

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-271

**Bureau of Health Services,
Petitioner**

Agency No. 63-00-0466-00

v

Agency: Bureau of Health Services

**William Thomas Maine, LLP, SW,
Respondent**

Case Type: Sanction

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**Issued and entered
this 4th day of March, 2002
by Howard T. Spence
Administrative Law Judge**

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This case is a license discipline or sanction case which is brought by the Bureau of Health Services (BHS or Petitioner) seeking discipline of licensee William Thomas Maine, LLP, SW (Maine or Respondent). The original Administrative Complaint in this matter was issued by BHS on September 28, 2000. On October 25, 2000, the Respondent filed an Answer to Administrative Complaint in this matter. That Answer was subsequently amended by the Respondent on November 8, 2000.

On February 14, 2001, the Bureau of Hearings (BOH) issued a Notice of Hearing scheduling this matter to be heard on March 16, 2001, in Lansing, Michigan. Administrative Law Judge (ALJ) Howard T. Spence was designated to preside at this

contested case hearing. That date was utilized for a prehearing conference. The actual evidentiary hearing was rescheduled to July 2, 2001.

Prior to the commencement of the evidentiary hearing on June 12, 2001, BHS filed a First Superseding Administrative Complaint in this matter. On June 18, 2001, the Respondent filed an Answer to First Superseding Complaint. Hearings in this matter were conducted by the ALJ on June 12, 2001, and August 17, 2001. Written closing statements in this case were filed by the Petitioner on December 7, 2001, and by the Respondent on December 21, 2001. The record in this hearing was closed on January 3, 2002.

During these proceedings, BHS was represented by Assistant Attorneys General Sanna Durk and Linda Craven. The Respondent was represented by Attorney William R. Schultz of the law firm of Foster, Swift, Collins, and Smith, PC. The ALJ is thankful to all attorneys for the fine manner in which they developed the evidentiary record, and for their thoughtful and helpful written closing statements.

APPLICABLE LAW AND ISSUES

The First Superseding Complaint issued in this case alleges violations by the Respondent of the Public Health Code, as amended (Code). In particular, it is alleged that Respondent has violated section 16221(a) of the Code, being MCL 333.16221(a); MSA 14.15(16221(a)). That Code section provides as follows:

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate

disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist: (a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession.

This proceeding concerns itself with the issue of whether or not Mr. Maine was involved in the practice of psychology when he participated in the transactions at issue. The definition of psychology is thus also a part of the applicable law of this case. The operant definition of the practice of psychology is found in the Code at section 18201. That Code section provides, in pertinent part, as follows:

Sec. 18201. (1) As used in this part: (a) ““Psychologist”” means an individual licensed under this article to engage in the practice of psychology.

(b) ““Practice of psychology”” means the rendering to individuals, groups, organizations, or the public, of services involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis, prevention, amelioration, or treatment of mental or emotional disorders, disabilities or behavioral adjustment problems by means of psychotherapy, counseling, behavior modification, hypnosis, biofeedback techniques, psychological tests, or other verbal or behavioral means. The practice of psychology shall not include the practice of medicine such as prescribing drugs, performing surgery, or administering electro-convulsive therapy.

(2) In addition to the definitions in this part, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 161 contains definitions applicable to this part.

In order to properly decide this contested case, two primary issues are presented. First it must be decided if the activities in which Mr. Maine participated constituted the “practice of psychology” which is regulated by the Michigan Board of Psychology. Secondly, it must be decided if the activities in which Mr. Maine participated were in non-compliance with the general duty or requirements for psychologists, as set forth in section 16221(a).

The instant case is a case in which BHS seeks to discipline the license of Mr. Maine. The burden of proof in this case is upon BHS, and BHS must prove, by the preponderance of the evidence, that the allegations set forth in the First Superseding Complaint are true and correct, and that those allegations, if proved, constitute violations or instances of non-compliance with the Code as cited in the complaint and applicable law of this case.

SUMMARY OF THE EVIDENCE

The evidence in this case was entered into the record during the course of the two days of hearing. The state presented as its expert witness Stephen D. Fabick, Ed. D., who is a licensed psychologist. In rebuttal, the Respondent presented as his expert witness in this proceeding, Dr. Charles A. Basso, Ph. D., psychologist. In addition to the testimony presented by these two expert witnesses, Mr. Maine also testified on his own behalf.

Six exhibits were admitted during the course of the hearing. Exhibit 1 is a letter from Respondent to Judge Latreille dated December 9, 1999. This letter constitutes the entire basis for the disciplinary action that BHS is bringing against Mr. Maine in this case. The focus

of this proceeding is on what is said in this letter, and whether the issuance of this letter constituted an instance of the practice of psychology by Mr. Maine which is regulated by the Board of Psychology. Because of the significance of this letter to this proceeding, it is set forth in its entirety below (emphasis added as indicated):

Thursday, December 09, 1999
Hon. Judge Latreille
Livingston County Circuit Court

Re: Mr. Dennis Sands

Dear Judge Latreille,

I am writing at Mr. Sands' request to describe to you the interaction that he and I have had in my role as Employee Assistance Coordinator with General Motors Truck Group.

Mr. Sands approached me in June of this year, expressing concerns about the actions, verbalizations and overall presentation, of his spouse of 19 years.

The expressions and actions which **he** was describing appeared to be of a person who was experiencing symptoms of schizoid, depressive or bipolar disorder. These included irrational suspicion of persons in a series of local churches, changing the locks on the family home repeatedly due to belief that someone had been entering the home and listening to, or watching, her, etc.

We explored several possibilities to get some assistance for his wife, including enlisting the assistance of her family-of-origin (unsuccessful due to apparent denial on mothers' part), her personal physician (who seemed unwilling to become involved), and ultimately, the actions which have culminated in Mr. Sand's presence in your Court.

He has approached this problem with the skills of the highly regarded engineer which he is, in isolating factors which appear to exacerbate her symptoms, (Aspartame and sugars), researching the possible disorders with focus on treatment options, various medications, etc.

Throughout the frequent *contacts which Mr. Sands & I have had in the intervening period,* it appears clear to me that his sole concerns have been the

welfare of his children, and obtaining appropriate medical or psychiatric assistance for his wife. The abiding theme was of love and concern for his wife, with no trace of any malicious intent. I feel the previous routes that he chose to attempt to find help, before taking his current action, speak to this loving motivation also.

Should you require any further information in this matter, please advise.

Sincerely, (unsigned)
William T. Maine, MA, LLP, CEAP
Employee Assistance
(248) 753-5204

The Petitioner also offered two other exhibits which were admitted into the record. Exhibit 2 is a curriculum vitae for Dr. Stephen Fabick, Ed. D. Exhibit 3 is a copy of American Psychological Association Code of Ethics, December 1992 version.

The Respondent also offered three exhibits which were accepted into the record. Respondent's Exhibit A is a copy of the resume for Mr. Maine, the Respondent. Exhibit B is a copy of the curriculum vitae for Peter Keeland. Exhibit C is a copy of the curriculum vitae for Dr. Charles A. Bassos, Ph. D.

This case is somewhat unusual in that there is very little that is in dispute factually. This is reflected, to a large degree, by the fact that in his Answer to the First Superseding Complaint, Mr. Maine actually disputed very little of what was alleged factually. The major dispute in this case factually relates to whether Mr. Maine was involved in the practice of psychology when he wrote Exhibit 1 and gave it to Mr. Sands, who was his client in an Employment Assistance Program relationship sponsored by General Motors. Another factual dispute, arguably, relates to whether Mr. Maine intended to deceive the audience of

his letter to believe that he had conducted a diagnosis and evaluation of Ms. Sands' wife. Based upon the testimony of Mr. Maine, which this ALJ found to be credible, Mr. Maine did not intend that his letter be deceptive in any way, or that his letter misrepresent his relationship and intervention with either Mr. Sands or Mr. Sands' wife.

The facts presented by both parties in their closing statements are reflected and supported to some degree in the testimony and evidence in this case. The facts which are found and supported in this record as the basis for this Proposal for Decision (PFD) are set forth below in the section on findings of fact.

FINDINGS OF FACT

The Administrative Law Judge finds that the following facts are proved on this record by the preponderance of the evidence:

1. William T. Maine is a limited license psychologist in the state of Michigan, having had that license status since 1985.
2. As a limited license psychologist in good standing in the state of Michigan, Mr. Maine is authorized to use the credential "LLP" on his business cards and correspondence.
3. Mr. Maine is also a Certified Employee Assistance Professional (CEAP) since 1985.
4. CEAPs are not licensees of the Department of Consumer and Industry Services, and Mr. Maine is authorized to use the credential "CEAP" on his business cards and correspondence.

5. During time periods relevant to these proceedings, Mr. Maine was employed as Employee Assistance Program Coordinator at the General Motors Truck Group Headquarters.
6. In his employment role at General Motors, Mr. Maine did not function as a limited license psychologist, or engage in the practice of psychology in that job.
7. In his employment role at General Motors, Mr. Maine never diagnosed or clinically assessed the employees he assisted, nor did he provide psychological counseling, psychotherapy, behavior modification, hypnosis, biofeedback techniques, psychological tests, or any other means to modify the employees' behavior.
8. At General Motors, Mr. Maine would refer GM employees who sought assistance from the GM employee assistance program to appropriate agencies and care providers in the community.
9. One of the GM employees who Mr. Maine assisted in his role as CEAP coordinator was a Mr. Dennis Sands.
10. Mr. Sands approached Mr. Maine in 1999 to get advice and assistance in handling marital problems which Mr. Sands described, including possibly abusive behavior by Mr. Sands' wife towards their children.
11. Mr. Maine's intervention with Mr. Sands required approximately ten to twelve contact sessions during 1999.

12. At the last contact between Mr. Sands and Mr. Maine, Mr. Sands requested that Mr. Maine draft and provide a letter relating to the situation which Mr. Sands had described to Mr. Maine regarding his marital problems and his wife's condition.
13. Mr. Maine did draft such a letter and delivered it to Mr. Sands to give to his attorney on December 9, 1999.
14. The letter in question is in this record as Exhibit 1, was addressed to Circuit Court Judge Latreille of the Livingston County Circuit Court.
15. The letter drafted by Mr. Maine accurately reflects information which Mr. Sands had presented to Mr. Maine about problems Mr. Sands was experiencing in his marriage and with his wife.
16. The letter was not written for the purpose of persuading Judge Latreille to rule more favorably towards Mr. Sands in any pending litigation for divorce or child support or custody involving Ms. Sands.
17. Mr. Maine never met Ms. Sands, never had any communication with her, and never established with her any clinician/client relationship.
18. The language selected by Mr. Maine and included in the December 9, 1999, letter to Judge Latreille does not suggest that Mr. Maine was providing any professional assessment or diagnosis of Ms. Sands.
19. The December 9, 1999, letter to Judge Latreille was not intended or presented to be a diagnostic, psychological, or forensic report to the Court.

20. The signature footing placed on the December 9, 1999, letter by Mr. Maine to Judge Latreille did include the credential "LLP" to indicate that Mr. Maine had earned the status of limited license psychologist in the state of Michigan.
21. The usage of a credential or designation for LLP in correspondence or on business cards or letterheads does not, in and of itself, implicate that the person using the designation is then involved in the practice of psychology.

CONCLUSIONS OF LAW

This is a case which probably should not have been brought on for hearing. The transaction complained of does not constitute an instance of non-compliance or violation of the Code as suggested by BHS. For the reasons stated below, the ALJ concludes that this compliance case and complaint should be dismissed.

Essentially what BHS is alleging in this case is that Mr. Maine, by writing the letter to Judge Latreille on December 9, 1999, was engaged in an act of practicing psychology in an unethical or unprofessional manner. The charge of unethical or unprofessional practice of psychology has been brought under the rubric of section 16221(a), in that BHS has alleged that Mr. Maine has violated his "general duty" as a psychologist when he wrote the December 9, 1999, letter, and affixed thereto the credential LLP.

BHS has not met its burden to persuade that the writing of the letter in question constituted the practice of psychology. The letter does not purport to present a professional diagnosis of any person. The letter's author was careful to make it clear that the opinions in the letter were not based upon observation or diagnosis, but reported observations of Ms.

Sands' husband. Certainly there was no misrepresentation or deception indicated in the letter. Circuit Court Judges are, by and large, well educated and trained to carefully read information and pleadings placed before them. It is difficult to believe that the December 9, 1999, letter written by Mr. Maine to Judge Latreille would have influenced Judge Latreille in any way in matters related to either divorce or child custody or support.

The expert testimony presented by Mr. Maine through the examination of Dr. Bassos is very helpful and persuasive in this matter. Dr. Bassos has extensive experience in reviewing and evaluating psychological diagnoses of other psychologists, and also has considerable experience in making determinations as to whether actions of persons licensed as psychologists are actually "the practice of psychology." Even more telling is the experience that Dr. Bassos has in the evaluation of the ethics of psychologists. He has even taught ethics for psychologists. His testimony is strong that the letter is not unethical or in violation of any "general duty" requirement of the Code. He even goes so far as to opine that numerous other psychologists have written similar letters in Michigan, and that he (Dr. Bassos) might also consider writing such a letter. His testimony and opinion that the letter written by Mr. Maine is not the practice of psychology, nor a diagnosis or forensic report, is persuasive on this record.

While the expert testimony offered by Dr. Fabick on behalf of the BHS position is appreciated, it clearly does not rise to the level of persuasion that Mr. Maine has been involved in any activity which violates section 16221. When asked by the ALJ about Mr. Maine's activity as alleged based upon the December 9, 1999 letter, Dr. Fabick hedged and acknowledged that it was not a serious problem, or egregious violation. In fact, Dr. Fabick

acknowledged that in the circumstances, Mr. Maine was “well intentioned” when he wrote the letter.

To a large degree, it seems that the BHS case and allegations are brought not as the result of any damage or deception which has been attempted or accomplished, but rather based upon speculation or possible misinterpretation of the letter by someone who is less than careful in reading the letter, or unsophisticated to believe that the letter constituted a professional psychological diagnosis upon which they could rely for decision making purposes. As indicated before, it is necessary to consider the audience of the letter as well as the letter’s direct statements. A circuit court judge such as Judge Latreille would not be deceived into thinking that Mr. Maine was attempting a diagnosis of Ms. Sands, or submitting a forensic psychological report. To that extent, the ALJ disagrees with Dr. Fabick’s speculation that a circuit court judge would be persuaded to take adverse action against Ms. Sands’ interest in a divorce action based upon the content of the December 9, 1999 letter which Mr. Maine wrote – even if Mr. Maine did use the LLP designation in the signature foot. Circuit court judges in divorce and child support actions routinely receive all manner of unsolicited opinion and information from persons which they assign appropriate weight to in their deliberations. The most that is likely to occur from receipt of a letter such as the December 9, 1999 letter to Judge Latreille is a referral by the Court to a competent evaluator, or request for evaluation. And that appears to have been the objective that Mr. Maine had in mind when he wrote this letter. It is clear from the letter that Mr. Maine was not depicting Ms. Sands in a negative light – but perhaps suggesting she might need help.

The ALJ is persuaded that the ethical considerations cited by BHS in this case are not applicable to the situation which resulted from Mr. Maine's writing the December 9, 1999 letter. There is no rule or regulation which states that a limited license psychologist may not use his LLP designation in matters which do not constitute the practice of psychology. This record does not support a finding or conclusion that Mr. Maine has been involved in any prohibited activity under the Code, and more particularly, does not support a conclusion that he has violated his "general duty."

PROPOSED ORDER

Having concluded on the facts found on this record that no violation of the Code has been demonstrated by the preponderance of the evidence, the ALJ respectfully recommends that this compliance action and complaint be dismissed.

EXCEPTIONS

The parties may file exceptions to this Proposal for Decision within 15 days after the Proposal for Decision is issued and entered. An opposing party may file a response within 5 days after exceptions are filed. Any such exceptions shall be filed with the Bureau of Health Services, Ottawa State Office Building, 611 West Ottawa Street, 1st Floor, P.O. box 30670, Lansing, Michigan 48909, Attention: Robert C. Miller.

Howard T. Spence P-27045
Administrative Law Judge

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