

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND
PROFESSIONAL COUNSELORS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0057-SWP REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 700-2006
ACTION AGAINST THE LICENSE OF)	
DONNA JUHL, LCPC License No. 122.)	
)	
)	

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) of the Department of Labor and Industry seeks imposition of sanctions against the license of Donna Juhl, a Montana licensed clinical therapist, alleging violations of Mont. Code Ann. § 37-1-316(9) (revealing confidential information obtained as a result of a professional relationship without the consent of the recipient of services), Mont. Code Ann. § 37-1-316(18) (engaging in conduct that does not meet generally accepted standards of practice), Admin. R. Mont. 24.219.804(2)(a)(iv) (exploiting in any manner a professional relationship with a past or former client), Admin. R. Mont. 24.219.804(2)(b)(ii) (failure to terminate a relationship with a client where a conflict of interest exists), and Admin. R. Mont. 24.219.804(2)(b)(viii) (failure to safeguard information provided by a client).

Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on January 30, 2006. Lorraine Schneider, agency legal counsel, represented the BSD. Charles Cashmore, attorney at law, represented Juhl. Juhl and Mary L. testified under oath.¹ Department's Exhibits 1 and 4 and Respondent's Exhibit B were admitted into the record. Having considered the evidence and arguments presented, the hearing examiner finds that the licensee violated professional standards

¹ The hearing examiner has chosen to refer to only the first name and first initial of the last name of the client witness in this written decision. While the witness did not assert any privacy right in this matter, the hearing examiner has nonetheless referred only to the last initial to lessen the likelihood of any untoward impact upon the witness' privacy rights as a result of testifying in this case.

and recommends that her license be sanctioned. This recommended decision is based on the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Juhl has been licensed as a clinical professional counselor in Montana at all times pertinent to this proceeding.

2. Juhl began treating Mary L. in September 1998 and ceased treating her on October 28, 2004.

3. Mary L. has custody of her two minor children. She suffers from potentially fatal health issues. She also lives in very real fear of her ex-husband who has severely assaulted her in the past. Due to her concerns about her health and her husband, she drafted a will that included providing a guardianship in the event she died while her children were still minors.

4. In the first will she prepared, Mary named her sister to act as the guardian for her children. Her sister, unfortunately, became disabled. This required Mary during late 2003 or early 2004 to draft a new will naming a new guardian for her children. Mary considered but decided against having one of her sister's adult children take the guardianship role.

5. Mary discussed her problem regarding the naming of the new guardian with Juhl. Juhl suggested to Mary that Juhl and Juhl's husband become the guardians. Mary asked Juhl if this might not be a professional conflict for Juhl and Juhl jokingly responded "If you die, then I can't be your counselor any more."

6. Juhl was very fond of Mary's children and referred to them as her "god children." On one occasion, the children stayed at Juhl's house overnight.

7. Mary then typed up her new will which provided, in conformity with Juhl's suggestion, that Juhl and her husband would be the guardian of the minor children if Mary died. Mary prepared her new will using the language from her old will and then presented it to Juhl for her review. Juhl then had the will reviewed by counsel and had some changes made. Juhl then returned the edited will to Mary for Mary's signature. Mary signed the will on March 23, 2004, and gave possession of the will to Juhl. Juhl maintained possession of the will until the time of the hearing in this matter.

8. Juhl also owned a home located at 1135 Terry Avenue in Billings while Mary was Juhl's client. Sometime around the end of December 2003, Juhl suggested

to Mary that Mary consider moving out of Mary's apartment and leasing the Terry Avenue property from Juhl. Mary was at first reluctant, but eventually agreed to do so. Juhl and Mary then entered into a lease agreement for the Terry Avenue property. The lease commenced on February 13, 2004, for a period of 1 year. Mary moved into the house with her children.

9. Juhl recognized that by renting the house to Mary she had created an improper dual relationship with Mary. Mary also was concerned about whether the landlord/tenant relationship might create a problem in the therapeutic relationship. Juhl suggested at the time that Mary might want to see another therapist, but told Mary in response to her concerns that the agreement wasn't illegal.

10. In fact, the rental did become a point of friction between Mary and Juhl. Mary felt that the rental house had several maintenance problems with it. The rental was Section 8 subsidized and eventually, due to some of the problems, Section 8 personnel had to become involved.

11. Sometime in April 2005, Juhl informed Mary that Mary and her children would have to move out of the Terry Avenue house. Juhl was forced to do this because she was selling the home she occupied as a result of the impending divorce with her husband. The move caused financial hardship for Mary and created a highly adversarial relationship between Mary and Juhl, causing Mary to lose her trust in her counselor.

12. During the time that Mary was utilizing Juhl's professional services, Juhl had no professional staff, only an answering service. At one point, Juhl asked Mary to go to Juhl's office in order to cancel patient appointments because Juhl was in the hospital. Mary agreed to do this and spent a week cancelling appointments for Juhl. Juhl gave Mary her appointment book and instructed Mary how to gain access to the office and the client files so that Mary could cancel Juhl's appointments. Mary followed Juhl's instructions, went to Juhl's office, and accessed Juhl's clients' files in order to get phone numbers for the clients and cancel their appointments. While going through the files, Mary saw client diagnosis, therapy notes, and billing information. Juhl placed no restrictions on which files Mary could access.

13. Mary is trained in medical transcription and is familiar with HIPAA requirements on medical information disclosure because of this training.² Mary was aware of these requirements at the time Juhl asked her to access client files in order to cancel appointments. Juhl was aware of Mary's training at the time she asked Mary

² HIPAA refers to the Health Insurance Portability and Accountability Act, a federal law enacted in 1996 which, among other things, restricts disclosure of personal medical information.

to access the client files. Juhl did not pay Mary for her work and at no time did Juhl employ Mary.

14. In agreeing to act as guardian for Mary's children, Juhl created a conflict of interest between her professional obligations to Mary and her obligation as potential guardian to her children. It also caused an adverse impact on the therapist/client relationship.

15. In entering into the landlord/tenant relationship with Mary, Juhl created a conflict of interest between her professional responsibilities to Mary and her business responsibilities as Mary's landlord. Juhl should have terminated her professional relationship at that point. Juhl tacitly admitted this at the hearing when she candidly testified that she compromised herself by putting herself into the dual relationship with Mary in respect to creating the landlord/tenant relationship.

16. Juhl compromised the confidentiality of her other clients' information by permitting Mary, as an unpaid client, to have access to Juhl's clients' files without restriction during the week that Juhl was in the hospital.

17. Juhl's demonstrated lack of judgment with respect to entering into these dual relationships with Mary and permitting Mary to have access to patient files was due in part to several simultaneous calamities that occurred in Juhl's life. Tragically, during the time of these events, Juhl's son was killed. Juhl and her husband also decided to divorce during this time period.

18. There has been no evidence presented that Juhl's license has previously been sanctioned.

III. CONCLUSIONS OF LAW³

A. *Juhl Committed Acts of Unprofessional Conduct.*

1. The Board of Social Work Examiners and Professional Counselors has the authority to license clinical social workers and to discipline licensees who engage in unprofessional conduct. Mont. Code. Ann. §§ 37-1-307 and 37-22-201.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct.

³ Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

4. Admin. R. Mont. 24.219.804(1) provides that a violation of any of the ethical rules promulgated by the Board under this regulation is unprofessional conduct. Admin. R. Mont. 24.219.804(2)(a)(iv) prohibits a counselor from exploiting in any manner a professional relationship with a past or former client. Admin. R. Mont. 24.219.804(2)(b)(ii) requires a licensee to terminate a relationship with a client where a conflict of interest exists and sanctions a failure to do so. Admin. R. Mont. 24.219.804(2)(b)(viii) further requires a licensee to safeguard information provided by a client and sanctions a failure to do so.

5. Juhl's conduct in permitting Mary L. to go through Juhl's clients' files in order to obtain telephone numbers for those clients without the consent of those clients and without placing any limitations on Mary L. in respect to reviewing those files constituted a violation of Mont. Code Ann. § 37-1-316(9). This conduct also violated Admin. R. Mont. 24.219.804(2)(b)(viii). Juhl's conduct in agreeing to become the guardian of Mary's minor children and in entering into the lease agreement with Mary L. violated both Admin. R. Mont. 24.219.804(2)(a)(iv) and Admin. R. Mont. 24.219.804(2)(b)(ii). That conduct clearly created a dual relationship between Juhl and Mary L. which both exploited Juhl's professional relationship with Mary L. and created a conflict of interest which required that the therapeutic relationship be terminated. Moreover, in getting Mary L. to undertake the role of contacting clients to cancel appointments without paying Mary, Juhl exploited her professional relationship with Mary.

6. Because the BSD has proven that Juhl violated the statute and administrative regulations noted in the preceding paragraph, BSD has also proven a violation of Mont. Code Ann. § 37-1-316(18). Admin. R. Mont. 24.219.804(1).

7. In closing argument, Juhl's counsel argued that there was no evidence of any exploitation of the client in this case. He further argued that there was no evidence of any problem in the counseling and therefore, no conflict existed that would require termination of the therapist/client relationship. The argument does not square with the facts of this case.

Juhl herself admitted at hearing that there was a problem with having to send a patient into a new therapist/client relationship as a result of having created a dual relationship (such as the landlord/tenant relationship that she and Mary L. shared). She also admitted that her dual relationship with Mary L. (being both landlord and therapist) impacted Mary L.'s therapy. Juhl herself acknowledged that the existence of a dual relationship created the potential of a conflict of interest. Indeed, Juhl acknowledged that her being named as guardian in Mary L.'s will caused an adverse impact on the therapy. In fact, in her response to the Board, Juhl at least tacitly conceded that the rental of the house created a problematic dual relationship when she acknowledged "I suggested that she [complainant] consult a different therapist, since we would now have a dual relationship by the rental of the house." Exhibit 2, Licensees's Response to Complaint, page 3. Juhl's statement to the Board is sufficient evidence in and of itself to show that the dual relationship in this case created a conflict of interest that violated Admin. R. Mont. 24.219.804(2)(b)(viii). Juhl's failure at once to terminate the therapist/patient relationship at that time violated Admin. R. Mont. 24.219.804(2)(b)(ii). And it is patently obvious that Juhl, by getting Mary to contact clients to cancel sessions without paying Mary, exploited the professional relationship with Mary.

In any event, the conflict of interest between Juhl's role as a landlord and her role as Mary's clinical psychologist is apparent even without considering Juhl's admissions. Juhl's role as Mary's therapist required Juhl to look out for the best interests of Mary alone. By taking on the role of landlord, Juhl's own considerations, whether economic or otherwise, took on as a great an importance for Juhl as her obligations to Mary. There simply is no way to escape the obvious conflict of interest that Juhl created for herself by taking on the dual roles.⁴

Finally, the harm to the therapeutic relationship in this case went beyond the stage of being a "potential" and came to fruition in the fallout of the landlord/tenant relationship. This obviously impacted Mary L. as demonstrated through her

⁴ The American Mental Health Counselors Association ethical rules note that examples of dual relationships may include financial and business relationships. Interestingly, that same ethical rule requires that clinical mental health counselors "make every effort to avoid dual relationships that could impair professional judgement or increase the risk of harm" to the client. Principle I (F), Code of Ethics of the American Mental Health Counselors Association (2000 Rev.).

testimony. There simply is no factual or legal basis for arguing that the violations alleged in the complaint did not occur.

B. The Appropriate Sanction is Suspension and Probation with Terms.

8. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may suspend a licensee's license and impose probation with terms.

9. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

10. There are some mitigating factors in this case, namely, the fact that Juhl's conduct was at least partially due to the unfortunate events of her son's death and her divorce from her husband. In addition, there is no evidence that Juhl has been the subject of any substantiated claim of unprofessional conduct other than that occurring in the instant case. Weighing more heavily, however, are the aggravating factors that Juhl entered into multiple relationships with Mary L., exploited the professional relationship, and also took inadequate measures to safeguard the confidentiality of her other clients over a period of at least ten months. Juhl's testimony demonstrates that she knew while engaging in the conduct that it was wrong but nonetheless she continued to do it anyway. In addition to probation, a period of suspension is necessary both to protect the public (by ensuring that the conduct does not occur again) and to ensure Juhl's rehabilitation (to impress upon her the seriousness of her conduct).

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board enter its order placing Juhl on probation for a period of three years with the terms:

(1) That Juhl's license shall be suspended for a period of 90 consecutive days beginning upon the entry of the final order in this matter;

(2) That Juhl shall, at her own expense, enroll in and successfully complete remedial education within 12 months of the entry of the final order issued in this matter, the type of education and the number of hours of education to be determined by the Board of Social Work Examiners and Professional Counselors;

(3) That Juhl shall comply with any monitoring of her practice implemented by the Board, including entering into any contracts or agreements with appropriate entities as required by the Board. Juhl shall provide such documentation or access to case files as deemed appropriate by the Board. Juhl shall also provide case files or disclose any information or undertake any action required by the Board with respect to monitoring;

(4) That Juhl shall obey (a) all provisions of Title 37, Chapters 1 and 22, Montana Codes Annotated, (b) all provisions of Title 24, Chapter 219, and (c) and all requirements or directives imposed by the Board; and

(5) That in the event Juhl fails to comply with any of the above terms and conditions of her probation, that her license be revoked.

DATED this 10th day of April, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.