

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
Arlis McCauley, M.S.Ed., L.P.
License No. LP2387

STIPULATION AND
CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Arlis McCauley, M.S.Ed., L.P. (Licensee) and the Minnesota Board of Psychology (Board) as follows:

1. During all times herein, Licensee has been and now is subject to the jurisdiction of the Board from which she holds a license to practice psychology in the state of Minnesota.

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

a. In August 1986, a psychiatrist signed a Provider Agreement for participation in the Minnesota Medicaid Program in connection with his association with a mental health center in Moorhead, Minnesota, and he was assigned a provider number. In 1988, Licensee communicated to the Minnesota Department of Human Services that the psychiatrist was associated with Licensee's clinic in Fargo, North Dakota. As a result of Licensee's communication, the psychiatrist's enrollment in the Minnesota Medicaid Program was updated on approximately September 6, 1988. On or about August 3, 1992, Licensee signed a Provider Agreement for participation in Minnesota's Medicaid Program. As a condition to participate in the Minnesota Medicaid Program, Licensee and the psychiatrist agreed to comply with all federal and state statutes and rules relating to the submission of claims and to certify the accuracy of all claims submitted.

b. In approximately November 1988, Licensee and the psychiatrist entered into an agreement under which the psychiatrist agreed to provide a minimum of three hours per month of consultation to Licensee's clinic. The psychiatrist visited the clinic once a month

for three or four hours on a Friday or a Saturday when the clinic was closed. He reviewed patient charts, determined whether or not the diagnosis was consistent with the intake interview, the treatment plan consistent with the diagnosis, and that the treatment plan was appropriate. He also provided input through written notes, which included suggesting possible other diagnoses, suggesting proposed treatment, and commenting on the treatment given. He also signed Medicaid claim forms. He spent approximately 20-30 minutes of each visit signing claim forms and the rest of the time reviewing patient charts. The psychiatrist did not attend staffings, did not see clients, and did not meet with staff to discuss treatment plans.

c. The psychiatrist's services to Licensee did not meet the definition of supervision under Minnesota Medicaid law. Specifically, the psychiatrist was not present and available on the premises more than 50 percent of the time when the supervisee was providing health services, and he did not accept full professional responsibility for a supervisee's actions and decisions, instruct a supervisee in his or her work, or oversee or direct the work of a supervisee.

d. Between December 1, 1988, and December 31, 1992, Licensee submitted or caused to be submitted a total of 449 claims to the Minnesota Medicaid Program under the psychiatrist's provider number. All of the claims identified the psychiatrist as the provider. A total of \$44,282 of Medicaid monies were paid as a result of the claims submitted, and checks were forwarded to Licensee's clinic.

e. Even after Licensee enrolled in Minnesota's Medicaid program in August 1992, she continued to submit claim forms to Minnesota's Medicaid program using the psychiatrist's name and provider number. A reduced rate of reimbursement would have applied to any claims Licensee submitted under her own name and provider number as a master's level psychologist.

f. Each claim Licensee submitted or caused to be submitted to the Minnesota and North Dakota Medicaid Programs referenced a 5-digit code reflecting the nature of the procedures performed or the service provided. The 5-digit codes are commonly referred to as

CPT (Physicians' Current Procedure Terminology) Codes. The following codes were repeatedly used on the claims Licensee submitted:

- 90801 Psychiatric Diagnostic Interview Examination
- 90830 Psychological Testing By A Physician
- 90841 Individual Medical Psychotherapy By A Physician, With Continuing Medical Diagnostic Evaluation, and Drug Management When Indicated; Time Unspecified
- 90843 Individual Medical Psychotherapy By A Physician, With Continuing Medical Diagnostic Evaluation, and Drug Management When Indicated; 20-30 Minutes
- 90844 Individual Medical Psychotherapy By A Physician, With Continuing Medical Diagnostic Evaluation, and Drug Management When Indicated; 45-50 Minutes
- 90853 Group Medical Psychotherapy By A Physician, With Continuing Medical Diagnostic Evaluation and Drug Management When Indicated
- X5531 This code is the same as CPT code 90844 but allows for a greater frequency of psychotherapy sessions than is allowable under code 90844.
- 90630 Initial consultation complex; physician only

g. The laws, rules, regulations and procedures governing Medicaid reimbursement for mental health services in the States of Minnesota and North Dakota require that the services associated with the CPT codes described above be provided by qualified providers and in some circumstances further require that the provision of services be supervised.

h. None of the services on the claim forms that Licensee submitted to the Minnesota Medicaid Program were provided by a physician or under the supervision of a physician or by a qualified provider or with the requisite supervision.

i. The regulations and procedures governing Minnesota's Medicaid program require that the credentials of the personnel actually providing the service be reflected on the claim form when billing for mental health services provided by someone other than a physician

or other qualified provider. The name of the physician or licensed psychologist who provided supervision must also be identified. In addition, the regulations require that modifiers be used on the claim form to reflect that the service was provided by personnel other than the physician or other qualified provider.

j. No reference was made on the claim forms Licensee submitted that the provider of services was anyone other than the psychiatrist.

k. In September 1995, the United States of America, on behalf of its agency, the Department of Health and Human Services, filed a complaint against Licensee in the United States District Court, Fourth Division. An Amended Complaint was filed on January 9, 1996. The complaint alleged that Licensee violated the False Claims Act, 31 U.S.C. §§ 3729-3731, by presenting false claims, using false records and engaging in conspiracy to submit false claims. The Complaint also alleged in Count III that Licensee engaged in Common Law Fraud, in Count IV that Licensee's conduct resulted in Unjust Enrichment, and in Count V that Licensee's conduct caused the government to make Payment under Mistake of Fact. HHS alleged that from June 1, 1988, to December 1992, Licensee submitted false claims for reimbursement from the Minnesota and North Dakota Medicaid program which resulted in Licensee receiving \$213,423.79 to which she was not entitled.

l. On April 10, 1996, Licensee signed a Stipulation for Compromise and Consent Judgment to settle the matter of United States v. Arlis Ann McCauley. Licensee agreed to pay \$110,500 to the U.S. Department of Justice to satisfy the monetary claims against her as described in the factual scenario alleged in the Amended Complaint. Licensee also agreed to be excluded from participation in the Medicare program and any state health care program as defined in section 1128(h) of the Social Security Act for a period of five years, effective April 19, 1996. Licensee entered into the agreement without any admission of liability.

REGULATIONS

3. The Board views Licensee's practices as described in paragraph 2 above to be in violation of statutes and rules enforced by the Board. Licensee agrees, for the purposes of this Stipulation, that the conduct cited above constitutes a violation of Minn. Stat. § 148.941, subd. 2(a)(1) (1996) (violation of statute or rule Board is empowered to enforce); Minn. Stat. § 148.941, subd. 2(a)(3) (1996) and Minn. R. 7200.5700 (unprofessional conduct); Minn. Stat. § 148.98 (1996) (violation of code of conduct); Minn. R. 7200.5200, subp. 3 (1995) (billing misrepresentations); Minn. R. 7200.5600 (1995) (engaging in conduct likely to deceive or defraud the public or the Board); and constitutes a reasonable basis in law and fact to justify the disciplinary action provided for in the order.

REMEDY

4. Upon this stipulation and without any further notice or proceedings, Licensee consents that the Board may make and enter an order as follows:

a. Licensee is hereby **REPRIMANDED** for the conduct described in paragraphs 2 and 3 above.

b. **Civil Penalty.** Licensee shall pay a civil penalty to the Board in the amount of five thousand (\$5,000) dollars for engaging in the conduct described in paragraphs 2 and 3 above. Payment of \$5,000 shall be remitted in full to the Minnesota Board of Psychology at Suite 320, 2829 University Avenue SE, Minneapolis, Minnesota 55414, within ninety (90) days of the date the terms of this stipulation and order are adopted by the Board.

c. Licensee's license to practice psychology in Minnesota is **SUSPENDED** for a period of three years, beginning on the date the terms of this stipulation and order are adopted by the Board. During the period of suspension, Licensee shall not in any manner practice psychology in the State of Minnesota.

d. **Stay of Suspension.** After no less than ninety days of the period of suspension have elapsed, the suspension shall be stayed for the remainder of the three years, provided that Licensee has met the following requirements:

1) **Professional Responsibility Examination.** Licensee shall take the examination described in Minn. R. 7200.3000, subp. 1.B. within ninety (90) days of the date of service of this Stipulation and Consent Order, and Licensee shall obtain a passing score. If Licensee takes the examination but does not pass during the ninety day period, the suspension shall remain in effect until Licensee does pass the examination.

2) **Civil Penalty.** Licensee shall pay the civil penalty as provided in paragraph 4.b. above.

5. **Costs.** Licensee is responsible for all costs incurred as a result of compliance with this Stipulation and Order.

6. If Licensee shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the license of Licensee to practice psychology in the State of Minnesota shall be revoked immediately upon written notice by the Board to Licensee, such a revocation to remain in full force and effect until Licensee petitions the Board to reinstate her license after a hearing. Nothing contained herein shall prevent the Board from revoking Licensee's license to practice psychology in the State of Minnesota after any such hearing.

7. If Licensee's license has been revoked pursuant to paragraph 6 above, Licensee may petition to have her license reinstated at any regularly-scheduled board meeting following Licensee's submission of a petition, provided that the petition is received by the Board at least 20 working days before the Board meeting. The Board shall grant the petition upon a clear showing by Licensee that she has corrected all violations of this Stipulation and Order which were the basis for the revocation. Based on the evidence presented, the Board may impose additional conditions or limitations upon reinstating Licensee's license.

8. This stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Licensee by initiating a contested case hearing or by other

appropriate means on the basis of any act, conduct, or omission of Licensee justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to the specific facts and circumstances set forth herein.

9. In the event the Board at its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, then, and in that event, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party to this stipulation, except that Licensee agrees that should the Board reject this stipulation and this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating to this matter.

10. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board.

11. Licensee has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Licensee has been represented by Robert G. Hoy.

12. Licensee waives all formal hearings on this matter and all other procedures before the Board to which Licensee may be entitled under the Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

13. Licensee hereby acknowledges that she has read, understands, and agrees to this stipulation and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Licensee acknowledges that she is fully aware that the stipulation shall be approved by the Board. The Board may either approve the Stipulation and Order as proposed, approve the Stipulation and Order subject to specified change, or reject it. If the changes are acceptable to Licensee, the stipulation will then take effect and the order as modified will be issued. If the

changes are unacceptable to Licensee or the Board rejects the stipulation, it will be of no effect except as specified herein.

14. This Stipulation and Consent Order constitutes a disciplinary action against the Licensee.

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

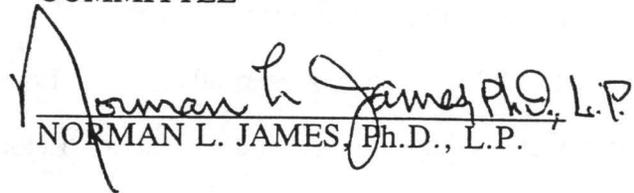
16. This stipulation contains the entire agreement between the parties there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

BOARD OF PSYCHOLOGY

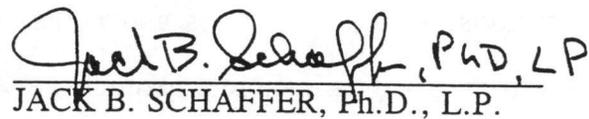
COMPLAINT RESOLUTION
COMMITTEE


ARLIS McCAULEY, M.S.Ed., L.P.
Licensee

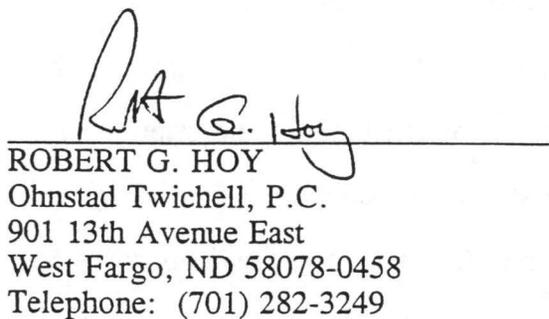
Dated: Nov. 11, 1998


NORMAN L. JAMES, Ph.D., L.P.

Dated: 11/20, 1998

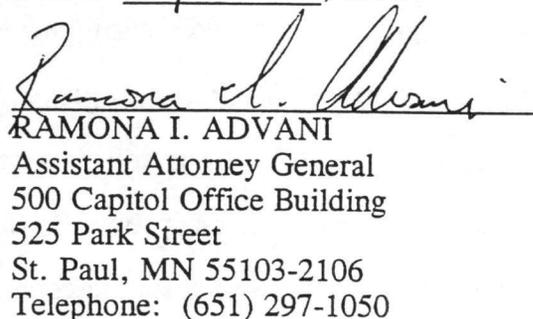

JACK B. SCHAFFER, Ph.D., L.P.

Dated: 12/11, 1998


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Attorney for Licensee

Dated: Nov. 13, 1998


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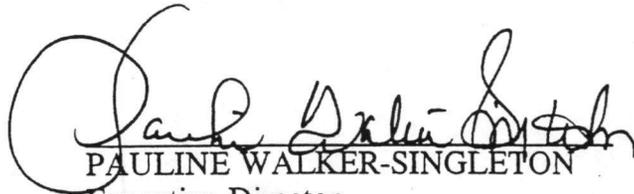
Dated: Nov. 20, 1998

ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,
IT IS HEREBY ORDERED that Licensee is REPRIMANDED, her license is placed in
a SUSPENDED status, and all other terms of this stipulation are adopted and implemented by
the Board this 18th day of Dec, 1998.

MINNESOTA BOARD

OF PSYCHOLOGY


PAULINE WALKER-SINGLETON
Executive Director

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