

STATE OF MINNESOTA  
BOARD OF PSYCHOLOGY

In the Matter of the  
Psychology License of  
Richard J. Anderson, M.S., LP  
License No. LP0004

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

The above-entitled matter was initiated pursuant to a Notice of and Order for Hearing issued by the Complaint Resolution Committee ("Committee") of the Minnesota Board of Psychology ("Board") on March 10, 2000. On May 16, 2000, Administrative Law Judge Kenneth A. Nickolai issued an order granting a motion by the Committee for summary disposition. Judge Nickolai recommended that the Board take disciplinary action against the psychology license of Richard J. Anderson, M.S., LP ("Respondent"). The order also stated that Respondent was entitled to a hearing to present evidence in mitigation and in regards to the propriety of any particular disciplinary action.

The matter was subsequently referred to Administrative Law Judge Beverly Jones Heydinger for the mitigation hearing phase. On October 5, 2001, Judge Heydinger issued an order finding that Respondent had waived his right to a mitigation hearing. In addition, she reaffirmed Judge Nickolai's summary disposition order and again recommended that the Board impose appropriate discipline on Respondent.

On December 5, 2001, Respondent and the Committee were notified in writing that the Board would meet to consider the case on January 18, 2002, and that each party could appear and would be permitted up to 30 minutes to present oral argument. The parties were also invited to submit proposed orders and exceptions, if any, to Judge Nickolai's order of May 16, 2000, and

Judge Heydinger's order and recommendation of October 5, 2001. All such materials were due to be filed with the Board and served no later than January 7, 2002.

A proposed order and written argument were timely received from the Committee. There was no submission by Respondent. On January 16, 2002, however, the Board received a letter from Respondent by facsimile machine stating, among other things, that due to an unexpected death in his family some ten days earlier he had been unable to respond and required a two month extension. The Board notified the parties the following day that it would permit oral argument regarding Respondent's time extension request at the Board's meeting on January 18, 2002, prior to any consideration of the underlying case.

The Board met on January 18, 2002, at University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota 55414. The following members of the Board were present: Samuel Albert, Ph.D., LP; Marcia Farinacci; Susan Hayes; Jane C. Hovland, Ph.D., LP; Ralph D. Maves, M.S., LP; John L. Romano, Ph.D., LP; Nicholas J. Ruiz, Ph.D., LP; Jack B. Schaffer, Ph.D., LP; Jane White Schneeweis, M.A., LP; and Myrla Seibold, Ph.D., LP. Assistant Attorney General Paul R. Kempainen, Suite 1400, 445 Minnesota Street, St. Paul, Minnesota 55101-2131, appeared and presented oral argument for the Committee. No appearance was made by or on behalf of Respondent. Assistant Attorney General Robert T. Holley was present as counsel to the Board. As the sole remaining member of the Committee, Jane C. Hovland, Ph.D., LP, did not participate in deliberations and did not vote in the matter.

Based on its review of the record of this proceeding, the Board made the following:

#### **FINDINGS OF FACT**

1. The Board adopts the facts contained in Judge Nickolai's summary disposition order, dated May 16, 2000, a true and correct copy of which is attached hereto as Exhibit 1 and

incorporated herein by reference. The Board also adopts the facts contained in Judge Heydinger's order and recommendation, dated October 5, 2001, a true and correct copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.

2. On August 5, 1983, the Board licensed Respondent as a psychologist in the State of Minnesota. During all times relevant herein, Respondent has continued to be licensed by the Board.

3. On April 16, 1998, the State of Minnesota, through the Attorney General's Medicaid Fraud Division, initiated criminal proceedings against Respondent with a Complaint filed in Ramsey County District Court. The allegations related to Respondent's conduct while he was the sole owner of the Children's Counseling Center in Winona, Minnesota, which specialized in the treatment of children.

4. On July 16, 1999, as part of plea negotiations, the State filed an Amended Complaint, which charged one count of felony theft by swindle and one count of felony medical assistance fraud. Specifically, the first count alleged that between approximately February 1, 1993, and September 30, 1996, Respondent had wrongfully and unlawfully swindled the Minnesota Department of Human Services ("DHS"), whether by artifice, trick or other means, into paying public funds for fraudulent claims for psychological services in the amount of \$56,288.31. The second count alleged that between approximately January 1 and April 13, 1998, Respondent had presented claims for reimbursement to DHS for medical assistance funds with the intent to defraud the Medicaid program, knowing the claims were false in whole or in part, and which actually defrauded the Medicaid program, resulting in payment of \$2,763.37.

5. As part of the plea negotiations, Respondent signed a Stipulation and a Statement of Parties' Agreement. In these documents, Respondent agreed, among other things, to be

permanently excluded from the Medicaid program and to submit no further claims to Medicaid and Medicare or to any similar government health care program for the rest of his natural life.

6. On July 16, 1999, Respondent entered pleas of guilty to both counts of the Amended Complaint.

7. On August 25, 1999, Respondent was sentenced for his convictions. The judge indicated on the Probation Referral/Judgment Upon Conviction/Warrant of Conviction that Respondent was convicted of two felony offenses and that he received a felony-level sentence for each count. The judge stayed imposition of Respondent's sentence contingent on several conditions, including the following: 1) Respondent must serve 20 years of probation for the first count of his conviction and 10 years for the second; 2) Respondent must make restitution to DHS in the amount of \$58,000; 3) Respondent must have no contact with the "victims" in the case, including his previous employees; and 4) Respondent must comply with any other conditions that the probation officer directs.

8. Respondent has waived his right for a hearing to present evidence in mitigation of the fact that he has been convicted of two felony crimes related to dishonesty or fraud.

9. On July 18, 2001, Respondent submitted an affidavit stating that he is no longer engaged in the private practice of psychology in Minnesota.

10. On September 5, 2001, Respondent sent a letter to the Board stating that he wished to terminate his license to practice psychology.

11. In a letter received from Respondent by facsimile machine on January 16, 2002, Respondent informed the Board, among other things, that he was withdrawing the voluntary termination of his license.

Based on the foregoing Findings of Fact, the Board makes the following:

### **CONCLUSIONS OF LAW**

1. Respondent's conduct outlined in the Findings of Fact above constitutes a violation of Minn. Stat. § 148.941, subd. 2(a)(4), and is grounds for disciplinary action against his license.

2. Specifically, Respondent has been convicted of or has pled guilty to a felony or other crime, an element of which is dishonesty or fraud.

3. There are no mitigating circumstances for such conduct.

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

### **ORDER**

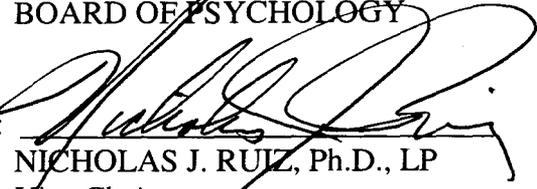
IT IS HEREBY ORDERED as follows:

1. Respondent's request for a two month extension is **DENIED**.
2. Respondent's license as a licensed psychologist in the State of Minnesota is **REVOKED**, effective immediately.
3. If he has not already done so, Respondent shall surrender his original license and current license renewal certificate to the Board. Respondent shall accomplish surrender by delivering personally or by certified mail said license and certificate to the Minnesota Board of Psychology, c/o Pauline Walker-Singleton, Executive Director, University Park Plaza, 2829 University Avenue S.E., Suite 320, Minneapolis, Minnesota 55414, within five days after receipt by Respondent of this Order.
4. This Order constitutes a disciplinary action against Respondent.

5. This Order is a public document and will be sent to all appropriate data banks.

Dated: January 24, 2002

STATE OF MINNESOTA  
BOARD OF PSYCHOLOGY

By: 

NICHOLAS J. RUIZ, Ph.D., LP  
Vice Chairperson

## MEMORANDUM

### 1. Time Extension Request

The unexpected death of a member of Respondent's family is regrettable. Based on his own written statement, however, Respondent was aware of the death some ten days before notifying the Board and requesting a time extension. Further, he was notified of the January 7, 2002, due date for the submission of a proposed order and any exceptions to the reports of the administrative law judges on December 5, 2001.

While not binding on the Board for purposes of Respondent's request, a rule of the Office of Administrative Hearings is instructive. It provides in pertinent part as follows: "A request for a continuance filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained." Minn. R. 1400.7500 (1999). As noted, Respondent was aware of the reason on which his request was based more than five days prior to our meeting of January 18, 2002, and well before his submission of the request. Clearly, Respondent was provided sufficient time to respond. By unanimous vote of the Board's participating members, his request has been denied as untimely.

Furthermore, even if the request had been filed in a timely manner, it fails to present recognized grounds for a continuance. *See id.* Respondent's request letter indicates that a principal purpose of the request is to "be given 4 hours with the Board, or with representatives of the Board, so that they are given the opportunity to hear and see the mountain of evidence totally contradicting Medicaid's case." The record in this matter has long been closed. *See* Minn. R. 1400.7800 J (1999); *see also* Order and Recommendation, dated October 5, 2001. We afforded Respondent the opportunity to submit a proposed order and exceptions to the reports of the administrative law judges, and to appear at our meeting on January 18, 2002, to present oral argument for not more than 30 minutes. The Board is neither authorized nor inclined, however, to consider information which is not part of the record or to participate in any belated challenge by Respondent to the criminal convictions for which he was sentenced more than two years ago.

## **2. License Revocation**

The underlying facts in this case are not in dispute. Respondent pled guilty to and has been convicted of two felony crimes: theft by swindle and medical assistance fraud. The Minnesota Psychology Practice Act provides in relevant part as follows:

The board may impose disciplinary action . . . against an applicant or licensee whom the board, by a preponderance of the evidence determines:

.....

(4) has been convicted of or has pled guilty . . . to a felony or other crime, an element of which is dishonesty or fraud . . . .

Minn. Stat. § 148.941, subd. 2 (a) (4) (2000). By definition, the crimes of which Respondent has been convicted include elements of dishonesty or fraud. *See* Minn. Stat. §§ 609.466 and 609.52, subd. 2 (4) (2000); *see also* Order on Motion for Summary Disposition, dated May 16, 2000, at pp. 4, 7.

A range of sanctions, including license revocation, is available to the Board for practice act violations. *See id.* at subd. 2 (b). Our decision to revoke Respondent's license was unanimous and is based on several factors. First and most troubling is the fact that the crimes in question arise out of and relate directly to the practice of psychology. Respondent's conduct has adversely impacted not only his clients and his own career but the reputation of the entire profession. The economic magnitude of Respondent's crimes is also telling, resulting in court-ordered restitution to DHS in the amount of \$58,000. Of related concern is the frequency and duration of Respondent's unlawful behavior. While his so-called Alford/Goulette plea in the criminal proceeding permitted Respondent to plead guilty and simultaneously assert his innocence (*see, e.g.*, Order on Motion for Summary Disposition, p. 2, n. 1), the evidence considered by the court in accepting the plea included documentation of the submission of more than 800 fraudulent medical assistance claims to DHS over a five year period. *See* Affidavit of Susan Fortney Renstrom, dated March 10, 2000; Notice of and Order for Hearing, Exhibits A-D. Among the several improper billing scenarios evidenced are billing for services not provided, billing for the services of ineligible providers under Respondent's provider number, and billing social outings with adolescent clients as therapeutic services and psychological testing. Notice of and Order for Hearing, Exhibits A-D.

In denying a request by Respondent to stay the imposition of his sentence in the criminal proceeding, Ramsey County District Court Judge Mary Louise Klas stated the following to Respondent's attorney:

I don't know what effect the stay of imposition would have on his licensing status but I can't agree with what you have asked for . . . I view everything I have learned about this case in the months I have had to deal with it as serious behavior. Now, I know that Mr. Anderson does not believe he committed any wrongs. I view it differently. The state views it differently.

Transcript of August 25, 1999, sentencing, at p. 13. We share the judge's view concerning the seriousness of Respondent's behavior.

Further, the record indicates that Respondent was given ample opportunity to present evidence as to what discipline is appropriate in this case and whether mitigating factors exist for imposing lesser discipline. *See, e.g.*, Order on Motion for Summary Disposition, dated May 16, 2000. After being granted several extensions to prepare and present his case, Respondent ultimately withdrew his request for a hearing regarding appropriate discipline and any mitigation issues. Letter to Judge Heydinger from Richard J. Anderson, M.S., dated October 1, 2001; Order and Recommendation, dated October 5, 2001. Nevertheless, Respondent has submitted a packet of some 45 documents which he has asked be considered for mitigation purposes. Letter to Judge Heydinger from Richard J. Anderson, M.S., dated October 1, 2001. The administrative law judge has included the documents in the case record for our review, but recommends that they not be regarded as evidence or the basis for any findings of fact. Order and Recommendation, dated October 5, 2001.

Under the circumstances, the Committee argues that Respondent has presented no evidence of mitigation and directs our attention to a series of cases in support of license revocation:

Minnesota cases involving the analogous professional licensing area of attorney discipline have held that conviction of a felony generally warrants license revocation. (i.e., disbarment) unless significant mitigating factors exist. *In re McNabb*, 577 N.W.2d 924, 926 (Minn. 1998); *In re Koss*, 572 N.W.2d 276, 278 (Minn. 1997); *In re Anderly*, 481 N.W.2d 366, 369 (Minn. 1992); and *Matter of Hedlund*, 293 N.W.2d 63, 66 (Minn. 1980). The cases have also held that the burden of proof is on the licensee to show mitigating circumstances. *In re Merlin*, 572 N.W.2d 737, 741 (Minn. 1998); *Koss* at 278; *Anderly* at 369.

Committee's Written Argument to the Board, dated January 7, 2002.

The cases cited by the Committee have been examined, as has each of the documents submitted by Respondent, including various certificates of recognition and appreciation, transcripts, client thank you letters, examples of continuing education activities and clinic brochures. Whether or not Respondent's materials are regarded as evidence, we are not persuaded that any remedy except license revocation is appropriate in this case. By reason of the seriousness of the crimes for which Respondent has been convicted and their direct relationship to the practice of psychology, he has forfeited any further opportunity to remain licensed as a psychologist in this state. We are hopeful that today's decision will deter other psychologists from engaging in similar conduct.

### **3. Voluntary License Termination**

Finally, we note that Respondent elected not to renew his license in 2001 and sought voluntary license termination. *See* Letter to Board of Psychology from Richard J. Anderson, M.S., dated September 5, 2001. In his letter received by facsimile machine on January 16, 2002, Respondent states that he is withdrawing the voluntary termination of his license. Judge Heydinger previously ordered that Respondent's notice of his intent not to renew his license has no effect on this proceeding. Fourth Prehearing Order, dated September 19, 2001, para. 5. We agree. Whether Respondent requested voluntary license termination and subsequently withdrew the request is of no moment relative to the status of his license.

As set forth in Board rule, "A license may be voluntarily terminated at any time upon written notification to the board, *unless a complaint is pending against the licensee.*" Minn. R. 7200.3700 (1999). (Emphasis added.) The initiation and pendency of the instant proceeding plainly constitutes the existence of a pending complaint against Respondent. *See* Minn. Stat. § 214.103, subd. 7 (2000). Moreover, it is well-established that a lapsed or unrenewed

professional license cannot divest a licensing agency of jurisdiction while disciplinary proceedings are pending. See, e.g., *In re Lallier*, 555 N.W.2d 903 (Minn. 1996); *Gilpin V. Board of Nursing*, 837 P.2d 1342 (Mont. 1992), *overruled in part on other grounds by Erickson v. State ex rel. Bd. of Med. Exam'rs*, 938 P.2d 625 (Mont. 1997); *Cross v. Colorado Bd. of Dental Exam'rs*, 552 P.2d 38 (Colo. Ct. App. 1976).

Accordingly, we have retained jurisdiction over Respondent throughout this proceeding and may properly impose disciplinary action without regard to his non-renewal of his license, his attempt to voluntarily terminate licensure or his recent notice of the withdrawal of that attempt.

The Findings of Fact, Conclusions of Law and Final Order constitute the Decision of the Board in this matter.

BY THE BOARD