



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
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September 26, 1997

FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON 9-26-97

CHRISTINE TODD WHITMAN
Governor

PETER VERNIERO
Attorney General

JAYNEE LAVECCHIA
*Assistant Attorney General
Director*

State Board of Psychological Examiners
124 Halsey St., 6th floor
P.O.Box 45017
Newark, NJ 07101

re: Matter of Lawrence D. Spiegel, Ed.d.
OAL Docket BDSPE 02981-95N
EXCEPTIONS TO INITIAL DECISION

Honorable Members of the Board:

In the September 15, 1997 Initial Decision ("ID") in this matter, the Hon. Diana C. Sukovich, A.L.J., has concluded that virtually all of the allegations of the Verified Complaint have been proved, warranting revocation of license. The Attorney General hereby files very limited Exceptions to the recommendations for disciplinary sanction, as set forth below.

The ALJ found that respondent's conduct with the two minors at his mobile home constitutes gross malpractice, negligence and professional misconduct (Count I, ID 7 through 19, 37 and 46). Further, Complainant has proved that respondent was a habitual and intemperate user of narcotics and other drugs, both legal and illicit, and that he continued to offer professional psychological services to clients during such periods (Count II, ID 19 through 39). Complainant has also proved the applicability of a criminal conviction and other improprieties in connection with weapons in 1983 and again in 1991 (Count III, ID 11, 17, 24 through 26, 39-40). Respondent's prior conviction and other conduct involving CDS are evidence crimes/conduct relating adversely to the practice of a licensed professional and are a separate basis for discipline (Count IV, ID 23-25,40). Complainant has also proved that respondent breached the terms of his professional contract with client David Stetson and then ignored a Court Judgment ordering him

to repay the client, and also ignored numerous judgments issued in other lawsuits against him (Count V, ID 33-35, 49), demonstrating poor moral character (ID 41). Respondent also failed to timely notify the Board of his change of address, thus impeding investigation of his conduct (Count 6, ID 35). Finally, respondent engaged in the practice of psychology during April 1995 while his license was suspended (Count VII (ID 6, 44, 46-47)).* The ALJ referenced Complainant's expert witnesses, Frank H. Dyer, Ph.D. on the psychological issues, and R. Michael Sanders, D.M.D., Ed.M. on drug prescribing and abuse issues.

The ALJ found that respondent's license should be revoked for the conduct proved in Count I (ID 37 and 46). For each of the Counts II, III and VII, the ALJ states that she would have recommended suspension of license if each such Count had stood alone (ID 46). For Counts IV, V and VI, the ALJ states that she would have recommended a letter of warning, reprimand or censure. However, the ALJ further determined that when the violations pertinent to Counts II through VII are considered in their totality, and in addition to the violations pertinent to Count I, then revocation is the appropriate disciplinary disposition (ID 46, 47). The ALJ also recommends certain monetary sanctions as well: assessment of penalties totalling \$10,000 for the violations proved in Counts I, II, III and V (Complainant sought no separate penalty for Count VI).

With regard to certain legal issues in the case, it should be noted that the ALJ carefully considered respondent's contentions that the Attorney General was precluded from instituting action

*The ALJ found insufficient proof under the high summary decision standard for one of the two allegations in Count VII: insufficient proof of misrepresentation by respondent of his academic affiliations (ID 5-6,47), and insufficient proof of habitual or intemperate use of alcohol (Count II, ID 24,39). The wrap-up reference in the Conclusions section at ID 46 to a finding that respondent was a habitual and intemperate user of alcohol as well as of narcotics and drugs, appears to be a clerical inadvertence and should be disregarded.

against him and that the Board would be precluded from imposing discipline upon respondent for legal or illegal drug usage, based upon his contention that he is somehow protected from consequences of his conduct by the Americans With Disabilities Act and the Rehabilitation Act. The ALJ notes at ID 41-42 her rulings at trial rejecting respondent's arguments for the reasons articulated in Complainant's post-hearing submissions (ID 42). Although Complainant's brief on that issue is, of course, already a part of the record before this Board, Complainant attaches for Board convenience the brief's pages 49-55 containing those reasons (Appendix A). The ALJ also addressed the matter at trial; see transcripts November 1, 1995 pp. 78-81; November 2, 1995 p.139; November 3, 1995 p.161.

In addition, the ALJ notes that she considered and rejected at trial respondent's contentions that certain evidence should be precluded based on privileges (which included marital privilege and physician-patient privilege) and the use of an expunged criminal record (ID 42). For the convenience of the Board, Complainant has referenced those portions of the trial transcript containing those rulings so that the Board can readily review the judge's bases for those decisions. Medical and dental treatment records subpoenaed for a Board investigation are not privileged pursuant to the Board's responsibility as a government agency and pursuant to the Duty-to-Cooperate Rule, N.J.A.C. 13:45-C-1 et seq., Additionally, respondent waived his privilege by voluntarily submitting material to the Board regarding his treatment (transcript November 1, 1995, pp. 237-243; subpoenaed internal medicine medical records not privileged for the above reasons and respondent stipulated to their content (November 3, 1995, pp. 188-191). Moreover, criminal records provided to a licensing Board are not privileged whether or not a later expungement was issued, based on case law, relevancy, and the fact that the Board is not a "law enforcement agency" (November 3, 1995, pp 177-182). Finally, marital privilege does not apply to testimony of observations which

are not communications made in confidence, and respondent waived possible privilege via his written Answer and Affirmative Defenses and Answers to Interrogatories along with communications made to a third party and/or in another public record (November 13, 1995, pp. 94-98, 117-118). Complainant's legal arguments as to expungement and each of the privilege issues were presented to the ALJ in detail in Complainant's October 20, 1994 brief, which is part of the Board record in this matter and which is incorporated herein for this purpose. Significantly, respondent failed to seek interlocutory appeal on any of the privilege issues.

Also provided to the Board as part of the existing record is Complainant's October 20, 1994 brief which the ALJ apparently found persuasive as the basis for part of the rulings; Appendix B.

The Attorney General's sole exceptions are as follows:

1. The allegations of Amendment Count VII charging respondent Dr. Spiegel with practice while his license was suspended were considered by the ALJ subsequent to the rest of the trial. The ALJ, in her December 16, 1996 decision on that Count, found (and affirmed upon reconsideration on January 15, 1997) that the allegations had been clearly proved, and she stated at page 20 that she would determine the disciplinary sanction at the time of the Initial Decision. The ALJ has apparently inadvertently overlooked that matter when completing her review of the remainder of the case and has thus failed to address any penalty for that offense.

It is incontrovertible that practice while suspended is a serious offense which totally subverts the Legislative effort set forth in the Practicing Psychology Licensing Act. Respondent's conduct manifests a flagrant disregard of law and rule enacted to protect the public; N.J.S.A. 45:1-21 and -23 through -25, and N.J.A.C. 13:45C-1 et seq. Complainant therefore asks the Board to increase the penalty to revocation on that Count VII independently and to assess the maximum statutory penalty of \$2,500 in addition to the penalties on the other Counts.

2. The ALJ accepted and extensively referred to the testimony of Dr. Frank Dyer (ID 33-35) when concluding that respondent had failed to prepare a proper expert report as explicitly required by his written contract and confirmed by the client's payment of \$5,000. Yet the ALJ apparently accepted the indirect, unsworn and nontestimonial representations by respondent that he had conferred with client David Stetson to give him a verbal evaluation of the evidence underlying the client's criminal conviction (ID 34,40,44). Therefore, although the client had paid the full requested retainer of \$5,000 (see P-62 EV), and the Superior Court has already issued a default judgment ordering respondent to repay that amount to the client (see P-59 EV, Order to Execute on Chattels), the ALJ recommended that Dr. Spiegel be ordered to repay only \$2,500. Thus, Complainant asks the Board not to impliedly undermine the Superior Court judgment for \$5,000 due to Mr. Stetson, which judgment is now fully supported by expert testimony from Dr. Dyer, and to order full reimbursement to the client.

3. Next, Complainant asks the Board to clarify or modify the ALJ's seeming recommendation that none of the costs, penalties or restitution be imposed except as a condition of reinstatement (ID 47), which is inconsistent with the ALJ's directive at ID 47-48 that all payments should be completed within 6 months of the effective date of "this decision." Complainant asks that the Board's Final Order be worded and processed as any other Complaint; i.e., all penalties, costs and reimbursements should be assessed as of the date of the Final Order, and any failure to pay in full within 10 days of the entry thereof should result in the filing of a Certificate of Debt pursuant to N.J.S.A. 45:1-25. (That does not preclude the Board from thereafter permitting installment payments.)

4. Finally, the Board is requested to correct plainly certain clerical errors in the Initial Decision, which have been brought to the ALJ's attention by Complainant's letters of September 22, 1997 and September 26, 1997, which were not fully rectified by the

Judge's own revision memorandum of September 19, 1997, copies attached, Appendix B.

In summary, Complainant asks the Board to affirm all of the ALJ's findings of fact and conclusions of law on Counts I through VII except as set forth above, and to affirm the assessment of costs, penalties and reimbursement except as set forth above. The Board should affirm the Order to seal the trial record except for Board and judicial review and except as the Board may otherwise order in particular circumstances. The Board should modify the ALJ's recommended conclusions by ordering revocation on Count VII in addition to Count 1; by imposing a \$2,500 penalty for Count VII thereby raising the total penalty to \$12,500; by ordering full \$5,000 reimbursement to client David Stetson (Count V); and by assessing all penalties, costs and reimbursement as of the date of the Board's Final Order. The Board should also correct the clerical errors noted.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 

Joan D. Gelber
Deputy Attorney General

c: Lawrence D. Spiegel, Ed.D.
1385 Highway 35, Box 270
Middletown, NJ 07748-2012

Excerpt

STATE OF NEW JERSEY
DEPT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PSYCHOLOGICAL EXAMINERS
DOCKET NO. BDS 02981-95n

IN THE MATTER OF THE SUSPENSION : ADMINISTRATIVE ACTION
OR REVOCATION OF LICENSE OF :
LAWRENCE D. SPIEGEL, Ed.D. : HON. DIANA C. SUKOVICH, A.L.J.
LICENSED TO PRACTICE PSYCHOLOGY :
IN THE STATE OF NEW JERSEY :

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON BEHALF OF COMPLAINANT ATTORNEY GENERAL

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Complainant
Attorney General

JOAN D. GELBER
DEPUTY ATTORNEY GENERAL
On the Brief

Appendix A

health, safety and welfare, is to be construed in the same remedial way authorized by the Legislative statement in N.J.S.A. 45:1-14. Board law N.J.S.A. 45:14B-24(d) authorizes discipline not only for habitual intemperance to such an extent as to incapacitate the psychologist for the performance of his professional duties but, also, for having been convicted of or pleading to "an indictment, information or complaint alleging a violation of any Federal or State law relating to narcotic drugs" (emphasis added). Thus, viewed by any analysis, Spiegel is here guilty as charged.

POINT III

INVESTIGATION OF RESPONDENT'S CURRENT DRUG USAGE, AND JUSTIFIED DISCIPLINARY ACTION BASED THEREON, ARE NOT PRECLUDED BY THE TERMS OF THE AMERICANS WITH DISABILITIES ACT.

Although Spiegel now contends, in a defense first raised at trial, that his drug usage and history are protected by the Americans with Disabilities Act, that contention is without merit. Spiegel claims to be protected, not only from disciplinary sanction but even from investigation and prosecution, by the Americans with Disabilities Act of 1990, Subtitle A, 42 U.S.C. 12131 et seq. (ADA) and/or the Rehabilitation Act of 1973, 29 U.S.C. 790-794a, both of which seek to protect persons who are disabled or seemingly disabled, from unjustified discrimination. However, Spiegel's exclusion from the protection of both statutes is manifest from scrutiny of the ADA law, rules and interpretations.

The Equal Employment Opportunity Commission has published rules and a Compliance Guide to implement the ADA as follows: Title I (29 C.F.R. Part 1630 et seq.) requiring employers to ensure equal opportunity for disabled applicants and employees; Title II (28 C.F.R. Part 35) prohibiting discrimination in places of public accommodation; and Title III (28 C.F.R. Part 36, prohibiting state and local governments and agencies from discriminating based on disability). The ADA rules continue definitions deemed comparable to those in the Rehabilitation Act (with additions not relevant

here; see Comment, Appendix). Spiegel does not satisfy the relevant eligibility definitions under the law.

The interpretive guideline to Section 1630.4 of the ADA states: "Part 1630 is not intended to limit the ability of covered entities to choose and maintain a qualified workforce" (Appendix, p. 410). The interpretive guidelines for Section 1630.1(b) and (c), Appendix, p.400, make clear that the ADA does not preempt state laws or rules that are consistent with this part, and are designed to protect the public health from individuals who pose a direct threat, that cannot be eliminated or reduced by reasonable accommodation, to the health or safety of others. Determining whether an individual poses a significant risk of substantial harm to others is to be made on a case-by-case basis. For individuals with mental or emotional disabilities, the entity must identify by objective, factual evidence the specific behavior which would pose the direct threat (Section 1630.2(r), Appendix, p.409). The ADA definition of mental impairment does not protect an individual whose conduct is the result of poor judgment (28 C.F.R. Part 35, Section 35.104, Appendix, p.452).

In the present case, the Board of Psychological Examiners made the determination at the time of the temporary suspension hearing that Spiegel's conduct presented a palpable demonstration of clear and imminent danger to the public health, safety or welfare, by his egregious lack of judgment (Order of Temporary Suspension, issued February 28, 1994 and filed March 15, 1994). That preliminary finding (as to respondent's conduct with the children) has now been proven at trial to apply more generally to his lack of good judgment in his acquisition and protracted use of illegal cocaine through at least "February" of 1993, and his indiscriminate acquisition and use of medically unjustified CDS into at least September 1993 from dentist Frumkin.

Several times at trial, Spiegel suggested that he would present proof to show that he had a "disability" but was "rehabilitated" or used only "valid prescriptions" "supervised by a physician" or was not "currently using" illegal CDS. All of those

are affirmative defenses, yet Spiegel declined to testify to create a record in support of those defenses, or to present any supporting witness. An adverse inference could thus be drawn that Spiegel was unable to refute Complainant's evidence. Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed. 162 (1976); Arthurs v. Stern, 560 F.2d 477 (1 C.A. 1979), cert.den. 434 U.S. 1034, 98 S.Ct. 768, 54 L.Ed.2d 782 (1978); State v. Kobrin Securities, Inc., 221 N.J.Super. 169 (App.Div. 1987), rev'd on other grounds, 111 N.J. 307 (1988). The ADA does not relieve Spiegel of the burden to demonstrate that he comes within the terms of its protections.

Significantly, Spiegel fails to meet the fundamental definition of the term "disability" under the ADA because he is excluded by the exceptions. "Disability" is defined by section 1630.2 as a physical or mental impairment that substantially limits one or more of the individual's major life activities; the term shall be defined on a case-by-case basis. However, section 1630.3(a) states: The terms "disability" and "qualified individual with a disability" do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. Section (a) (1) defines "drug" as a CDS. Section (a) (2) defines illegal use of drugs to mean the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, but reminds that the term does not include the use of a drug taken under the supervision of a licensed health care professional. However, the interpretive guidance to Section 1630.3 (a) through (c) states: "Illegal use of drugs refers both to the use of unlawful drugs, such as cocaine, and to the unlawful use of prescription drugs" (Appendix, p.410).

In Spiegel's case, there is significant evidence of CDS acquisition, not only of cocaine but also of many forms of CDS both acquired and used unlawfully. There is undisputed evidence of obtaining prescriptions which dentist Frumkin had admittedly signed in blank. There is undisputed evidence of obtaining prescriptions for the same drug on the same date in different pharmacies. The Dental Board found the prescribing

"indiscriminate." There are other "red flags" of lack of medical/dental justification for the drugs: Spiegel's avoidance of definitive treatment for any of his purported conditions. All this bespeaks substance abuse of even otherwise legal drugs which were acquired not by "valid prescription" and not under the "supervision" of a treating doctor.

Section 1630.3(b) states that the entity may not exclude an individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs. But Spiegel never testified under oath and has provided no evidence of successful completion of a supervised drug rehabilitation program. On the contrary, he was still obtaining the indiscriminate CDS as recently as 5-6 months before this Complaint was filed.

The rules and interpretations for Title II are comparable. Thus, the term "current illegal use of drugs" as used in Section 35.131 again makes clear that "the Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are 'controlled substances'...." (Appendix, p.462). A disabled person is protected only for use of controlled substances pursuant to a (1) valid prescription (2) under supervision by a licensed health care professional (Appendix, p.462). The exclusion from ADA protection "does apply to illegal use of those substances, as well as to illegal use of controlled substances that are not prescription drugs" (Appendix, p.462). As noted above, Spiegel's acquisition of prescription forms from dentist Frumkin, signed in blank with content unverified by the nominal prescriber, have been dispositively found by the State Board of Dentistry not to be valid prescriptions, a finding which, in the circumstances, should be deemed binding on the OAL. In addition, Spiegel's repeated request for and filling of CDS prescriptions before an earlier prescription would have been used up (if taken according to directions) clearly further demonstrates that Spiegel's use of the drugs was unsupervised by dentist Frumkin, and thus also illegal. The records

of Dr. Safier, as well, show Spiegel's attempts to obtain refills of CDS too early even for that practitioner. Spiegel presented no treating physician to attest to a legitimate medical need for the CDS Spiegel acquired.

An additional ground for exclusion from ADA protections is Spiegel's longterm pattern of use, extending at least through October 1993. The interpretive guidelines state: "The term 'currently engaging' is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the "illegal use of drugs that has occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem" (Appendix, p.463). The same definition is provided for Section 35.104 (Appendix, p.438). Section 35.131(a) states that (except as provided in paragraph b, not relevant here), the rules do not prohibit discrimination against an individual based on that individual's current illegal use of drugs. The term "currently engaging" has been recently defined both by case law and in written communications from the U.S. Department of Justice.

In Colorado State Board of Medical Examiners v. Davis, 893 P.2d 1365 (1995), the court upheld the ALJ and Board finding (among other things) that Dr. Davis had engaged in excessive use of a habit-forming drug or controlled substance which warranted license revocation. Dr. Davis did not dispute that he suffers from a chemical addiction problem, but claimed his dependency qualified as a disability under the ADA. He also claimed he was not using drugs illegally at the time of the hearing and was "an addict in recovery." The court rejected his contentions, and relied upon 28 C.F.R. 35.131, App.A at 454 (1994) which defined current illegal use to include uses "that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem." Id. at 1368 (emphasis of alternatives added). Thus, there need not be proof of actual illegal use of drugs at the very time of the disciplinary

hearing in order to find that the doctor does not qualify as a person with a disability because of a "current illegal use of drugs." The court considered the doctor's history of recurrent illegal drug use, the risks of relapse, and his relatively short period of claimed recovery, to support the ALJ finding that "continuing [drug] use is a real and ongoing problem" for the doctor. The doctor's "current" use was properly found to violate the Colorado Medical Practice Act which prohibited "excessive use of any habit-forming drug...or any controlled substance" (language similar to N.J.S.A. 45:14B-24(d)) and the court noted that proof of such violation does not require current addiction or use of drugs at the time of the disciplinary hearing. Id. at 1368-1369.

Consistent with this interpretation, the U.S. Department of Justice, Civil Rights Division, Public Access Section, advised the New Jersey State Board of Medical Examiners that questions to physician licensees of that Board on applications and biennial registrations could, without violating the ADA, include the following definitions: "Illegal use of controlled dangerous substances" means the use of controlled dangerous substances obtained illegally (e.g. heroin or cocaine) as well as the use of controlled dangerous substances which are not obtained pursuant to a valid prescription or not taken in accordance with the directions of a licensed health care practitioner." The term "currently" was defined as follows: "Currently" does not mean on the day of, or even in the weeks or months preceding the completion of this application. Rather, it means recently enough so that the use of drugs may have an ongoing impact on one's functioning as a licensee, or within the past two years." (All emphases added.) Acceptance of the definition resulted in settlement of the case, Medical Society of New Jersey v. Jacobs et al., 1993 WL 4306 (DNJ 1993). The Department of Justice definition and letter⁵³ was called

⁵³The March 16, 1994 letter is an official interpretation issued by Sheila Foran, attorney for the Department of Justice, to the attorney for the State Board of Medical Examiners in the course of the Medical Society litigation. Spiegel has a copy. Request was

to the attention of respondent and of the ALJ early in this trial and Complainant referred to it during legal argument (1T79; 2T139). Indeed, respondent acknowledged being aware of the letter and the definition; see, among other references, 3T161; 4T92,93. The Professional Boards, including the Medical Board and the Board of Psychological Examiners, have used that language ever since.

Thus, the last independently confirmed possession of cocaine by Spiegel was mid-February 1991 in Fort Lee. The last date of use admitted by Spiegel himself to the Board is early 1992. The last date of use admitted by Spiegel to Dr. DeRosa is "February 1993."⁵⁴ The Verified Complaint was filed in February 1994, only 1 year later. Moreover, the illegal use of cocaine was but a part of Spiegel's ongoing illegal use of other Controlled Dangerous Substances, which was continuous and was confirmed at least through September 1993 (only 6 months before filing of Complaint) from dentist Frumkin. Respondent Spiegel is therefore excluded from the protections of the ADA or the Rehabilitation Act.

POINT IV

RESPONDENT'S POSSESSION AND DISPLAY OF GUNS,
OPERABLE OR OTHERWISE, IN THE CIRCUMSTANCES
OF THIS CASE, CONSTITUTE PROFESSIONAL MISCONDUCT.

Respondent has admitted his 1983/85 criminal conviction for unlawful possession of a gun and admitted that his gun permit was

made by Complainant to this Court on January 3, 1996 (after respondent had made representations of intent to testify on the ADA issue but then changed his mind, resulting in an unanticipated cancellation of additional trial dates) to specifically mark the Department of Justice letter as an official government interpretation as P-21 EV.

⁵⁴Respondent's Answer to the Complaint, 15th defense, paragraphs 2 and 4 at p.17 admits he began "indiscriminate use of cocaine" in 1983. As he refers to a period when JL was his "spouse" it may be assumed that the usage continued at least beyond 1987 as that was when they married. (Complainant does not accept any of respondent's other assertions regarding JL as supported by any evidence.) Respondent's references to his own conduct are party admissions.



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Diana C. Sukovich
Administrative Law Judge

September 19, 1997

MEMORANDUM TO: All Parties,
Decision Control

FROM: Diana C. Sukovich, ALJ *DCS*

RE: **Division of Law v. Lawrence D. Spiegel, Ed.D.**
OAL Dkt. No. BDS 2981-95
On Remand from BDS 3204-94

Please make the following corrections to the above-captioned initial decision:

Page 3, third paragraph, first word: Delete the number Eight and insert the number "Eleven;"

Page 4, first paragraph, fourth line: The word "pertinent" should be added after "petitioner";

Page 25, first full paragraph, cite, second line: Delete the abbreviation "*Id.*" and insert "Tr., 11/13/95;"

Page 44, last paragraph, second line: Delete the word "suspension" and insert "revocation" ;

Page 50, at the top, delete "For Respondent" under "Witnesses."

Appendix B



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
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William Speziale
Legal Assistant III

September 23, 1997

Paul C. Brush, Executive Director
State Board of Psychological Examiners
124 Halsey Street, 6th Fl.
Newark, New Jersey 07102

Re: Lawrence Spiegel, Ed. D.
OAL Docket No. BDS 2981-95

Dear Mr. Brush:

Attached hereto, please find the memorandum of Administrative Law Judge Diana C. Sukovich in the above-noted matter.

The copy on file with this office has been revised in accordance with the attached. Kindly correct the original decision which has been filed with your agency.

Please note that by copy of this letter, I am requesting that the parties also correct their copies of the decision.

Very truly yours,

William Speziale
Legal Assistant III

WS/dh
Enclosure
cc: Joan D. Gelber, DAG
Lawrence D. Spiegel, Ed. D.



State of New Jersey

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PETER VERNIERO
Attorney General

JAYNEE LAVECCHIA
*Assistant Attorney General
Director*

September 22, 1997

Hon. Diana C. Sukovich, A.L.J.
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

Re: Matter of Spiegel, Ed.D.
Docket OAL BDS 02981-95N

Dear Judge Sukovich:

This letter is to request corrections of what appear to be some clerical errors in the Initial Decision, which could generate confusion for the Board or others.

Page 19, par. 3. The dentist is Stanley Frumkin, D.D.S., not Alvin Frumkin, D.D.O.

Page 32, par. 4. The sentence probably is intended to read: The fact that Frumkin [not Spiegel] signed blank prescriptions was...

Page 39, par. 3. The sentence probably is intended to read: However, I am persuaded that the Attorney General [not the Board] has not demonstrated,....

Page 44, par. 4. The sentence probably is intended to read: Although the violations pertinent to Counts II through VII do not, individually, warrant a revocation [not suspension] of respondent's license, I am persuaded that those violations, in their totality, provide support for a conclusion that respondent's license should be revoked, in addition to the considerations pertinent to Count I.

(That substitution would make this sentence consistent with every other reference in the Decision to your recommended

disposition for each Count and when considered in the totality.)

Please excuse this request for correction, but I hope that the Court will agree that the suggested corrections are appropriate.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Joan D. Gelber
Deputy Attorney General

C:

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September 26, 1997

William Speziale, Legal Assistant III
Office of Administrative Law
185 Washington Street
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Re: Lawrence D. Spiegel, Ed.D.
Docket No. OAL BDS 02981-95N

Dear Mr. Speziale:

On September 25, 1997, I received your cover letter enclosing revisions by Judge Sukovich to the Initial Decision. My letter of September 22, 1997, to the Judge, in which I requested one of the same corrections, may have crossed in the mail.

I must call to your attention questions on my part as to some of the revisions: my calendar lists only eight trial days, not eleven, although perhaps the Judge was including other proceedings as hearing dates (page 3).

Page 50 is of more concern: The Initial Decision provides a Witness List in the Appendix, but omits many of the witnesses. Petitioner/Complainant presented the four persons listed, as well as Detective Thomas Provenzano, Janeen Love, expert witness R. Michael Sanders, D.M.D., Detective Supervisor Catherine C. Fenske, Investigator Susan Evans, and Investigator Joseph J. Corrado. The ALJ now correctly notes that respondent presented no witnesses.

Would you kindly ascertain whether these corrections shall be made, and advise.

Respectfully submitted,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: Joan D. Gelber
Joan D. Gelber
Deputy Attorney General

JDG/mdp
c: Laurence D. Spiegel, Ed.D.

