST VIRGINIA BOARD OF
EXAMINERS OF PSYCHOLOGISTS

By:

Tina Yost, Ed.D.

Tina Yost, Ed.D.
President

ACKNOWLEDGMENT OF RESPONDENT

I have reviewed the provisions of this Agreement and Consent Order. I accept these conditions and hereby consent to the entry of this order and the findings and conclusions in it.

Michael McCarty

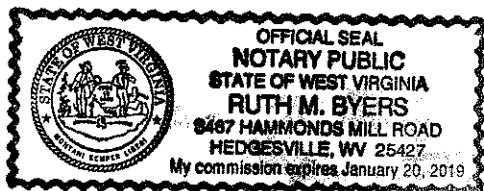
Michael McCarty, Ph.D.

8/14/13
Date

Sworn and subscribed before me this 14th day of August, 2013.

My Commission expires: January 20, 2019

Ruth M. Byers
Notary Public



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



Phone: 304-558-3040
Fax: 304-558-0608
Email: psychbd@wv.gov
Web: www.wvpsychbd.org

September 12, 2013

Michael McCarty, Ph.D.
510 Butler Avenue
Martinsburg, WV 25405

FORMAL LETTER OF REPRIMAND - Ethical Inquiry #2012-6 – Michael McCarty, Ph.D.

Dear Dr. McCarty:

As denoted in the September 5, 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 3.05 (a) & (b).


Ethical standard 2.05 (a) & (b) states:

"(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person. A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists. Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical. (b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code."

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 2a of the Order section of the September 5, 2013 Consent Decree, that you will pay the fee according paragraph 2c and meet with the Board as delineated in paragraph 2b.

Sincerely,


Jeffrey Harlow, Ph.D.
Executive Director

CC: Ethics file #2012-6
Franklin Terrell, Complainant
David Stackpole, Assistant Attorney General