

MINNESOTA BOARD OF PSYCHOLOGY

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PERSONAL

June 26, 2001

Gary L. Fischler, Ph.D., LP
604 Parkside Professional Center
825 So. Eighth St.
Minneapolis, MN 55404

Dear Dr. Fischler:

This letter is notification that the Minnesota Board of Psychology Complaint Resolution Committee has completed its review of your compliance with the Agreement for Corrective Action, dated March 30, 2001, and has determined that you have satisfactorily completed the corrective action agreed upon. Therefore, the complaints referenced in the Corrective Action Agreement are dismissed.

Pursuant to Minnesota Statutes Section 214.103 an Agreement for Corrective Action is a public document, and as such becomes a permanent part of a licensee's public file. All other material related to a complaint is classified under the Minnesota Government Data Practices Act as "confidential" while the complaint is in active status, and "private" after it is closed. Therefore such material is not part of a licensee's public licensure file and is not available to the public. Please note, however, that this letter will be included in your public licensure file to reflect your compliance with the Agreement For Corrective Action.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Labrocca".

PATRICIA LABROCCA
Regulations Analyst

cc: Nathan Hart, Assistant Attorney General
Thomas Pearson, Esq.

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY
COMPLAINT RESOLUTION COMMITTEE**

In the Matter of
the License of
Gary L. Fischler, Ph.D., L.P.
License Number: LP0722

**AGREEMENT FOR
CORRECTIVE ACTION**

This agreement is entered into by and between Gary L. Fischler, Ph.D., L.P. (“Licensee”), and the Complaint Resolution Committee (“Committee”) of the Minnesota Board of Psychology (“Board”) pursuant to the authority of Minn. Stat. § 214.103, subd. 6(a) (1998). Licensee and the Committee hereby agree as follows:

FACTS

1. This agreement is based upon the following facts:
 - a. **Background.** Licensee practices psychology at Gary L. Fischler & Associates, a professional association that employs psychologists licensed by the Board. As part of his practice, Licensee performs psychological testing, evaluation, and screening of candidates for employment, particularly policemen and firemen. Licensee also conducts “fitness for duty” examinations of existing employees. Licensee is hired by employers. In connection with these evaluations, Licensee has declined to provide clients who received psychological services from him with copies of their records or access to their records as described more fully below.
 - b. In 1996, the [Redacted] Police Department referred client #1, a police officer, to Licensee for a psychological evaluation. Licensee evaluated client #1 and prepared and maintained written records of his services. Client #1 later requested a copy of all of his records from Licensee. Licensee declined to provide the records, and by letter dated May 6, 1996, Licensee told the police officer that he must request his records from the police department.

c. In January 1997, Licensee provided psychological services to client #2, an employee at a refinery. Client #2's employer referred him to Licensee for a psychological evaluation related to client #2's ability to safely work in the refinery environment. On February 13, 1997, client #2 made a written request to Licensee to review and obtain a copy of his records. Licensee declined to provide client #2 access to his records. By letter dated March 14, 1997, Licensee notified client #2 that he received the client's request for information and promised to respond to client #2's request after Licensee's attorney completed research on the legal and ethical issues related to the records request.

d. In 1998, client #3 applied for employment with the [Redacted] [Redacted] Police, which referred him to Licensee for pre-employment psychological testing and evaluation. In early 1999, Licensee evaluated client #3 and prepared a psychological report recommending that client #3 not be hired. The [Redacted] [Redacted] Police did not hire client #3. On more than one occasion, client #3 requested that Licensee provide him with a copy of his records. On or about July 6, 1999, client #3 sent Licensee a certified letter stating, "This is the third time I have requested a copy of My medical file from You in as many months." Client #3's letter included a detailed list of the records he was requesting. Licensee declined to provide client #3 with a complete copy of his records.

e. Client #4 was evaluated on two separate occasions at Gary L. Fischler & Associates, P.A., once in 1995 and again in 1999. In 1995, Licensee evaluated client #4 and prepared a psychological report recommending that client #4 not be hired by the [Redacted] Police Department. In 1999, another psychologist employed by Fischler & Associates evaluated client #4 and prepared a psychological report recommending that client #4 not be hired by the [Redacted] [Redacted] Patrol. Client #4 made two written requests to Licensee for complete copies of his records. Licensee declined to provide client #4 with the records he requested as demonstrated by the following:

1) By letter dated November 15, 1999, client #4 requested that Licensee provide him with "copies of any and all materials in your possession regarding me[.]"

By letter dated December 1, 1999, Licensee acknowledged receiving client #4's request for records related to his "previous psychological examinations at this office." Licensee told client #4 that "[r]eports summarizing these results have been sent to the organizations that referred you here, and you should be able to obtain those directly from those departments."

2) By letter dated December 8, 1999, client #4 made a second written request for his records. Licensee did not respond to client #4's second request for copies of his records.

f. After review of the applicable laws and ethical rules and consultation with legal counsel, Licensee concluded that in the case of individuals referred to him by third parties solely for the purposes of pre-employment screening, assessing fitness for duty, and adverse medical examinations he was not required to provide certain records to the evaluatee.

2. On September 29, 2000, Licensee met with the Committee to discuss the facts set forth in paragraph 1. Based on the discussion, the Committee views certain of Licensee's practices to be contrary to Minn. Stat. §§ 148.941, subd. 2(a)(1) (1998), 148.941, subd. 2(a)(3) (1998), Minn. R. 7200.5700 and 7200.4900, subp. 1a., and Minn. Stat. § 144.335, although the Committee believes that Licensee acted in good faith. Licensee agrees that the conduct cited above occurred and constitutes a reasonable basis in law and fact to justify the corrective action described in paragraph 3 below.

CORRECTIVE ACTION

3. Licensee agrees to address the conduct referenced in paragraphs 1 and 2 by taking the following corrective actions:

a. ***Revision of Informed Consent Form.*** Within 30 days of the effective date of this agreement, Licensee shall revise his evaluatee/client consent forms to comply with the provisions of the Psychology Practice Act, including, but not limited to, Minn. Stat. § 144.335, Minn. Stat. § 148.89, subd. 2a., Minn. R. 7200.4900, subp. 1a., and Minn. R. 7200.4900, subp. 2D and H. Licensee shall forward a copy of his revised consent form to the

Committee by mailing it to the Board office. The Committee shall determine whether the revised form complies with the Psychology Practice Act.

b. **Revision of Future Contracts.** Licensee shall revise all future contracts for performing evaluations to comply with the provision of the Psychology Practice Act, including, but not limited to, the fact that evaluatees are considered clients, in addition to the person or entity for whom the evaluation is being performed.

c. **Release of Information Procedures.** Within 30 days of the effective date of this agreement, Licensee shall forward a copy of his written procedures regarding release of information allowing evaluatee clients to obtain information from Licensee. Included shall be intake forms and letters indicating that evaluatees have access to Licensee's records. The Committee shall determine whether the procedures comply with the Psychology Practice Act.

d. **Protocol for Release of Information to Evaluatee Clients.** Within 30 days of the effective date of this agreement, Licensee shall submit to the Committee a written protocol for release of information to evaluatee clients (including blank form(s)). The protocol shall provide for the release of as much information as possible to evaluatee clients, while protecting the integrity of testing and examination materials, including, but not limited to, the test security provisions of Minn. Stat. § 148.965.

e. **Costs.** Licensee shall be responsible for all costs incurred as a result of compliance with this agreement.

f. **Violation of Agreement.** The Committee may take further action as allowed by law in the event Licensee does not comply in a timely manner with the requirements of this Agreement.

g. **Applicability to Renewal Requirements.** No condition imposed as a remedy by this Agreement for Corrective Action shall be used as a continuing education activity for the purpose of renewal of Licensee's license to practice psychology, unless it is specifically stated in this Agreement for Corrective Action that the condition may be used for this purpose.

OTHER INFORMATION

4. Licensee understands that this agreement does not constitute disciplinary action.

5. Upon Licensee's satisfactory completion of the corrective action referenced in paragraph 3, the Committee agrees to dismiss the complaints referenced in paragraph 1. Licensee agrees that the Committee shall be the sole judge of satisfactory completion. Licensee understands and further agrees that if, after dismissal, the Committee receives complaints regarding a client's request for records made after the date of this Agreement, the Committee may reopen the dismissed complaints.

6. If Licensee fails to complete the corrective action satisfactorily or if the Committee receives additional complaints regarding a client's request for records, the Committee may, at its discretion, reopen the investigation and proceed according to the Board's practice act and Minnesota Statutes chapters 214 and 14. In any subsequent proceeding, the Committee may use as proof of the facts of paragraph 1 Licensee's agreements herein. Licensee agrees that failure to complete corrective action satisfactorily constitutes failure to cooperate under Minn. Stat. § 148.941, subd. 4, and may subject Licensee to disciplinary action by the Board.

7. Licensee has been advised by Committee representatives that Licensee may choose to be represented by legal counsel in this matter and has been represented by Thomas A. Pearson.

8. This agreement shall become effective upon execution by the Committee and shall remain in effect until the Committee dismisses the complaint, unless the Committee receives additional information that renders corrective action inappropriate. Upon receipt of such information, the Committee may, at its discretion, proceed according to the Board's practice act and Minnesota Statutes chapters 214 and 14.

9. Licensee understands and acknowledges that this agreement and any letter of dismissal are classified as public data.

10. Licensee hereby acknowledges having read and understood this agreement and having voluntarily entered into it. This agreement contains the entire agreement between the

Committee and Licensee, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this agreement.

LICENSEE

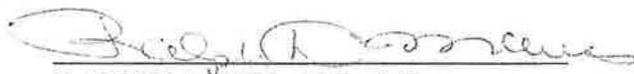
MINNESOTA BOARD OF PSYCHOLOGY
COMPLAINT RESOLUTION COMMITTEE



GARY L. FISCHLER, Ph.D., L.P.



JANE HOVLAND, Ph.D., L.P.
Committee Chair



RALPH MAVES, M.S., L.P.
Committee Member

SHARON ANDREWS
Committee Member

Dated: 2/20/, 2001

Dated: 3/30, 2001

AG: 420313, v. 01