

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
825 North Capitol Street, NE Suite 4150  
Washington, DC 20002-4210

*In re:*

LEE CRUMP, Ph.D.  
Respondent

Case No.: DH-B-07-800044

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**FINAL ORDER**

**I. Introduction**

This case arises under the Health Occupations Revision Act of 1985, D.C. Official Code §§ 3-1201.01 – 3-1251.16 (the “Act”), and 17 DCMR, Chapter 69, which regulate the practice of psychology in the District of Columbia. On or about April 20, 2007, the Board of Psychology (the “Board”) issued a Notice of Intent to Take Disciplinary Action (the “Notice”) against Respondent Lee Crump, Ph.D., and Respondent, by his attorney, requested a hearing. The Board referred this matter to the Office of Administrative Hearings to hold a hearing and issue a final decision pursuant to D.C. Official Code § 2-1831.03(i).

The proposed disciplinary action was based on two charges: Charge I, that Respondent violated § 3-1205.14(a)(26) of the Act and 17 DCMR 6909.1, by failing to conform to the standards of acceptable conduct and prevailing practice within a health profession, as set forth in the Ethical Principles of Psychologists and Code of Conduct as published by the American Psychological Association (the “APA”); and Charge II, that Respondent violated § 3-1205.14(a)(28) of the Act by demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, regardless of whether the patient sustained actual injury as a result.

The factual predicate for both charges is the same: namely, the Board alleged that in December 2000 Lyonel Jose, Sr. and Marie-Lucie Guerrier (collectively, the “Parents”) brought their minor son (the “Minor”)<sup>1</sup> to Respondent for treatment of a psychological disorder, that the Parents also received counseling services from Respondent, and within nine months after the counseling services ended Respondent and Ms. Guerrier began an intimate relationship.

A hearing was held on March 25, 2008. The Government was represented by Tasha Hardy, Assistant Attorney General, and Respondent was represented by Peter C. Grenier, Esquire. Post-hearing, the parties submitted proposed findings of facts and conclusions of law.

The following findings of facts and conclusions of law are based on the testimony of the witnesses, my evaluation of their credibility, and the exhibits introduced into evidence. The relevant material facts are not in dispute, except for one: namely, whether Ms. Guerrier was ever a patient of Respondent.

I conclude that the Government has not proved by the preponderance of the evidence that Ms. Guerrier was a patient of Respondent and, accordingly, has not proved the charges as alleged.

## **II. Findings of Fact**

### **A. The Complaint to the Board**

In March 2006 the Board received a complaint from Lanning E. Moldauer, Ph.D., that in 2004 Mr. Jose had filed a suit against Respondent in the Superior Court of the District of

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<sup>1</sup> The Minor’s name is not being disclosed to protect his privacy.

Columbia claiming damages for alleged medical malpractice by Respondent (the “Civil Case”). In the Civil Case, Mr. Jose alleged that he and his wife, Ms. Guerrier, were former patients of Respondent and that Respondent and Ms. Guerrier had carried on an affair.<sup>2</sup> Dr. Moldauer is a licensed psychologist in the District of Columbia and the State of Maryland and was an expert witness in the Civil Case on behalf of Mr. Jose.<sup>3</sup>

At the direction of the Board, Mark Donatelli, an investigator with the District of Columbia Health Professional Licensing Administration (the “Government Investigator” or “Mr. Donatelli”), reviewed the court record in the Civil Case, including transcripts of depositions, and submitted a report recommending that the Board take appropriate action for possible violation of Section 10.08(a) of the American Psychological Association’s Ethical Principles of Psychologists And Code of Conduct (the “2003 APA Ethics Code”), which prohibits sexual intimacies between a psychologist and former therapy clients/patients for at least two years after termination of professional services.<sup>4</sup>

## **B. Respondent**

Respondent is a licensed psychologist in the District of Columbia and the State of Maryland.<sup>5</sup> Since 2008 he has been self employed as a clinical psychologist.<sup>6</sup> He received his

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<sup>2</sup> Tr. at 41 (“Tr. at \_\_\_” refers is to the transcript of the hearing on March 25, 2008); Government’s Exhibit (“Gov. X”) 100 at 2 [Investigative Report by Mr. Mark Donatelli, Investigator, Health Professional Licensing Administration (hereinafter “Donatelli Investigative Report”)].

<sup>3</sup> Gov. X 102 at 5 [Transcript of deposition of Dr. Moldauer in the Civil Case (hereinafter “Moldauer Deposition”)].

<sup>4</sup> Donatelli Investigative Report at 2-3.

<sup>5</sup> Tr. at 303; Donatelli Investigative Report, Ex. B (Respondent’s D.C. license as a psychologist).

<sup>6</sup> Tr. at 299.

Ph.D. in clinical psychology in 1978 from the University of Tennessee.<sup>7</sup> After receiving his Ph.D. he worked in a community mental health center in Memphis, Tenn. until 1980, when he became the Deputy Director of the Veterans Administration's National Vietnam Veterans Program.<sup>8</sup> From 1982 to 1992 he was Chief of Psychology at Perry Point Medical Center, a Veterans' Administration facility. And from 1992 until 2006 he was the Director of the Department of Psychiatry pre-doctoral program in clinical psychology at Howard University Hospital, Washington, DC.<sup>9</sup> After leaving Howard University Hospital, Respondent commenced his solo private practice. Respondent has had extensive experience in child counseling, having treated over one thousand children.<sup>10</sup>

Respondent has taught seminars on ethics, including the propriety of relationships between psychologist and patient; and he has also taken continuing education courses regarding standards of behavior between a psychologist and patient.<sup>11</sup> Respondent has never been the subject of professional disciplinary proceedings.<sup>12</sup>

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<sup>7</sup> Tr. at 301.

<sup>8</sup> Tr. at 302.

<sup>9</sup> Tr. at 303, 304.

<sup>10</sup> Tr. at 318.

<sup>11</sup> Tr. at 309.

<sup>12</sup> Tr. at 306, 307.

**C. Respondent's Relationship With The Parents.**

In December 2000 Ms. Guerrier contacted Respondent about her Minor son, who was exhibiting hostile and threatening behavior.<sup>13</sup> Respondent requested that the Parents and the Minor meet with him to obtain their consent to treat the Minor, to obtain information about the Minor from them, and to make a diagnosis of the Minor's condition and devise a plan for his treatment.<sup>14</sup> This is Respondent's standard practice when treating a minor patient.<sup>15</sup>

Respondent met with the Minor along with one or more of his Parents on three occasions.<sup>16</sup> The first meeting was in December 2000, when Respondent met with the Minor and both Parents at Howard University Hospital.<sup>17</sup> Respondent completed an "Intake Evaluation Form" which identifies only the Minor as the patient.<sup>18</sup> Respondent always obtains consent to treatment from a patient.<sup>19</sup> According to Respondent, his case file reflects that he had the consent of the Parents solely for the Minor to be his patient.<sup>20</sup>

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<sup>13</sup> Donatelli Investigative Report, Ex. E, ¶ 1 [Statement in Civil Case of Material Facts Not In Dispute (hereinafter "Statement of Undisputed Facts")].

<sup>14</sup> Tr. at 314-315

<sup>15</sup> Tr. at 315.

<sup>16</sup> Statement of Undisputed Facts, ¶ 1.

<sup>17</sup> Tr. at 313

<sup>18</sup> Respondent's Exhibit ("RX") 200 (Respondent's "Patient File"); Tr. at 316

<sup>19</sup> Tr. at 229-330.

<sup>20</sup> Tr. at 314, 330.

At the first meeting, Respondent formed an “impression” that the Minor was suffering from an “adjustment reaction with mixed emotional features.”<sup>21</sup> Respondent formulated a treatment plan composed of two parts: to provide individual therapy for the Minor and to address the parenting philosophies and practices of the parents as part of the treatment of the Minor.<sup>22</sup>

On the second visit Respondent met with the Minor and his father, Mr. Jose, and on the third with the Minor and his mother, Ms. Guerrier.<sup>23</sup> These sessions were to get information about the Minor and Minor’s condition from the Parents’ perspective.<sup>24</sup> After the third meeting, the Minor was hospitalized for a psychiatric evaluation.<sup>25</sup> Respondent then referred the Minor to a psychiatrist colleague, Dr. Attia, who saw the Minor on an outpatient basis.<sup>26</sup> Respondent agreed to collaborate with Dr. Attia on Minor’s treatment, and he kept Patient File open until September 2001.<sup>27</sup>

While the Minor was being seen by Dr. Attia, Respondent met with the Minor’s family members, the Parents and two siblings, in his office at Howard University several times. The purpose of these sessions was to enable Respondent to get information about the Minor and his

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<sup>21</sup> Tr. at 319

<sup>22</sup> Tr. at 320; Gov. X 101 at 51 [Excerpts from the transcript of the deposition of Respondent in the Civil Case (hereinafter “Respondent’s Deposition”)].

<sup>23</sup> Tr. at 324, 325.

<sup>24</sup> Tr. at 325.

<sup>25</sup> Tr. at 326.

<sup>26</sup> Tr. at 327; Statement of Undisputed Facts, ¶¶ 1 and 2.

<sup>27</sup> Tr. at 327.

condition, and to educate or instruct the Parents about “age appropriate freedoms and liberties for an adolescent.”<sup>28</sup> Respondent was not providing therapy or treatment to any of the Minor’s family members, as a group or individually.<sup>29</sup> Respondent never considered the Parents, or either of them, his patients, and he never told them otherwise.<sup>30</sup>

Respondent never sought or obtained any form of written or verbal consent from any of Minor’s family members for any of them to be his patient.<sup>31</sup> Except for the name of the Minor, who is identified as Respondent’s patient, all other entries in Respondent’s Patient File were redacted for reasons of confidentiality.<sup>32</sup> It is undisputed, however, that only the Minor is referred to in the file as Respondent’s patient.<sup>33</sup>

Ms. Guerrier never considered herself to be a patient of Respondent. She always considered her Minor son to be the patient.<sup>34</sup> Mr. Jose admitted that the purpose for seeing Respondent was for the Minor’s treatment, but he also contended that he and Ms. Guerrier were also Respondent’s patients from the time of their first visit.<sup>35</sup> According to Mr. Jose, he was a

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<sup>28</sup> Tr. at 364-365; Tr. at 329.

<sup>29</sup> Tr. at 320-321; Tr. at 325-326.

<sup>30</sup> Tr. at 325, 329, 312, 326, and 334.

<sup>31</sup> Tr. at 326.

<sup>32</sup> Respondent’s Patient File; Tr. at 315.

<sup>33</sup> Tr. 316.

<sup>34</sup> RX 205 at 33, 37, 64, 65, and 66 (Excerpts from the transcript of the deposition of Marie-Lucie Guerrier in the Civil Case). Ms. Guerrier did not attend the hearing because of medical reasons. She was undergoing chemotherapy to treat her Stage IV metastatic breast cancer. Tr. at 311.

<sup>35</sup> Donatelli Investigative report, Ex. C at 60, and 61 (Excerpts of transcript of the deposition of Mr. Jose in the Civil Case).

patient of Respondent “Since I seen (sic) him with my son . . . .” Mr. Jose described the sessions as “family therapy,” but he could not relate anything that was discussed at the meetings with Respondent.<sup>36</sup>

Respondent did not see any member of the Minor’s family from the time he closed his Patient File in September 2001 until June 2002, when Respondent attended the Minor’s graduation at the invitation of Ms. Guerrier.<sup>37</sup> Then, in the fall or winter of 2002 Ms. Guerrier called Respondent “out of the blue” and offered to help him “unclutter” and organize his office.<sup>38</sup> Ms. Guerrier’s offer was accepted by Respondent, and Ms. Guerrier helped out in Respondent’s office a few times.<sup>39</sup> At this time they began to talk about their respective marital situations and they developed a personal relationship.<sup>40</sup> Respondent specifically considered whether seeing Ms. Guerrier socially would constitute any unethical behavior. He concluded that it would not because Ms. Guerrier had never been his patient.<sup>41</sup> Thereafter, Respondent and Ms. Guerrier began a romantic relationship.<sup>42</sup>

From approximately 1996 until March 2000, Mr. Jose and Ms. Guerrier had been separated. Mr. Jose returned from Pennsylvania in March 2000 and announced that he wanted a divorce. This was nine months prior to Respondent’s first meeting with the Minor and his

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<sup>36</sup> *Ibid.*

<sup>37</sup> Statement of Undisputed Facts, ¶ 4; Tr. at 334.

<sup>38</sup> Statement of Undisputed Facts, ¶ 5; Tr. at 339.

<sup>39</sup> Tr. at 339-340.

<sup>40</sup> Statement of Undisputed Facts, ¶5; Tr. at 340.

<sup>41</sup> Tr. at 341.

<sup>42</sup> Respondent’s Deposition at 99-101.

parents in December 2000. Thereafter Ms. Guerrier and Mr. Jose had separate bedrooms.<sup>43</sup> As for Respondent, he and his wife had a marriage “in name only.”<sup>44</sup>

In March 2003 Mr. Jose found out about his wife’s relationship with Respondent when he accessed her e-mail on her computer without her permission. Shortly thereafter he contacted a lawyer and sued Respondent for malpractice.<sup>45</sup> Thereafter the relationship between Mr. Jose and Ms. Guerrier continued to deteriorate, and in June 2003 Ms. Guerrier filed complaints against Mr. Jose for abuse towards herself and her son.<sup>46</sup>

At the time the Civil Case was filed in 2004, Mr. Jose and Ms. Guerrier were in the process of obtaining a “final separation.”<sup>47</sup> The Civil Case was settled and dismissed with prejudice in December 2005.<sup>48</sup> Respondent and Ms. Guerrier have continued to live together.<sup>49</sup>

The opinions of several psychologists on whether Ms. Guerrier was a patient of Respondent were admitted into evidence. Dr. Mary Olbrisch testified at the hearing on behalf of the Government.<sup>50</sup> Excerpts from the deposition of Dr. Moldauer in the Civil Case were also

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<sup>43</sup> Statement of Undisputed Facts, ¶ 3.

<sup>44</sup> Tr. at 336.

<sup>45</sup> Statement of Undisputed Facts, ¶6.

<sup>46</sup> Statement of Undisputed Facts, ¶ 9; RX 207 and RX 208 (Petitions filed in the District Court for Prince George’s County Maryland for Protection from Domestic Violence).

<sup>47</sup> Statement of Undisputed Facts, ¶9.

<sup>48</sup> Donatelli Investigative Report at 6.

<sup>49</sup> Tr. at 310, 311.

<sup>50</sup> Tr. at 162-282.

introduced by the Government.<sup>51</sup> Excerpts from the depositions in the Civil Case of Erwin R. Parsons, Ph.D.,<sup>52</sup> and William Ritchie, M.D.,<sup>53</sup> were introduced by Respondent.

Dr. Olbrisch<sup>54</sup> was of the opinion that whenever a person sees a psychologist in a “professional capacity,” *ipso facto*, a psychologist-patient relationship is formed. She agreed that the psychologist-patient relationship was consensual, but was of the view that “implied consent” to be a “patient” was demonstrated simply by a person “coming to a psychologist in their (sic) professional capacity and . . . talk(ing ) about the issues that brought . . . (the person) to that psychologist.”<sup>55</sup> Dr. Olbrisch was of the opinion that Respondent’s discussion with the Parents about “parenting styles” amounted to giving of “direct advice,” rather than being educational or informative in nature. The “direct advice” Dr. Olbrisch was referring to essentially Respondent telling Ms. Guerrier “to lighten up” and that she “was too strict with her son.”<sup>56</sup> Dr. Olbrisch’s opinion was contrary to the opinions of the other psychologists who testified.

All of the other psychologists recognized that there is a difference between a psychologist furnishing professional services that are essentially educational or instructive in nature, and providing treatment or therapy to a patient, and that in the former case a psychologist-patient

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<sup>51</sup> Moldauer Deposition.

<sup>52</sup> RX 201 [Excerpts from the transcript of the deposition of Erwin R. Parsons, Ph.D., in the Civil Case (hereinafter “Parsons Deposition”).]

<sup>53</sup> RX 203 [(Excerpts of the transcript of the deposition of William Ritchie, M.D., in the Civil Case (hereinafter “Richie Deposition”).]

<sup>54</sup> Dr. Olbrisch is a clinical psychologist licensed in Virginia, and is Associate Professor of Psychiatry in Surgery at Virginia Commonwealth University. Tr. at 164. Dr. Olbrisch is a member of the Ethics Committee of the Board of Professional Psychology. Tr. at 166.

<sup>55</sup> Tr. at 224.

<sup>56</sup> Tr. at 198, 200.

relationship is not established. Dr. Moldauer<sup>57</sup> was of the view that a psychologist providing therapeutic treatment to a minor can have sessions with the parents without creating a psychologist-patient relationship with the parents. In his opinion, having counseling sessions with a parent for purposes of “education” or “instruction” does not impliedly make them patients.<sup>58</sup> Dr. Parsons concurred.<sup>59</sup>

Dr. William Ritchie<sup>60</sup> was of the opinion that there was not a psychologist-patient relationship between Respondent and Ms. Guerrier because there was no evidence of express consent thereto by the parties, and because the “parental guidance” provided by Respondent was part of a “continued assessment and evaluation” for the purpose of treating the Minor patient, and not therapy or treatment for Ms. Guerrier.<sup>61</sup>

Taking into consideration all the evidence, I find that the Government has not proved by the preponderance of the evidence that Ms. Guerrier was a patient of Respondent. There is no evidence that Ms. Guerrier consented, expressly or impliedly, to being a patient of Respondent, and there is no evidence that Respondent agreed or accepted Ms. Guerrier as a patient. Also, the evidence is that the nature of the professional services furnished by Respondent to the Parents,

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<sup>57</sup> Dr. Moldauer is a psychologist licensed in the District of Columbia and Maryland. Moldauer Deposition at 5.

<sup>58</sup> Moldauer Deposition at 48-49.

<sup>59</sup> Parsons Deposition at 109. Dr. Parsons is a clinical psychologist with the department of veterans Affairs and, *inter alia*, a Diplomat in Psychology. See RX 202 (*Curriculum Vitae* of Dr. Parsons).

<sup>60</sup> Dr. Ritchie is, *inter alia*, certified by the American Board of Psychiatry and Neurology, Subspecialty Certification in Forensic Psychiatry. See RX 204 (*Curriculum Vitae* of Dr. Ritchie).

<sup>61</sup> Ritchie Deposition at 86, 99.

including Ms. Guerrier, were essentially instructive and educational in nature, and not in connection with providing treatment or therapy to either of them.

### **III. Conclusions of Law**

Respondent is alleged to have violated §3-1205.14(a)(26) of the Act by failing to conform to the standards of acceptable conduct and prevailing practice within a health profession. 17 DCMR 6909.1 establishes the pertinent standards for psychologists as “the standards set forth in the ‘Ethical Principles of Psychologists and Code of Conduct’ as published by the American Psychological Association.”

Under Rule 1.2 of the APA Ethics Committee Rules and Procedures, the applicable ethics code of the APA is based on the “the Ethics Code in effect at the time the conduct occurred. If a course of conduct continued over a period of time during which more than one Ethics Code was in effect, each Ethics Code will be applicable to conduct that occurred during the time period it was in effect.”<sup>62</sup>

The APA Ethics Code of 1992 was in effect until it was revised in 2002, effective June 1, 2003. Thus two APA Ethics Codes were in effect for portions of the course of conduct in question here: when Ms. Guerrier allegedly became a patient of Respondent and when Respondent’s alleged intimate relationship with Ms. Guerrier began. At the hearing the

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<sup>62</sup> See <http://www.apa.org/ethics/rules.html>

Government relied upon Section 4.07 of the 1992 APA Ethics Code,<sup>63</sup> whereas the Government Investigator recommended that the Board take disciplinary action for a possible violation of 10.08 of the 2002 APA Ethics Code.<sup>64</sup>

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<sup>63</sup> See District of Columbia's Proposed Findings of Fact, Conclusions of Law and Order at 4.

Section 4.07 of the 1992 APA Code provides:

**Sexual Intimacies With Former Therapy Patients.**

(a) Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least two years after cessation or termination of professional services.

(b) Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a two-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the two years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated, (2) the nature and duration of the therapy, (3) the circumstances of termination, (4) the patient's or client's personal history, (5) the patient's or client's current mental status, (6) the likelihood of adverse impact on the patient or client and others, and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client. (See also Standard 1.17, Multiple Relationships.)

See <http://www.apa.org/ethics/code1992.html>

<sup>64</sup> See Donatelli Investigative Report at 2.

Section 10.08 of the 2002 APA Ethics Code provides:

**Sexual Intimacies With Former Therapy Clients/Patients**

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden

Both of these sections of the respective APA Codes deal with “Sexual Intimacies With Former Therapy Patients,” and while there are some differences in terminology, the differences are not substantive and do not affect the analysis of the charges or my findings and conclusions.<sup>65</sup> The Government contends that Respondent violated the Act by engaging in sexual intimacies with Ms. Guerrier within two years of the cessation of their psychologist/patient relationship. Both Section 4.07(a) 1992 APA Ethics Code and Section 10.08(a) of the 2002 APA Ethics Code prohibit sexual intimacies by a psychologist with a former *therapy client/patient* within two years of the termination of professional services.<sup>66</sup>

The Government further alleged that this same conduct provides a basis for disciplinary action by the Board under § 3-1205.14(a) (28) of the Act, because it “(d)emonstrates a willful or careless disregard for the health, welfare, or safety of a patient, regardless whether the patient

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of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client’s/patient’s personal history; (5) the client’s/patient’s current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

See <http://www.apa.org/ethics/code2002.html>

<sup>65</sup> An article in the January 2003 issue of *APA Monitor on Psychology* discusses the major changes between the 1992 and the 2002 APA Ethics Codes. See <http://www.apa.org/ethics/homepage.html> The changes in terminology in these sections of the respective codes were not mentioned.

<sup>66</sup> See footnotes 52 and 53. The APA Ethics Codes do not define “patient” or “client” nor do they establish criteria for determining whether or when such a relationship is created. It is not disputed by the parties, however, that in the context of this case, the terms “patient” and “client” are synonymous. Dr. Moldauer opined that the terms are synonymous. See Moldauer Deposition at 54-55.

sustains actual injury as a result.” Thus, the conduct proscribed by this provision of the Act also relates to a psychologist’s actions *vis-à-vis* a *patient* or former *patient*.

It is undisputed that Respondent and Ms. Guerrier entered into an intimate relationship approximately within a year after Respondent closed his Patient File and stopped rendering professional services to the Minor or his family. Therefore, the sole issue is whether Ms. Guerrier was ever a patient of Respondent.

As a general rule, in order to provide medical services to a minor, the medical provider needs the consent of a parent or guardian of the minor. In addition, the active participation of the parent or guardian may also be necessary, in varying degrees, depending on the age or maturity of the minor, the minor’s state of mind, etc., to furnish information and cooperate in the treatment of the minor. So it is obvious that a psychologist can provide “services” to a parent in connection with providing treatment to a minor patient, without the parent or guardian, *ipso facto*, also becoming a patient. Thus, the APA Ethics Codes acknowledge the advisability of the psychologist clarifying at the outset who is the patient when services are provided to several persons who have a relationship such as parent and child.<sup>67</sup>

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<sup>67</sup> Section 10.02(a) of the 2003 APA Ethics Code (Therapy Involving Couples or Families) and Section 4.03 of the 1992 APA Ethics Code (Couple and Family Relationships) are identical. They provide:

- (a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained.

Although there is nothing in the record that reflects that Respondent at any time expressly clarified with Ms. Guerrier that she was not a patient, it is undisputed that neither of them were confused about the nature of their professional relationship. Neither of them considered themselves ever to have been in a psychologist-patient relationship. At the outset of Respondent's personal relationship with Ms. Guerrier he considered whether his former professional relationship with her was a barrier, and concluded that it was not, because Ms. Guerrier was never a therapy patient. Ms. Guerrier also clearly understood that she was not Respondent's patient being treated or receiving therapy.

The determination whether a psychologist-patient relationship exists is a matter of fact depending on the questions whether a person entrusted herself to the care of the psychologist and whether the psychologist accepted the case. The relation is a consensual one, in which a person knowingly seeks treatment and the psychologist knowingly accepts her as a patient. *See* 61 Am. Jur. 2d, *Physicians, Surgeons, and Other Healers*, §130 (2008)

The doctor-patient relationship "may be established by contract, express or implied, although creation of the relationship does not require the formalities of a contract . . . What is important . . . is that the relationship is a consensual one. . . (and) the physician must take some action to treat the person before the physician-patient relationship can be established." *Dehn v. Edgcombe*, 865 A.2d 603 (Md. App. 2005); *See also Rigelhaupt, What Constitutes Physician-Patient Relationship for Malpractice Purposes*, 17 A.L.R.4<sup>th</sup> 132 (2005).

The evidence shows that Mr. Jose and Ms. Guerrier arranged for their Minor son to be treated by Respondent, and only the Minor is identified in Respondent's Patient File as a patient. It is undisputed that there is no express contract or agreement, written or verbal, whereby

Respondent agreed to provide, and Ms. Guerrier accepted, Respondent's services for purpose of her receiving treatment or therapy. Also, there was no implied contract or agreement. Ms. Guerrier denies that such a relationship existed, and she denies that she accepted Respondent's services for purposes of her receiving treatment or therapy. Respondent also denies that he treated Ms. Guerrier, and unqualifiedly states that neither he nor Ms. Guerrier believed that a psychologist-patient relationship existed between them.<sup>68</sup>

The evidence does not show with any particularity what was said or what transpired during the meetings or sessions with Respondent that Ms. Guerrier and/or Mr. Jose attended. While Respondent referred to these sessions as "counseling," he described their purpose and general nature to be educational, informative, or instructive. In other words, there is no evidence that the "counseling" sessions were therapeutic in nature or that Respondent was probing into Ms. Guerrier's feelings and emotions, or giving personal and specific directives or suggestions.<sup>69</sup>

Under the best of circumstances it can be difficult distinguishing "family education" from "family therapy" when family members see a mental health provider for a minor family member.

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<sup>68</sup> See *Browne v. Brooke*, 236 F.2d 686 (D.C. 1956) (psychiatrist engaged by bank to examine decedent for mental competency was allowed to give opinion that the decedent did not think there was a patient-client relationship created).

<sup>69</sup> Compare *Figueiredo-Torres v. Nickle*, 584 A.2d 69 (Md. 1991), where court held that allegations that a psychologist undertook to counsel plaintiff, individually and jointly with his wife, for the purpose of bettering plaintiff's "own mental and emotional health and to better the marital relationship" and conducted therapy sessions "designed to help and resolve marital problems and conflicts which the couple had been experiencing, and to treat them both from a psychological point of view so that their marriage would be preserved, enriched, and fulfilled" were sufficient to show that a psychologist-patient relationship arose; *Accord Daymude v. State of Indiana*, 540 N.E.2d 1263 (Ind. 1989), where physician-patient privilege was recognized regarding communications made by father in the course of "family counseling" ordered by the court. The "counseling" sessions were therapeutic in nature, and described as "*individual evaluative and therapy sessions.*" (Emphasis added).

*See Doherty Boundaries between Parent and family Education and Family Therapy, Family Relations*, 1995, 44, 353-358. In the instant case, however, the record discloses that the sessions were essentially informative and educational in nature, and that Ms. Guerrier was not a patient receiving therapy or treatment from Respondent. Since the Government failed to prove that Ms. Guerrier ever was a patient of Respondent, it failed to prove either of the Charges.

Accordingly, I will vacate the Notice of Intent to Take Disciplinary Action against Respondent Lee Crump, Ph.D., issued by the Board of Psychology on or about April 20, 2007.

#### **IV. Order**

Based on the above findings of fact and conclusions of law, it is this 23rd day of July, 2009:

**ORDERED**, that the Notice of Intent to Take Disciplinary Action against Respondent Lee Crump, Ph.D., issued by the Board of Psychology on or about April 20, 2007, is hereby **VACATED**; and it is further

**ORDERED**, that the appeal rights of any person aggrieved by this Order are stated below.

/s/  
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Robert E. Sharkey  
Administrative Law Judge