BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF IDAHO

In re the Psychologist's License of MAXIMO JOSE CALLAO, Ph.D., License No. PSY-55, Respondent.	)	Case No. BOL 83-204 HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

On July 28, 1983, a hearing was conducted in the above-entitled action and documentary evidence and oral testimony was presented. The Bureau of Occupational Licenses, hereinafter referred to as the Bureau, submitted evidence and argument through its attorney, Fred C. Goodenough, Deputy Attorney General, and Maximo Jose Callao, hereinafter referred to as Respondent, submitted evidence and arguments through his attorney, Pat Urquhart.

Closing Briefs were submitted by both parties on August 22, 1983, and on August 30, 1983, the Bureau's Reply Brief was received. When no Reply Brief was received from Respondent, the record was closed.

FINDINGS OF FACT

I

Based upon a Complaint dated June 30, 1983, disciplinary action was instituted by the Bureau before the Board of Psychologist Examiners against Respondent, pursuant to Idaho Code Sec. 54-2309(e), on the grounds that Respondent had engaged in unethical practices by engaging in sexual intimacies with a client, Molli Edgerton. On July 22, 1983, the

Bureau was allowed to file an Amended Complaint dated July 14, 1983, alleging an additional count that Respondent had engaged in unethical practices by continuing to treat a client, Dan Edgerton, during the period of time Respondent was engaging in sexual intimacies with the client's spouse.

II

Respondent in his Answer to the original Complaint, dated July 6, 1983, at the time of the hearing, and in his Closing Brief, admitted the following facts:

1. Respondent is the holder of Idaho psychologist license No. PSY-55.

2. Respondent had engaged in sexual intercourse with Ms. Edgerton, but expressly denied that Ms. Edgerton was his client at any time during the course of their intimate relationship.

3. As alleged in Count II of the Amended Complaint, Dan Edgerton was a psychological client of Respondent from approximately January, 1982, through June, 1982, during which time, Respondent was having a sexual relationship with Dan Edgerton's wife.

III

In addition to these admitted facts, the following facts were undisputed at the hearing:

1. Molli Edgerton began receiving psychological therapy from Respondent in January, 1981, after being referred to Respondent by her husband, Dan Edgerton. (Tr., p. 14, Ls. 7-9.).

2. From January 28, 1981, through December 23, 1981, Respondent had 23 sessions with Ms. Edgerton. (Tr., p. 80, Ls. 18-19).

3. Approximately eight months after Ms. Edgerton had begun therapy, Respondent embraced her after one therapy session and embraced her after every session thereafter. (Tr., p. 16, Ls. 3 and 13-14).

4. Following a therapy session on December 9, 1981, Respondent walked Ms. Edgerton to her car, and in discussing her Italian heritage said: "Oh, so that's what it is about you that turns me on." (Tr., p. 18, Ls. 16-24). Respondent then asked Ms. Edgerton to have a drink with him before the holidays, and joked that they could get a room at the Ramada. (Tr., p. 19, Ls. 2-9).

5. Respondent and Ms. Edgerton went to the Red Lion Riverside for drinks on December 23, 1981, following a therapy session. (Tr., p. 19, Ls. 16-17 and p. 21, Ls. 1-16; Tr., p. 81, Ls. 4-7).

6. At that time, Ms. Edgerton gave Respondent a card which included mistletoe and they mutually agreed that they were each physically attracted to the other. (Tr., p. 22, Ls. 10-25; Tr., p. 83, Ls. 21-24).

7. On December 23, 1981, Respondent and Ms. Edgerton engaged in sexual intimacies including kissing and fondling at the Red Lion Riverside, for two to two and one-half hours. (Tr., p. 26, Ls. 8-21).

8. Respondent and Ms. Edgerton saw each other again on or about January 8, 1982, to discuss a class schedule, and

January 19, 1982, for an appointment during which the same types of sexual intimacies occurred. (Tr., p. 29, Ls. 1-16; Tr., p. 86, Ls. 5-22).

9. Respondent and Ms. Edgerton first engaged in sexual intercourse on January 19, 1982. (Tr., p. 27, L. 5).

10. The personal and sexual relationship between Respondent and Ms. Edgerton continued for almost 1 1/2 years, ending May 7, 1983. (Tr., p. 43, L. 18 and p. 48, L. 10).

11. During their relationship, Respondent and Ms. Edgerton engaged in several activities together, including fencing, cross-country skiing, travel, attending parties and having lunch and dinner. (Tr., p. 40, L. 20 and p. 41, Ls. 1-25 and p. 42, Ls. 1-11; Tr., p. 91, Ls. 15-25).

12. After January 19, 1982, Respondent and Ms. Edgerton continued to have regularly scheduled counseling appointments at Respondent's office, although the major purpose of such appointments was to continue their sexual relationship and during which they engaged in sexual intercourse. (Tr., p. 30, Ls. 1-6; Tr., p. 89, Ls. 8-12).

13. On December 23, 1981, Ms. Edgerton was approximately 24 years old and felt awed by Respondent because of his age, his status as her therapist and counselor, and because of his superior status monetarily, emotionally and academically. (Tr., p. 57, Ls. 6-21).

IV

The major dispute with respect to Count I of the Amended Complaint is whether or not Ms. Edgerton was a client of Respondent's at any time during which sexual intimacies were

occurring. Respondent claims on December 23, 1981, he told Ms. Edgerton that "if any sexual intimacy would occur, then I would have to change the relationship." (Tr., p. 84, Ls. 3-10). Respondent further testified that he felt he had complied with Principle 7-C of the Psychologist's Code of Ethics by attempting to terminate the client-counselor relationship on December 23, 1981. (Tr., p. 85, Ls. 17-25). Respondent also stated that he and Ms. Edgerton again discussed termination of the client-counselor relationship, and on January 19, 1982, and more so on January 20, 1982, Respondent and Ms. Edgerton decided ". . . the client-counselor relationship could no longer exist and it had to be radically changed and it had to be technically changed." (Tr., p. 87, Ls. 12-25 and p. 88, Ls. 1-5). However, Respondent also admitted that he told his colleagues that a sexual relationship occurred January 19, 1982, and he terminated the client-counselor relationship on January 20, 1982. (Tr., p. 85, Ls. 11-25).

Ms. Edgerton admitted that on December 23, 1981, Respondent discussed his bondage to his ethics, but she indicated she did not fully understand. (Tr., p. 23, Ls. 8-14 and p. 35, Ls. 3-14). She admitted that she participated voluntarily in sexual intimacies on December 23, 1981, and expressed concern at losing him as a therapist. (Tr., p. 36, Ls. 10-19). She also testified that she was not sure if she still considered herself to be Respondent's client after January 19, 1982. Even though they continued to discuss some of the same issues, the major purpose of the appointments after January 19, 1982, was to be together. (Tr., p. 38, L. 14 and p. 39, Ls. 2-17).

Based upon this conflicting evidence, the Hearing Officer finds that the client-counselor relationship between Respondent and Ms. Edgerton terminated on or around January 20, 1982. However, the Hearing Officer believes the weight of the evidence indicates that Ms. Edgerton was a client of Respondent at the time the first sexual intimacies occurred on December 23, 1981, and at the time of the first sexual intercourse on January 19, 1982. In fact, the first sexual intimacies on December 23, 1981, occurred immediately following a counseling session and after Ms. Edgerton had been a client of Respondent's for almost one year.

V

In addition to evidence related to the allegations of the Amended Complaint, Respondent submitted the testimony of two witnesses, Richard Hart and David Torbet, and one large documentary exhibit, Respondent's Exhibit A, regarding his educational and professional background and reputation. This evidence establishes that Respondent is a qualified and well respected practitioner and prior to the present Complaint, had an unblemished record with no other disciplinary or ethical problems.

CONCLUSIONS OF LAW

VI

Pursuant to Idaho Code Sec. 54-2309(e), the Board of Psychologist Examiners may revoke a psychologist's license if a licensee is "found guilty by the board of the unethical practice of psychology as detailed by the current, and future amended, ethical standards of the American Psychological

Association." In addition, pursuant to Idaho Code Sec. 54-2305(c), the Board of Psychologist Examiners also has the authority to revoke or suspend the license of a psychologist and to conduct hearings in connection therewith.

VII

Respondent has admitted the following conclusions of law:

1. Respondent's license is subject to the provisions of Chapter 23, Title 54, Idaho Code; the administrative rules promulgated thereunder by the Board of Psychologist Examiners; and the Rules of Practice and Procedure promulgated by the Bureau of Occupational Licenses, State of Idaho.

2. Sexual intimacies with clients are unethical under the standards of the American Psychological Association, specifically Principles 1(c), 2(b), 3, 7(c), 8(c), of the Ethical Standards of Psychologists, 1963 edition, and Principle 6a of the Ethical Standards of Psychologists, (1979 ed.), copies of which standards are attached to the original Complaint.

3. Engaging in sexual intimacies with the spouse of a client is unethical.

4. Pursuant to Idaho Code Sec. 54-2309(e), a licensed psychologist found to have engaged in unethical practices by the Board may have that license revoked, suspended or otherwise acted upon.

VIII

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer concludes that:

1. With respect to Count I of the Amended Complaint, Respondent engaged in unethical practices by engaging in sexual intimacies with a client; and

2. With respect to Count II of the Amended Complaint, Respondent engaged in unethical activities by engaging in sexual intimacies with the spouse of a client.

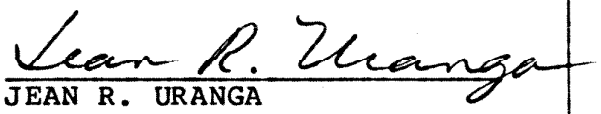
IX

Severe disciplinary action, including license revocation, has been upheld against licensed professionals who have been charged with engaging in sexual activities, or taking sexual liberties, with clients. Cardamon v. State Board of Optometric Examiners, 441 P.2d 25 (Colo. 1968); Nevada State Board of Chiropractic Examiners v. Babtkis, 432 P.2d 498 (1967); Bernstein v. Board of Medical Examiners, 22 Cal.Rptr. 419 (1962).

PROPOSED ORDER

Based upon the foregoing, and considering the age of Ms. Edgerton, the voluntariness and encouragement by her of the relationship and the background of Respondent, the Hearing Officer proposes that, with respect to Count I of the Amended Complaint, Respondent's psychologist license be suspended for a fixed period of time to be set by the Board, in its discretion, and with respect to Count II of the Amended Complaint, Respondent be formally reprimanded.

DATED This 15th day of September, 1983.



JEAN R. URANGA
Hearing Officer

CERTIFICATE OF SERVICE

Pursuant to IDAPA 24.20.A.4.S, the Rules of Procedure of the Bureau of Occupational Licenses, I hereby ceritfy that on this 15th day of September, 1983, I served the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER by hand-delivering copies thereof to:

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