

**BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF NEW MEXICO**

Case No. 10-16

FINAL AGENCY DECISION AND ORDER

IN THE MATTER OF DIANE WILLIAMS, LICENSE NO. 1119,

Respondent.

This matter came before the New Mexico Board of Psychologist Examiners (Board) during a duly noticed special meeting on December 2, 2011, for a final agency decision and order.

PROCEDURAL HISTORY

On November 22, 2010, the Board issued to the Respondent a Notice of Contemplated Action (Notice). The Board issued the Notice based upon a finding that the Board had sufficient evidence which, if not rebutted or refuted, would allow the Board to take disciplinary action against the Respondent's license pursuant to the New Mexico Uniform Licensing Act, § 61-1-1, *et seq.*, NMSA (1978) (the Uniform Licensing Act) and the New Mexico Professional Psychologist Act, § 61-9-1, *et seq.*, NMSA (1978) (the Professional Psychologist Act). In response to the Notice, the Respondent requested a hearing. The case was heard by Hearing Officer Robert Sherrill, Jr., Ph.D. Assistant Attorney General William J. Moon was the administrative prosecutor for the hearing and Patricia J. Simpson, Esq. represented the Respondent. On November 6, 2011, the Hearing Officer issued his report.

On December 2, 2011, with a quorum present and being duly apprised of the premises, five Board members voted to enter this Final Agency Decision and Order in conformance with § 61-9-13, NMSA (1978). One Board member abstained from voting.

ISSUE

Whether the Respondent violated applicable provisions of the New Mexico Administrative Code, the Uniform Licensing Act, and the Professional Psychologist Act thereby warranting the imposition of discipline against her license.

FINDINGS OF FACT

Based upon a review of the full record, the Board finds as fact that:

1. The Respondent is licensed under the Professional Psychologist Act and, at all times relevant to this proceeding, was acting as a licensed psychologist. She is subject to the jurisdiction of the Board.

2. The Notice was properly served upon the Respondent in accordance with the Uniform Licensing Act and the Respondent received proper notice of the proceedings before the Board. This matter was timely heard before the Board and the Respondent has been afforded her full due process rights.

3. At all relevant times, the Respondent was working with elderly patients through Southwest Cares skilled nursing home facilities.

4. At all relevant times, Southwest Cares and Medicare were third-party payors.

5. On or about July 19, 2010, the Respondent and Southwest Cares understood and agreed that the use of a physician extender billing practice would be illegal and would violate Southwest Cares policies. The Respondent and Southwest Cares understood and agreed that there would be no use by the Respondent of "incident to care" billing practices.

6. Incident to care billing rules apply to non-institutional patients in a non-institutional setting. Where auxiliary personnel perform services outside the office in a hospital or skilled nursing facility, their services may not be billed as incident to care. Where auxiliary personnel perform services outside of the office setting, for example in an institution other than a hospital or skilled nursing facilities, their services may be billed only if there is direct supervision. Direct supervision means that a practitioner is immediately available and in the office or suite where the services are being rendered.

7. In August 2010, the Respondent began using the services of a clinical assistant in the care of Southwest Cares' clients in violation of Southwest Care policies. The Respondent knew at the time that her use of a clinical assistant was a violation of Southwest Cares policies. The Respondent's assistant at the time of the conduct in question was Ms. Catherine Peel.

8. At all relevant times, the Respondent and her non-licensed assistant were working in Southwest Cares nursing home facilities and were not working out of a separate office. The Southwest Cares nursing home facilities are institutional and provide skilled nursing home care for institutional patients. The services provided by Ms. Peel under the direction of the Respondent, at all relevant times, were not conducted in an office setting. The Respondent billed

Southwest Cares for services provided by Ms. Peel to Southwest Cares patients in a nursing home without the Respondent being in the immediate presence of Ms. Peel while Ms. Peel performed those services. The Respondent failed to provide the requisite direct supervision required in those circumstances.

9. Contrary to direction from Southwest Cares, the Respondent, from July 19, 2010 and thereafter, used physician extender and "incident to care" billing practices.

10. The Respondent's billing to Southwest Cares and Medicare on an "incident to care" basis for the services actually provided by Ms. Peel constituted inaccurate billing. Pursuant to the Respondent's request Ms. Peel provided certain screening and diagnostic services to Southwest Cares patients and Ms. Peel has not been paid for those services.

11. The Respondent used her non-licensed assistant, Ms. Peel, to administer diagnostic testing known as the 'Repeatable Battery for the Assessment of Neuropsychological Status' (Repeatable Battery Test). The Repeatable Battery Test is a stand-alone battery of tests used for the detection and characterization of dementia in the elderly. The Respondent used her non-licensed assistant, Ms. Peel, to perform specific treatment for patients such as supportive counseling and behavior modification tasks. The Respondent used her non-licensed assistant, Ms. Peel, to perform roles beyond the collection of historical data, administering and scoring psychological tests. Such activities were beyond the activities appropriate for non-licensed personnel. Ms. Peel engaged in conduct which required a license to practice psychology in the State of New Mexico and the Respondent aided and abetted Ms. Peel in that practice.

12. The Respondent improperly delegated responsibilities to Ms. Peel. At all relevant times, Ms. Peel was not appropriately licensed, credentialed, or otherwise qualified to provide assessment, diagnosis and treatment. At all relevant times, Ms. Peel was not enrolled in a graduate level training program.

13. The Respondent's use of her non-licensed assistant, Ms. Peel, to provide treatment services including therapeutic tasks compromised patient welfare and was the improper aiding and abetting of the practice of psychology.

14. The Respondent submitted billing through Southwest Cares to Medicare for treatment services ostensibly provided by the Respondent but which were actually provided by her non-licensed assistant, Ms. Peel. The Respondent expected to be paid for those billings even though she knew those treatment services had been rendered by her non-licensed assistant, Ms. Peel. The Respondent's submission of those billings was an abusive billing practice. Likewise, the Respondent employed abusive billing practices by submitting bills through Southwest Cares to Medicare for services on an "incident to care" basis

when those services were not performed under the Respondent's direct supervision in a nursing home by auxiliary personnel.

15. The Respondent failed to provide complete and accurate information about charges of professional services to Southwest Cares and Medicare. The Respondent misrepresented her fees. There is no credible, persuasive evidence that the Respondent met the Medicare requirements for billing for such services. The Respondent's Southwest Cares and Medicare billings for services actually provided by Ms. Peel were intentionally deceptive and the Respondent had knowledge that her deception could result in an unauthorized benefit to her. The Respondent knowingly presented non-compliant, false, fraudulent claims to Southwest Cares and Medicare for payment or approval. The Respondent's billing on an "incident to care" basis for services provided by Ms. Peel was fraudulent billing.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that:

1. The Respondent is subject to the jurisdiction of the Board pursuant to the Uniform Licensing Act and the Professional Psychologist Act.

2. The Notice was properly served upon the Respondent in accordance with the Uniform Licensing Act and she received proper notice of the proceedings before the Board.

3. This matter was timely heard before the Board and the Respondent has been afforded her full due process rights.

4. The Board has the authority to impose discipline against the Respondent's license. See § 61-9-6 (B) (3) of the Professional Psychologist Act; see *also* New Mexico Administrative Code § 16.22.2.6.

5. At all relevant times, Southwest Cares and Medicare were third-party payors.

6. The Respondent violated the provisions of §§61-9-1 and 13 (A) (8), NMSA (1978).

7. The Respondent's billing on an "incident to care" basis for the services provided by Ms. Peel was inaccurate billing. Incident to care billings for the services of Ms. Peel in a nursing home required direct personal supervision by the Respondent of Ms. Peel. Direct personal supervision required that the Respondent be in the immediate presence of the auxiliary personnel while the services were performed by Ms. Peel. The Respondent did not meet that

requirement. The Respondent's use of Ms. Peel was contrary to her obligations to Southwest Cares.

8. The Respondent violated § 61-9-13 (A) (17), NMSA (1978) by employing abusive billing practices. The Respondent's submission of billings for payment to Southwest Cares for the services actually rendered by Ms. Peel was an abusive billing practice. Likewise, the Respondent employed abusive billing practices by submitting bills to Southwest Cares and Medicare for Ms. Peel's services on an "incident to care" basis when those were not performed under her direct supervision in a nursing home.

9. The Respondent violated New Mexico Administrative Code (NMAC) § 16.22.2.14 (A) by failing to provide complete and accurate information about charges for professional services to Southwest Cares for submission to a third-party payor, Medicare.

10. The Respondent violated NMAC § 16.22.2.14 (D) (1) by misrepresenting her fees for professional services to Southwest Cares for submission to a third-party payor, Medicare.

11. The Respondent violated NMAC § 16.22.2.17 (B) by using fraud in the billing of professional services to Southwest Cares and Medicare. The Respondent's billing on an "incident to care" basis for services provided by Ms. Peel was fraudulent billing. Medicare fraud is the intentional deception or misrepresentation with the knowledge that the deception could result in some unauthorized benefit to a person or an entity. See 42 U.S.C. §1320a-7a. The federal *False Claims Act*, 31 U.S.C. § 3729 (A), imposes liability on a person who knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval. The Respondent's conduct violates these provisions.

12. The Respondent violated § 61-9-13 (A) (18) and NMAC § 16-22.2.18 (A) by aiding and abetting the practice of psychology by a person (Ms. Peel) not licensed by the Board.

13. The Respondent violated NMAC § 16.22.2.18 (B) (1) by delegating her responsibilities to Ms. Peel who, at all relevant times, was not appropriately licensed, credentialed, or otherwise qualified to provide assessment, diagnosis and treatment.

14. The Respondent violated NMAC § 16.22.2.18 (B) (2) by delegating her responsibilities to Ms. Peel who was not, at all relevant times, a psychology pre-doctoral or post-doctoral trainee.

15. In aiding and abetting Ms. Peel's illegal practice of psychology, the Respondent violated NMAC §§ 16.22.2.10 (J) concerning patient welfare by failing to take reasonable steps to minimize harm to her patients. As a licensed

psychologist, the Respondent should have provided the appropriate treatments herself or otherwise arranged for care to be provided by another licensed psychologist.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Board enters the following Order:

1. Due to the extent and seriousness of the Respondent's violations, the Respondent's license is hereby **REVOKED**. See 61-9-13, NMSA (1978).
2. Due to the extent and seriousness of the Respondent's violations, the Board shall place the Respondent's name on the national data reporting database reporting her as an individual who has committed fraudulent billing, abusive practices, inaccurate record keeping, and aided and abetted another to practice psychology without a license.

The Board's Final Agency Decision and Order shall be served upon The Respondent in accordance with applicable law pursuant to §§ 61-1-5 and 61-1-14, NMSA (1978) of the Uniform Licensing Act and § 39-3-1.1 (B) (3), NMSA (1978).

Chairman, Robert Sherrill, Jr., Ph.D. is designated by the Board to sign the Final Agency Decision and Order.

**FOR THE NEW MEXICO
BOARD OF PSYCHOLOGIST EXAMINERS**

Done and signed 28 Dec., 2011.



ROBERT SHERRILL, JR., PH.D.
Board Chairman



APPEAL RIGHTS

A person who is entitled to a hearing provided for in the Uniform Licensing Act , who is aggrieved by an adverse decision of a board issued after a hearing, may obtain a review of the decision in district court pursuant to § 39-3-1.1, NMSA (1978). See § 61-1-17, NMSA (1978). Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to the district court by filing a notice of appeal in the district court within thirty days of the date of the filing of the final decision. See § 39-3-1.1 (C) NMSA (1978). The filing date of the Board's Final Agency Decision and Order is set forth below. The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a hearing on the matter was conducted. When notices of appeal are filed in more than one district court, all appeals not filed in the district court in which the first appeal was properly filed shall be dismissed without prejudice. An appellant whose appeal is dismissed without prejudice pursuant to § 39-3-1.1 (C) NMSA (1978) shall have fifteen days after receiving service of the notice of dismissal to file a notice of appeal in the district court in which the first appeal was properly filed.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Final Agency Decision and Order** including attachments were sent via certified U.S. mail, return receipt requested to:

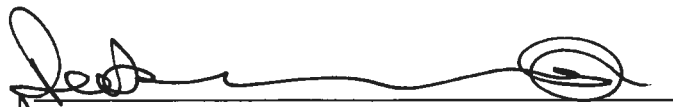
Diane Williams
110 Palomino Lane
Bloomfield, NM 87413

Patricia Simpson, Esq.
500 W. Main St., Ste. 200
Farmington, NM 87401
patricia@simpsonlawoffice.com

William J. Moon
Assistant Attorney General
408 Galisteo St.
Santa Fe, NM 87501

Email: bmoon@nmag.gov

Dated this December 29, _____, 2011.



Robert Hollingsworth
Compliance Liaison.