

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF MARRIAGE AND FAMILY THERAPY

In the Matter of Tonya Gilmore, Applicant
Date of Birth: 1/15/1969

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a telephone prehearing conference before Administrative Law Judge Barbara L. Neilson commencing at 1:30 p.m. on January 3, 2012. Benjamin R. Garbe, Assistant Attorney General, appeared on behalf of the Complaint Panel of the Minnesota Board of Marriage and Family Therapy (Board). Lee R. Johnson, Attorney at Law, Johnson & Greenberg, PLLP, appeared on behalf of the Applicant, Tonya Gilmore. The OAH record closed on February 2, 2012, upon receipt of a letter of clarification from counsel for the Board.

By letter dated January 11, 2012, the parties informed the Administrative Law Judge that the Applicant had decided not to contest the allegations contained in the Notice and Order for Prehearing Conference and Hearing but reserved her right to present evidence and argument before the full Board regarding the appropriate remedy in this matter. The terms of the agreement reached between the Applicant and the Complaint Panel are reflected in the Findings of Fact set forth below.

STATEMENT OF THE ISSUE

The issues presented in this case are whether the Applicant violated a statute or rule of the Board, contrary to the requirements of Minn. Stat. §§ 148B.37, subd. 1(3), and 148B.175, subd. 6; failed to furnish evidence that she is of good moral character, in violation of Minn. Stat. § 148B.33, subd. 1(2); is incompetent to practice marriage and family therapy, in violation of Minn. Stat. § 148B.37, subd. 1(1); engaged in unprofessional and unethical conduct, in violation of Minn. R. 5300.0350, subp. 3; exploited the trust and dependency of a client and engaged in an inappropriate dual relationship with a client, in violation of Minn. R. 5300.0350, subp. 5.B.; engaged in sexual contact or other physical intimacies with a client, in violation of Minn. R. 5300.0350, subp. 5.E.; exploited the professional relationship with a client for her emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.; or failed to terminate a professional relationship when her objectivity or effectiveness was impaired, in violation of Minn. R. 5300.0350, subp. 5.J. If so, the further issue presented is what, if any, disciplinary action should be taken by the Minnesota Board of Marriage and Family Therapy.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant, Tonya Gilmore, has never been licensed by the Board but has applied for licensure.¹

2. The Notice and Order for Prehearing Conference and Hearing (Notice of Hearing) in this matter was issued on November 28, 2011. The Notice of Hearing scheduled a prehearing conference for January 3, 2012, at 1:30 p.m. During the prehearing conference, counsel for the Applicant indicated that the Applicant was considering waiving the hearing before the Administrative Law Judge and reserving the right to present argument to the full Board.

3. By letter dated January 11, 2012, the parties notified the Administrative Law Judge that, after being duly advised of her rights to a contested case proceeding, the Applicant had decided not to contest the allegations contained within the Notice of Hearing. The Applicant does intend to exercise her right to present evidence and argument before the full Board regarding the appropriate remedy in this matter.²

4. In the January 11, 2012, letter, the parties jointly requested that the Administrative Law Judge issue Findings of Fact, Conclusions and Recommendations consistent with the allegations contained in the Notice of Hearing. The Applicant understands that the allegations contained in the Notice of Hearing will become the foundational factual findings on which the matter will proceed to be heard before the full Board.³

5. This matter did not proceed by default, but rather by stipulation of the parties.⁴

6. Based on the stipulation entered into between the Complaint Panel and the Applicant, the allegations contained in the Notice of Hearing are not contested. Those allegations are hereby incorporated into these Findings of Fact, with the understanding that the Applicant reserves her right to present evidence and argument to the full Board regarding what, if any, discipline should be imposed against her.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 148B.175.

¹ Feb. 1, 2012, Letter to Administrative Law Judge from Counsel for the Complaint Panel.

² Jan. 11, 2012, Letter to Administrative Law Judge from Counsel for the Complaint Panel.

³ *Id.*

⁴ *Id.*

2. The Notice of Hearing was proper, the Board has complied with all relevant procedural legal requirements, and this matter is properly before the Board and the Administrative Law Judge.

3. The Applicant has entered into a stipulation with the Complaint Panel under which she does not contest the allegations set forth in the Notice of Hearing. Accordingly, the allegations contained in the Notice of Hearing are taken as true.

4. Based upon the facts set forth in the Notice of Hearing, the Applicant violated statutes and rules of the Board, contrary to the requirements of Minn. Stat. §§ 148B.37, subd. 1(3), and 148B.175, subd. 6.

5. Based upon the facts set forth in the Notice of Hearing, the Applicant failed to furnish evidence that she is of good moral character, in violation of Minn. Stat. § 148B.33, subd. 1(2).

6. Based upon the facts set forth in the Notice of Hearing, the Applicant is incompetent to practice marriage and family therapy, in violation of Minn. Stat. § 148B.37, subd. 1(1).

7. Based upon the facts set forth in the Notice of Hearing, the Applicant violated the Code of Ethics adopted by the Board (which is set forth in Minn. R. 5300.0350). Specifically, the Applicant engaged in unprofessional and unethical conduct, in violation of Minn. R. 5300.0350, subp. 3; exploited the trust and dependency of a client and engaged in an inappropriate dual relationship with a client, in violation of Minn. R. 5300.0350, subp. 5.B.; engaged in sexual contact or other physical intimacies with a client, in violation of Minn. R. 5300.0350, subp. 5.E.; exploited the professional relationship with a client for her emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 5300.0350, subp. 5.G.; and failed to terminate a professional relationship when her objectivity or effectiveness was impaired, in violation of Minn. R. 5300.0350, subp. 5.J.

8. The imposition of appropriate disciplinary action against the Applicant is in the public interest.

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

RECOMMENDATION

The Administrative Law Judge recommends that the Board take appropriate disciplinary action against the Applicant.

Dated: February 8, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: No hearing occurred.

NOTICE

This report is a recommendation, not a final decision. The Board of Marriage and Family Therapy will make the final decision after a review of the record. 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 calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. The parties should contact Jennifer Mohlenhoff, Executive Director of the Board, 2829 University Avenue S.E., Suite 330, Minneapolis, MN 55414, (612) 617-2220, 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 Commissioner 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. In order to comply with this statute, 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.

Under 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 or as otherwise provided by law.