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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON 9-15-97

In the Matter of the Suspension : STATE OF NEW JERSEY
or Revocation of the License of : DEPARTMENT OF LAW & PUBLIC
: SAFETY
ALLEN P. WP, Psy.D. : DIVISION OF CONSUMER AFFAIRS
-and- : BOARD OF PSYCHOLOGICAL EXAMINERS
LUIS R. NIEVES, Psy.D. : OAL DOCKET NO. BDS 2394-96
:
Licensed to Practice Psychology : Administrative Action
in the State of New Jersey :
: Exceptions Submitted on Behalf of
: Respondents
:

EXCEPTIONS - ALLEN BLASUCCI, PSY.D.

1. Failure to Address the Evidence of Complainants' Motive

The decision of Judge Jeff Masin adopts the serious allegations of Dr. Allen Blasucci's former employees -- Wendy Aita, Angela Carragiolo, Victoria Mason and Jacqueline Decker. Judge Jeff Masin chose to believe the allegations of the former employees, but Judge Masin failed to comprehend (or evaluate) the self-interest of these former employees to "bring down" respondents so that these employees could "take over" the state contract to manage DYFS referrals through respondents' program known as Therapeutic Alternatives (hereafter T/A). Linda Phillips, the administrative assistant at T/A testified that as early as July or August 1993 (three months before Ms. Carragiolo left T/A) Ms. Carragiolo began discussing

the plan of herself, Aita, Mason and Decker to "take over" T/A and that these discussions would occur on an almost daily basis until she left. (11/26T 12, 15-T13, 25).¹ R-19 is a phone message taken by Ms. Phillips from Ms. Carragiolo just days after Ms. Carragiolo left T/A to Denise Tontarski, a para-professional at T/A, warning of their takeover of the T/A contract. (See also T16, 17-22).

Denise Tontarski also testified that Ms. Carragiolo told her that she, Dr. Wendy Aita and Derek Aita (Wendy Aita's husband) would "take over" after the fall of Drs. Nieves and Blasucci. (11/26T 45, 8-12). Likewise, Angela Carragiolo provided their detailed plans to Dr. Kathleen Wilkinson regarding their takeover of T/A. (11/26T 122, 12-22).

Jack Abbott, the DYFS liaison, also testified that both Aita and Carragiolo called him about the T/A program after Carragiolo left and it was his impression that they were interested in taking over the program. (12/9T 34, 13-16; T57, 11-20). Mr. Abbott specifically disputed Dr. Aita's claim that he called her regarding T/A. (T55, 1-6).

The quartet's desire to take over the program and bring down Nieves and Blasucci is not disputed. Dr. Aita

¹The date before the transcript citation refers to the date of the testimony.

as well as Ms. Carragiolo admitted that they had conversations for a "takeover" of T/A which included her husband's role in T/A when she was out on maternity leave. (10/22T 166, 11-23). Likewise, Jacqueline Decker admitted that she spoke to Ms. Carragiolo about taking over T/A. (10/29T 148, 5-24). Judge Jeff Masin, however, chose to ignore the complainants' motives in pursuing their complaint against respondents.

2. IMPROPER SEXUAL RELATIONSHIP WITH A PATIENT
(pp.153-154 of the decision.)

While ignoring complainants' motives to destroy Dr. Allen Blasucci, Judge Masin chose to accept the contention of Jacqueline Decker that Dr. Blasucci had sex with his patient, E.S. Significantly, Dr. Blasucci and E.S. both testified specifically denying any improper relationship.

The evidence that Judge Masin chose to accept to prove that Dr. Blasucci had sex with E.S. is Jacqueline Decker's claim that: a) Dr. Blasucci admitted the sexual relationship with E.S. during a restaurant game of Truth or Dare (10/29 T 84, 3-24), and, b) Dr. Blasucci appeared "disheveled" when Ms. Decker delivered coffee to his office while he was in session with E.S. (10/29T 86, 1-6)².

Judge Jeff Masin concedes that the evidence to prove Dr. Blasucci's sexual relationship with E.S. "is

²The date before the transcription denotes the date of the testimony.

admittedly limited and largely circumstantial." Yet, with this limited and circumstantial evidence Judge Masin concluded that E.S. lied, that she was biased (even though her anonymity has been scrupulously maintained) and that Dr. Blasucci lied about his relationship with E.S.

Judge Masin provided a detailed evaluation regarding his interpretation of the general character of Dr. Blasucci, but he failed to evaluate the character of the evidence presented to prove Dr. Blasucci's guilt of this specific offense. Clearly, a so-called admission given during an after hours game at a restaurant over drinks to a new employee cannot be given much credence.³ Did this so-called admission really happen, or, even if it happened as Judge Masin believed, was it merely an extension of the game that Dr. Blasucci and Ms. Decker were playing.

The other evidence identified by Judge Masin, Dr. Blasucci's so-called "disheveled" appearance, also cannot be a linchpin to prove a sexual relationship between psychologist and patient. A review of Ms. Decker's recitation of the facts once again demonstrates evidence that is far from compelling and subject to interpretation:

"About five after -- five minutes after they started their session I brought some coffee to the door, knocked on the door,

³Ms. Decker admitted on cross-examination that when Dr. Blasucci allegedly admitted his sexual relationship with E.S. she had only been working for CPI for six weeks. (10/29T 152, 7-10).

and I heard some rustling and Dr. Blasucci opened the door quickly. His tie was loosened down, two buttons were open and his hair was a little messed up." (10/29 T 85, 25-T 86,4).

It is critical that the psychological profession and Dr. Allen Blasucci in particular not be convicted by hearsay, innuendo, or false appearance of this most grievous charge that can be made against a psychologist. The quality and credibility of the evidence regarding the specific issue and not the general character of the respondent must be at issue. When we weigh the specific denial of impropriety by Dr. Blasucci and E.S. against the paltry evidence offered by the State, it is clear that the State has failed to prove by a preponderance of the credible evidence that Dr. Blasucci had a sexual relationship with E.S.

3. SEXUAL HARASSMENT AND SEXUAL ADVANCES
(pp 136-139 of the Decision)

Judge Masin initially dealt with the sexual harassment/assault that allegedly occurred when Drs. Aita, Blasucci, Nieves and Angela Carragiolo attended a conference in Philadelphia. Dr. Aita and Angela Carragiolo paint a very outrageous picture of Dr. Blasucci sexually harassing and even physically harming them. The facts related by Dr. Aita and Ms. Carragiolo were clearly implausible on their face since:

1. If Dr. Blasucci was acting so improperly toward Dr. Aita in the hotel room (touching her thigh, cursing, intoxication, relating vulgar stories), why was Dr. Aita so willing then to accompany him to dinner. (10/21T 228, 8-9).

2. If Dr. Blasucci was truly dragging Ms. Carragiolo around the block, why did Dr. Aita get into a cab and leave the scene. (10/22T 243, 16-T244,9).

3. If Dr. Aita and Ms. Carragiolo were truly assaulted in Philadelphia in October 1992, why did Dr. Aita fail to file a complaint until May 1994? [Dr. Aita admitted that she did not file the complaint until she and Ms. Carragiolo had conversations regarding their "takeover" of T/A. (10/22T 166, 11-23).]

4. If Angela Carragiolo was truly sexually assaulted by Dr. Blasucci why did she:

a) fail to tell Dr. Aita of the assault on the ride home on the night of the assault (10/22T 244, 18-T245,4);

b) attend the seminar the next morning and not tell Dr. Nieves that she was assaulted (11/25T 76, 9-T77, 15);

c) exhibit great support for the T/A program

in December 1992 to Dr. Kathleen Wilkinson and did not mention the assault until after the "takeover" plan was hatched (11/26T 107, 18-25; T 183, 13-23);

d) invite Dr. Blasucci to her wedding in June 1993 (11/25T 77, 10-17);

e) refer her sister-in-law for treatment to Dr. Blasucci in mid-1993 (12/9T 116, 8-21);

f) tell Jack Abbott, the DYFS liaison, that the alleged assault took place at the T/A office in Mount Holly (12/9T 32, 14-T33,7).

In his evaluation of the events occurring in Philadelphia, Judge Masin only addressed #4(a) and (b) above. There can be no other explanation for the inconsistencies in the conduct of Dr. Aita and Angela Carragiolo after this so-called Philadelphia incident other than that their story was fabricated to fulfill their takeover plot.

The issue of alleged hostile work environment presents another significant disparity between respondents' testimony and that of Aita, Carragiolo, Decker and Mason. Raymond Pawson, Dr. Kathleen Wilkinson, Denise Tontarski, Linda Phillips, Taissa Matla and Diane Carlson never witnessed any hostile behavior by respondents. Dr. Karen Miller, who was hostile to respondents, admitted that she never witnessed sexual harassment by respondents. (11/19T

82, 1-6). Furthermore, Dr. Linda Cameron testified that Victoria Mason and Angela Decker did not spontaneously quit CPI, since she was told by Dr. Karen Miller before the baby shower that "she was expecting people to leave or people were going to walk out." (12/3T 35, 8-T36, 5). That is, Decker and Mason did not leave precipitously due to a hostile work environment. Rather, they left CPI because they had takeover discussions with Ms. Carragiolo.

Denise Tontarski characterized Ms. Carragiolo's conduct as "bizarre" (11/26T 42, 5), while Dr. Kathleen Wilkinson felt Ms. Carragiolo was "delusional" and "hysterical" when Ms. Carragiolo recounted her allegations of sexual assault. (12/26T 126, 5-8). This "delusional" conduct fed and inflamed the fervor of Aita, Decker and Mason to "bring down" respondents. The allegations of sexual harassment/hostile work environment are irrational on their face and totally inconsistent with the experience of contemporaneous employees of CPI and T/A such as Taissa Matla, Diane Carlson, Denise Tontarski, Linda Philips, Dr. Karen Miller, Dr. Kathleen Wilkinson and Ray Pawson. Judge Masin, however, chose to ignore all of these inconsistencies just as he failed to evaluate the motive for the complaint.

4.

USE OF ALCOHOL
(pp. 155-156 of the Decision)

Dr. Blasucci's use of alcohol was, as most issues in this case, the subject of totally contradictory testimony.

Jacqueline Decker claimed that Dr. Blasucci "was constantly drinking daily, in his office" and "at times he would start at 11 o'clock in the morning." (10/29T 93, 8-15). She claims that his drinking was obvious from his gross verbal and physical conduct. (T 94, 2-24). But, why didn't her co-worker Taissa Matla ever see Dr. Blasucci take a drink, and another co-worker, Diane Carlson, saw him take a drink only twice over a period of years? Furthermore, neither Ms. Matla nor Ms. Carlson ever witnessed any manifestations of intoxication by Dr. Blasucci even though both worked at CPI with Ms. Decker and Ms. Mason. (Matla: 12/3T 5, 19-24; Carlson, 11/25T 142, 15-21). Even Dr. Karen Miller, who was hostile to Dr. Blasucci, admitted that she never saw Dr. Blasucci drunk. (11/19T 87, 10-13). Furthermore, no one who worked with Dr. Blasucci at Therapeutic Alternatives ever saw Dr. Blasucci drunk or intoxicated.

Judge Masin rejected the claim of Dr. Blasucci's habitual intoxication but still concluded that his use of alcohol established professional misconduct. There simply is no credible evidence to support the professional misconduct in his use of alcohol. Dr. Blasucci's testimony regarding his alcohol use is that he enjoys a drink at the end of the day, at lunch, or when there is a large gap between clients, but he has never been intoxicated in the office or while seeing clients. (12/9T

152, 1-T153, 4). The most telling statement regarding Dr. Blasucci's alcohol use is Dr. Nieves' very credible challenge that he would never allow alcohol use by his partner to jeopardize his career. (12/5T 11, 21-T12, 11).

CONCLUSION

The more serious charges against Dr. Allen Blasucci are the subject of contradictory testimony and self-interest, which Judge Jeff Masin fails to evaluate. We request a careful review of the facts and a determination that the inconsistencies of the allegations of Aita, Carragiolo, Mason and Decker coupled with their self-interest requires that their claims be rejected.

The recommended revocation of Dr. Blasucci's license is based in most significant part on his alleged sexual relationship with a patient, E.S. This finding must be carefully evaluated to determine if the charge is supported by a preponderance of the credible evidence. Since this recommended determination is based on evidence which is little more than an answer to a party game and a slightly disheveled appearance, the determination must be rejected.

If this Board adopts the findings of Judge Masin, but rejects the conclusion that Dr. Blasucci had an improper relationship with a patient, Dr. Blasucci should not be precluded from the profession and clients he has aided for more than twenty years. It is recommended that a period of suspension and counseling, with an opportunity for reinstatement would best serve justice and the public interest.

EXCEPTIONS: LUIS NIEVES, PSY.D.

The Exceptions to the decision of Judge Jeff Masin regarding Luis Nieves, Psy.D. do not contest the factual findings. Rather, we contest the relative significance of each presumed violation as well as the recommendation that Dr. Nieves' license be suspended for one year.

1. Retaliatory Conduct and Unethical Treatment of Colleagues

Judge Masin found that the "most serious (violation) as to his character being the retaliatory conduct and unethical treatment in regard to several colleagues." (p. 159). This retaliatory treatment and unethical conduct toward colleagues regarded Dr. Nieves' supervision of Dr. Jeffrey Allen and Dr. Freida Rosner as well as his employment of Dr. Karen Geller.

Judge Masin found that Dr. Jeffrey Allen's complaint is a financial one. That Dr. Allen should have gotten "fair warning of anticipated reduction in hourly rates" for his work at ERTC. (p. 146). We agree that prior warning of a salary reduction was in order, but there was no intention to reduce Dr. Allen's salary. Through an administrative error, Dr. Allen's position was included in the arrangements with other ERTC consultants. Despite an assurance that the salary reduction was an error, Dr. Allen advised Dr. Nieves that he did not accept the apology and the offer to restore his full salary. Instead, Dr. Allen chose to secure his own contract with

ERTC. The point is that Dr. Allen did not get a warning of the intent to reduce his salary at ERTC because there was no intent to reduce his salary and, it is uncontested that Dr. Nieves offered to fully restore Dr. Allen's salary.

Dr. Rosner was Acting Clinical Director at ERTC, and the evidence is clear that she could not continue in the position since she was not licensed. Furthermore, her plan for ERTC was "tabled" or "shelved" by the Director (p. 145). Thereafter, Dr. Nieves submitted his own plan for ERTC. Significantly, Dr. Nieves had been in contact with Barry Silverstein since 1990, who was the person in charge of recruiting and supervising ERTC personnel. Judge Masin concluded that "respondents ultimately received a contract to supplant her (Dr. Rosner) does not appear to have been the result of any unfair advantage or inappropriate undercutting of Rosner, at least as far as their contracts with ERTC." (p. 145). In fact, Dr. Rosner admitted that she knew that Dr. Nieves was submitting his own proposal for the ERTC contract. (11/25T 274, 11-22). Judge Masin, however, went on to conclude that Dr. Nieves "had an obligation of fairness and ethics to advise his supervisee of the intentions of he and his partner to seek the clinical directorship." (p. 145).

It is, however, undisputed that once Dr. Nieves

received the ERTC contract, he was in the position to determine the administrative structure of ERTC. It cannot be perceived as improper or unethical for Dr. Nieves to replace Dr. Rosner as Clinical Director of ERTC, especially since Dr. Rosner admitted that Ms. Silverstein felt that she was "soft on the kids." (11/25T 282, 24-T283,40.) Does the fact that Dr. Rosner is Dr. Nieves' supervisee ethically preclude him from demoting Dr. Rosner?

With regard to Dr. Allen and Dr. Rosner, Judge Masin also concluded that Dr. Nieves did not "give them due warning of the impending change that they would have to make" because he would stop acting as their supervisor. (p. 147). Judge Masin found a violation of not providing due warning of the termination of supervision even though he found "[i]n each case the record shows that the supervisee (Drs. Rosner and Allen) were not actually left without supervision when Nieves terminated his supervisory role." (p. 147). Significantly, Dr. Allen always had a previous supervisor and Dr. Nieves was known and accepted as his second supervisor. Judge Masin seems to assume that the alternate supervision for Drs. Allen and Rosner was unconfirmed information, but Dr. Nieves had confirmation from both Dr. Rosner and Dr. Allen prior to the decision to terminate supervision. As a matter of fact, it was this other supervision that had been a matter

of contention between Dr. Rosner and Dr. Nieves.

The final claim of unethical or retaliatory conduct regards Dr. Nieves' treatment of Dr. Karen Geller. Dr. Geller was the first psychologist that Dr. Nieves hired for the Therapeutic Alternatives program. That is, Dr. Geller was the first person undertaking the supervision of children in this cutting edge DYFS funded program. Dr. Geller left the program within six months of beginning her job and she failed to complete the paperwork for the children under her care. Judge Masin found that "Nieves was honestly upset about the timing and effect of Geller's departure, about information that was requested of her and not immediately supplied." (p. 149). In fact, Dr. Geller never fulfilled her commitment to T/A.

Judge Masin found fault with a letter that Dr. Nieves sent to Ms. Geller, which was copied to the Board. Judge Masin believed the intent of the letter was to scare Geller rather than to lodge a complaint -- the Judge read correctly that Dr. Nieves did not wish to interrupt her licensing process, but misread that malice was intended. If malice had been intended, Dr. Nieves would have lodged a complaint. Instead, the intent of the letter was to "raise the conscience of a young psychologist about the importance of their commitment to a job in which clients depend on you." Dr. Nieves did not feel that Karen Geller was a threat to the public, only that she needed to be

more conscientious about her time and written commitments.

2. Financial Matters

Judge Masin found two violations of financial issues. The first finding is that until the Board changed its rules effective May 1, 1995, Dr. Nieves retained up to 50% of the client fees charged for services rendered by consultants. Judge Masin concluded that "the retention of 50% of the fee, without any separation of the charges for ancillary expenses, does not represent a reasonable apportionment of the total fee and therefore respondents violated N.J.A.C. 13:42-4.6(b) and (c). (p. 133). Although Judge Masin found this percentage of fee retention to be unreasonable, I am sure that many Board members know that prior to May 1, 1995 this was a common practice in the profession.

The second financial violation alleges that Dr. Nieves did not sufficiently concern himself with deficiencies delineated in audits, i.e., that he had a "laissez faire" attitude to these problems. (p. 135). Significantly, Judge Masin confirmed that "there was never a conscious plan on the part of the respondents to defraud the State" (p. 134), and Judge Masin properly noted that Dr. Nieves' corporate auditors failed to point out the deficiency in the maintenance of time records, and he recognized this as a mitigating factor. (p. 135).

The reality of the situation is that Dr. Nieves was

piloting his first state contract, while offering a unique service. He delegated the fiscal monitoring to a "Contract Manager" who was supervised by their corporate auditors and by the DYFS Fiscal Contract Manager. This delegation, although perhaps not prudent, certainly is not a violation of the code of professional responsibility.

3. Programmatic Issues

The final exceptions address three miscellaneous issues cited by Judge Masin: 1) Payment of Dr. Marilyn Lyga, 2) Employment of Dr. Nieves' daughter, Kim, and 3) Testing security.

Dr. Marilyn Lyga was a psychologist who worked for Dr. Nieves at ERTC. After Dr. Lyga resigned her employment, Dr. Lyga was paid for a week that she had not worked. Out of convenience for the program, Dr. Nieves had Dr. Lyga return to the program to make up the hours for which she had been paid. Judge Masin agreed that no one was "unjustly enriched", but he felt that "ERTC should have been informed of the mistake and given the option of whether it simply wanted the money back or was willing to let Dr. Lyga work the necessary hours." (p. 130). Significantly, there is no evidence in the record that Dr. Nieves' having Dr. Lyga complete the hours for which she was paid was inconsistent with the State contract (or that the services provided were not needed), yet Judge Masin found that the "handling of the situation was less than

professional". (p. 132). Certainly, Dr. Nieves should have the latitude to require his employee to provide the service for which she was paid without incurring a professional violation.

Dr. Nieves' daughter, Kim Nieves, was hired as a paraprofessional after working as a volunteer for three months. The hiring of non-professional staff was never the responsibility of Dr. Nieves. The Contract Manager for DYFS, Robert Fierick, testified that he was aware that Dr. Nieves' daughter was being hired as a paraprofessional, but Judge Masin found that "[i]t does appear that some aspects of her hiring at T/A were not accomplished in accord with standard procedures." (p. 132). I submit that this claim cannot be adopted as an ethical or professional violation.

As a final violation, Judge Masin found that there was sharing of the details of testing documents used for employment decisions at T/A with people who only needed "generalized conclusory information". (p. 143-144). This is a very fine distinction because the people involved were at a Master's Degree level (Pawson and Carragiolo). Judge Masin also properly pointed out that Diane Carlson, an administrative person in charge of overall hiring of non-professionals, was out of line when she made reference to an individual's test results which she was only entrusted to file. This was an isolated case

and she was reprimanded. This violation, while valid on one occasion, was not a matter of practice.

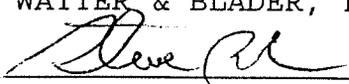
CONCLUSION

The charges sustained by Judge Masin for Dr. Luis Nieves did not involve any patient related issues. A significant portion of the sustained charges concerned conflicts with employees/supervisees and in none of the charges were the employees or supervisees hindered in their professional development. In only one case did Judge Masin believe that there was malice and that was when a copy of an uncomplimentary letter was sent to this Board for their information, not as a formal complaint.

We ask that the sustained charges be reviewed from a practical perspective. Dr. Nieves' practice was placed under a microscope during a time that he was in the midst of development and innovation and experimentation. Certainly the sustained charges do not warrant a suspension of his license which would be tantamount to the destruction of his practice and the undermining of the T/A program.

Respectfully submitted,

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BY: 

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