



COPY

**STATE OF OHIO
COUNSELOR AND SOCIAL WORKER BOARD**

**ADJUDICATION ORDER
in the Matter of:**

Terms of the consent Agreement
complete as of 4/10/2000

Barbara Frybarger
8732 James Road
Wooster, Ohio 44691

**IN THE MATTER OF THE ELIGIBILITY OF BARBARA FRYBARGER TO BE
LICENSED AS A PROFESSIONAL COUNSELOR IN THE STATE OF OHIO.**

**THE MATTER OF BARBARA FRYBARGER CAME BEFORE THE OHIO
COUNSELOR AND SOCIAL WORKER BOARD AT ITS MAY 1998 MEETING.**

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Opportunity for Hearing was issued to Barbara Frybarger by the Counselor and Social Worker Board on January 12, 1998. An administrative hearing was held on April 22, 1998, at 1:30 p.m. in the offices of the Ohio Counselor and Social Worker Board, 77 S. High Street, Columbus, Ohio 43266, pursuant to Chapter 119 and Section 4757 of the Ohio Revised Code. The State was represented by Assistant Attorney General Jonathan M. Bowman. Barbara Frybarger was present and not represented by counsel.

The Board has reviewed the Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Board has also reviewed the Objections to the Hearing Officer Report and Recommendations submitted by Ms. Frybarger as well as the letters of support from Ms. Frybarger's co-workers. The Board adopts in their entirety the Findings of Fact and Conclusions of Law. A copy of the Hearing Officer Report and Recommendations is attached to this Adjudication Order. The Board is modifying the Recommendations of the Hearing Officer since the Board believes that 3 months suspension is not sufficient to fully correct the inappropriate actions of Ms. Frybarger and to protect the public.

THEREFORE, it is hereby ORDERED that for the reasons outlined in this ORDER and in the attached Hearing Officer Report and Recommendations which is hereby incorporated, by reference, into this ORDER, the license of Barbara Frybarger (C-4847) to practice as a Professional Counselor in the State of Ohio is

A. Suspended for a period of six (6) months

1. Five (5) months of this suspension will be stayed if Ms. Frybarger agrees to the following:

a. Be supervised for twenty-four (24) months by an individual pre-approved by the Board. The supervisor will meet with Ms. Frybarger for 2 hours for every 40 hours Ms. Frybarger works. The supervision will clearly focus on appropriate boundaries and ethics in the counseling profession. The supervisor will provide written reports every other month beginning August 1, 1998, by sending such reports to the Board to the attention of the Investigative Supervisor at the Board offices. It is Ms. Frybarger's responsibility to find suitable supervision. The proposed supervisor will need to submit his/her credentials to the Board for pre-approval. Failure of Ms. Frybarger to submit a proposed supervisor by **June 30, 1998**, will indicate Ms. Frybarger's intent not to comply with this provision and her license to practice counseling will be actively suspended for the entire 6 months. This ORDER was approved by unanimous vote of the Members of the Board who reviewed this case.

Motion carried by order of the Counselor and Social Worker Board.

It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

APPEAL RIGHTS

Pursuant to Section 119.12 of the Ohio Revised Code, you may appeal from this Order. Such an appeal may be taken to the court of common pleas in the county in which your place of business is located or to the court in the county in which you reside. If you do not have a place of business in Ohio and are not a resident of Ohio, you may appeal to the Court of Common Pleas in Franklin County, Ohio.

Such an appeal, setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State of Ohio Counselor and Social Worker Board and the appropriate Court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

By Order of the State of Ohio Counselor and Social Worker Board.



Robert L. Moore
Chairman

Certification

I hereby certify that a true and accurate copy of this Adjudication Order of the State of Ohio Counselor and Social Worker Board was mailed return receipt requested to Barbara Frybarger this 2nd day of June 1998.

Beth Farnsworth
Beth Farnsworth
Executive Director

6-2-98
Date

2337 619115
Certified Mail Number
Return Receipt Requested

COUNSELOR AND SOCIAL WORKER BOARD

IN THE MATTER OF THE
LICENSURE OF

Barbara Frybarger

AS A COUNSELOR
IN THE STATE OF OHIO

REPORT AND RECOMMENDATION OF
HEARING EXAMINER

April 27, 1998

FOR THE LICENSEE:

Barbara Frybarger

HEARING EXAMINER:

Ronda S. Shamansky
245 East Gay Street
Columbus, Ohio 43215-3210
614/224-9078

FOR THE BOARD:

Jonathan Bowman
Assistant Attorney General
Health & Human Services Section
30 E. Broad St., 26th Floor
Columbus, Ohio 43215
614/466-8600

FINDINGS OF FACT:

1. The hearing on this matter was held on Wednesday, April 22, 1998 commencing at 1:30 p.m. in the offices of the Counselor and Social Worker Board, 77 South High Street, Columbus, Ohio. The Board was represented by Jonathan Bowman, and Ms. Frybarger represented herself. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made.

2. The Board has proposed disciplinary action against Barbara Frybarger's license to practice counseling because of alleged violations of the Code of Ethics of the American Association for Counseling and Development, adopted by the Ohio Board at Rule 4757-21-01 of the Ohio Administrative Code. The Board cites Ohio Revised Code 4757.13(A), which gives it the authority to take disciplinary action against a licensee for any violations of Chapter 4757 or the administrative rules enacted under it. ¹ The Board's Notice of Opportunity for Hearing was issued January 12, 1998. State's Exhibit 1. Ms. Frybarger made a timely request for a hearing through her letter dated January 26, 1998. State's Exhibit 2. Ms. Frybarger received notice of the initial hearing date, notice of a continuance of that date, and notice of the hearing ultimately held on April 22, 1998. State's Exhibits 3, 4.

3. The first charge against Ms. Frybarger in the Notice of Opportunity is that in August 1995, she received a check for \$25,000 from her client, which was that client's divorce settlement, and that she deposited that check into her own personal account until the client could open her own account. The second charge is that when Ms. Frybarger had back surgery, she allowed this same client to stay in her home and assist her in her recovery. The Board contends that these acts constitute violations of Sections A(8) and B(11) of the Code of Ethics. Section A(8) requires the counselor to avoid engaging in activities that seek to meet

¹ At the hearing, the State noted for the record that the Notice of Opportunity contains a typographical error. The second paragraph of that letter cites "O.A.C. 4757.13(A)," which appears to indicate an administrative code section, when it should instead cite O.R.C. 4757.13(A), a section of the Revised Code. Ms. Frybarger stated that this did not cause her any confusion, that she was able to review the appropriate sections prior to the hearing, and that she was willing to waive any defect that this error created in the Notice and go forward with the hearing.

the counselor's personal needs at the expense of the client. Section B(11) prohibits the counselor from having "dual relationships" with clients that might impair the counselor's objectivity and professional judgment, such as relationships with close friends or relatives.

4. At the hearing, the State called Barbara Bishop and Barbara Frybarger as witnesses. Barbara Bishop testified that she is the client referred to in the Notice of Opportunity, and that she had no objection to her name being used in the hearing. The substance of Ms. Bishop's and Ms. Frybarger's testimony is the same, and there are no factual discrepancies in the testimony of the two witnesses. Ms. Bishop testified that she first met Ms. Frybarger when she sought treatment for alcoholism at the Human Resource Center in January or February 1994. The Human Resource Center is a counseling agency in Millersburg, Ohio. She saw Ms. Frybarger for individual counseling once a week, and at a women's support group that Ms. Frybarger facilitated at the agency once a week. She testified that initially, she thought she needed counseling only for her alcoholism, but that she was in a very abusive relationship with her husband, and eventually came to see that she needed mental health counseling as well so that she could get out of her marriage.

5. Ms. Bishop testified that she entered Beacon House, a halfway house offering drug and alcohol treatment, in June 1995, and stayed there until September. During the time she was at Beacon House, in August 1995, Ms. Bishop received a divorce settlement check for \$25,000. Ms. Bishop testified that she felt she could not keep the check (nor the money, if she cashed it) with her at Beacon House because it would be stolen. She also testified that she did not believe it would be safe in a bank account in her name because her ex-husband had temporary custody of their daughter, and she was afraid he would claim that he needed this money for the daughter's support and gain access to it. By this time she had become friends with Ms. Frybarger, and she asked her to hold the money for her in her account. Ms. Frybarger agreed, and deposited the money into a savings account that was in her name only. Ms. Frybarger testified that she did not want to keep the check itself because she was afraid she might lose it. On two occasions, Ms. Bishop asked Ms. Frybarger to withdraw cash for her.

In August 31, 1995, Ms. Frybarger withdrew \$200 at the request of Ms. Bishop, and gave the money to her while she was still at Beacon House. On September 14, 1995, again at Ms. Bishop's request, she withdrew \$1000 from the account and gave the money to her. Finally, on October 2, 1995, she withdrew the entire balance remaining from the \$25,000 and gave it to Ms. Bishop in the form of a cashier's check. (State's Exhibit 6) About a month later, when she got her bank statement, Ms. Frybarger realized that she owed Ms. Bishop the interest that had accrued on the \$25,000, and paid it to her at that time.

6. Ms. Bishop testified that she got out of Beacon House in September 1995, and that she was granted supervised visitation with her daughter the following November. All of Ms. Bishop's relatives lived far away or were deceased, and she had no close friends at that time. She testified that she believes she suggested to the court that Ms. Frybarger could be the designated supervisor for her visits with her daughter, and that upon Ms. Frybarger's agreement, the visits took place at Ms. Frybarger's house. Ms. Bishop testified that her daughter's guardian ad litem also attended the visits at times, to observe her interaction with her daughter. ²

7. Ms. Bishop testified that by August 1996, she was having serious problems again. She had resumed drinking, her ex-husband was back, and she was in the middle of a custody battle over their daughter. She testified that she knew she had to stay sober if she wanted to have a chance to get custody, and so she began taking Antabuse, a drug that makes one violently ill if alcohol is consumed while taking it. Ms. Bishop testified that she felt she needed Ms. Frybarger's support at that time so that she could stay sober, and tried to contact her in September 1996. This happened to be the time that Ms. Frybarger was having back surgery, and was incapacitated during her recuperation. Ms. Frybarger permitted Ms. Bishop to stay at her house for two or three days, sleeping on an air mattress. During that time, Ms. Bishop ran errands, helped with laundry, and took care of Ms. Fry-

² Although this conduct may also indicate a dual relationship, these allegations are not contained in the State's Notice of Opportunity for Hearing, and so this conduct cannot be a separate basis for disciplinary action resulting from this hearing. It is my recollection that this information was volunteered by Ms. Bishop, and that it was not purposefully elicited by the State at the hearing.

barger's pets. Ms. Bishop testified that she received nothing for these services, but that she did them out of gratitude for Ms. Frybarger's help to her.

8. In the presentation of her case, Ms. Frybarger acknowledged that she had made serious mistakes in judgment. With respect to the bank deposit, she testified that attempted to open an account in Ms. Bishop's name, but that the bank would not allow it without Ms. Bishop present. With respect to this issue and the matter of her permitting Ms. Bishop to stay in her home, she testified that this client was adamant that she had no one else she could turn to for help, and so she acquiesced. She testified that at that time, she could think of no other way to help the client. She also testified that because Holmes County is very rural, access to other counseling and support services was very limited. She acknowledged that she knew she was becoming a close friend of Ms. Bishop, but that transferring her to another counselor was difficult. The Human Resource Center is the only counseling agency in Millersburg, and although it had two other counselors, both of them were trained only as alcohol and chemical dependency counselors. Ms. Frybarger testified that this client also needed mental health counseling. There was also testimony from Ms. Bishop that for at least part of this time, she had lost her driver's license, and was unable to drive to another town for counseling. Ms. Frybarger testified that in hindsight, she should have denied both the request to hold the divorce settlement money and the request of this client to stay at her home. Ms. Frybarger testified that she had never had any similar personal involvement with a client in the past, that she was aware of the ethical rules, and that she would not make the same mistakes again, if permitted to keep her license.

DISCUSSION

It is clear that Ms. Frybarger committed violations of the Code of Ethics of the American Association for Counseling and Development, both by depositing her client's divorce settlement check into her own account, and by allowing the client to stay at her home for two or three days while she was recovering from back surgery. However, I was convinced by the testimony at the hearing that she did not do so with the intent to exploit her client for her own personal benefit. Although the matter of her "intent" is not

controlling in determining whether or not there was a violation, I believe that it should be considered in determining what is the appropriate penalty against her license.

With respect to the matter of depositing her client's divorce settlement check into her own account, I found no instance of any way in which Ms. Frybarger personally benefitted from this deposit. She returned the entire amount to Ms. Bishop when Ms. Bishop requested it, and she returned the interest that accrued on that amount to Ms. Bishop as well. Although Ms. Frybarger readily admits that she should have denied this request, I believe the testimony that she held this money strictly for the client's benefit and sought to gain nothing from it.

Likewise, even though Ms. Bishop's stay at Ms. Frybarger's home would appear on the surface to be exploitative of the client, I find from the testimony that this was for the greater benefit of Ms. Bishop than Ms. Frybarger. Ms. Bishop testified that she felt Ms. Frybarger's support at that time was critical to her maintaining her sobriety and avoiding further problems with her ex-husband. I found her testimony sincere and heartfelt. I believe that Ms. Frybarger did receive some personal benefit from this client's stay at her home, through her help with errands and household chores, but that it was very minimal. Moreover, there was no testimony that Ms. Frybarger actually requested that she perform these tasks. Instead, Ms. Bishop testified that she wanted to do what she could to help, as a show of gratitude for this counselor's help to her in the past.

In becoming involved personally with her client in these ways, I must find that Ms. Frybarger entered into a "dual relationship" with her. She created a situation with an appearance of impropriety and the potential for exploitation of her client, and for that reason, some action against her license is warranted. I am persuaded by the State's argument that the ethical rules concerning boundaries with clients must always apply—not only when the counselor thinks they are necessary. The ethical rules have been designed to prevent situations where there is the potential for harm to the client, and Ms. Frybarger placed herself in that position.

For this reason, I recommend that the Board suspend Ms. Frybarger's license to practice counseling for a period of three months. The Board members who are experts in counseling may be better equipped to determine what length of time would constitute a suitable suspension period,

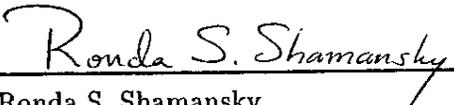
and the Board has full authority to require a longer suspension than three months, if it deems that appropriate. The Board may also wish to require her to complete additional continuing education in ethics, in the amount of hours it finds appropriate. However, because Ms. Frybarger has never tried to claim that she did not know the disciplinary rules, the Board may find additional training in ethics unnecessary. There is no question that she knew this conduct was against the rules; Ms. Frybarger testified instead that she could think of no other way to help this client at that time. Therefore, in this case, I believe the Board is the most appropriate entity to determine whether additional ethics training is necessary.

CONCLUSION OF LAW

I conclude that Ms. Frybarger entered into a dual relationship with her client when she deposited her client's divorce settlement check into her own bank account, and when she allowed the client to stay in her home following her back surgery. This relationship violates Section B(11) of the Code of Ethics of the American Association of Counseling and Development. I further find that she gained some benefit, although minimal, when this same client stayed in her home to assist her personally in her recovery from back surgery. I find that this conduct violates Section A(8) of the Code of Ethics of the American Association of Counseling and Development. Based on these violations, and because the Board has incorporated the Code of Ethics into its Rules at 4757-21-01, I find that R.C. 4757.13(A) gives the Board the authority to take whatever action it deems appropriate against her license.

RECOMMENDATION

For the reasons detailed in this report, I recommend that the Board suspend Ms. Frybarger's license for three months. In addition, I recommend that the Board give consideration to whether additional ethics training is warranted, in a number of hours to be determined by the Board.



Ronda S. Shamansky
Hearing Examiner