

BEFORE THE NEW MEXICO  
BOARD OF PSYCHOLOGIST EXAMINERS

IN THE MATTER OF  
The Application of  
ALAN SCHLAKS, Ph.D.  
Respondent.

Case No. 2009-03

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER OF THE BOARD  
NOTICE OF RIGHT TO JUDICIAL REVIEW.

THIS MATTER came before the New Mexico Medical Board ("Board") on June 19 and 20, 2010 for a decision pursuant to provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (1957, as amended through 2003) and the Professional Psychologist Act, NMSA 1978, Section 61-9-1 et.seq.

DECISION

A quorum of the Board, having familiarized itself with the record, including the digital audio record of the administrative hearing held August 26, 2010, all exhibits admitted into evidence, and the Hearing Officer's Report, makes the following findings of fact, reaches the following conclusions of law, and renders this decision and order.

FINDINGS OF FACT

1. Respondent applied for licensure as a psychologist on or about September 4, 2007. On October 19, 2009, this Board issued a Notice of Contemplated Action which was properly served on the respondent. The Notice of Contemplated Action stated that the Board was contemplating denial of his application because of evidence that respondent had violated NMSA 1978, Section 61-9-13 A (10), in that he had been disciplined by another state for having a dual relationship with a patient. Respondent

requested a hearing and was provided a full and fair opportunity to due process in such proceeding on August 26, 2010.

2. Respondent had previously applied to this Board to be licensed as a psychologist associate, which application was denied on or about March 25, 1996. That application was denied on the grounds that he had engaged in the practice of psychology without a license in violation of NMSA 1978, Section 61-9-4.1(A) of the Professional Psychologist Act.

3. In 1992, California's Board of Psychology revoked Dr. Schlaks' license as a psychologist associate because he had engaged in a dual relationship with a patient. That Board also simultaneously denied his application to be licensed as a psychologist.

4. The Board adopts the Hearing Officer's Recommended Findings of Fact numbered 1,2,3,4, and 6. The Board rejects the Hearing Officer's Recommended Findings of Fact numbered 5 and 7. A copy of the Hearing Officer's Report is attached hereto and incorporated into the decision of the Board. The Board makes the following additional findings of fact:

5. Respondent did not produce sufficient evidence of treatment or rehabilitation since violating the standards of this profession by engaging in a dual relationship with a patient. Specifically, there is insufficient evidence that respondent participated in a sufficient level treatment related to the violation or that he participated in any rehabilitation supervision of his work in the field of psychology as a school psychologist, or that he participated in colleague assistance program or equivalent, directed to the violation.

6. Respondent did submit exhibits 1-9, which consists of 9 different letters of recommendation. Exhibits 3-9 are from non-psychologist educators and none of these exhibits demonstrate that the author was aware of respondent's prior violation of ethics or of the gravity of such a violation in our profession.

7. Respondent also submitted exhibits 1 and 2 from E. Wayne Hart, Ph.D., whose letterhead indicates that he is a psychologist, marriage family counselor and expert witness and consultant. Dr. Hart wrote exhibit 1 in 1993, stating that he was treating respondent regarding issues surrounding the dual relationship violation, and that he anticipates that the respondent "will continue his treatment to strengthen the progress made to date" (exhibit 1). In this same letter that indicates a need to continue treatment, Dr. Hart wrote that he believed that respondent was "no risk to the public". Dr. Hart also wrote exhibit 2 in 1994, stating that he treated respondent from 12/11/92 to 1/12/94 and that respondent had made progress in his rehabilitation and that respondent "presents no danger to the consumer". The letters indicate some attempt at treatment, however, they do not specifically describe the time spent in treatment or the criteria used to arrive at the conclusions Dr. Hart drew. The evidence does not indicate whether the treatment was conducted once every 6 months or once per week, nor does it describe methodology or how progress was measured. I

8. Respondent's years of work as a school psychologist are not necessarily indicative of rehabilitation because that work took place in institutions where the close proximity of many authority figures would naturally discourage ethical violations, unlike the private setting in which a licensed psychologist may practice.

9. Respondents work as a school psychologist is not necessarily indicative of rehabilitation because that work involved children as patients and is therefore not analogous to the setting in which he might treat an adult female patient to whom he is attracted. Therefore, the years of practice as a school psychologist do not indicate that respondent could resist the temptation to involve himself in inappropriate relationship with an adult patient.

10. Respondent's years of work as a school psychologist are not necessarily indicative of rehabilitation because that practice is controlled and supervised by individuals who are in the field of education, not psychology and as such, they lack the training to evaluate his attempts at rehabilitation or to apply the standards of practice in the field of psychology.

11. Respondent's years of work as a school psychologist are not necessarily indicative of rehabilitation because that work centers on education-related problems, which does not bear on his ability to treat an adult patient in matters related to sexual relationships.

12. The record demonstrates that the victim patient became pregnant as a result of the relationship with respondent and that he took no responsibility with regard to medical costs, demonstrating an ethical failure on his part.

13. The record demonstrates that the respondent's sexual contact with the patient was not an isolated incident, but rather a conscious ongoing relationship that he participated in with full knowledge that he was violating his ethical duties as a psychologist associate at the time.

14. The respondent failed to present any evidence of remorse regarding his violation. The respondent failed to testify or to give this Board any indication that he acknowledges the seriousness of violating the rules of practice by engaging in a dual relationship with a patient.

15. The respondent's application before this board evidences that he was less than forthcoming about the revocation of his California Associate Psychologist license, in that he responded to the questions related to ethical standards as follows:

When asked, "Have you ever been called before the Committee on Ethics of any professional organization or state Licensing Board?" he responded "No".

When asked, "Has any action been taken against you by:

a. another licensing jurisdiction?" he responded "No".

When asked, "Has any action been taken against you by:

b. a government agency?" he responded "No".

When asked, "Are you now or have you ever engaged in any activities that misrepresents your professional qualifications, affiliation, or purposes, ...? he responded "No".

When asked, "Have you ever been denied a license or certificate as a psychologist in any jurisdiction or country...?" he responded "No".

16. The respondent's prior conduct evidenced by this Board's 1996 denial of his application for licensure as a psychologist associate because he had engaged in the unlicensed practice of psychology, is indicative of a lack of respect for the ethical standards of this profession.

## CONCLUSIONS OF LAW

Based on the Findings of Fact, the Board reaches the following Conclusions of Law:

1. The Board has jurisdiction over Respondent and the subject matter.
2. The Board has complied with all notice and hearing requirements of the Uniform Licensing Act and has afforded Respondent all due process rights required by law. This Decision and Order is timely rendered.
3. Pursuant to § 61-1-1 et. seq. the Board has authority to implement and enforce the laws and rules controlling the granting of the privilege to practice psychology. Pursuant to § 61-9-13, the Board has authority to deny an application for licensure based upon an applicant's dual relationship or based upon California's prior denial of licensure as a psychologist or upon California's revocation of respondent's license as a psychologist associate.
4. Respondent has been guilty of unprofessional and unethical conduct.
5. Pursuant to § 61-9-13, practicing psychology without a license is sufficient basis to deny a license application in the discretion of the Board, as evidenced by a vote of at least 5 of its 8 members.
6. The Board concludes that there is sufficient, conclusive evidence in the record to prove by a preponderance of the evidence that California's Board of Psychology revoked Dr. Schlaks' license as a psychologist associate in 1992, and that California's Board of Psychology revoked Dr. Schlaks' license as a psychologist associate because he had engaged in a dual relationship with a patient. That Board also simultaneously denied his application to be licensed as a psychologist. because he had

engaged in a dual relationship with a patient. There is also sufficient evidence to prove that the California Board also simultaneously denied his application to be licensed as a psychologist as alleged in ¶ 2(A) of the NCA.

7. The Board has sufficient evidence in the record to deny respondent's application.

ORDER

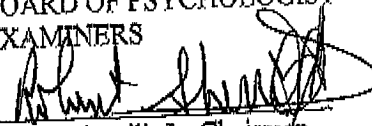
Based on the findings of fact and conclusions of law, the Board renders this order.

IT IS ORDERED that Respondent's application for a license to practice as a psychologist in New Mexico is DENIED.

This Decision and Order shall be served upon Respondent in accordance with law. A Notice informing Respondent of his right to seek judicial review and the time within which review must be brought is attached.

Robert Sherrill, chair of the Board., is designated to sign the decision and order of the Board.

FOR THE NEW MEXICO  
BOARD OF PSYCHOLOGIST  
EXAMINERS

  
Robert Sherrill, Jr. Chairman

Date: November 24, 2010