

**BEFORE THE NEW MEXICO
COUNSELING AND THERAPY PRACTICE BOARD**

IN THE MATTER OF:

**ARCILIA HOLGUIN
LICENSE No. 2244
Respondent.**

CASE No. 2010-21

FINAL DECISION AND ORDER

THIS MATTER came before a quorum of the New Mexico Counseling and Therapy Practice Board on November 16, 2012 at the Domenici Center/Health Sciences Center, 1001 Stanford NW, Albuquerque, NM 87106. The board members familiarized themselves with the record, including the Hearing Officer's Report, and voted unanimously as follows:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

The Board adopts the Hearing Officer's Findings of Fact and Conclusions of Law in the Hearing Officer's Report which is attached hereto and incorporated by reference. Conviction of Medicaid Fraud is a serious offense and based on the findings of fact and conclusions of law the Board renders this decision and order.

ORDER

It is ordered that Respondent's license no. 2244 to practice counseling and therapy is hereby revoked. Respondent shall surrender her license to the Board in person or via certified mail as soon as practicable, and in any event, no later than fifteen days from her release from incarceration.

This disciplinary action and this Final Decision and Order are public records under the

Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2011) and shall be reported as required by law.

Respondent may appeal this Final Order within 30 days pursuant to NMSA 1978, Section 61-1-17 and NMSA 1978, Section 39-3-1.1.

IT IS SO ORDERED.

Dated: _____

MICHAEL G. MAESTAS
CHAIR, NM Counseling & Therapy Board

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IN THE MATTER OF:

**ARCILIA HOLGUIN
LICENSE No. 2244**

Respondent.

CASE No. 2010-21

HEARING OFFICER'S REPORT

This matter came before me on September 19, 2012 in the Regulation and Licensing Department, Office of the Superintendent Conference Room, 2550 Cerrillos Rd., Santa Fe, NM. The Counseling and Therapy Practice Board ("the Board") was represented by Nan Erdman, Assistant Attorney General, P.O. Box 1508, Santa Fe, NM 87104. The Respondent appeared pro se.

PRELIMINARY MATTERS

On April 13, 2012 Michael G. Maestas, Chairperson of the Board, acting pursuant to the Uniform Licensing Act, NMSA 1978, §§61-1-1 to 61-1-33 and the Counseling and Therapy Practice Act, NMSA 1978, §61-9A-1 *et seq.*, issued a Notice of Contemplated Action to Respondent upon a finding probable cause that Respondent had:

1. Been convicted of four felonies related to Medicaid Fraud contrary to NMSA 1978, §61-9A-30; and
2. Violated the following rules adopted by the Board:
 - a. 16.27.18.12 NMAC by failing to behave in accord with standards of professional integrity and by participating in dishonest, fraudulent or deceitful behavior;
 - b. 16.27.18.16 (E) (1) NMAC by being convicted of a felony to wit: Medicaid Fraud and Fraud related to Respondent's functions as a licensee of the Board;
 - c. 16.27.18.18 (Q) NMAC by violating the code of ethics in that Respondent did not bill clients for actual services provided and that Respondent submitted bills to a client or third party that Respondent knew were improper, unreasonable or clinically unnecessary; and

d. 16.27.18.19 (A),(D) and (E) by aiding and abetting another person in misrepresenting his or her professional credentials ; illegally engaging in the practice of counseling or therapy; and failing to inform the board in writing of a violation of the Board's rules.

On May 24, 2012 Respondent filed a timely notice of request for a hearing on the charges in the NCA.

On or about August 8, 2012, I was appointed to act as the Hearing Officer in this case.

There were no other preliminary matters.

THE HEARING

Witnesses called by the Board:

1. The Respondent, Arcilia Holguin.

Witnesses called by the Respondent:

1. The Respondent testified in her own behalf.

Exhibits Tendered by the Board:

- A. A copy of the Notice of Contemplated Action ("NCA") filed in this case.
- B. A copy of the indictment handed down against the Respondent on April 30, 2010 charging Respondent with seven felonies related to Medicaid Fraud.
- C. A copy of the Judgment and Sentenced filed by the court following Respondent's jury trial. The exhibit indicates that the Respondent was found guilty of the four felony counts submitted to the jury.
- D. A copy of the Notice of Hearing issued in this case.
- E. All four exhibits were admitted without objection.

Exhibits Tendered by the Respondent:

1. The Respondent did not tender any exhibits.

Testimony

1. The first and only witness called by the Board was the Respondent, who testified that she had been licensed by the Board as a therapist since July 1993.

2. Respondent testified that she was the sole proprietor of Counseling and Mediation Services, LLC, an agency that provided counseling, therapy and other services for those on

Medicaid. She also testified that the agency used several different care-provider reimbursement methods, managed primarily by Value Options with some later oversight by CYFD.

3. The Respondent identified Exhibit 2, the Grand Jury Indictment charging Respondent with seven counts of Medicaid Fraud and related charges, and Exhibit 3 the Judgment, Partially Suspended Sentence and Commitment filed in the Third Judicial District Court, County of Dona Ana, Case No. D-307-CR-2010-00531 following Respondent's jury trial.

4. Respondent admitted that she was convicted by the jury of the following felonies:

a. Medicaid Fraud (Falsification of Documents), a fourth degree felony, occurring on or about March 2008 to June 2009; or in the alternative, Fraud over \$20,000, a second degree felony;

b. Medicaid Fraud (False or Excessive Claims), a fourth degree felony, occurring on or about July 2006 to March 2007, or in the alternative, Fraud over \$20,000, a second degree felony;

c. Medicaid Fraud (Substantially Inadequate Treatment - over \$20,000), a second degree felony occurring July 2006 to March 2007; and

d. Fraud over \$20,000, a second degree felony, occurring March 2008 to June 2009.

5. Respondent also admitted that as a result of her convictions she was sentenced to 9 years' incarceration, all but 18 months of which was suspended, and she was ordered to serve five (5) years of supervised probation after her term of incarceration. In addition, Respondent and Counseling and Mediation Services, LLC, Respondent's co-defendant in the criminal action, were held to be jointly and several liable for restitution payments, and payment for costs of prosecution in the criminal case in the amount of \$3,834.30. Respondent was also ordered to pay a personal \$5,000.00 fine, and ordered to pay the \$10,000 fine levied against her business, Counseling and Mediation Services, LLC.

6. At the hearing, Respondent testified that the gravamen of Count 1, Medicaid Fraud (Falsification of Documents) was the fact that she had employees working for her, for whom she charged service fees to Medicaid, who were not in fact high school graduates as required by 8.315.6. 10 (A) NMAC. Investigation revealed that these employees had forged their high school diplomas.

7. Respondent admitted that she did not check the authenticity of these employees' diplomas, nor did she require that any of her office workers, who were responsible for monitoring the files, to do so when she hired these employees. As a result, Medicaid was billed and paid for services that were performed by individuals not qualified for Medicaid reimbursement. However, Respondent testified that the employees who had forged their high school diplomas testified at her trial that she, the Respondent, did not know that the diplomas had been forges.

8. Respondent also testified that part of the factual basis for the allegations in Count 2, Medicaid Fraud (False or Excessive Claims) consisted primarily of accusations that she overbilled for group therapy sessions under the Intensive Home Based program. Specifically, Respondent testified that instead of billing for time the group therapist spent in each session and splitting the number of the therapist's hours among the attendees of the group sessions, she billed the entire time the therapist spent in each session to each attendee of the group therapy session. In other words if a therapist spent one hour in a group session with 20 individuals, Respondent billed Medicaid for one hour for each participant for a total of 20 hours. Respondent testified that this procedure had been approved by a Value Options liaison, and had passed several audits using that same billing method. Respondent also testified that when she asked for guidance on how to bill she was told to use her own judgment.

9. Respondent testified that she was also accused of billing for improper, unreasonable and clinically unnecessary treatment, which is a further basis for her conviction on Count 2.

10. Respondent testified that she did not fully understand the factual basis for the allegations in Count 3, Medicaid Fraud (Substantially Inadequate Treatment - over \$20,000), but it was her understanding that the charge was based on double billing for services. It was Respondent's testimony that the double billing was the result of an investigation by an auditor who was not familiar with therapy practices. Consequently, when the auditor found similar words used in different bills he assumed that Respondent was billing twice for the same services. Respondent also argued that she should not have been charged for any allegations of Medicaid Fraud with regard to billing for Intensive Home-based treatment, since she and her agency were never paid by Medicaid for those services. Respondent also argued that she was not responsible for billing for Intensive Home-based care since she had hired a clinical supervisor who was responsible for all billing for that program. Respondent and her company, Counseling and

Mediation Services, were only involved in Intensive Home-based care program from July 2006 to March 2007.

12. Respondent testified that her conviction for Count 4, Fraud, was based on false billings from March 2008 to June 2009 and was related to employees not having valid high school diplomas.

13. Respondent testified that her billing practices at issue in several of the charges were based on confusing and contrary instructions from the third-party payers and Medicaid, and were also due to the fact that she is, “not a good business manager.” However, Respondent also emphasized that none of the Counts upon which she was convicted were based on her counseling and therapy abilities, nor suggested that she was an unethical therapist.

14. On the September 27, 2012, the Board filed its written closing argument, and on October 10, 2012 the Respondent filed her written closing argument.

15. The counsel for Board did not request any particular punishment for Respondent, but instead argued that “The evidence before the Board, is that Respondent has been criminally convicted of crimes involving moral turpitude, and is thus subject to discipline under NMSA 1978, § 61-9A-26(A) (3).”

16. The Respondent in her closing argument emphasized that she had been licensed by this Board since 1993 and had not had any complaints filed against her during that time. Respondent also argued that the evidence established that she was only guilty of being a bad business manager. There was no evidence she had been an unethical therapist or counselor. Consequently, Respondent asked the Board to consider one or more of the following punishments in lieu of revoking her license:

- a. Impose restrictions or limitations on her practice after she has completed her term of incarceration;
- b. Require that she complete a remedial education program;
- c. Require that she obtain an individual approved by the Board to monitor her practice and report to the Board on a regular basis;
- d. Publically censure or reprimand her; or
- e. Suspend her license for a period of time followed by a term of supervised probation.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The unrefuted evidence has established that the Respondent was convicted of four felony charges related to her practice as a licensed counselor/therapist, i.e., Respondent could not have committed the crimes had she not been a licensed therapist. However, the Respondent has argued that the evidence also establishes that she either did not know that a violation had occurred as when individuals were hired who had forged their high school diplomas, Counts 1 and 4, or the billing errors were the results of was bad or confusing advise from Value Added liaisons or Medicaid representatives, Count 2, or the result of investigators unfamiliar with Medicaid billing or therapy practices combined with the assertion that a clinical director and not the Respondent reviewed the bills, Count 3. In short Respondent has argued that her convictions resulted from the fact that she was a bad business manager and not from the fact that she was an unethical counselor/therapist, an argument that goes to mitigation of punishment.

2. However, if Respondent had only been convicted of unknowingly hiring individuals that had forged their high school diplomas and then unknowingly billing Medicaid for these individuals' services I would have found that Respondent had not been convicted of a felony involving moral turpitude in violation of NMSA 1978, §61-9A-26 (A)(3). But that is not the case.

3. Respondent was also convicted of Medicaid Fraud (False or Excessive Claims) and Medicaid Fraud (Substantially Inadequate Treatment - over \$20,000) in counts 2 and 3. These two counts involved billing practices for group sessions and double billing. I find Respondent's testimony that she believed that it was permissible to have a counselor bill more than 24 hours per day for group sessions, See Exhibit 2, Count II, not credible. I also find Respondent's testimony that she was not aware of any double billing practices that may have been undertaken by her clinical director not credible. Respondent was the owner of the Counseling and Mediation Services, LLC, and as such must have reviewed bills and financial reports in the course of making business decisions and paying bills and salaries. A review of the financial reports of the business would have certainly alerted Respondent to these irregularities if for no other reason than the sums being collected.

4. I also find that both count 2 and count 3 are felonies involving moral turpitude in that they involve conduct that is considered contrary to community standards of justice, honesty, or good morals. See, *In re Patton*, 86 N.M. 52, 54, 519 P.2d 288, 290 (1974).

CONCLUSION

For the reasons set forth above I find that the Board has proven by a preponderance of the evidence that the Respondent has been convicted of two felonies involving moral turpitude contrary to NMSA 1978, §61-9A-30 and the following Regulations:

- a. Respondent violated Regulation 16.27.18.12 NMAC by failing to behave in accord with standards of professional integrity and by participating in dishonest, fraudulent, or deceitful behavior.
- b. Respondent violated Regulation 16.27.18.16(E)(1) NMAC (7-1-04) by being convicted of a felony, to wit Medicaid Fraud and Fraud,
- c. Respondent violated Regulation 16.27.18.18(Q) (1) & (4) NMAC (6-15-01), by submitting bills to a client or third party that were improper, unreasonable, or clinically unnecessary.
- d. Respondent violated 16.27.18.19(A) (D) and (E) NMAC (6-15-01), by permitting her employees to misrepresent his or her credentials in the course of billing for services for which those credentials were required. .

Consequently, I find that Respondent is subject to discipline under NMSA 1978, § 61-9A-26(A) (3), which provides that “In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act, or take any other action provided for in the Uniform Licensing Act,...” NMSA 1978, §61-1-3 of the Uniform Licensing Act provides that the Board may take any of the following actions:

- a. suspension of a license;
- b. revocation of a license;
- c. restrictions or limitations on the scope of a practice;
- d. the requirement that the applicant complete a program of remedial education or treatment;
- e. monitoring of the practice by a supervisor approved by the board;
- f. the censure or reprimand of the licensee or applicant;
- g. compliance with conditions of probation or suspension for a specific period of time;
- h. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- i. corrective action, as specified by the board.

It is of course the Board's responsibility to determine what punishment should be imposed in this case. I would, however, recommend at the very least that Respondent's license be suspended for a period of time followed by a period of supervised practice and that Respondent not be allowed to treat any Medicaid clients, a condition that Medicaid would, I assume, impose given the nature of Respondent's convictions.

October 25, 2012.

Max Shepherd

Max Shepherd, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via U.S. certified mail return receipt requested and/or electronic mail to the following on this 30th day of October, 2012.

Nan Erdman, Assistant Attorney General
NM Attorney General's Office
PO Box 1508
Santa Fe, NM 87104-1508
nerdman@nmag.gov

Arcilia Holguin Inmate #75035
PO Box 800
Grants, NM 87020

Shannon Garcia

Shannon Garcia, Paralegal
Regulation and Licensing Department