

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
Nicole Holman, M.A., L.P.P.
License No. LPP0204

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

The above-entitled matter came on for a prehearing conference on May 2, 2011, before Administrative Law Judge (“ALJ”) Manuel J. Cervantes, at the request of the Minnesota Board of Psychology (“Board”) Complaint Resolution Committee (“Committee”). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Committee on April 22, 2011. Benjamin R. Garbe, Assistant Attorney General, represented the Committee. Nicole Holman, M.A., L.P.P. (“Respondent”), made no appearance. By letter dated April 26, 2011, Respondent’s counsel advised the parties of Respondent’s intention not to participate in these proceedings.

On May 18, 2011, the ALJ issued Findings of Fact, Conclusions, and Recommendation (“ALJ’s report”), recommending the Board take disciplinary action against the license of Respondent. (A true and accurate copy of the ALJ’s report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on June 17, 2011, in Suite 320, University Park Plaza, 2829 University Avenue SE, Minneapolis, Minnesota 55414-3237. Benjamin R. Garbe, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent did not appear. Board members Chris Bonnell, J.D.; Jean Wolf, Ph.D., L.P.; and Patricia Stankovitch, Psy.D., L.P., did not participate in deliberations and did not vote in the matter. Gail A. Schiff, Regulations Analyst for the Board, did not participate in the

deliberations. Daphne A. Lundstrom, 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 accepts the May 18, 2011, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 4 of the ALJ's Conclusions states, "Under Minn. R. 1400.6000, when a party defaults, the allegations set out in the Notice and Order for Prehearing Conference may be taken as true and deemed proven. In this matter, the ALJ takes those allegations as true and they are deemed proven without further evidence."

The allegations contained in the Notice of Hearing are as follows:

1. In July 2009, Respondent began employment as a program therapist at a correctional facility ("facility"), providing professional therapy to inmates enrolled in a chemical dependency treatment program.

2. From March 2010 until August 2010, Respondent provided therapeutic services to client #1, a male inmate at the facility who was enrolled in the chemical dependency treatment program.

3. In August 2010, the facility initiated an internal investigation of Respondent's practice through the Department of Corrections ("DOC"), amid allegations that Respondent and client #1 were involved in a romantic relationship concurrent with Respondent providing psychological services to client #1 within the chemical dependency treatment program.

4. The DOC investigation revealed that between July 25, 2010 and August 15, 2010, client #1 placed 106 phone calls from the facility to the cell phone of a female who identified herself as "Rachel." It was determined that "Rachel" was in fact Respondent.

5. During phone conversations, Respondent and client #1 engaged in sexually explicit dialogue and other exchanges demonstrating an ongoing romantic relationship.

a. During a conversation on July 25, 2010, client #1 refers to "spanking" Respondent on one occasion, presumably during a therapeutic session.

b. During conversations on August 11 and August 14, 2010, Respondent and client #1 refer to an instance where client #1 exposed his genitalia to Respondent, presumably during a therapeutic session.

6. On August 18, 2010, Respondent was interviewed by DOC investigators. During the course of the interview, Respondent provided the following information:

a. The romantic relationship between Respondent and client #1 began in approximately June 2010.

b. Respondent purchased a "pre-paid" cell phone from a retail store, to be used exclusively for communication with client #1. Respondent gave client #1 the cell phone number. The first time client #1 contacted Respondent on the cell phone was sometime in June or July of 2010.

c. On one occasion, Respondent sent money to client #1 under client #1's sister's name.

CONCLUSIONS

The Board accepts the May 18, 2011, ALJ's report and accordingly adopts and incorporates the Conclusions therein.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respondent as a licensed psychological practitioner in the State of Minnesota is **REVOKED**. All state licenses and certificates shall be returned to the Board within ten (10) days of service of this Order.

2. IT IS FURTHER ORDERED that Respondent shall not practice psychology in any manner, shall neither offer nor provide psychological services of any kind within Minnesota, and shall not use the designation "licensed psychological practitioner," "licensed psychologist," "LPP," "LP," or any other designation that implies that Respondent is eligible to practice psychology in the State of Minnesota. Respondent shall not imply to any persons by words,

conduct, or advertisement that Respondent is authorized to practice psychology in the State of Minnesota.

3. IT IS FURTHER ORDERED that Respondent may not reapply for licensure earlier than ten (10) years from the date 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 this 21st day of June, 2011.

MINNESOTA BOARD
OF PSYCHOLOGY



JEFFREY LEICHTER, Ph.D., L.P.
Board Chair

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of Nicole Holman, M.A., L.P.P.
License No. LPP0204

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a prehearing conference before Administrative Law Judge Manuel J. Cervantes ("ALJ") on May 2, 2011, commencing at 1:30 p.m. at the Office of Administrative Hearings in St. Paul, Minnesota.

Benjamin R. Garbe, Assistant Attorney General, represents the Board's Complaint Resolution Committee, Board of Psychology. Mr. Kevin Gregorius, Attorney at Law, represents Ms. Holman (Respondent).

By letter dated April 26, Mr. Gregorius indicated that Respondent would not participate in the present matter. Neither Respondent nor her counsel appeared at the scheduled prehearing conference on May 2, 2011.

By letter filed May 3, 2011, the Complaint Resolution Committee moved for default recommendation.¹ The hearing record closed on May 16, 2011; the date upon which Respondent's objection to the motion for default was due. The Respondent did not object.

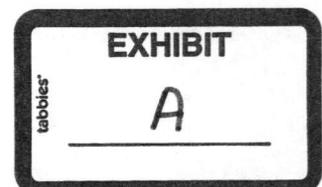
STATEMENT OF THE ISSUES

Whether the foregoing conduct constitutes one or more of the following grounds for disciplinary action:

1. Engaging in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, without actual injury having to be established, in violation of Minn. Stat. § 148.941, subd. 2(a)(3), and Minn. R. 7200.5700;

2. Violating the rules of conduct/code of ethics adopted by the Board, in violation of Minn. Stat. § 148.98 and Minn. R. 7200.4500;

¹ Minn. R. 1400.6000.



3. Providing psychological services to a client when the psychologist's objectivity was impaired, due to the fact that the psychologist exploited the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 7200.4810, subp. 2.E.;

4. Exploiting the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 7200.4900, subp. 7a.; and

5. Engaging in sexual intercourse or other physical intimacies with a client, and/or engaging in verbal or physical behavior which was sexually seductive or sexually demeaning to a client, in violation of Minn. R. 7200.4900, subp. 8.

Based on the proceedings herein, the ALJ the following:

FINDINGS OF FACT

1. On April 22, 2011, a Notice and Order for Prehearing Conference and Hearing ("Notice") was served by mail upon Respondent's counsel, Kevin M. Gregorius, at his place of business in Minneapolis, Minnesota. The Notice scheduled a prehearing conference for May 2, 2011.²

2. By letter dated April 26, 2011, counsel for the Board received notification that his client, the Respondent herein, did not intend to participate in the present proceeding. Neither Respondent nor her counsel appeared at the scheduled prehearing conference on May 2, 2011.

3. The Notice contained the following informational warning:

Respondent's failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that Respondent is in default, that the allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld. (Emphasis added.)

4. Because Respondent failed to appear, she is in default.

5. In July 2009, Respondent began employment as a program therapist at a correctional facility ("facility"), providing professional therapy to inmates enrolled in a chemical dependency treatment program.

6. From March 2010 until August 2010, Respondent provided therapeutic services to client #1, a male inmate at the facility who was enrolled in the chemical dependency treatment program.

² Affidavit of Service and Notice and Order for Prehearing Conference and Hearing, filed April 25, 2011.

7. In August 2010, the facility initiated an internal investigation of Respondent's practice through the Department of Corrections (DOC), amid allegations that Respondent and client #1 were involved in a romantic relationship concurrent with Respondent providing psychological services to client #1 within the chemical dependency treatment program.

8. The DOC investigation revealed that between July 25, 2010 and August 15, 2010, client #1 placed 106 phone calls from the facility to the cell phone of a female who identified herself as "Rachel." It was determined that "Rachel" was in fact Respondent.

9. During phone conversations, Respondent and client #1 engaged in sexually explicit dialogue and other exchanges demonstrating an ongoing romantic relationship.

a. During a conversation on July 25, 2010, client #1 referred to "spanking" Licensee on one occasion, presumably during a therapeutic session.

b. During conversations on August 11 and August 14, 2010, Licensee and client #1 referred to an instance where client #1 exposed his genitalia to Licensee, presumably during a therapeutic session.

10. On August 18, 2010, Respondent was interviewed by DOC investigators. During the course of the interview, Respondent provided the following information:

a. The romantic relationship between Respondent and client #1 began in approximately June 2010.

b. Respondent purchased a "pre-paid" cell phone from a retail store, to be used exclusively for communication with client #1. Respondent gave client #1 the cell phone number. The first time client #1 contacted Respondent on the cell phone was sometime in June or July of 2010.

c. On one occasion, Respondent, under the assumed name of client #1's sister, sent money to client #1.

Based on these Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. The ALJ and the Board of Dentistry have jurisdiction, pursuant to Minn. Stat. §§ 14.50, 148.941, 214.10, and 214.103.

2. The Respondent was given notice of the prehearing conference in this matter and the Board has complied with all relevant procedural requirements.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of her failure to appear at the scheduled prehearing conference.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations set out in the Notice and Order for Prehearing Conference may be taken as true and deemed proven. In this matter, the ALJ takes those allegations as true and they are deemed proven without further evidence.

5. Respondent engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, without actual injury having to be established, in violation of Minn. Stat. § 148.941, subd. 2(a)(3), and Minn. R. 7200.5700.

6. Respondent violated the rules of conduct/code of ethics adopted by the Board, in violation of Minn. Stat. § 148.98 and Minn. R. 7200.4500.

7. Respondent provided psychological services to a client when the psychologist's objectivity was impaired, due to the fact that the psychologist exploited the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 7200.4810, subp. 2.E.

8. Respondent exploited the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 7200.4900, subp. 7a.

9. Respondent engaged in sexual intercourse or other physical intimacies with a client, and/or engaged in verbal or physical behavior which was sexually seductive or sexually demeaning to a client, in violation of Minn. R. 7200.4900, subp. 8.

RECOMMENDATION

Based upon these Conclusions, the ALJ recommends that the Board of Psychology take adverse action against Respondent's license and take appropriate disciplinary action.

Dated: May 18, 2011



MANUEL J. CERVANTES
Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Minnesota Board of Psychology will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Board shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this report and the Board must consider the exceptions in making a final decision. Parties should contact Angelina M. Barnes, Executive Director, Minnesota Board of Psychology, 2829 University Avenue SE, Suite 320, Minneapolis, MN 55414, 612-617-2230, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Board of Psychology fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a, and the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of Nicole Holman, M.A., L.P.P.
License No. LPP0204

CORRECTION ORDER

The above matter came on for a prehearing conference before Administrative Law Judge Manuel J. Cervantes ("ALJ") on May 2, 2011, commencing at 1:30 p.m. at the Office of Administrative Hearings in St. Paul, Minnesota.

Benjamin R. Garbe, Assistant Attorney General, represents the Board's Complaint Resolution Committee, Board of Psychology. Mr. Kevin Gregorius, Attorney at Law, represents Ms. Holman (Respondent).

By letter dated April 26, Mr. Gregorius indicated that Respondent would not participate in the present matter. Neither Respondent nor her counsel appeared at the scheduled prehearing conference on May 2, 2011.

By letter filed May 3, 2011, the Complaint Resolution Committee moved for default recommendation.¹ The hearing record closed on May 16, 2011; the date upon which Respondent's objection to the motion for default was due. The Respondent did not object. The undersigned ALJ granted the motion for default on May 18.

On May 19, 2011, a typographical error was brought to the attention of the undersigned ALJ.

IT IS HEREBY ORDERED:

That paragraph 1. of the Conclusions at p. 3 of the Findings Of Fact, Conclusions, and Recommendation, dated May 18, 2011, is corrected and shall read:

1. The ALJ and the Board of Psychology have jurisdiction, pursuant to Minn. Stat. §§ 14.50, 148.941, 214.10, and 214.103.

Dated: May 19, 2011



MANUEL J. CERVANTES
Administrative Law Judge

¹ Minn. R. 1400.6000.