

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of
Joseph E. Draganosky Psy. D.
License No. 379.

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Tuesday, June 25, 1985 at 9:30 A.M. in Room 335 of the Minnesota Department of Health Building, 717 Delaware Street S.E., in the City of Minneapolis, Minnesota. The hearing continued on the following day, June 26, 1985. The hearing was then continued until July 16, 1985 at 9:00 A.M., or the presentation of the Respondent's case. Prior to that date the Respondent determined that he would present no evidence in this matter. The record then remained open through September 9, 1985 for the filing of written briefs on behalf of the parties.

Audrey Kaiser Manka, Special Assistant Attorney General, 136 University Park Plaza Building, 2829 University Avenue S.E., Minneapolis, Minnesota 55414, appeared representing the Minnesota Board of Psychology. Theodore J. Collins, Attorney at Law of the firm of Collins, Buckley, Sauntry & Haugh, W-1100 First National Bank Building, 332 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Licensee.

This Report is a recommendation, not a final decision. The Board of Psychology will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 214.10, subd. 2, any Board member consulted during the course of an investigation may not vote on any matter pertaining to this case. Pursuant to Minn. Stat. 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Lois E. Mizuno, Executive Secretary, Minnesota Board of Psychology, 717 Delaware Street S.E.,

Minneapolis, Minnesota 55414 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues to be determined in this contested case proceeding are (1) whether the Licensee has violated any law in which the facts giving rise to the violation involved the provision of psychological services contrary to Minn. Rule 7200.5500 and Minn. Stat. 148.98 and (2) whether the Licensee is of good moral character-as required by Minn. Stat. 148.91, subd. 4(2).

Based upon all of the proceedings here in, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. Dr Joseph E. Draganosky was first licensed by the Minnesota Board of Psychology as a licensed psychologist on December 8, 1979. The Licensee was awarded a Master of Science degree in Clinical Psychology by the Hahnemann medical College in June of 1975. In July of 1978 the Licensee received a Psy.D. degree from Western Colorado University. Prior to coming to Minnesota the Licensee was employed as a psychologist A Philadelphia, Pennsylvania. (Ex. 2).

2. On April 7, 1981 the Licensee applied for licensure as a Licensed Consulting Psychologist. The Board informed the Licensee that it could not grant him licensure without documentation from Western Colorado University that the school was a regionally accredited school. (Draganosky v. Minnesota Board of Psychology 352 N.W.2d 432, 434 (Minn. App. 1984); Tr. 36-37).

3. In August of 1982 the Licensee applied to the Board for a variance from the accreditation requirement on the grounds that Western Colorado University had been accredited by the National Association of Private Non-Traditional Schools and Colleges (NAPNSC) which was equivalent to a regional accrediting association. (Draganosky v. Minnesota Board of Psychology, 367 N.W.2d 521, 523 (Minn. 1985), Tr. 36-37).

4. On September 10, 1982 the Board voted to defer action on the Licensee's request for a variance from the Board rule which requires a Doctoral degree from an institution accredited by a regional accrediting association. The Board appointed a committee to investigate whether accreditation by the National Association of Private Non-Traditional Schools and Colleges was comparable to accreditation by a regional accrediting association. (Ex. 1).

5. On December 3, 1982 the Board voted to deny the request for a variance on the grounds that it had not been demonstrated that accreditation of Western Colorado University by the Association of Non-Traditional Schools and Colleges was equivalent to accreditation by a regional accrediting association. The Board's minutes reflect that the investigation determined that the Association of Private Non-Traditional Schools and Colleges was twice denied recognition by the U.S. Department of Education, that the President of Western Colorado University was Chairman of the accrediting standards committee of NAPNSC and

that six of the founders of NAPNSC were also on the faculty Of Western Colorado University. (Ex. 1).

6. On December 2, 1983 the Licensee and his attorney appeared at a Board meeting to request reconsideration of the denial of the variance. Following the presentation the Board voted again to deny the variance- but stated that it would reconsider the matter if Licensee could provide information showing that accreditation by NAPNSC meets or exceeds the requirements contained in the rule. (Ex. I).

7 The Board notified the Licensee in a letter dated December 27, 1983

That it had denied his request for a variance. The Licensee then filed a Petition with the Minnesota Court of Appeals seeking judicial review of that decision. The Court of Appeals, in a decision issued June 26, 1984, determined that the Board's denial of a variance was arbitrary and capricious. The Court of Appeals remanded to the Board with the direction to

a variance to the Licensee. Draganosky, supra, 352 N.W.2d at 434,437.

The Board of Psychology then petitioned to the Minnesota Supreme Court for further review. In a decision issued May 17, 1985 the Supreme Court reversed the decision of the Minnesota Court of Appeals; and affirmed the Board's denial of an application for a variance by the Licensee. Draganosky, supra, 367 N.W.2d at 526- 527.

Patricia Lilligren

9. Patricia Lilligren is a psychologist employed by the Judson Family Center in Minneapolis. She was a member of the Minnesota Board of Psychology from 1977 through 1984. She served as Chair of the Board for her last 3 years as a member. (Tr. 16) . Ms. Lilligren was present at the Board meetings on September 10, 1982, December 3, 1982 and December 2, 1983.

10. In early March of 1984 Ms. Lilligren received an announcement from Scientific American magazine stating that she would receive Scientific American each month courtesy of Shirley M. Corrigan, Ph.D. (Ex. 5). Dr. Corrigan had not in fact ordered this magazine for Ms. Lilligren. (Tr. 22).

11. In early 1984 an order form for the book, "Explorations in the Development of Writing" was received by the publisher signed by Patricia A. Lilligren, Ph.D.'. (Ex. 7). Ms. Lilligren had not signed the order form or ordered the book. (Tr. 23) . The book was sent to Ms. Lilligren on February 10, 1984 and she was billed \$50.99 for the book. (Tr. 22-30) Ms. Lilligren

does not have a Ph.D.

1 2 In February of 1984 an order form was submitted with Ms. Lilligren's name and address to a book club called 'Frontiers of Knowledge'. (Ex. 6). Ms. Lilligren did not herself send in this order form. (Tr. 24).

13. In March of 1984 Ms. Lilligren received a notice from "Mother Jones" magazine stating that she would be receiving a subscription to that magazine from Shirley M. Corrigan, Ph.D. (Ex. 9). Dr. Corrigan did not order this magazine for Ms. Lilligren. (Tr. 27) .

1 4. Ms. Lilligren developed a form letter which she began to send to magazine publishers or other firms to cancel the subscriptions which she was receiving. (Tr. 27).

1 5. In April of 1984 Ms. Lilligren received an invoice from "Women's Sports" magazine billing her \$12 for 12 issues of the magazine. (Ex. 10) . Ms. Lilligren did not order the magazine. (Tr. 28).

16. . in January of 1985 Ms. Lilligren submitted a sample of her handwriting, both printing and script, to the Attorney General for use by the Questioned Document Section of the Bureau of Criminal Apprehension. (Ex. 8).

Nancy Acker

17. Nancy E. Acker is a school psychologist with the Minneapolis Public, School s She is a current member of the Board of Psychology and was first appointed to the Board in early 1984 - (Tr. 45). She has been a member of the Minnesota Psychological Association (MPA) for 20 years and served on its Ethics Committee from 1975 until 1984. She served as Chair of the MPA Ethics committee from 1980 until 1984. The committee investigates ethical complaints against its members. In 1982 other members of the Ethics Committee included Ada Hegion, Jane Rozsnafszky, Edward Wells, John Buchanan and Robert Ivanik,

18. In October of 1981 a complaint was filed with the MPA Ethics Committee by psychologist Shirley Corrigan against Joseph Draganosky alleging that he had been identified in the MPA newsletter as a Ph.D. instead of a Psy.D. and that his firm was listed in the Yellow Pages under Licensed Consulting Psychologists even though there were no Licensed Consulting Psychologists in his firm. (Tr. 47-48). The Ethics Committee asked for a written response from Dr. Draganosky and he informed them that he had changed the listing in the Yellow Pages and had informed the newsletter editor that he was not a Ph.D. The matter was then closed on January 4, 1982. (Tr. 49).

19. In February of 1982 Dr. Draganosky filed a complaint against Shirley Corrigan with the Ethics Committee. Dr. Draganosky alleged that she had publicly confronted him with her concerns about an issue involving Dr. Draganosky and had made no attempt to settle the matter informally. The Committee determined that no violation had occurred but sent Shirley Corrigan a letter suggesting that she be a little more judicious. (Tr. 50).

20. In July of 1982 Dr. Draganosky sent a letter to the Ethics Committee which complained that Nancy Acker had included her name and position on the return address of the Ethics Committee correspondence. The Committee found another way of handling the return address on its correspondence. (Tr. 51).

21. In October of 1982 Dr. Draganosky filed a complaint against psychologist Janet Anderson alleging that she had misrepresented herself as a Ph.D. Dr. Anderson responded that she had received a Ph.D. from the University of Minnesota in December of 1981 and asked for a copy of the

complaint filed. Dr. Draganosky refused permission to release the complaint and complained in a letter to the Committee that the Committee was biased and was selectively enforcing ethical principles. (Tr. 52:). The Committee took no further action in regard to Dr. Anderson. (Tr. 53).

2 2 Beginning in March of 1984 Nancy Acker started to receive unordered magazines, books and informational materials. She received approximately 95 magazine subscriptions or books and approximately 50 packets of informational material which she had not requested. (Ex. 13. Tr. 55) . Order blanks with Nancy Acker's name and address were received by "Barron's" magazine (Ex. 11), "Cats" magazine (Ex. 12), "Cruising World" magazine (Ex. 14), Management Information Studies (Ex. 15), the Doubleday Book Club (Ex. 16), the Wall Street Journal (Ex. 19) and Video Review (Ex. 20). Nancy Acker did not fill out or send these order forms herself. (Tr. 58-65).

2 3 . CY January 15, 1985 Nancy Acker supplied samples of her handwriting with both printing and script to the Attorney General's office for use by the Questioned Document Section of the Bureau of Criminal Apprehension. (Ex. 21).

2 4 For a short period of time, approximately 3 to 4 days, Nancy Acker received phone calls either late in the evening or early in the morning in which the caller would hang up when she answered. (Tr. 69).

Shirley Corrigan

2 5 . D.-. Shirley Corrigan is the practice of psychotherapy. She is a Licensed Consultant She is a member of the Minnesota Psychological Association.

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2 6 From 1982 through 1984 Dr. Corrigan received a large number of telephone calls in which the caller hung up. For a period of one year the calls were as frequent as two at the office and two at home each day. (Tr, 87). A number of the calls were traced to pay telephones in downtown Minneapolis. (Tr. 87). The calls did not occur on weekends. (Tr. 107). Dr. Corrigan has received similar phone calls in 1985. (Tr. 88).

2 7 . In February of 1984 Dr. Corrigan began receiving unordered magazines, books and informational materials. She has received approximately 90 magazine subscriptions or books and a large number of packets of informational (Ex. 22). These unsolicited mailings have continued through June of 1985. (Ex. 22). All of the unsolicited material had an incorrect zip code. (Tr. 90).

2 8 . Dr. Corrigan did not order any subscriptions for Patricia Lilligren. (Tr. 93, Ex. 5, 9).

2 9. Dr. Corrigan was advised by the U.S. Postal Service that the cases involving unauthorized orders for merchandise are generally not prosecuted in Federal Court. The Post Office suggested filing a complaint with the local police. (Ex. 23).

30. Order forms with Shirley Corrigan's name and address were sent to Scientific American, United Reports, Microcomputing (Ex. 24), Blair (Ex. 25) a firm offering a Chippendale chest kit (Ex. 26), Art News (Ex. 27), The Ducks

of North America Miniature Decoy Collection (Ex. 28), "VM & SD" magazine (Ex. 29), the Strawberry Library of First Learning (Ex. 30) and the publisher of ''Clinical Methods in Psychology'' (Ex. 4A). Dr. Corrigan did not sign or print her name to any of these order forms and did not order any of the books or magazines. (Tr. 95-101).

Janet Anderson

31 . Dr. Janet Anderson is a licensed psychologist and is self-employed as a psychotherapist. (Tr. 114). She has been a member of the Minnesota Psychological Association.

32 . In the summer of 1979 Janet Anderson and a colleague, Alice Taylor, entered into an office sharing arrangement with Dr. Draganosky in a building called the Carriage House. Dr. Draganosky has just arrived in Minnesota from Pennsylvania. (Tr. 115). The office-sharing arrangement ended in July of 1980 when Dr. Anderson sought another office arrangement (Tr. 117). At the time Dr. Anderson left the office sharing arrangement it was agreed that Dr. Draganosky and Alice Taylor would forward telephone calls to tier. However, Dr. Anderson received no referral calls from her old office. (Tr. 118, 120).

Dr Dragnosky advised Dr. Anderson that he would not forward phone calls ,to her because it would cost too much money to do, so (Tr. 1 21 . Dr. Anderson also sent written notifications of her new address and phone number to and recent former clients when she moved. (Tr . 133) .

3 3 in the summer of 1981 Dr. Anderson underwent surgery to remove a portion of her lung. After the surgery she received a get-well card from Dr. Draganosky. Dr. Draganosky wrote the note in the card:

Dear Mrs. Anderson:

was so sorry to hear of the physical ailments which struck you down. Moreover, given your specious nature, I was dismayed by the possibility of a less-than- total recovery, and the prospect of potentially more serious afflictions. Luckily, the symbolism inherent 'in the Talion Law is grounded in superstition rather than ethics. Say "hello" to Shirley and Patricia for me. God bless you'

Dr. Joseph E. Draganosky
Psychological Consultants, Inc.
870-8892

Ex 31

34. In November , - of 1982 Dr. Anderson was notified by the MPA Ethics Committee that Dr. Draganosky had filed a complaint alleging that she was claiming to have a Ph.D. when she in fact did not have one. After Dr. Anderson advised the Committee of the date and place that she received her doctorate the matter was dismissed. (Tr.126).

35. in January of 1983 the Attorney General's office advised Dr. Anderson that the complaint had been filed with the State Board of Psychology alleging that she was representing herself as a Ph.D. when she did not have that degree. The complaint was filed by Joseph Draganosky. It was dismissed when she advised the Board of the date and place of the awarding of her doctorate. (Tr. 127).

36. In February of 1984 Dr. Anderson received several books from John Wiley and Sons, Inc. which she had not ordered. (Tr. 127). Order forms with Dr. Anderson's name, address and her purported signature had been submitted to John Wiley and Sons, Inc. for two books, namely "A Program for Families of Children with Learning and Behavior Problems" (Ex. 4D) and Volume 2 of the ,Handbook of Child Psychology (Ex 4E). Dr. Anderson did not sign the order forms or fill them out. (Tr. 128).

37. in approximately March of 1984 Dr. Anderson begin to receive magazines from 9 different magazine publishers which she had not ordered. (Tr. 128, Ex. 32).

Robert J. Chalmers

38. Robert J. Chalmers is a self-employed consultant. He was a public member of the Board of Psychology from May of 1980 through March of 1984. (Tr. 143). Mr. Chalmers was present at the Board meeting on December 2, 1983 when Dr. Draganosky's request for a variance was denied. (Tr. 144).

9 In the summer of 1984 Mr. Chalmers began receiving Newsweek Magazine. An order form with his name and address had been submitted to Newsweek, . (Ex. 33). Mr. Chalmers had not submitted the order blank or written his name on it. (Tr. 145).

16 40. By June 6, 1984 Chalmers had received subscriptions or books which he had not ordered. (Ex. 34, Tr. 146).

,Ada Hegion

41. Ada G. Hegion is a licensed consulting psychologist employed by the Hennepin County Medical Center as a child psychologist. She was a member of the MPA until 1984. (Tr. 154). She served on its Ethics Committee from 1980 to the spring of 1983. (Tr. 155). The Committee at that time dealt with the complaints by Dr. Corrigan against Dr. Draganosky and by Dr. Draganosky against Dr. Corrigan and Dr. Anderson. (Tr. 155-56).

42. In April of 1984 Dr. Hegion received some office supplies which she had not ordered including a large hand stamp and a work order rack. An order form had been submitted to the New England Business Service, Inc. listing her name and address and with her purported signature ordering these items. (Ex. 36). Dr. Hegion had not ordered these items. (Tr. 156).

43. At about the same time Dr. Hegion received approximately 23 magazine subscriptions which she had not ordered. Most of them arrived in April, May and June of 1984. (Tr. 158).

44. On January 10, 1985 Dr. Hegion submitted a handwriting sample including printing and script to the Attorney General's office for use by the Questioned Document Section of the Bureau of Criminal Apprehension. Ex. 37) .

Ann Meissner

45. Ann Meissner is a licensed consulting psychologist in private practice in St. Paul. She currently is and has been a member of the Board of Psychology for 4 years. (Tr. 164). She was at the meetings of the Board on September 10 and December 3 of 1982 and December 2 of 1983. (Tr. 165).

46. By June 6 of 1984 Dr. Meissner had received an unordered subscription to Business Week magazine, some unordered Harlequin books and 4 pairs of panty hose which she did not order. (Ex. 39, Tr. 167). An order form with her name and address on it had been submitted to Business Week magazine. (Ex. 38). She did not fill out that order form (Tr. 1167).

William Madsen

47. William Madsen is Director of graduate programs in Psychology at the College of St. Thomas. He was a member of the Minnesota Board of Psychology from 1980 through January of 1985. He served as Vice-Chair from 1982 to 1984 and Chair from 1984 through January of 1985. (Ex. 40, p. 4,). Dr. Madsen was a member of the Education Committee that investigated the institution which granted Dr. Draganosky his doctorate. (Ex. 40, p. 6).

48 In May of 1984 Dr. Madsen received an invoice from Hearst magazines indicating that His subscription would begin in June. (Ex. 40-1 Dr. Madsen had not ordered this subscription. (Ex. 40 p. 8).

49. in May of 1984 Dr. Madsen received an invoice from New Shelter" magazine requesting payment for a subscription ordered in April (Ex. 4:-2 ve had not ordered this magazine, Ex. 40, 1. I).

50. in July of 1984 Dr. Madsen received an invoice for "Happy Times" magazine. (Ex. 40-3). Dr. Madsen had not ordered this magazine. (Ex. 40, p. 9).

51. Dr. Madsen received an initial issue of each magazine before he received the invoice. (Ex. 40, p. 17).

Jane Rozsnafszky

52. Jane Stewart Rozsnafszky is a licensed consulting psychologist who is treatment director at the Indian Health Board and is also in the private practice of psychology. (Tr. 190). She is a member of the Minnesota Psychological Association and has served on its Ethics Committee from 1980 to 1984. (Tr. 191). She was a member of that committee at the time that a complaint was filed against Dr. Draganosky by Dr. Corrigan. (Tr. 192).

53. In May of 1984 an order blank with Dr. Rozsnafszky's name and address was sent to the Home Medical Books series. (Ex. 41). She did not fill out this order form herself. (Tr. 194).

54. In April of 1984 an order form with Dr. Rozsnafszky's name and address was submitted to the American Ceramics Society expressing an interest in joining the Society and receiving their Journal. (Ex. 42). She did not fill out this order form. (Tr. 195).

55. In April of 1984 an order form was submitted to "School Arts" magazine with Dr. Rozsnafszky's name and address, as well as her purported signature. (Ex. 43). Dr. Rozsnafszky did not sign the form or order the subscription. (Tr. 196).

54. In May of 1984 a membership form in the American Association of Retired Persons was submitted to the Association with Dr. Rozsnafszky's name and address. (Ex. 44). This form was not filled out or submitted by Dr. Rozsnafszky. (Tr. 197).

55. On January 10, 1985 Dr. Rozsnafszky submitted a sample of her handwriting, both printing and script, to the Attorney General's office for use by the Questioned Document Section of the Bureau of Criminal Apprehension (Ex. 46, Tr. 198).

56. From April through July of 1984 Dr. Rozsnafszky received 72 separate magazine subscriptions, catalogs or brochures which she had not ordered (Ex. 47, Tr. 200).

57. Joseph Draganosky printed the following names (and addresses) on the following order forms:

- (a) He printed "Shirley M. Corrigan PH,D." on an order form for 'Clinical Methods in Psychology.' (Ex. 4A).
- (b) He printed 'Patricia A. Lilllgren, PH.D.' on an order form for Explorations in the Development of writing.' (Ex. 4C).
- (c) He printed 'Janet A. Anderson, PH.D.' on an order form for 'A Program for Families of Children with Learning and Behavior Problems.' (Ex. 4D) .
- (d) He printed "Janet A. Anderson, PH.D " on an order form for The Handbook of Psychology, Volume 2. (Ex. 4E).
- (e) He printed "Patricia A. Lilligren'" on an order form for McMillan Book Clubs, Inc. (Ex. 6).
- (f) He printed 'Nancy E. Acker'' on an order form for Management Information Studies. (Ex. 15).
- (g) Pe printed "Nancy E. Acker'' on an order form for the Doubleday Book, Club. (Ex. 18).
- (h) He printed 'Shirley M. Corrigan'' on an order form for 'Microcomputing'' magazine. (Ex. 24).
- (i) He printed 'Ada G. Hegion'' on an order form for The New England Business Service, Inc. (Ex. 36).
- (j) He printed "Jane Rozsnafszky'' on an order form for the Home Medical Book series. (Ex. 41).
- (k) He printed 'Nancy Acker'' on an order form for 'Barron's'' magazine. (Ex. 11).
- (l) He printed 'Nancy Acker' on an order form for 'Cats'' magazine.. (Ex. 12).
- (m) He printed 'Nancy Acker'' on an order form for "Cruising World" magazine. (Ex. 14).
- (n) He printed 'Jane Rozsnafszky'' on a membership form for the American Ceramics Society. (Ex. 42)
- (o) He printed "Jane Rozsnafszky'' on an order form for 'School Arts'' magazine. (Ex. 43).

- (p) He printed "Jane Rozsnafszky," on an order form for The American Association of Retired Persons. (Ex. 44).
 - (q) He printed "Nancy Acker" on an order form for "The Wall Street Journal." (Ex. 19).
 - (r) He printed "Nancy E. Acker" on an order form for "Video Review" magazine. (Ex. 20).
 - (s) He printed "Shirley M. Corrigan" on an order form for blouses (Ex. 25).
 - (t) He printed "Shirley M. Corrigan" on an order form to receive a Chippendale chest kit. (Ex. 26).
 - (u) He printed "Shirley M. Corrigan" on a subscription for "Art News" magazine. (Ex. 27).
 - (v) He printed "Shirley M. Corrigan" on an order form for the Ducks of North America Miniature Decoy Collection. (Ex. 28).
 - (w) He printed "Shirley M. Corrigan" on an order form for "V.M. & S.D." magazine. (Ex. 29).
 - (x) HE printed "Shirley M. Corrigan" on an order form for the Strawberry Library of first Learning. (Ex. 30).
 - (y) He printed "Robert J. Chalmers" on a subscription form for "Newsweek" magazine. (Ex. 33).
 - (z) He printed "Ann Meissner, PH.D." on an order form for "Business Week" magazine. (Ex. 38).
- (Exs. 48, 49, 50 and Tr. 214-215, 220-221, 229).

58. Dr. Draganosky signed the following signatures to the, following order forms:

- (a) He signed the signature "S. Corrigan, Ph.D." to an order form for "Clinical Methods in Psychology, 2nd Edition." (Ex. 4A).
- (b) He signed the signature "J. A. Anderson, Ph.D." to an order form for "A Program for Families of Children with Learning and Behavior Problems." (Ex. 4D).
- (c) He signed the signature "J. A. Anderson, Ph.D." to an order form for the second volume of "The Handbook of Child Psychology." (Ex. 4E).

(d) He signed the signature Daniel N. Wiener Ed.d to an order form fro Dichotomies of the

Mind." (Ex. 4B)

(e) He signed the signature of Patricia A. Lilligren P h. D. to an order form for Expplorations in the Development of Writing.' ' (Ex . 4C) .

(Exs. 48, 49, 50 and Tr. 222-223).

Based upon the foregoing Findings of . 'act, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Minnesota Board of Psychology and the administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 1 48 . 9 5 .

2. That the Board provided proper notice of the hearing in this matter to the Licensee.

3. That the Board has complied with all substantive and procedural requirements of law or rule.

4. That the Board has the burden of proof in this Proceeding to establish any alleged violations of rule or statute.

5. That the Board must prove the facts Et issue by a preponderance of the evidence.

6. That the Board has proved that Dr. Draganosky signed the names of his colleagues and Board members to order forms for books and printed their names on order forms for merchandise, books, informational materials and magazines without their authorization.

7. That the Board has not proved that Dr. Draganosky has violated Minn. Stat. 148.98 and Minn. Rule 7200.5500 which prohibits the violation of any law in which the facts giving rise to the violation involve the provision of psychological services.

8. That Dr. Draganosky has violated Minn. Stat. 148.91 which requires an applicant for a license to satisfy the Board that he is of good moral character.

9. That the foregoing Conclusions and the Recomenendation set out below are arrived at for the reasons set out in the Memorandum which follows and which is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Board of Psychology take disciplinary, action against the psychologist license of Joseph E. Draganosky.

Dated: October 4 1 985

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the administrative law judge by first class mail.

Reported: Allan J. Thiry
Summit Court Reporters
15 North 16th Street
Minneapolis, Minnesota 55403 -- Transcript Prepared.

MEMORANDUM

Based upon the facts contained in this record, the Board of Psychology has proved that the Licensee forged the signatures and filled in the names and addresses of other psychologists on order forms for magazines, books and merchandise which caused the publishers or manufacturers to send unwanted items to those whose names were filled in. Nine witnesses testified that they had received an excess of 200 unordered magazine subscriptions, books or other items. Each witness had had some interaction with the Licensee. Shirley Corrigan had filed a complaint against him with the Minnesota Psychological Association Psychologist Janet Anderson had a dispute with him as to whether or not he would disclose her new telephone number to former clients. The other witnesses were either members of an MPA committee which considered complaints by or about him, or members of the Minnesota Board of Psychology who denied his request for a variance in regard to an application for licensure as a licensed consulting psychologist.

The Board also called Janis Tweedy as an expert witness to testify concerning the similarities between the Licensee's handwriting and printing and the handwriting and printing on the order forms. Ms. Tweedy is supervisor of the Questioned Document and Latent Print Sections of the Minnesota Board of Criminal Apprehension. The Board established her qualifications as a

handwriting expert based upon her training and experience. Her expertise was not contested. Ms. Tweedy testified that she employs six levels of certainty

in comparing two samples of handwriting, namely positive , strong evidence, good indication , inconclusive , likely did not write and strong probability did not write. Ms . Tweedy described the " positive" Level of identification, as a situation in which there is nothing but similarities between the two samples and there is no doubt that samples were written by the same person. She described the " strong evidence " level of certainty, that the two samples were many similarities and a very few discrepancies . She testified however that strong evidence " meant It was a virtual certainty that the two samples written or printed by the same person. A "good indication" level meant there were many similarities but also some differences.

Findings of Fact No. 57 and 58 are each supported by Ms. Tweedy's conclusion that there was either positive identification or strong evidence that the Licensee either printed or signed He items in question. In most instances Ms. Tweedy made a "strong evidence" conclusion Instead of a positive identification because she was asked to compare photocopies. instead of originals. She was also limited in some instances from making a stronger conclusion because of an absence of certain letter combinations in both samples. The expert testimony was not rebutted. The evidence in this record requires the conclusion that Joseph Draganosky signed or printed on the order forms set out in Findings of Fact No. 57 and 58. It may be that he printed several others in the record, however the quality of the photocopies limited the analysis by the expert witness. It is therefore concluded that the Licensee, because of differences he had with Board members, MPA committee members and other fellow professionals, undertook to systematically harrass them for a sustained period of time by forging or printing their names on order forms for magazines, books and other merchandise. The scope of the Licensee's scheme was extensive and required a great deal of effort on his part. Correspondingly, he caused a great deal of inconvenience and some expense for those persons who were harrassed as well as for the publishers or manufacturers involved.

Fifth Amendment.

At the hearing of this matter the Licensee declined to answer any questions concerning whether or not he printed or wrote upon the order forms in question on the grounds that any testimony might tend to incriminate him. (Transcript 252-256). The Board has suggested in its written brief that the Licensee's refusal to answer these questions should be taken as "collaborative" evidence proving that the Licensee did forge their names on order forms. As the Licensee has pointed out in his memorandum there are limits on how far the state can go in penalizing a person for asserting his rights under the Fifth Amendment of the Constitution. In *Spevak v. Klein*, 385 U.S. 511, 515, 17 L.Ed. 2d 574, 577, - 82 Sup.Ct. 625 (1967), the U.S. Supreme Court held that an attorney could not be disbarred on the grounds alone that he refused to testify or produce records while asserting his Fifth Amend., Ent rights. The Court stated that the state could not impose any sanction which makes assertion of Fifth Amendment rights "costly."

In this case, however, the Board is not relying solely upon the Licensee's failure to testify as grounds for discipline. The later case of *Baxter v. Palmiciano*, 425 U.S. 308, 318-319, 47 L.Ed. 2d 810, 96 Sup.Ct. 1551 (1976), involved a prison disciplinary proceeding in which the prisoner was told that he could remain silent but that his silence could be used against him.

prisoner (did not testify. The state presented other facts to show a violation by the prisoner. The U.S. Supreme Court approved treating the prisoners failure to respond as a "final admission of guilt,,. The Baxter decision was cited by the Minnesota Supreme Court in Parker v. Hennepin County District Court, 285 N.W.2d 81, 83 (Minn. 1979). In Parker the Minnesota Supreme Court approved a trial court order which deemed admitted requests for admissions directed to the defendants, which the defendants refused to answer claiming the Fifth Amendment privilege against self-incrimination. The Court noted that invocation of the Fifth Amendment by a civil defendant requires a more subtle response because of -he involuntary nature of the d efendant's participation in the lawsuit. However, the Court stated that the Fifth Amendment does not forbid adverse inferences against parties to civil actions where they refuse to testify in response to probative evidence offered against them. 285 N.W.2d at 83. Since in the case at bar there is extensive probative evidence apart from the Licensee's refusal to testify, the case law permits an adverse inference to be drawn which would tend to corroborate the other evidence. Even though this is permissible, It is not necessary In this case for the decisionmaker to rely upon the Licensee's failure to testify as evidence. The un rebutted testimony of the recipients of the mailings and the expert- witness is clearly sufficient to establish the facts of this matter. Standard of Proof.

The Licensee argues in his brief that the appropriate standard of proof in this contested case proceeding is proof by clear and convincing evidence. Minn. Rule 1400.7300, subp. ', (1983) provides that "the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard-' ' The Licensee argues that the substantive kw does provide a different standard and that it is set out in the case of In re Rerat. 232 Minn. 1, 44 N.W.2d 273, 275 (1950). In that case the Minnesota Supreme Court held that in attorney disciplinary cases the evidence mist be "full, clear, and convincing".

The standard of clear and convincing evidence has been applied in the past by Administrative Law Judges in certain license revocation proceedings. That conclusion was based, in part, upon the case of Collins Securities Corp. v. SEC, 562 F.2d 820, 823 (D.C.Cir. 1977). a case involving the revocation of a securities broker dealer license. That holding was later reversed in Steadman

v. SEC, 101 Sup.Ct. 999 (1981) which held that preponderance of the evidence was the proper- standard of proof in the discipline of an investment adviser accused of fraud and deceit. 101 Sup.Ct. at 1008. Other states appear to adhere to the preponderance of the evidence standard in professional licensing cases. Bernstein v Real Estate Commission of Maryland, 221 Md.221, 156 A.2d 657 app.dism., 363 U. S. 419 (1959). There is no reported appellate decision in Minnesota which considers the appropriate standard of proof in an administrative license revocation proceedings. Recently however, the Court of Appeals did hold that the appropriate standard of proof in unemployment cases is a preponderance of the evidence, even if gross misconduct must be proved. Manos v. First Bank Minnehaha, 357 N.W.2d 372 375 (Minn.App. 1984).

Although it might be suggested that a standard of clear and convincing evidence for attorneys and a fair preponderance of the evidence for physicians or psychologists is a denial of equal protection of the law, at least one

court which has carefully considered this argument,, has code,,determined that there is no constitutional violation since differing regulatory, schemes are involved which are maintained by separate branches of government. In re Polk, 90 N.J, 550, 449 A.2d 7, 16 (1982). It is therefore concluded that the appropriate standard of proof in this proceeding is proof by a fair preponderance of the evidence. As the Board argues in its reply memorandum, however, the Board has proved the facts at Issue by clear and convincir,g evidence, at least as to the positive' and "strong evidence" determinations by the expert witness, which were the only determinations included In the Findings of Fact. The Licensee suggests in his brief that 'he Board is obligated to prove by clear and convincing evidence that he committed the acts in question and that such acts indicate an unfitness to practice the profession. However, there is no particular burden of proof as to whether or not the acts indicate a violation of the statute or rules since this is a legal conclusion and not a factual determination.

Unprofessional Conduct

The first alleged violation cited by the Board in its Notice of and Order for Hearing is a violation of Minn. Rules 7200.5500 (1983). which states that a psychologist shall not violate any law in which the facts giving rise to the violation involve the provision of psychological services. The rule appears in the Board's Rules of Conduct which define unprofessional or unethical conduct. See, Minn. Rules 7200.4500, subps. 2 and 3; Minn. Stat. 148.95. The Board alleges that the Licensee has violated the federal mail fraud statute set out at 18 U.S.C. 1341. The Licensee argues that a conviction for mail fraud or some other crime is a prerequisite to a finding of a violation under the rule. The rule does not so state, however. It does provide that the conviction of crime shall constitute proof of the factual elements necessarily underlying the conviction. This provision seems to imply however that while the Board needn't prove up a criminal violation once a conviction has been obtained, the Board would also have the option of proving a violation of a criminal statute in its disciplinary proceeding in the absence of' a conviction.

The crime of mail fraud consists of three essential elements:
(1) The act of having devised a scheme to defraud; (2) The act of placing in an authorized post office a letter intended to be sent; and (3) Wilful use of the mails with the specific intent to carry out a scheme to defraud. U.S. v. States, 362 F.Supp. 1293 (E.D.Mo. 1973). A scheme to defraud needn't involve the loss of money or property. The States involved a conviction for placing false absentee ballots in the mail. In this case the evidence shows that the Licensee wilfully placed forged order forms in the mail with the intent of carrying out a scheme of harrassment against his victims. The magazine companies and manufacturers were defrauded in that they sent merchandise to persons for which they received no compensation. The case law indicates that the element of defrauding in P mail fraud violation is not to be interpreted in a narrow technical sense. In Bronzin v. U.S., 309 F.2d 158, 159 (8th Cir. 1962), the Court upheld a conviction for mail fraud which involved a scheme to send bills for advertising in a third persons magazine to a number of persons who were not indebted to the sender. The Licensee's scheme is similar. He wilfully used the mails with an intent to carry out his scheme of harrassment. It is concluded that the facts proved constitutes a violation of 18 U.S.C. 1341.

The Board must demonstrate more than a violation of the mail fraud statute, however. It must show that the violation involves the provision of psychological services. The rule contains three factors to consider in making this determination. First, the nature and seriousness of the violation; secondly, the relationship of the violation to the purposes of regulating the practice of psychology; and lastly, the relationship of the violation to the

capacity, fitness or integrity of the psychologist in rendering psychological services. The last two factors are aimed at a consideration of

whether or not the violation of law affects the licensee's professional duties. As the Licensee points out, a number of courts have suggested that

"unprofessional conduct" requires a connection between the conduct complained

of and the fitness of the Licensee to practice his profession.

Grannis v.

Board of Medical Examiners, 96 Cal.Rpt. 863, 19 Cal.App.3d 551 (1971);

Newland v. Board of Governors, 19 Cal.3d 708, 139 Cal.Rpt. 620, 624 (1977).

Unprofessional conduct is sometimes defined as a departure from standards of

prevailing practice in the licensee's area of expertise. Lester v.

Department

of Professional and Occupational Regulations 348 S.2d 923, 925

(Fla.App.

1977) In Reyburn v. Minnesota State Board of Optometry, 247 Minn. 520, 78

N.W.2d 351, 355 (56), the Minnesota Supreme Court defined

"unprofessional

conduct" as conduct "which-violates those standards of professional behavior

which through professional experience have become established. by the

consensus of the expert opinion of the members, as reasonably

necessary for

the protection of the public interest." The Licensee argues that the

Board

has not demonstrated that his alleged misconduct has had any impact on his

provision of services to clients.

The Board states that it has demonstrated that the Licensee's violation of

the mail fraud statute calls into question his ability, fitness and integrity as a psychologist in two respects. First, the Board points to the

testimony

by its expert witness, Dr. Loring McAllister, which was to the effect that

the

Licensee's harassment may indicate an inability to resolve disputes

which

might be transferred to a dispute between the Licensee and a client.

Dr.

McAllister qualified his testimony in this regard by stating that it was

,,speculative admittedly.'" (Transcript 273). He speculated that if an individual responded in the way the Licensee had in the face of disagreements with colleagues, it would cause one to wonder what the Licensee might do or say with a client with whom he had a disagreement. This speculation does not, however, amount to proof that the Licensee engaged in or would engage in behavior which adversely affected a client. The Board also points out that the Licensee's failure to advise callers to his office of Dr. Anderson's new telephone number might potentially have adversely affected a client of Dr. Anderson. Again, this argument depends on speculation. It appears that Dr. Anderson provided her telephone number to all present and a number of former clients when she moved. In short, there are not facts in the record which demonstrate that the Licensee's acts in violating the statute adversely affected his private practice of psychology. Minn. Rule 7200.5500 is consistent with the case law cited by the Licensee in that it requires a connection between the objectionable conduct and fitness to practice. The speculation provided by the Board is simply too tenuous a link between the statutory violation and the provision of psychological services.

In its final brief the Board suggests that the facts giving rise to the violation of law are related to the practice of psychology in that it demonstrates the Licensee's response to efforts to ensure compliance with

ethical standards prescribed by the Board. The Licensee's Conduct is unlike that cited in the cases in his brief where licensing authorities attempted to apply sanctions for conduct in the personal life of the licensee. In this case it can be argued that the conduct strikes at the heart of the regulatory system itself. It was an attempt by the Licensee to retaliate against those who regulated him on the Board of Psychology and within the MPA. The conduct does supply grounds for speculation on whether or not the Licensee could be effectively regulated or disciplined should he violate a rule or statute directly related to the treatment of a client. Nonetheless, the rules established by the Board, and the available case law make it clear that unprofessional conduct relates to the practice of psychology and to the welfare of clients. The Board has not produced evidence that the Licensee has engaged in unprofessional conduct which affected his clients or that the facts giving rise to the statutory violation involve the provision of psychological services. The Board may have authority to adopt a rule covering a factual situation such as that involved in this case. It is clear that the Legislature desired the Board to spell out in its rules what constituted unprofessional conduct. Minn. Stat. 148.95. However, where such rulemaking authority exists, it has been held that violations of law (e.g., intentional misrepresentations to a malpractice insurer) could not constitute a grounds for license revocation in the absence of a rule to that effect. Meodahl v. Oregon State Board of Dental Examiners, 288 Ore.293. 605 p.2d 273 (1980). See also, Tuma v. Board of Nursing, 593.2d 711 (Idaho) 1979).

Good Moral Character.

The Board's second allegation in the Notice of and Order for Hearing is that the Licensee is in violation of Minn. Stat. 148.91 subd. 5(3), which requires an applicant for licensure as a psychologist to demonstrate "good moral character. Although this requirement is contained in a section setting out requirements for licensure, it has been held that requirements for licensure can be considered continuing requirements. In re Polk, 90 N.J. 550, 449 At.2d 7, 20 (1982). A number of courts reviewing professional license cases have examined the meaning of good moral character and have adopted a definition originally set out in Konigsberg v. State Bar of California, 353 U.S. 252, 263-4, 1 L.Ed. 2d 810, 77 SuP.Ct. 722 (1957) where good moral character was described as "honesty, fairness and respect for rights of others and for the laws of the state and the nation." See e.g., State v. Louisiana

State Board of Medical Examiners, 115 So.2d 833, 839 (La. 1959).

This

definition was recognized by the Minnesota Supreme Court in *In re Haukebo*, 352

N.W.2d 752, 754 (Minn. 1984). The Minnesota Supreme Court has also commented

in regard to physicians that the Legislature can require good moral character

"to bar from admission to this profession a dishonorable man, whose principles

or practices are such as to render him unfit to be entrusted with the discharge of its duties." *State ex rel Powell v. State Medical Examining Board*, 32 Minn. 324, 20 N.W.238, 240 (1884).

In judging the Licensee's course of conduct against a requirement for respect for the rights of others and for the Iasi of the nation it must be concluded that the Board has proved a lack of good moral character. The scheme of harrassment engaged in by the Licensee continued over a long period

of time into the spring of 1985, involved many victims and a very large number

of false orders. The Licensee wilfully violated the mail fraud statute to

carry out his scheme. Other jurisdictions have found, similar conduct to show

a lack of good moral character. In the case of, In re Latimer, 11 Ill.2d 327, 143 N.E.2d 20, cert. den. 355 U.S. 82 (1957), an applicant's lack of moral fitness to be an attorney was shown by his scurrilous and defamatory charges against the bar committee considering his application. A case closer on the facts is In re Application for Admission to the Bar, 378 Mass. 795, 392 N.E.2d 533, cert. den. 444 U.S. 1046, reh. den. 445 U.S. 947. In which admission to the bar was denied because the applicant had filed charges against three attorneys who had testified against his character and fitness.

Although the Board cites in its brief a number of violations of the Ethical principles of the American Psychological Association, those allegations have not been discussed in this memorandum since those principles have not been adopted as rules regulating the practice of psychology in Minnesota. They are to be used only to resolve any ambiguity which may arise in the interpretation of the Board's Rules of Conduct. Minn. Rule 7200.4500, subp. 4. Good moral character is not defined in the rules. The issue of good moral character was not specifically addressed in the Licensee's memorandum except that the Licensee did cite In re Haukebo for the proposition that disciplinary action cannot be based upon conduct which has not occurred. The testimony at the hearing indicated that the Licensee had continued his scheme of harassment at least through May of 1985. (Transcript 101). The record demonstrates that the Licensee has little respect for the rights of his colleagues and that he deliberately engaged in mail fraud in order to further a scheme of harassment of his colleagues who were merely fulfilling their obligations as regulators. This demonstrates a lack of the good moral character necessary for licensure and suggests that some form of disciplinary action should be taken.

G.A.B.