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2 **BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS**
3 **FOR THE STATE OF ARIZONA**

4 In the Matter of

5 **Walter E. Fidler, Ph.D.,**

6 Holder of License No. 1380
7 for the practice of Psychology
in the State of Arizona

) Complaint No. 04-11

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **AND ORDER**

8 On August 6, 2004, W. E. Fidler, Ph.D. ("Licensee") appeared for an informal interview
9 before the Board of Psychologist Examiners ("Board") with his attorney, Stephen W. Myers. After
10 interviewing Licensee and considering the information presented, the Board voted to find Licensee
11 in violation of A.R.S. §§ 32-2061(A)(13)(h), (j), (o), (y), and (bb), and continued the informal
12 interview deliberations to a subsequent meeting to consider draft Findings of Fact and to adopt
13 Findings of Fact, Conclusions of Law and an Order. Licensee appeared with his attorney for the
14 continuation of the informal interview on October 1, 2004. After further deliberation, the Board
15 adopted the following Findings of Fact, Conclusions of Law, and Order.

16 **FINDINGS OF FACT**

- 17 1. Licensee is the holder of license number 1380 for the practice of psychology in the
18 State of Arizona.
- 19 2. The Board has the authority to hold an informal interview pursuant to A.R.S. § 32-
20 2081(G). After an informal interview, the Board may take action pursuant to A.R.S. § 32-2081(G),
21 (H) and (I).

22 **BACKGROUND**

23 **Psychological Services for Mr. and Mrs. T.**

- 24 3. Licensee's session notes indicate that he provided individual psychological services
25 to Mr. T. ("Husband") from approximately November 1999 to May 2000, and in March and April
26 2001. He also had a telephone contact with Husband on December 15, 2003. According to
27 Licensee's session notes, he provided marriage counseling to Mr. and Mrs. T. together in May
28 2001.

1 For various intervals from approximately December 1999 to at least August 2004, Licensee
2 provided psychological services to Mrs. T. ("Wife") individually.

3 **Husband's Complaint to the Board**

4 4. On March 29, 2004, Husband complained to the Board that Licensee had accepted
5 a \$5000 Promissory Note from Wife, secured by a Deed of Trust on the residence owned by
6 Husband and Wife, who were engaged in dissolution of marriage proceedings. The Promissory
7 Note and Deed of Trust, dated December 4, 2003, had been recorded with the county recorder as
8 a lien on the residence.

9 5. Husband stated that he had only recently discovered the lien. The divorce was not
10 yet final, he indicated, and the recorded lien prevented him from refinancing the family residence
11 as ordered by the Court.

12 6. The Board identified additional issues as the investigation progressed.

13 **First Board Subpoena**

14 7. On March 31, 2004, the Board sent Licensee a copy of Husband's complaint, along
15 with a subpoena ("First Subpoena") (Exhibits 1-30, 1-31) requiring him to produce copies of the
16 following documents by April 15, 2003:

17 All records and materials in any form or medium in your possession or
18 subject to your control pertaining to assessment, evaluation, consultation,
19 intervention, treatment, or the provision of psychological services
20 concerning [Wife], including but not limited to a TYPEWRITTEN
21 VERBATIM copy of any and all handwritten notes, any and all reports,
22 summaries, test results, diagnoses, treatments, informed consent forms,
23 telephone messages, correspondence, invoices or billing statements and a
24 copy of any and all Promissory Notes, Deeds of Trust, and all other
25 documents relating to loans you made to [Wife].

26 8. On April 14, 2004, Licensee produced documents in response to the First Subpoena,
27 certifying in writing that the copies he provided "are true and correct copies of all records and
28 materials in my possession or subject to my control that are responsive to the subpoena." (Exhibit
29 1-31).

30 9. Licensee personally prepared the photocopies that he submitted to the Board.

31 **Board's Earlier Discussions**

32 10. At a public meeting on June 4, 2004, the Board discussed Husband's complaint and

1 issues raised by the copied records received from License in response to the First Subpoena. The
2 Board identified billing inconsistencies and irregularities, improper dual relationships, diagnostic
3 inconsistencies, conflict between session notes and billing records, lack of treatment plan review,
4 and other issues. Determining that the public health, safety and welfare required emergency action,
5 the Board summarily suspended his license pending proceedings for revocation or other action.
6 The Board subsequently rescinded the summary suspension and requested that Licensee appear for
7 informal interview before the Board.

8 **Second Board Subpoena**

9 **11.** On June 8, 2004, the Board's investigator hand-delivered a subpoena for documents
10 ("Second Subpoena") (Ex. 1-32, 1-33) to Licensee which required him to immediately produce the
11 original records subpoenaed earlier (the previous subpoena requested only copies), as well as some
12 additional original documents. The June 8 subpoena stated in pertinent part as follows:

13 On receipt of this subpoena, YOU ARE HEREBY COMMANDED by the
14 Board of Psychologist Examiners, pursuant to A.R.S. §§ 32-2082(B) to
15 immediately produce the following original documents to the Board's
representative for inspection and copying:

16 1. ALL records and materials in any form or in any medium in your
17 care, custody, or subject to your control, wherever located, pertaining to
assessment, evaluation, consultation, intervention, treatment, therapy, or the
provision of psychological services concerning:

18 [Wife]

[Husband]

[Husband and Wife]

19 including, but not limited to, session notes, reports, summaries, test results,
20 diagnoses, treatments, intake records, consent forms, telephone messages,
correspondence, invoices, insurance records, and billing ledgers and
statements.

21 2. Your appointment book or record of appointments for the
22 period July 1, 1999 to December 31, 2000.

23 3. All notes, cards, correspondence, and other tangible things
24 that you received from [Wife].

25 **12.** On June 8, 2004, Licensee gave the Board investigator original documents,
26 certifying in writing that the documents "are ALL original documents, wherever located, in my
27 care, custody, or subject to my control, that are responsive to Items 1-3 on the subpoena." (Ex. 1-
28 34).

1 **UNPROFESSIONAL CONDUCT**

2 **Deleted Session Notes and Altered Pages**

3 13. The copies of documents that Licensee provided to the Board are not true and
4 correct copies of the original records later obtained by the Board's investigator. The copies are
5 altered versions of Wife's original session notes, with five notes deleted from the original documents. On
6 two pages, the copies were also altered to mask the deletions by moving the remaining notes to the top of
7 the page where the deletions occurred.

8 14. The deletions and alterations in copies of notes dated January 31, March 9, March 16, April
9 5, and April 13, 2000 occurred as follows:

ORIGINAL SESSION NOTES FOR WIFE		PHOTOCOPIED SESSION NOTES FOR WIFE SUBMITTED BY LICENSEE	
Exhibit No.	Session notes on one page in original records	Exhibit No.	Session notes on one page in photocopied records
1-38	January 31, 2000 February 3, 2000 [Wife] had a lot of difficulty in talking today. She says that she is afraid to talk about things. She tries to avoid talking about much of anything but the marriage and what her husband has done to her. She said that he became physical with her and doesn't let her have any say so in the running of the house. When she punishes the children by time out or makes them go to their room he changes everything and allows the children to do what they want.	1-37	January 31, 2000 [February 3, 2000 note deleted]
1-36	March 2, 2000 March 9, 2000 [Wife] said she was very confused today. She felt like she is creating her own reality instead of seeing things the way they really are. We talked about the meaning of this statement. She says with her marriage and life in general. She has buried her head in the sand	1-35	March 2, 2000 [March 9, 2000 note deleted]

	and not dealt with it like it really is. She then said she would like to fire me so she could date me it would be safer and easier for her.		
1-42	March 16, 2000 session 13 [Wife] continues to be angry. However we discover that she is angry as a way of helping her distance because she is afraid of her issues. March 30, 2000 session 14 April 5, 2000 session 15 April 13, 2000 session 16	1-39	[March 16, 2000 note deleted] March 30, 2000, session 14 April 5, 2000, session 15 April 13, 2000, session 16 (The remaining 3 notes were moved to the top of the page.)
1-44	April 5, 2000 (partial note; not the same note as on p. 1-42) home and feels every second of my day should be devoted to her and the kids. April 13, 2000 [Wife] continues in her fear. She states that she wants things to change but is fearful of doing the work necessary to make those changes. I confronted her about this impossible position and she became angry with me and said that I wasn't helping her and why wasn't I giving the answers. I explained to her I don't have all the answers. April 26, 2000	1-43	[April 5, 2000 note deleted] [April 13, 2000 note deleted] April 26, 2000 note (This note was moved to the top of the page.)

15. Licensee failed to provide the deleted handwritten session notes at all in response to the First Subpoena.

Omitted Records

16. In the copied records Licensee submitted to the Board, he failed to provide Progress Notes for Wife dated August 2 and October 8, 2002, and February 12, 2003, that appear in his original records. The Progress Notes are pre-printed forms containing information that is circled and handwritten by Licensee in sections designated Initial, Observed Behavior and Affect, Goals, Interventions, Goal Attainment, Dream Themes. (Ex. 1-46, 1-48, 1-50).

17. In response to the First Subpoena, Licensee failed to provide a copy of a page

1 containing session notes dated February 7 and 10, 2000 that appears in his original records. (Ex.
2 1-55).

3 **18.** Licensee also failed to provide a copy of a page containing session notes dated
4 March 30 and April 5, 2000 that appears in his original records. (Ex. 1-60).

5 **19.** The First Subpoena required Licensee to have his session notes typed verbatim and
6 to submit the typed notes with the copies of subpoenaed documents. Two weeks after Licensee
7 submitted copies of his records to the Board, he provided typed session notes, including a note
8 dated March 9, 2000 that does not appear in his original records. The typed note dated March 9,
9 2000 submitted April 30 (Ex. 1-117) is entirely different from the note in the original records (Ex.
10 1-36) for that date. The typed note (Ex. 1-117) reads as follows:

11 [Wife] talked at length about her need for a job and to feel like she was
12 doing something with her life. She says that things go well with she and her
13 husband for a while and then he eventually starts pressuring her about things
14 money, getting together etc.

15 She also expressed her fear regarding therapy. She looks to me like some
16 type of psychic who has all the answers but no matter how much I tell her
17 its not true she doesn't believe it. As a result she comes in all protected and
18 distant.

19 **20.** In Licensee's original records, the handwritten note for March 9, 2000 (Ex. 1-36)
20 reads as follows:

21 [Wife] said she was very confused today. She felt like she is creating her
22 own reality instead of seeing things the way they really are. We talked
23 about the meaning of this statement. She says with her marriage and life in
24 general. She has buried her head in the sand and not dealt with it like it
25 really is. She then said she would like to fire me so she could date me it
26 would be safer and easier for her.

27 **21.** On June 23, 2004, Board staff informed Licensee's attorney that Licensee's original
28 file contained documents that Licensee had not previously submitted to the Board in response to
the First Subpoena. The letter requested the Licensee provide verbatim typewritten transcripts of
ten designated pages of Wife's session notes, all sessions notes for Husband and Wife's marital
therapy, and all notes for Husband. (The First Subpoena did not request Husband's individual
session notes.)

Different Notes

22. Licensee submitted copies of handwritten notes for the following dates that are different from the original notes: February 3, 7, and 10; March 9, 16, and 30; April 5 and 13; and May 5 and 11, 2000, indicated in bold-face in the table below.

ORIGINAL SESSION NOTES FOR WIFE		PHOTOCOPIED SESSION NOTES FOR WIFE SUBMITTED BY LICENSEE	
Exhibit No.	Session notes on one page in original records	Exhibit No.	Session notes on one page in photocopied records
1-54	<p>January 31, 2000 [Wife] was very anxious today. She again talked about her confusion. She is very angry that her husband is causing difficulties in seeing ___ children. She says she is ___ in a one room rented from the homeowner. [Wife] seems afraid of therapy and what she might discover about herself. She stays focused on the marriage.</p> <p>February 3, 2000 [Wife] had a lot of difficulty in talking today. She says that she is afraid to talk about things. She tries to avoid talking about much of anything but the marriage and what her husband has done to her. She said that he became physical with her and doesn't let her have any say so in the running of the house. When she punishes the children by time out or makes them go to their room he changes everything and allows the children to do what they want.</p>	1-53	<p>February 3, 2000, session 6 [Wife] was wrestling with a number of issues. She continues to assume that I have all the answers and the days that she is nervous about realizing things about herself. She again says she would rather date me than for us to do therapy. I began addressing the issues of intimacy w her and her fear of it.</p> <p>February 7, 2000, session 7 [Wife] talked about her fear of therapy. She believes I possess much more knowledge than I really do. She has stated one thing is for sure she has been living life in denial wearing rose colored glasses</p> <p>February 10, 2000, session 8 [Wife] talked a great deal about her need for a job and her fear about therapy. She is coming to grips with numerous things.</p>
1-55	<p>February 7, 2000 [Wife] called and wanted to come in. She was depressed about the situation. She says that her husband continuously "play games" with her and she has problems staying focused when he does that. I asked</p>	1-53	<p>February 3, 2000, session 6 [Wife] was wrestling with a number of issues. She continues to assume that I have all the answers and the days that she is nervous about realizing things about herself. She again says she would rather date me than for us to do therapy. I began addressing the</p>

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	<p>him about her and the reactions to things attempts to have her refocus of herself it was difficult and she was not open to it. All she kept asking was "what do you mean?"</p> <p>February 10, 2000: [Wife] talked a lot about not having access to her children and how her husband had to have the order of protection reversed and placed on her. She further stated that he made her quit her job and objected to many of her outside volunteer activities. It seems that [Wife]'s self esteem is derived from these outside activities where she feels needed and wanted.</p>		<p>issues of intimacy w her and her fear of it.</p> <p>February 7, 2000, session 7 [Wife] talked about her fear of therapy. She believes I possess much more knowledge than I really do. She has stated one thing is for sure she has been living life in denial wearing rose colored glasses.</p> <p>February 10, 2000, session 8 [Wife] talked a great deal about her need for a job and her fear about therapy. She is coming to grips with numerous things.</p>
1-57	<p>March 2, 2000 [Wife] was upset today. She is angry at me and stated that typically she never views things in a particular way but now feels like she is only creating fantasies . . .</p> <p>March 9, 2000 [Wife] said she was very confused today. She feels like she is creating her own reality instead of seeing things the way they really are. We talked about the meaning of this statement. She says with her marriage and life in general she has buried her head in the sand and not dealt with it like it really is. She then said she wanted to fire me so she could date me. It would be safer and easier for her.</p>	1-56	<p>March 9, 2000 [Wife] talked at length about her need for a job and to feel like she was doing something with her life. She says that things go well with she and her husband for a while and then he eventually starts pressuring her about things, money, getting together, etc. She also expressed her fear regarding therapy. She looks at me like some type of psychic who has all the answers but no matter how much I tell her its not true she doesn't believe it. As a result she comes in all protected and distant.</p> <p>March 16, 2000 [Wife] was angry today it seems that she feels that she and her husband keep score cards on each other. She forces a power struggle with him and becomes enraged when he attempts to manipulate her. I focus on her anger & why it upsets her so if this is what he has done thru entire married life. She can't or won't answer the question. She just tells me I'm no help.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18</p>	<p>1-59</p> <p>March 9, 2000 [Wife] talked at length about her need for a job and to feel like she was doing something with her life. She says that things go well with she and her husband for a while and then he eventually starts pressuring her about things, money, getting together, etc. She also expressed her fear regarding therapy. She looks at me like some type of psychic who has all the answers but no matter how much I tell her its not true she doesn't believe it. As a result she comes in all protected and distant.</p> <p>March 16, 2000 [Wife] was angry today it seems that she feels that she and her husband keep score cards on each other. She forces a power struggle with him and becomes enraged when he attempts to manipulate her. I focus on her anger & why it upsets her so if this is what he has done thru entire married life. She can't or won't answer the question. She just tells me I'm no help.</p>	<p>1-58</p>	<p>March 16, 2000 [Wife] continues to be angry today. However we discover that she is angry as a way of helping her distance because she is afraid of her issues.</p> <p>March 30, 2000, session 14 [Wife] is as manipulative as her husband. She wants change to happen but isn't wanting to do the work that is necessary. I confronted her on this issue today.</p> <p>April 5, 2000, session 15 [Wife] is very critical of men. She turns all positive into negative as far as men go. She is upset when I confronted her about this.</p> <p>April 13, 2000, session 16 [Wife] was angry again. The fact that her husband is still trying to control things and is still unwilling to meet jointly on a regular basis.</p>
<p>19 20 21 22 23 24 25 26 27 28</p>	<p>1-60</p> <p>March 30, 2000 [Wife] came in very angry and we talked about why she was so angry. I again suggested that perhaps this helps her from looking at her and being honest with herself. She said she was scared because of her sexual issues and because she is worried that her mother may be lurking in her somewhere. She also reported not being honest with the psychiatrist I referred her to. She said when the referral was made she was scared to death because she thought that meant she was going to be locked up.</p>		<p>Same as Ex. 1-58</p>

	<p>April 5, 2000 [Wife] was somewhat depressed. She talked about involving herself in a threesome in which she was the second female. She also revealed that the only way she can have an orgasm is thru manual stimulation not thru intercourse. This makes her feel like less of a woman. She says that she wants it over with between she and her husband. She said, "I let him get close and all he does is hurt me. He complains [I'm on the computer when he came] [continued on 1-61].</p>		
1-61	<p>April 5, 2000 (partial note; This is the last 3 lines of the note that began on 1-60. Not the same note as on p. 1-42) home and feels every second of my day should be devoted to him and the kids.</p> <p>April 13, 2000 [Wife] continues in her fear. She states that she wants things to change but is fearful of doing the work necessary to make those changes. I confronted her about this impossible position and she became angry with me and said that I wasn't helping her and why wasn't I giving the answers. I explained to her I don't have all the answers.</p> <p>April 26, 2000 [Wife] has begun to cancel sessions . . .</p>		Same as Ex. 1-58
1-63	<p>May 5, 2000 [Wife] said she was angry at me. When I asked why she said it was because she was beginning to realize how she was using her</p>	1-62	<p>May 5, 2000, session 20 [Wife] is beginning to realize how she uses her anger to hide behind.</p> <p>May 11, 2000, session 21</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>anger to hide behind. I asked her why and she said she was afraid but couldn't say why. She did state that she feels foolish because she has been doing things all these years believing one thing only to find out that her reason was that she has been trying to get people to like her and find her worthy. This led us into a discussion of her mother and how abusive she was to her. Always telling her that she just was never good enough etc. I suggested to [Wife] that now she is telling herself "the same thing."</p> <p>May 11, 2000 [Wife] has gone back to hiding again. She is trying to intellectualize her way thru life and I have confronted her about it. She gets angry but says that that is what she is doing.</p>		<p>[Wife] is very defensive in terms of looking at her past. She attempts to intellectualize things. She afraid of giving up control.</p> <p>May 19, 2000, session 19 [Wife] is very frightened to look at her issues. She continues to want to blame her husband.</p> <p>May 25, 2000, session 22 [Wife] just wants to argue about things rather than explore issues. She has said she really doesn't want therapy.</p>
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Commingled Records of Other Clients

23. Licensee's original records file for Husband and Wife obtained in response to the Second Subpoena contained Progress Notes for sixteen of Licensee's other patients. (Exs. 1-64 through 1-80.)

Billing Practices and Records

24. Licensee's billing records for Husband and Wife are virtually impossible to comprehend.

25. The copies that Licensee submitted to the Board in response to the First Subpoena included billing ledgers and billing statements for Wife. The billing ledgers contain errors in arithmetic and are internally inconsistent.

26. At the informal interview on August 6, 2004, Licensee stated that at one point his billing service brought to his attention that most of Wife's co-pays for 2000 had not been paid.

1 Licensee looked at his records and made up the entire ledger for that year and presented it to
2 Husband for payment.

3 **27.** In a letter to the Board dated April 13, 2004, Licensee described the billing
4 statements as a “reconstructed statement reflecting all debits and credits to her account.” He also
5 provided a letter from his billing service dated April 6, 2004, to explain “the reasons why the
6 account had to be reconstructed” and the account information manually reentered in order to
7 reconstruct the account history.

8 **28.** The April 6, 2004 letter from the billing service said that the billing statement,
9 prepared April 5, 2004 at Licensee’s request, was “a bit unusual.” The letter indicates that
10 “reconstruction” of the account was necessary because the billing service’s computer crashed in
11 July 2002, a new computer was purchased, the new computer crashed in September 2002, another
12 new computer was purchased, and all of Licensee’s billing information was subsequently “lost or
13 corrupted.”

14 **29.** Licensee himself reviewed the “reconstructed” billing statements before they were
15 sent to the Board in response to the First Subpoena.

16 **30.** In a letter to the Board dated July 23, 2004, Licensee admitted that “there are errors
17 in my former billing service’s attempt to reconstruct the billing history.” Although Licensee had
18 previously informed the Board that the billing statements had been manually “reconstructed,” he
19 had failed to indicate that the statements were inconsistent with the copies of session notes and
20 billing ledgers that he provided or that the statements contained a multitude of errors.

21 **31.** In Licensee’s July 23, 2004 letter, he also stated that “there are still innumerable
22 errors in that billing statement and as a result of my dissatisfaction, I have changed billing
23 services.” When pressed at the informal interview on August 6, 2004 about the alleged change of
24 billing service providers, Licensee admitted that he had NOT, in fact, changed providers for Wife’s
25 billing. He said that in early 2002, he began to gradually change some of his other accounts to
26 another provider. He did not change all his accounts to another provider because he was “kind of
27 feeling at the mercy of this billing company . . . There would be some real repercussions in terms
28 of finances that were due me through the billing company.”

1 **Other Discrepancies**

2 32. In a letter to the Court dated May 24, 2003 in Husband and Wife's dissolution
3 proceedings, Licensee stated that Wife owed him \$2744, when his billing ledger showed a lesser
4 amount due of \$2564.

5 33. Although Licensee represented to the Board that he had seen Husband and Wife for
6 marital therapy from January to May 2000, he provided typed session notes for May 11, 16, 23, and
7 30, 2001.

8 34. In a letter to the Board dated July 23, 2004, Licensee stated that he "did not provide
9 individual counseling to [Wife] until after the marriage therapy sessions that had occurred
10 beginning in November 1999 had terminated in May of 2000." Licensee's records belie his
11 statement. His records include notes for individual sessions with Wife from January 2000 though
12 May 2000 and joint marital sessions with Husband and Wife four times in May 2001.

13 35. Licensee told the Board that he sent Wife a certified letter on August 9, 2002,
14 terminating her as a client due to her verbal abuse. When asked to produce a copy of the letter,
15 Licensee stated that he could not do so because the letter was on his computer, which had
16 "crashed."

17 36. Licensee stated that when Wife resumed therapy in January 2002, she was "very
18 emotional and very upset and feeling suicidal." Licensee's five Progress Notes for January 2002
19 do not support his statements. None of the notes state that Wife was suicidal. His notes for January
20 2002 say such things as Wife "was very focused today. She wants to get on with her life and learn
21 how to do that . . ." She "came in on time. She apologized for being so verbally abusive and
22 thanks me for seeing her again . . ." Her affect was consistent with depression, she was very verbal,
23 seemed sad and lethargic, wouldn't talk.

24 37. Licensee failed to provide all original EOB's (explanation of benefits statements)
25 in his possession to the Board in response to the Second Subpoena.

26 **Inadequate Records**

27 38. Licensee's business, financial, and professional records for Husband and Wife are
28 inadequate because, among other reasons, they lack sufficient information to identify the dates of

1 service, the fee for service, the payments for service, and the type of service given. A.R.S. § 32-
2 2061.

3 39. Licensee, through his attorney, admitted that Licensee's "initial records certainly
4 fell below the standard of care."

5 40. Licensee has been licensed as a psychologist in Arizona since December 11, 1987.
6 In the informal interview of August 6, 2004, Licensee stated "I really don't know what I should put
7 in a note and what I shouldn't put in a note."

8 **Untrue Statement**

9 41. Licensee's written certification dated April 14, 2004, that the copies of records he
10 submitted to the Board "are true and correct copies of all records and materials in my possession
11 or subject to my control that are responsive to the subpoena" (1-31) is untrue.

12 **Fraudulent Statements**

13 42. Licensee's subpoena certifications were fraudulent statements. Licensee knew or
14 had reason to know that the Board regarded or was likely to regard his subpoena
15 certifications—and the accuracy and completeness of the copies and original records he
16 provided—as important. The Board draws the reasonable inference from the totality of the
17 discrepancies, errors, omissions, and deletions and alterations described in Findings of Fact Nos.
18 3-41 above, and the fact that Licensee himself prepared the copies, that Licensee knew that his
19 certification statements were false. From the totality of the circumstances, the Board reasonably
20 infers that by submitting the copies, originals, and certifications, Licensee intended the Board to
21 regard the certifications as true. Upon receiving the copies and certification in response to the First
22 Subpoena, the Board did not know that the certification was false. In discussing the copies at the
23 June 4, 2004 Board meeting that resulted in the summary suspension of Licensee's license, the
24 Board relied on the April 14, 2004 certification and the copies certified. The Board had a right to
25 rely on the truth of the certification. A.R.S. §§ 32-2082(A), (B); 32-2061(A)(13)(j) and (bb).

26 43. From the totality of the circumstances and from Licensee's explanations, the Board
27 also reasonably infers that the discrepancies, errors, omissions, and deletions and alterations
28 described in Findings of Fact Nos. 3-42 above were not the result of inadvertence or innocent

1 conduct.

2 **Promissory Note and Deed of Trust on Husband and Wife's Marital Home**

3 44. On December 3, 2003, when Wife's balance for psychological services was
4 approximately \$4994, Wife signed and recorded a Promissory Note for \$5000 in favor of Licensee,
5 secured by a Deed of Trust on the family residence owned by Husband and Wife. Licensee was
6 designated as Lender on the Promissory Note, which required Wife to pay Licensee the \$5000
7 principal plus interest in monthly installments of \$100 per month beginning January 4, 2004, with
8 the balance of over \$4500 due six months later on July 4, 2004. The default interest rate was 18%.
9 Wife gave a copy of the Promissory Note and Deed of Trust to Licensee on the date they were
10 recorded.

11 45. At the time Licensee accepted the Promissory Note and Deed of Trust at Wife's
12 initiation, Husband and Wife were involved in contentious litigation concerning the dissolution of
13 their marriage. Although the Deed of Trust referred to Wife as a "single woman," the parties were
14 not divorced at the time. The dissolution of marriage became final on July 7, 2004.

15 46. Husband was unaware that Wife had recorded a lien on the family residence. He
16 did not learn of the lien until Wife was evicted from the residence in early February 2004, and he
17 found a copy of the documents stuffed in a cabinet. (Because Wife had long refused to vacate the
18 residence, Husband had to file a separate civil action to have her evicted.)

19 47. The lien prevented Husband from refinancing the loan on the residence, as the Court
20 had ordered him to do.

21 48. Husband addressed the Board at the informal interview on August 6, 2004, and
22 requested that Licensee release the lien within three business days. On August 10, 2004, Licensee
23 signed and recorded a Deed of Release and Reconveyance (Beneficiary).

24 49. According to Licensee, when Wife gave him a copy of the Promissory and Deed of
25 Trust on December 3, 2003, he didn't think anything about it and put the documents in his drawer.
26 At the informal interview on August 6, 2004, Licensee further stated that he never intended to
27 collect on the note, but thought he and Wife would work through the issues dynamically. They
28 never did so.

1 **50.** Licensee stated at the informal interview on August 6, 2004 that "if the husband
2 were to call me and say look, do something with this [the Promissory Note and Deed of Trust] will
3 you, I would have been more than glad to. I didn't think it was any big deal."

4 **51.** Husband's complaint had made it clear that he and Wife were not yet divorced and
5 that, because of the lien, he could not refinance the family home as ordered by the Court. Licensee
6 received this information in the Board's certified letter dated March 31, 2004. Despite receiving
7 Husband's plea about the lien, and despite claiming that he never intended to collect on the note,
8 Licensee failed to release the lien until after the August 6, 2004 Board meeting.

9 **Inappropriate Dual Relationships**

10 **52.** Licensee was aware that Husband and Wife were involved in a lengthy, bitter
11 divorce proceeding. Sometime after July 2003, Licensee conducted a "mediation" session with the
12 couple at Wife's request. The mediation concerned matters at issue in the divorce proceeding,
13 including Wife's signing a quit claim deed on the family residence to facilitate Husband's
14 refinancing the home. Wife refused to do so. Licensee had served as psychotherapist to Husband,
15 provided marital therapy to both Husband and Wife, and was Wife's current treating
16 psychotherapist. Licensee engaged in inappropriate dual relationships by serving as a mediator
17 between Husband and Wife in this circumstance.

18 **53.** Licensee's roles as Wife's treating psychotherapist and creditor were inappropriate
19 dual relationships.

20 **Transference Issues**

21 **54.** Licensee's session note dated February 3, 2000, indicates that Wife "again says she
22 would rather date me than for us to do therapy." (Emphasis added.) Although earlier session notes
23 do not mention such previous statements by Wife, a note on May 9, 2000 indicates that Wife said
24 that she wanted to fire Licensee so she could date him. Licensee failed to address these
25 transference issues with Wife.

26 **Diagnosis**

27 **55.** Licensee's initial diagnosis for Wife was Major Depression. Based on the initial
28 case plan, Licensee suggested medication as a treatment modality. Wife underwent a psychiatric

1 evaluation which yielded a different diagnosis and determined that medication was not appropriate
2 at that time. A later psychological evaluation suggested yet another diagnostic possibility. In a
3 letter to Wife's attorney dated August 7, 2003, Licensee suggested PTSD (post-traumatic stress
4 disorder.) Licensee failed to address the diagnostic differences in his case notes and never changed
5 the treatment plan to reflect the psychiatrist's determination that medication was not needed.

6 **56.** Licensee's session notes fail to support his diagnosis for Wife.

7 **Treatment Plans**

8 **57.** Licensee's records for Husband fail to contain any treatment plan. Although
9 Licensee's records for Wife include an initial case plan, they do not show that Licensee ever
10 reviewed or revised the plan even after approximately 169 sessions. Licensee stated at the informal
11 interview of August 6, 2004 that he did not know that he was supposed to review or revise the
12 treatment plan over the course of therapy.

13 **Activities that are Unprofessional by Current Standards of Practice**

14 **58.** According to Licensee's July 23, 2004 letter to the Board, he provided individual
15 therapy to Wife during the following periods: January 6, 2000 to May 2000; January 2001 to
16 October 2001; January 2002 through August 2, 2002; and September 25, 2002 to present. Although
17 Licensee gave various explanations to the Board for Wife's beginning and ending therapy on those
18 dates, the rationale is not indicated in his records. A reasonable and prudent psychologist would
19 have indicated the rationale in his records.

20 **59.** In responding to the First Subpoena, Licensee's deletion of session notes and
21 alteration of pages, his omission of records, his handwritten notes that are different from the
22 original notes; and the discrepancies in billing ledgers, billing statements, and session notes, all
23 described above, constitute activities that are unprofessional by current standards of practice. A
24 reasonable and prudent psychologist would have provided true and correct copies of all documents
25 responsive to the First Subpoena. A reasonable and prudent psychologist would have maintained
26 and retained business, financial, and professional records that contain, at a minimum, sufficient
27 information to identify the dates of service, the fee for service, the payments for service, and the
28 type of service given.

1 **60.** Because of the discrepancies in Licensee's clinical and billing records described
2 above in paragraphs 3-42, his records are inherently unreliable. Licensee failed to provide a
3 satisfactory explanation for the deleted session notes and altered pages; the omitted records; the
4 handwritten notes that are different from the original notes; and the discrepancies between billing
5 ledgers, billing statements, and session notes.

6 **Previous Board Action**

7 **61.** The Board takes administrative notice of and incorporates by reference its orders
8 issued in Case No. 01-16, the previous case involving Licensee. In Case No. 01-16, the Board
9 issued an agreed upon Interim Order for Evaluation and Practice Monitoring dated September 14,
10 2001. By Consent Agreement dated April 9, 2002, the Board censured Licensee and placed him
11 on probation for a period of three years. The Order of Probation required Licensee to see a Board-
12 approved internist regarding Licensee's medical condition; comply with the recommendation of
13 the internist; undergo psychotherapy with a Board-approved psychologist or psychiatrist; submit
14 to practice monitoring by a Board-approved psychologist, including face-to-face meetings with the
15 monitor and review and discussion with the monitor of all psychological services provided by
16 Licensee during the preceding monitoring period; obtain three graduate level semester hours in
17 ethics and three hours in marriage and family psychotherapy; and pay restitution to the clients and
18 insurance company.

19 **62.** Licensee requested the Board to terminate his Order of Probation before the
20 expiration of the three-year term. After Licensee provided evidence that he completed the terms
21 of probation, the Board terminated the Order of Probation in Case No. 01-16 on February 5, 2004
22 at Licensee's request, 14 months before the Order's ending date.

23 **63.** In addressing the errors and omissions in Licensee's records in the present case,
24 Licensee and his attorney referred to Licensee's medical condition in the previous case. Licensee
25 also indicated at the informal interview of August 6, 2004 that he suffered from ADHD (attention
26 deficit hyperactive disorder). On July 23, 2004, Licensee's attorney provided copies of letters
27 written in 2001 from Licensee's evaluating psychiatrist, evaluating internist, and treating
28 psychologist. The letters had been provided to the Board in connection with Case No.01-16. The

1 letter dated June 21, 2001 from Licensee's expert evaluating psychiatrist stated that Licensee's
2 "ADHD had finally come under control and has responded to low and stable doses of
3 [medication]." The psychiatrists's letter also stated that, with continued psychotherapy, continued
4 medical treatment for ADHD and mood stabilization, and medical monitoring from an internist,
5 Licensee does not pose a risk to the public. When the Board consented to discipline in Case No.
6 01-16, the Order of Probation included those terms recommended by Licensee's expert psychiatrist.

7 **64.** At the August 6, 2004 informal interview, Licensee, through his attorney, asked the
8 Board to "take into account" that "during the period of time from 1999 through late spring of 2002,
9 we have previously identified was a time of serious impairment of judgment as documented by
10 experts..." Licensee has presented no evidence of impairment after mid-2001, when his evaluating
11 and treating health care providers found him stable and able to practice subject to the
12 recommendations incorporated into the Order of Probation.

13 **CONCLUSIONS OF LAW***

14 **1.** The Board of Psychologist Examiners of the State of Arizona possesses jurisdiction
15 over the subject matter and W. E. Fidler, Ph.D.

16 **2.** The conduct and circumstances described above constitute unprofessional conduct
17 pursuant to A.R.S. § 32-2061(A)(13)(j)(Making a fraudulent or untrue statement to the board or its
18 investigators, staff or consultants).

19 **3.** The conduct and circumstances described above constitute unprofessional conduct
20 pursuant to A.R.S. § 32-2061(A)(13)(h)(Failing or refusing to maintain and retain adequate
21 business, financial or professional records pertaining to the psychological services provided to a
22 client.)

23 **4.** The conduct and circumstances described above constitute unprofessional conduct
24 pursuant to A.R.S. § 32-2061(A)(13)(bb)(Failing to furnish information in a timely manner to the
25 board or its investigators or representatives if requested by the board as prescribed in this chapter.)

26 **5.** The conduct and circumstances described above constitute unprofessional conduct
27

28 * The Board determined to omit a violation of A.R.S. § 32-2061(A)(13)(y) from the final
Conclusions of Law.

1 psychologists who agree to supervise Licensee under the terms of this order if approved as a
2 supervisor.

3 **3.** The vitae submitted shall demonstrate that the proposed supervisor has been licensed and
4 has practiced clinical psychology for at least ten years and has previously supervised post-doctoral
5 students in a post-doctoral training experience.

6 **4.** The supervisor may not be a person who has previously supervised Licensee in the
7 practice of psychology or whom Licensee has supervised in the practice of psychology or pre- or
8 post-doctoral training experience.

9 **Supervisor's Duties**

10 **5.** The supervisor shall supervise Licensee's practice of psychology, which shall include,
11 at a minimum, the following

12 **a.** Review Licensee's business and client records (including, for example, informed
13 consent forms and session notes) to determine the adequacy and quality of the records and whether
14 the records are consistent with the current standards of practice;

15 **b.** Review case conceptualizations and treatment plans;

16 **c.** Evaluate psychological assessments;

17 **d.** Evaluate psychological report writing;

18 **e.** Review all patient documents prior to their release;

19 **f.** Review all billings for adequacy and completeness;

20 **g.** Countersign all assessments, treatment plans, session notes, reports, correspondence,
21 and billings;

22 **h.** Sit in with Licensee on at least ten hours of client sessions in the first three months
23 of supervision.

24 **6.** The supervisor shall pay particular attention to boundary management and transference
25 issues regarding female patients.

26 **7.** The supervisor shall document in each client record the date and nature of each
27 supervisory contact. The supervisor may request that Licensee audio tape or video tape client
28 sessions.

1 **Reports**

2 8. The supervisor shall submit written reports to the Board regarding the appropriateness
3 of Licensee's practice of psychology. For the first year of supervision, the supervisor shall submit
4 two reports per month, which must be received at the Board's office not later than the first day and
5 the fifteen day of each month. For the remainder of the supervision, the supervisor shall submit a
6 report once report per month, which must be received at the Board's office not later than the first
7 day of each month.

8 9. At a minimum, the reports shall include an anonymous description of each client seen
9 or treated by Licensee, including age and gender; the reason the client is seeking psychological
10 treatment; adequacy of session notes, billing and insurance documents, case conceptualization, and
11 treatment plan developed for each client; number of clients seen by Licensee; appropriateness of
12 boundaries; and the date and duration of each supervisory contact between the supervisor and
13 Licensee. The reports shall also include issues or areas of concern to the supervisor.

14 **Minimum Contact Hours**

15 10. Licensee shall meet face to face with the supervisor at least two hours per week for the
16 first year of supervision. For the remainder of the supervision, the supervisor may reduce the
17 number of meetings to at least once per week, and shall document the rationale for reduction in the
18 frequency of meetings. The supervisor shall have the right of access to all Licensee's records
19 relating to his practice of psychology and to all health care professionals involved in the treatment
20 of Licensee's clients. For supervisory purposes, the supervisor shall make scheduled and
21 unscheduled visits to Licensee's office.

22 **Disclosure of Supervision and Probation**

23 11. During the term of probation, Licensee shall provide to each person for whom he
24 provides psychological services a written statement disclosing that Licensee is practicing under
25 supervision, subject to a Board Order of Probation. The written statement shall also provide the
26 supervisor's name and the procedure for contacting the supervisor. Licensee shall obtain each
27 person's signature on a copy of the written statement, acknowledging receipt, and retain the signed
28 document in his records.

1 12. Licensee shall document the supervisory relationship in each client's record. If any
2 supervisory act specified in this Order requires the consent of the client, Licensee shall obtain
3 informed consent in writing.

4 13. Prior to beginning supervision, Licensee shall provide a copy of these Findings of Fact,
5 Conclusions of Law, and Order to the supervisor.

6 **Supervision Agreement**

7 13. Prior to beginning supervision, Licensee and the supervisor shall enter into a written
8 supervision agreement that sets forth the terms of supervision specified in this Order and such other
9 terms as Licensee and the supervisor find appropriate. Financial arrangements shall be specified
10 in the agreement. Prior to beginning supervision, Licensee shall provide a copy of the agreement
11 to the Board.

12 **Supervision Records**

13 14. The supervisor shall maintain supervision records indefinitely.

14 **Practice Management Consultant**

15 15. Not more than 120 days nor less than 90 days prior to termination of the suspension,
16 Licensee shall engage the services of a practice management consultant approved by Board staff
17 in consultation with the Board chair or vice chair. Licensee shall meet with the practice
18 management consultant at least four to five times prior to termination of the suspension and
19 thereafter at a frequency that enables the consultant to write the reports required under this Order.

20 16. The practice management consultant shall submit a written report to the Board prior
21 to termination of the suspension and thereafter on the first day of each month for four months. The
22 reports shall include at a minimum, an assessment of Licensee's practice management systems,
23 including record keeping, confidentiality of records, structure of session notes, filing, copying, and
24 billing, as well as recommendations for improvement. The practice management consultant shall
25 also recommend appropriate forms or formats for documents for Licensee to use in the management
26 of his practice.

27 17. The practice management consultant shall meet with the Board upon reasonable request
28 and shall provide information to the Board's executive director upon her reasonable request.

1 **18.** The duties of the supervisor and practice management consultant may overlap to some
2 extent.

3 **19.** Licensee shall promptly provide copies of the practice management consultant's reports
4 to the supervisor.

5 **Compliance Certification**

6 **20.** Thirty days after date of this Order and on first day of each month thereafter, Licensee
7 shall submit a written statement to Board certifying that he is in compliance with this order and
8 reporting on the progress of his activities required under this Order. The statement must be
9 received at the Board's office by the due date.

10 **Access**

11 **21.** Upon reasonable request, the Board and its representatives shall have reasonable access
12 to Licensee's records related to the practice of psychology.

13 **Payment**

14 **22.** Licensee shall promptly pay all costs of compliance with this Order.

15 **Session Notes**

16 **23.** Licensee shall make session notes for each client on consecutively numbered pages and
17 shall also number each session consecutively (that is, session 1, session 2, session 3, etc.)

18 **Activities Log**

19 **24.** In a bound book with consecutive, preprinted numbers on each page, Licensee shall
20 maintain a contemporaneous, legible log of all his professional activities as a psychologist. The
21 log shall include at a minimum, the date, type, and duration of each activity, entered in
22 chronological order. Upon request, Licensee shall promptly make the log available to Board staff
23 or provide legible copy.

24 **Education**

25 **25.** Not later than six months following termination of the suspension, Licensee shall
26 complete the twelve-hour continuing education course in ethics and risk management offered by
27 the American Psychological Association/the APA Insurance Trust and provide satisfactory
28 evidence of completion to the Board.

1 26. Not later than six months following termination of the suspension, Licensee shall
2 successfully complete two graduate level courses of three-semester credit hours each at a regionally
3 accredited institution. "Successfully complete" means completing with a grade of "B" or better.
4 One course shall be in marriage and family therapy and the other course shall include or focus on
5 case conceptualization and independent treatment planning. Licensee shall obtain prior approval
6 of the courses from Board staff. Licensee shall provide written documentation from the educational
7 institution that he passed the courses as ordered.

8 27. The continuing education hours and course work required under this Order shall be in
9 addition to the hours required for renewal of license.

10 **No Supervision by Licensee**

11 28. During the term of this Order, Licensee shall not supervise any psychologist or any pre-
12 or post-doctoral student or trainee in a pre- or post-doctoral training experience or practicum.

13 **Current Address and Phone Number**

14 29. Within five days of changing his home or business address or telephone number,
15 Licensee shall notify the Board in writing.

16 **Non-renewal and Reapplication**

17 30. If Licensee fails to renew his license while under probation and subsequently applies
18 for a license, the remaining term of probation shall be imposed if the application for license is
19 granted.

20 **Appearance**

21 31. Upon reasonable notice, Licensee shall appear before the Board regarding his
22 compliance with this Order.

23 **Compliance with Law**

24 32. Licensee shall obey all state and federal law pertaining to the practice of psychology.

25 **Tolling**

26 33. This Order shall be tolled for any period of time that Licensee is absent from Arizona
27 for more than ten consecutive business days. Following the end of suspension, the Order shall be
28 tolled for any period that Licensee ceases to practice psychology for more than ten consecutive

1 business days. Licensee shall promptly notify the Board in writing of such absence or cessation
2 of practice psychology.

3 **Modification or Termination**

4 **34.** Licensee shall not request modification or termination of this Order for a period of five
5 years.

6 **Strict Enforcement**

7 **35.** The Board shall strictly enforce the terms of this Order. Any violation of the Order by
8 Licensee shall be grounds for summary suspension, pending hearing for revocation. Licensee bears
9 responsibility for the timely delivery to the Board's office of all reports, information, and
10 documents required to be submitted under this Order. Lack of timely receipt at the Board's office
11 constitutes a violation of this Order.

12 **Immediate Effectiveness**

13 **36.** The Board having determined that the immediate effectiveness of this order or decision
14 is necessary for the immediate preservation of the public peace, health and safety, and that a
15 rehearing or review of the order or decision is impracticable, unnecessary, or contrary to the public
16 interest, this Order is issued as a final order or decision without an opportunity for a rehearing or
17 review. Any application for judicial review of the order or decision shall be made within the time
18 permitted for final orders or decisions.

19 DATED this 8th day of November 2004.

20 ARIZONA BOARD OF
21 PSYCHOLOGIST EXAMINERS

22 By Maxine McCarthy
23 Maxine McCarthy
24 Executive Director
25 1400 West Washington Street, Room 235
26 Phoenix, Arizona 85007
27
28

1 COPY of the foregoing mailed by certified mail
Number 7000 1670 0009 3607 5959
2 this 8th day of November 2004 to:


3 Walter E. Fidler, Ph.D.
4 Address of Record

5 COPY of the foregoing sent by
mail this 8th day of November 2004 to:

6 Stephen W. Myers, Esq.
Myers & Jenkins
7 3003 N. Central Ave., Ste. 1900
Phoenix, AZ 85012

8
9 COPY of the foregoing sent by interagency
mail this 8th day of November 2004 to:

10 Nancy J. Beck, Assistant Attorney General
Office of the Attorney General
11 1275 West Washington, Civil/LES
Phoenix, Arizona 85007

12
13 
14 By Shari S. Courtney

15
16 429709