

Before the West Virginia Board of Examiners of Psychologists

**W. Va. Board of Examiners of
Psychologists,**

Complainant,

v.

Case No.: 2021-05

**Barbara Nelson, MA,
(License No. 1181)
*Respondent.***

Consent Agreement and Order

Pursuant to W. Va. Code § 30-21-1 *et seq.*, the West Virginia Board of Examiners of Psychologists (“Board”) commenced an investigation concerning licensed psychologist Barbara Nelson, MA, and test scoring and assessment procedures that may not meet accepted standards in violation of W. Va. Code R. § 17-6-1 *et seq.*

Respondent was provided with written notice of the allegations against her pursuant to the applicable rules of the Board and the laws of this State. Respondent submitted a written answer concerning the issues set forth in the complaint.

The parties have reached an agreement as to the appropriate disposition of this matter, with consideration to necessary safeguards for protection of the public and do hereby agree to the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. The Board is a State entity created by W. Va. Code § 30-21-1 *et seq.*, and is empowered to regulate the practice of psychology in this State.
2. Respondent, at all times relevant to this investigation, was a licensee of the Board, possessing License No. 1181, and is subject to the jurisdiction and authority of the Board and applicable licensing requirements.

3. The Board investigated a written complaint it received from TB relating to a court-ordered forensic psychological evaluation he underwent to assess for cognitive, emotional, or psychological factors that could affect his ability to parent.

4. According to the complaint, TB takes issue with Respondent's conclusion that his alleged intellectual functioning will have a negative impact on his ability to parent. TB alleges Respondent violated W. Va. Code R. §17-6-4.6, in that she issued a formal professional opinion about the fitness of a parent in a custody matter without having direct and substantial contact with that person. TB expressed concern that Respondent recommended that he take drug tests although nobody claimed or asserted that he was using drugs. Further, TB expressed concern that Respondent alleged that she held a video conference with him, but that it was only a telephone conference.

5. Respondent denies TB's allegations. First, Respondent notes that she gave TB the most favorable prognosis possible with respect to his ability to parent of "fair." Respondent also asserts that the evaluation was indeed conducted *via* video conference, averring that she specifically recalls seeing TB during the assessment and notes that the testing portion of the assessment could not have been conducted without the video function enabled. With respect to TB's complaint that Respondent recommended that TB be subjected to drug testing despite there being no allegations that he used drugs, Respondent asserts that said recommendation was indeed reasonable, noting that the Court was free to disregard the recommendation, such requirements are routinely imposed by Courts in similar situations, and that TB admitted to previously having been incarcerated for drug-related offenses.

6. The Board's review of TB's Forensic Psychological Evaluation Report indicates Respondent did not meet assessment procedures as set forth in W. Va. Code R. § 17-6-12.6 ["Psychologists provide opinions of the psychological characteristics of individuals only after they

have conducted an examination of the individuals adequate to support their statements or conclusions”] in that the respondent made a formal diagnosis of Intellectual Disability despite incomplete WAIS-IV test data and clinical assessment information to support such diagnosis and, therefore, without meeting the requisite DSM-5 diagnostic criteria.

Regarding the WAIS-IV test data, the Respondent administered the three subtests which measure verbal comprehension. The Respondent did not administer the remaining seven subtests, as it was not possible to administer those subtests via the remote means required at that time due to the Covid-19 pandemic. The Respondent notes, and the Board confirms, that prior to conducting the evaluation, Respondent (through her employer) sought guidance from the Board’s Executive Director. The Board confirms that the Executive Director provided said guidance verbally, indicating that it was acceptable for psychologists to administer the WAIS IV subtests in video format due to pandemic-related limitations on in-person assessments and that there was support for using it as an estimate of verbal IQ. The Executive Director states that, in his guidance, he indicated that only verbal intelligence [Verbal IQ] could be estimated, not general intelligence [Full Scale IQ], and that an estimated Verbal IQ is insufficient to meet criterion A of the requisite DSM-5 diagnostic criteria.

While the Board acknowledges that considerable uncertainty existed at that time due to the pandemic and that written, as opposed to verbal guidance from the Board regarding this testing may have better alleviated this uncertainty, Respondent’s formal diagnosis without all ten subtests being completed still failed to meet DSM-5 diagnostic criterion A [significantly deficient intellectual functioning as denoted by standardized intellectual testing and clinical assessment].

Respondent also failed to meet DSM-5 diagnostic criteria B and C, which require that there must be substantial functional deficits, and that there be evidence that the intellectual disability began before age 18, respectively. The Respondent failed to address either of these issues in her

report. Respondent explained that she omitted these criteria because they were not relevant for the purpose for which she was tasked with generating her report, namely a court-ordered parental fitness evaluation. The Board finds, however, that irrespective of these criteria's relevance to the purpose of her report, Respondent was required to address the criteria in order to make her formal diagnosis of Intellectual Disability, and that DSM-5 diagnostic criteria were not met, and the Intellectual Disability diagnosis should not have been made.

Thus, the Board's review is that Respondent provided a formal diagnosis about the complainant based on an inadequate examination of the complainant which failed to support such opinions and violated W. Va. Code R. § 17-6-12.6.

7. The Board's review of TB's Forensic Psychological Evaluation Report also indicates the Respondent technically did not meet test scoring and interpretation assessment procedures as set forth in W. Va. Code R. § 17-6-13.1, which states that, "[i]f using the computer-generated interpretation report word for word, psychologists shall place such information in quotes and identify the source". The Board finds that the report included excerpted language from the computer-generated interpretation without proper attribution required by the rule. Respondent contends that W.Va. Code R. § 17-6-13.1 is vague and that she complied with a reasonable interpretation of the rule by noting in the report that it included language from the computer-generated interpretation. Specifically, the report stated at the outset that it "contains an interpretative output of the PAI software Portfolio or other software, but has been substantially modified for readability, accuracy, clarity, and clinical appropriateness by the current evaluator." Likewise, the report notified the reader elsewhere that "[v]erbiage from the computer-generated report provided by the publisher has been excerpted in this evaluation. The following is a combination of the assessment results as well as examiner judgment." While these caveats were likely to advise readers that the report incorporated language from the computer-generated

interpretation, the Board still finds that Respondent did not technically satisfy the requirements of the rule, specifically that excerpted language from the computer-generated interpretation report was not put in quotes.

8. Respondent avers and maintains that, at all times at issue herein, and at all times in her practice as a licensee before the Board, she has acted in good faith and followed applicable laws, regulations, accepted standards, and has behaved reasonably and within the accepted standards of the profession.

9. The Board's findings are limited to the allegations in TB's complaint and the Board makes no findings of fault with respect to any other evaluations conducted by Respondent.

10. The Board and Respondent desire to resolve this disputed claim through the use of this negotiated Consent Agreement and Order as follows:

Conclusions of Law

1. The Board has jurisdiction to take disciplinary action against Respondent.

2. The Board is empowered to discipline an individual's psychology license. See W. Va. Code § 30-21-10.

3. The Board may, after notice and opportunity for hearing, take disciplinary action against a psychologist upon satisfactory proof that the psychologist, in his or her professional capacity, engaged in conduct, practices, or acts deviating from accepted standards of professional conduct set forth in article twenty-one, chapter thirty of the West Virginia Code or any reasonable rule and regulation promulgated by the Board. See W. Va. Code § 30-21-10(b)(4).

4. The Board asserts that Respondent breached the Board's Code of Conduct, W. Va. Code R. §§17-6-12, with respect to psychological assessment, including administration, scoring, interpretation, analysis, and that Respondent breached the Board's Code of Conduct, W. Va. Code R. §§17-6-13, with respect to report writing; and that this practice fails to meet accepted standards.

5. The allegations set out above in the Findings of Fact, if proved consistent with the applicable burden of proof, would likely demonstrate that Respondent failed to comply with applicable law, codes of conduct, and/or regulation concerning licensed psychologists in West Virginia, which is grounds for disciplinary action pursuant to W. Va. Code § 30-21-10(b)(4), and applicable Board rules and codes of conduct.

Consent of Licensee

The Respondent, by affixing her signature hereto, acknowledges the following:

1. Respondent acknowledges the Board has jurisdiction over her and the conduct which has precipitated this Consent Agreement and Order.

2. Respondent has been given the opportunity to consult with legal counsel and she executes this negotiated Consent Agreement and Order voluntarily, freely, without compulsion or duress, and she is mindful that it has legal consequences.

3. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

4. Respondent acknowledges that she is aware she may pursue this matter through appropriate administrative and/or court proceedings, and she is aware of her legal rights regarding this matter, but intelligently, knowingly, and voluntarily waives such rights, but she does not waive her rights regarding the interpretation, execution, or compliance with this Consent Agreement and Order.

5. Respondent expressly acknowledges that the entire agreement is contained in this Consent Agreement and Order and that no representations, promises, or inducements have been made by or to Respondent other than as appear in this Consent Agreement and Order.

6. Respondent acknowledges that this Consent Agreement and Order is a public document available for inspection by the public in accordance with the provisions set forth in the

West Virginia Freedom of Information Act (W. Va. Code § 29B-1 *et seq.*), and may be reported to other governmental agencies, professional boards or other organizations.

7. Respondent waives any defenses including, but not limited to, laches, statutes of limitation, and estoppel, that she may have otherwise claimed as a condition of this Consent Agreement and Order.

8. Respondent avers and maintains that, at all times at issue herein, and at all times in her practice as a licensee before the Board, she has acted in good faith and followed applicable laws, regulations, accepted standards, and has behaved reasonably and within the accepted standards of the profession.

9. Respondent consents to the entry of the following Order affecting her conduct as a licensed psychologist in the State of West Virginia.

Order

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Beginning on the date of execution of this Consent Agreement and Order, Respondent's license shall be placed on probation for a period of six (6) months.

2. During this period of probation, Respondent may only complete psychological evaluations under the direct supervision of Eric Walls, a Board-approved supervisor and licensed psychologist from Respondent's current place of employment. ["supervising psychologist"], who shall review and approve via co-signing all evaluative and diagnostic reports completed by Respondent. The supervising psychologist shall meet with Respondent once a month for at least one hour during the probation period. The supervising psychologist shall submit monthly reports to the Board regarding Respondent's performance. The parties shall execute a supervisory agreement outlining the terms of supervision prior to initiation of such supervision.

3. During this period of probation, and at her expense, Respondent shall successfully complete three (3) hours of Board-approved continuing education in Differential Diagnosis and three (3) hours of Board-approved continuing education in Forensic Psychological Assessment. This continuing education may be taken on-line. Respondent shall acquire board approval of such continuing education, submit written verification to the Board of her enrollment, and shall submit proof of having successfully completed said continuing education. Respondent acknowledges this continuing education is in addition to the continuing education hours that are needed in the normal course of renewing her license.

4. By the 5th day of the 6th month of the probation period, the supervising psychologist shall submit a final report to the Board, which shall include his opinion of whether or not Respondent has met the requirements of the Consent Agreement and Order and a recommendation concerning Respondent's ability to return independent practice. Said final report may also serve as the monthly report required under Paragraph 2 above for the 6th month of the probation period. During the 6th month of the probation period, Respondent shall appear before the Board in person or via video conferencing (at her discretion) to document and assure the Board she has met all requirements of the Consent Agreement and Order.

5. After meeting with the Board, Respondent's probationary period shall be terminated, provided she has complied with all the foregoing requirements of the Consent Agreement and Order, and subject to her meeting continuation education requirements that may be needed in the normal course of renewing her license.

6. Respondent shall at all times cooperate with the Board, and any of its agents or employees, in the monitoring or investigation of Respondent's compliance with the terms and conditions of this Consent Agreement and Order.

7. Respondent's failure to comply with the terms and conditions of this Consent Agreement and Order hereby imposed shall be deemed a violation of this Consent Agreement and Order, and should Respondent violate any of the terms of this Consent Agreement and Order, the Board may initiate proceedings to further discipline Respondent's license, up to and including suspension. Respondent shall have the right to contest any such allegations of violating the Consent Agreement and Order by way of hearing. Any such proceedings shall be scheduled and conducted in accordance with the provisions of West Virginia Code § 30-1-8 and § 30-21-11, and W. Va. Code R. §17-5 *et seq.*

Entered this 28th of July 2022.

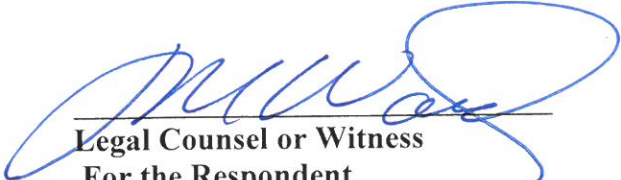
W. Va. Board of Examiners of Psychologists


President

Inspected and Agreed to by:


Barbara Nelson
Respondent

7/15/22
Date


Legal Counsel or Witness
For the Respondent

7/14/22
Date

Entered this _____ of _____, 2022.

Before the West Virginia Board of Examiners of Psychologists

W.Va. Board of Examiners of
Psychologists,

Complainant,

v.

Case No.: 2021-05

Barbara Nelson, MA,
(License No. 1181)

Respondent,

Supervisory Agreement

This Supervisory Agreement is entered into between the W.Va. Board of Examiners of Psychologists (“Board”) and the Respondent in the above-referenced matter to outline the terms of supervision as required pursuant to the Consent Agreement and Order entered into by these parties.

1. Respondent agrees to be supervised during the six (6) month period of her probation by Eric Walls, MA, a Board-approved supervisor and licensed psychologist from the Respondent’s current place of employment (“supervising psychologist”).

2. The supervising psychologist shall cosign all evaluative work completed by Respondent.

3. The supervising psychologist shall meet with Respondent once a month for a minimum of one hour to consult with Respondent concerning Respondent’s evaluative work performed in the course of her employment.

4. The supervising psychologist shall submit a monthly report to the Board to include the following: Based on a review of records and general observations, whether Respondent is in compliance with the applicable statutes, regulations, and codes of conduct pertaining to the licensed practice of psychology in the State of West Virginia, and in compliance with the terms of her probation and this Supervisory Agreement.

5. The supervising psychologist shall assist the Respondent in understanding and adhering to the applicable Code of Conduct (Title 17, Series 6).

6. By the 5th day of the 6th month of the probation period, the supervising psychologist shall submit a final report to the Board, which shall include his opinion of whether or not the Respondent has met the requirements of the Supervisory Agreement and a recommendation concerning Respondent's ability to return to independent practice. Said final report may also serve as the final monthly report required under Paragraph 4 above.

7. The supervising psychologist understands that in the event he determines the Respondent is not in compliance with the terms of this Supervisory Agreement or the terms of her probation, the supervising psychologist shall notify the Board immediately of such noncompliance and the reporting of such information is considered confidential until such time the Board decides whether there is probable cause for a violation of the Board's governing statutes and rules.

8. The supervising psychologist understands that the information he provides to the Board is solely in connection with the Board's statutory duty as a professional licensing agency for the State of West Virginia and pursuant to the Consent Agreement and Order.

9. In the event the supervising psychologist is unable to continue his relationship as the supervising psychologist for Respondent, he agrees to notify the Board in writing immediately and the Board will work with the Respondent in approving a new supervising psychologist.

10. The supervising psychologist understands that if he fails to carry out his responsibilities pursuant to the Supervisory Agreement that he may be subject to disciplinary action by the Board.

11. If, during the probationary period, the Respondent leaves her employment she shall notify the Board in writing immediately so that the Board may approve a new supervising psychologist.

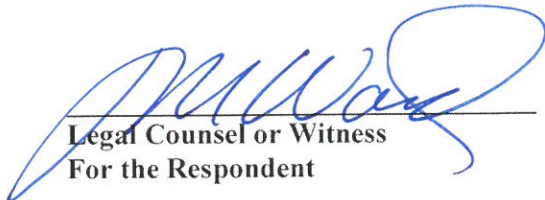
12. Respondent bears all costs and expenses associated with the supervision.

13. It is understood by all parties that the period of supervision is effective upon entry of the Consent Agreement and Order and will remain in effect for a period of six months. The period of this Supervisory Agreement corresponds to the period of the mandated supervision in the Consent Agreement and Order.


14. Respondent's failure to comply with the terms and conditions of this Supervisory Agreement shall be deemed a violation of the Consent Agreement and Order, and should Respondent violate any of the terms of the Consent Agreement and Order, the Board may initiate proceedings to further discipline Respondent's license up to and including suspension. Respondent shall have the right to contest any such allegations of violating the Consent Agreement and Order by way of hearing. Any such proceeding shall be scheduled and conducted in accordance with the provisions of West Virginia Code §30-1-8 and §30-21-1 *et seq.*, and W. Va. Code R. §17-5 *et seq.*


Barbara Nelson, Respondent

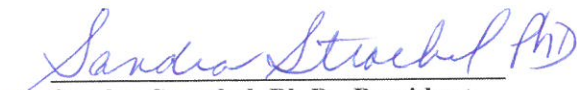
7/15/22
Date


Legal Counsel or Witness
For the Respondent

7/14/22
Date


Eric Walls, Supervisor

7-14-22
Date


Sandra Stroebel, Ph.D., President
WV Board of Examiners of Psychologists

7-28-22
Date