

**BEFORE THE MINNESOTA
BOARD OF MARRIAGE AND FAMILY THERAPY**

In the Matter of
Duane R. Hackbarth, LMFT
License No. 1841

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter came on for hearing at a regularly scheduled meeting of the Minnesota Board of Marriage and Family Therapy ("Board") on July 18, 2014, convened at 2829 University Avenue S.E., Minneapolis, Minnesota 55414. The Board conducted a hearing pursuant to the procedure set forth in Section VI of the Stipulation and Order ("2013 Order") issued by the Board to Duane R. Hackbarth, LMFT ("Respondent"), on September 20, 2013. Respondent did not appear at the hearing. Jennifer R. Coates, Assistant Attorney General, appeared on behalf of the Board Complaint Panel. Board members Dennis Morrow and Herb Grant did not participate in deliberations and did not vote in the matter. Gregory J. Schaefer, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby issues the following Findings of Fact:

1. The Board is authorized pursuant to Minnesota Statutes sections 148B.01 to 148B.39 to license, regulate, and discipline persons who apply for, petition, or hold licenses as marriage and family therapists and is further authorized pursuant to Minnesota Statutes sections 214.10 and 214.103 to review complaints, to refer such complaints to the Attorney General's Office, and to initiate appropriate disciplinary action.

2. Respondent agreed to and signed the 2013 Order issued by the Board on September 20, 2013. In Section VI of the 2013 Order, Respondent expressly acknowledged and agreed to several procedures the Board Complaint Panel may use to resolve alleged noncompliance with or violation of the 2013 Order. The 2013 Order remained in full force and effect at the time the conduct described in paragraph 4 below occurred.

3. Respondent expressly acknowledged and agreed in Section VI of the 2013 Order that in the event the Board received evidence Respondent violated the terms of the 2013 Order, he would be notified of such allegations in writing and, following the opportunity to contest the allegations, the Board may impose additional disciplinary action against Respondent's license.

4. The Board received information Respondent violated the terms of the 2013 Order and engaged in acts or omissions which would be a violation of Minnesota Statutes section 148B.01, *et seq.*, as follows:

a. On September 20, 2013, the Board issued an order suspending Respondent's license but staying that suspension subject to certain conditions. The 2013 Order was based on Respondent inappropriately engaging in conduct with a patient which had sexual overtones and insinuations. At the time, Respondent was treating the patient and the patient's spouse for sexual issues within the couple's marriage.

b. The 2013 Order required Respondent to enroll in a professional boundaries course preapproved by the Board within 60 days of September 20, 2013. Respondent failed to enroll in the course or seek Board approval within the 60-day time period.

c. As a result of not enrolling in the professional boundaries course, Respondent failed to fulfill the requirements of Sections V.A.1.b., V.A.2., and V.A.3.

d. On January 24, 2014, the Board of Behavioral Health and Therapy issued an order disciplining Respondent for the same conduct underlying this Board's 2013 Order.

e. On January 31, 2014, Respondent allowed his license to practice marriage and family therapy to lapse.

f. On February 3, 2014, Respondent contacted Board staff and informed staff that he had no intention of complying with the 2013 Order.

5. On May 19, 2014, Respondent was served with a Notice of Removal of Stay of Suspension, Imposition of Suspension, and Hearing ("Notice") and Order of Removal of Stay of Suspension by first-class mail at his last known address on file with the Board. The Notice informed Respondent of the alleged violations and of the date, time, and place of the hearing. The Notice also informed Respondent he was required to submit a response to the allegations in the Notice within ten days after the Notice was mailed. Respondent failed to submit a response.

6. The Board Complaint Panel had probable cause to remove the stay of suspension.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions:

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes sections 148B.01, *et seq.*, 214.10, and 214.103.

2. The Board Complaint Panel gave proper notice of the alleged violations to Respondent, pursuant to Section VI of the 2013 Order.

3. Under Section VI of the 2013 Order, the allegations contained in the Notice are deemed admitted because of Respondent's failure to submit a written response.

4. As a result of Respondent's failure to respond to the Notice, the Board Complaint Panel has met its burden of proof.

5. The Board Complaint Panel has proved by a preponderance of the evidence that Respondent has violated Minnesota Statutes section 148B.37, Minnesota Rules 5300.0280, and the 2013 Order.

6. As a result of the violations set forth above and pursuant to the terms of the 2013 Order, the Board has the authority to impose additional disciplinary action against Respondent's license to practice marriage and family therapy.

ORDER

Based on the foregoing Findings of Fact and Conclusions, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the 2013 Order issued to Respondent on September 20, 2013, is hereby **RESCINDED** and shall have no future force or effect except as incorporated and restated herein.

2. IT IS FURTHER ORDERED that the license of Respondent as a marriage and family therapist in the State of Minnesota is hereby **REVOKED** immediately. Respondent shall not:

a. Engage or attempt to engage in any act or practice in the State of Minnesota which constitutes the practice of marriage and family therapy under Minnesota Statutes section 148B.01, *et seq.*, and Minnesota Rules chapter 5300.0100;

b. Advertise, use any of the terms or letters, including but not limited to "Marriage and Family Therapist," "LMFT," or any other title or letters under any circumstances as to lead the public or patients to believe that he is engaged in the practice of marriage and family therapy;

c. Imply to patients or other persons by words or conduct that Respondent is authorized to practice marriage and family therapy in Minnesota; and

d. Provide, direct, or assist in the provision of marriage and family therapy to any person or engage in any other procedure or practice which may be undertaken in this state only by licensed health personnel or by the lawful delegates, assistants, technicians, or aids of such personnel.

3. IT IS FURTHER ORDERED that if he possesses a license certificate, within ten (10) days of the date of this Order, Respondent shall surrender his license certificate to the Board. The certificate and card shall be mailed or delivered to the Minnesota Board of Marriage and Family Therapy, c/o Jennifer Mohlenhoff, Suite 400, 2829 University Avenue SE, Minneapolis, Minnesota 55414.

4. IT IS FURTHER ORDERED that Respondent may re-apply for licensure to this Board no sooner than ten (10) years from the date of this Order. Respondent shall be treated like an initial applicant to the Board, unless otherwise stated herein, and must fulfill all requirements for licensure required for an initial applicant to the Board. At the time Respondent applies for licensure, Respondent must prove by a preponderance of the evidence that he is fit and competent to practice marriage and family therapy and that he has been sufficiently rehabilitated. The Board may consider any other factors it deems relevant in determining whether Respondent is fit and competent to practice marriage and family therapy and has been sufficiently rehabilitated. The Board shall be the sole determiner of whether Respondent is rehabilitated and fit and competent to practice marriage and family therapy.

5. IT IS FURTHER ORDERED that upon applying for licensure, Respondent may be required to meet with a Board Complaint Panel. Respondent must provide the Complaint

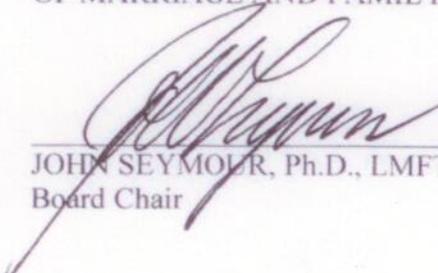
Panel with any additional information it reasonably requests. Based on the evidence presented by Respondent, the Complaint Panel will make a recommendation to the Board as to whether Respondent has proved by a preponderance that he is fit and competent to practice marriage and family therapy. The full Board, however, shall make the final decision regarding whether to license Respondent to practice marriage and family therapy.

6. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's application for licensure pursuant to the above paragraphs, take any of the following actions:

- a. Issue a license to Respondent;
- b. Issue a license to Respondent with conditions for Respondent's practice, limitations upon the scope of Respondent's practice, impose a period of probation upon Respondent's license, and/or impose any other action available by law; or
- c. Deny Respondent a license based upon his failure to meet the requirements for licensure and/or the burden of proof.

Dated: 07/22/2014

MINNESOTA BOARD
OF MARRIAGE AND FAMILY THERAPY



JOHN SEYMOUR, Ph.D., LMFT
Board Chair

Ph.D., LMFT