

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
the Psychology License of
Michael A. Appleman, M.A., LP
License No. LP2613

ORDER

On January 3, 2002, Michael A. Appleman, M.A., LP ("Respondent") filed a request with the Minnesota Board of Psychology ("Board") for a stay of enforcement and/or reconsideration of the Board's Findings of Fact, Conclusions and Final Order, dated December 26, 2001 ("Final Order"). Respondent asked that the stay "take effect immediately and remain in effect until the tenth work day following the conclusion of all appellate proceedings in this case or, in the alternative, for such reasonable period of time as the Board deems appropriate." On January 7, 2002, the Board established a briefing schedule regarding the request and informed the parties that it would not seek to enforce the Final Order before reaching a decision on Respondent's request. The Board's Complaint Resolution Committee ("Committee") submitted a response to Respondent's request on January 11, 2002. There was no reply by Respondent.

The Board met to consider the matter on January 18, 2002, in the Board conference room, Suite 320, University Park Plaza, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414-3237. The following members of the Board were present: Marcia Farinacci; Susan Hayes; Jane C. Hovland, Ph.D., L.P.; Ralph D. Maves, M.S., L.P.; John Romano, Ph.D., L.P.; Nicholas J. Ruiz, Ph.D., L.P.; Jack B. Schaffer, Ph.D., LP; Jane W. Schneeweis, M.A., L.P.; and Myrla Siebold, Ph.D., L.P. Assistant Attorney General Robert T. Holley was present as legal adviser to the Board. Appearances by Respondent and the Committee were not requested.

Upon all of the files, records and proceedings herein,

IT IS HEREBY ORDERED as follows:

1. Respondent's request that the Board stay enforcement of the Final Order is **DENIED**.
2. Respondent's request that the Board reconsider the Final Order is **DENIED**.
3. The Final Order is reaffirmed in all respects; provided that the time by which Respondent must pay a civil penalty to the Board (Final Order, p. 9, para. 2) and secure appropriate referrals for existing clients and conclude the administrative details necessary to close his practice (*id.* at p.10, para. 6) shall begin to be computed from the date of service of this Order, not from the date or date of service of the Final Order.

Dated: January 25, 2002

MINNESOTA BOARD
OF PSYCHOLOGY

By: Jane C. Hovland
JANE C. HOVLAND, Ph.D., LP
Chairperson

MEMORANDUM

Stay of Enforcement

Respondent argues that we should stay the enforcement of our Final Order because a stay would not create any risk of harm to the public or to any of Respondent's current clients. He would support the claim with the following assertions:

In more than 18 years of practicing psychology, the respondent has never caused psychological harm to any client. No evidence of any such harm has ever been presented to the Board, and no part of the Board's Final Order rested upon any finding that any such harm had occurred.

Request for Stay of Enforcement and Reconsideration of the Findings of Fact, Conclusions and Final Order dated December 26, 2001 (“Respondent’s Request”), p. 2, para. 3.a.i. As further evidence that he would pose no danger to anyone if permitted to continue to practice during the pendency of a promised appeal of the Final Order, Respondent states that he has never been sued for malpractice and, again, that none of his clients has been harmed psychologically while he continued to practice during this case’s lengthy proceedings. *See id.* at p. 3, para. 3.a.ii-iii.

Respondent’s request for a stay of enforcement would appear to be analogous to a request to a court for a temporary injunction. Accordingly, his identification of the absence of risk of harm to his clients as a factor for our consideration seems appropriate. *See, e.g., Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). The analysis need not be belabored, however. We have imposed the most significant sanction available to us, license revocation, precisely because Respondent’s continued practice presents an unacceptable risk of harm to clients and to the public.

Respondent’s claims that the record in this matter is without evidence that he has caused client harm is patently inaccurate. Our decision revoking Respondent’s license is supported by a voluminous record evidencing a multitude of ethical lapses, instances of incompetence, and documentation failures. It is indisputable that Respondent’s misconduct has resulted in a variety of types of client harm or potential harm, including psychological harm, all of which has previously been inventoried at great length. *See* Final Order, pp.15-25; ALJ’s Report, pp. 98-180 and Appendix 1. Further, we do not find persuasive Respondent’s claims that he presents no risk to clients because he has not been sued for malpractice during 18 years of practice or because he has harmed no clients during the pendency of this action. In light of the extremely large number of proven violations of the Minnesota Psychology Practice Act and Board rules underlying our

revocation of Respondent's license, a purported absence of malpractice claims plainly is not a reliable basis for predicting Respondent's future conduct. We would hope that Respondent has caused no additional harm to clients while continuing to practice during the pendency of this case. Whether the claim is true, however, is not a matter of record.

Respondent also argues that enforcement of our Final Order should be stayed because a failure to do so will harm his current clients. Respondent's Request, p.3, para. b. Some of Respondent's clients who apparently have been treating with him for many years are said to be profoundly depressed, suicidal or suffer from schizophrenia. *Id.* at para. b.i. Respondent claims that "[a]n abrupt termination of the therapeutic relationship between the respondent and those patients would create a genuine, substantial, and unnecessary risk of harm to the patients in question." *Id.* at para. b.ii.

Once again, by analogy to temporary injunction proceedings, the issue identified by Respondent seems appropriate for our consideration. Absent more specific information concerning the clients in question, however, it is evident that Respondent has failed to make a showing sufficient to justify a stay based on claims of patient harm. Indeed, Respondent's license was revoked largely to protect very vulnerable clients such as those he now describes. To permit Respondent to remain in practice to treat such individuals, without more, would be irresponsible and wholly inconsistent with our public protection obligation.

Further, we take exception to Respondent's assertion that our Final Order will result in an abrupt termination of the therapeutic relationship which will be harmful to clients. Our order requires that Respondent secure appropriate referrals within 60 days. Final Order, p. 10, para. 6. It is an adequate period of time. As pointed out by the Committee, in cases of disbarment, for example, Minnesota lawyers must notify clients of the court's order and urge them to seek legal

advice elsewhere within a mere 10 days. Rules on Lawyers Professional Responsibility, Rule 26. Given our decision set forth above to recompute the time by which Respondent must secure appropriate referrals for existing clients, he will have been provided approximately 30 additional days. At the same time, by unanimous vote, we deny Respondent's request for a stay.

Reconsideration

Respondent also requests that we reconsider our Final Order, expressly including the decision to revoke his license and the time periods imposed for implementing that decision. Respondent's Request, p. 4, para. 5. The request appears to be based exclusively on the ground that Respondent views the decision as harsh. *Id.* There is no suggestion that he alleges any accident, fraud, newly discovered evidence or other recognized ground relating to requests for reconsideration, new trials or the opening of judgments. *See, e.g.*, Minn. R. 1400.8300; Minn. R. Civ. P. 59 and 61.

It is not our goal to punish Respondent. As noted above and in our Final Order, the Board is charged with public protection responsibilities. Our authority to revoke a license is exercised only in the most aggravated circumstances. The evidence before us in this case demands the revocation of Respondent's license for purposes of public protection. The time periods which we have imposed relating to the implementation of our Final Order are reasonable and fully warranted.

Respondent has shown no compelling reason why our Final Order should be reconsidered, and by unanimous vote we have elected not to do so.

BY THE BOARD

