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BEFORE THE NEVADA STATE BOARD  
OF PSYCHOLOGICAL EXAMINERS

received  
7/24/95

In the Matter of )  
RICHARD W. LEWIS, Ph.D. )  
Respondent. )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A hearing was held on the above matter by the Nevada State Board of Psychological Examiners (Board) on May 20, 1995, at 10:00 a.m., in the State of Nevada Early Childhood Services Conference Room at 3987 S. McCarran Boulevard, Reno, Nevada 89502. The hearing was conducted in compliance with the provisions of chapters 233B and 641 of the Nevada Revised Statutes (NRS) and chapter 641 of the Nevada Administrative Code (NAC). The Respondent appeared and was at all times represented by his attorney, Pamela Willmore. Deputy Attorney General Ronda Moore appeared and presented the case against Respondent. Deputy Attorney General Keith Marcher served as board counsel to advise the Board in matters of procedure and order.

Respondent presented the testimony of himself and Jerry Nims, Ph.D., who appeared as a character witness and an expert in the practice of forensic psychology. DAG Moore presented the testimony of Richard Wieher, Ph.D., who appeared as the investigator in this matter and an expert in the practice of forensic psychology. All exhibits were admitted pursuant to stipulation between the parties, with the exception of the affidavit of Dr. Mujahid Rasul dated October 20, 1993, for which Respondent's objection was noted.

The Board, having duly considered the evidence introduced by the parties, both oral and documentary, and having heard, read and considered the arguments of counsel, and

1 having fully considered the law and being fully advised herein, makes the following Findings  
2 of Fact, Conclusions of Law and Order.

3 FINDINGS OF FACT

4  
5 1. In approximately April through July of 1993, Respondent acted as a court-  
6 appointed, independent evaluating psychologist in a case involving custody of the minor  
7 children of former spouses Tyrone Duff and Linda Duff Foster custody case. In that role  
8 Respondent performed psychological assessments, including psychological testing, scoring and  
9 evaluation of test results, and clinical interviews and observations of Tyrone Duff and the  
10 other parties in the matter. On July 6, 1993, Respondent testified as an objective  
11 psychological expert regarding his diagnoses and conclusions with respect to Tyrone Duff.  
12 Also as directed by the court, Respondent presently serves as the monitor of Tyrone Duff's  
13 course of psychotherapy.

14  
15 2. Prior to October 20, 1993, Dr. Rasul, a psychiatrist treating Tyrone Duff,  
16 requested information regarding Respondent's psychological evaluation of Duff. Respondent  
17 was provided an authorization to release psychological records to Dr. Rasul that was signed  
18 by Tyrone Duff. He did not provide Dr. Rasul with psychological records or a summary of  
19 his psychological assessment of Tyrone Duff.

20  
21 3. Dr. Rasul was a responsible professional who treated Tyrone Duff at the time  
22 of his request. Dr. Rasul is a psychiatrist and is not trained in the use of psychological  
23 assessment tools; nevertheless, with the exception of the raw psychological test data, he was  
24 entitled to the psychological information he requested from Respondent.

25  
26 4. Between June 2 and November 7, 1994, Dr. Frank Everts, a psychologist  
27 treating Tyrone Duff, requested on at least four occasions that Respondent provide him with  
28 interview and testing data on Tyrone Duff. The first two such requests were accompanied

1 by an authorization to release psychological records signed by Tyrone Duff.

2 5. On September 1, 1994, Respondent wrote that he had no intention of  
3 communicating further with Dr. Everts about Dr. Everts' treatment of Tyrone Duff.

4 6. Sometime between January and May of 1995, Respondent sent Tyrone Duff's  
5 raw MMPI data to Dr. Everts after Dr. Everts forwarded payment of \$11.20 for 28 copied  
6 pages. Respondent informed Dr. Everts that the remainder of the psychological records  
7 concerning Duff would not be provided to Dr. Everts until a remittance of \$450 for  
8 Respondent's professional time was paid in advance. As of May 20, 1995, Respondent had  
9 not provided Dr. Everts with the remainder of psychological records.  
10

11 7. Dr. Everts is a responsible treating professional and the information he  
12 requested from Respondent was and is important to the making of decisions in the ongoing  
13 diagnosis and treatment of Tyrone Duff. He was entitled to be timely provided with the  
14 psychological information in Respondent's possession, or in some other manner to be given  
15 meaningful access to such information by Respondent.  
16

17 8. At no time did Judge Jordan communicate any legal or personal objection to  
18 Respondent's release of the Duffs' psychological records to the Duffs or to Tyrone Duff's  
19 later treating professionals. Judge Jordan's letter of July 29, 1993 stated that the records were  
20 not part of the court files and indicated that he had no objection to the release of the records  
21 to the Duffs themselves. No testimonial or documentary evidence was offered at the hearing  
22 in contradiction to this finding of fact.  
23

24 9. Respondent administered only four of the eleven subtests of the Wechsler Adult  
25 Intelligence Scale, Revised (WAIS-R) to Tyrone Duff. To reach his forensic assessment,  
26 Respondent prorated the results on the four subtests, which produced an extrapolated score  
27 falling at the 30th percentile. He was aware of the psychotropic and other medications Duff  
28

1 was taking at the time, and he reached a professional conclusion that such medications likely  
2 impaired Duff's ability to think clearly and to complete the WAIS-R.

3  
4 10. The court specifically asked Respondent whether the medications that Duff was  
5 taking affected the validity or interpretation of the psychological tests administered.  
6 Respondent did not tell the court how the medications Duff was taking might affect his  
7 performance on the WAIS-R or the validity of any conclusions derived as a result.

8 11. Respondent knew that Tyrone Duff completed only four of the eleven subparts  
9 of the WAIS-R because he claimed he was impaired by the medications he was taking.  
10 Respondent told this Board that he accepted that Duff was impaired and he did not insist that  
11 Duff complete the remaining seven sections of the WAIS-R because he believed it was cruel.  
12 Considering the incomplete data and the condition of the subject, it was inappropriate to  
13 report such questionable psychological findings without extensive qualification or limitation.

14 12. Respondent did not qualify his psychological findings regarding Duff based on  
15 the WAIS-R. He did not properly communicate reservations or limitations about the accuracy  
16 of those assessment results or the validity of his interpretations based thereon. Respondent  
17 told the judge how Duff's WAIS-R scores had been obtained but not the significance of those  
18 factors. Proration and extrapolation of test results is a statistical technique; it is not a  
19 qualification of the judgement offered.

20 13. In reporting to the court how he arrived at his diagnostic conclusions,  
21 Respondent did not adequately correlate the objective and subjective data on which he relied.  
22 Respondent reported his diagnostic conclusions to the court in a manner that implied  
23 incorrectly that his conclusions were chiefly based on objective psychological assessment tools  
24 rather than on clinical interviews and personal history as reported by the parties.

25 14. Respondent told the court that Tyrone Duff's former spouse had a verbal  
26  
27  
28

1 intelligence in the 99th percentile plus and further described her at some length as  
2 exceptionally intelligent and clear thinking.

3  
4 15. Respondent told the court that the WAIS-R indicated that Duff's I.Q. fell at the  
5 30th percentile and that 70% of the population functioned at a higher level. He did not  
6 correct or clarify the questioning attorney's statement that 70% of the population had a higher  
7 degree of intelligence than Duff. Even assuming the reliability of Duff's WAIS-R score,  
8 Respondent did not tell the court that it indicated an I.Q. of 92, or that an I.Q. falling at the  
9 30th percentile is within the average range of intellectual functioning.

10  
11 16. Respondent's selective reporting of his psychological findings regarding the two  
12 parents' respective intelligence left the general impression that Tyrone Duff is of substandard  
13 intelligence. Respondent's statements to the court regarding Duff's results on the WAIS-R  
14 were technically accurate; however, those statements were misleading and resulted in a  
15 distortion of psychological findings. Respondent's reporting of the questionable psychological  
16 findings without qualification, his use of percentile values without proper explanation, and his  
17 elaboration regarding Duff's former spouse's high intelligence contrasted with his failure to  
18 reveal that Duff tested in the normal range were inappropriate.

19  
20 17. Tyrone Duff still owes Respondent approximately \$1,200 for services rendered  
21 in the summer of 1993. In his Answer filed in this matter, Respondent asserts that he spent  
22 considerable additional time on Tyrone Duff's behalf for which he did not receive payment  
23 in support of the reasonableness of his request for \$450 in advance for copies of Tyrone  
24 Duff's psychological records. Tyrone Duff's complaint to the Board led to this disciplinary  
25 action against Respondent. Finally, Respondent presently continues a professional relationship  
26 with Tyrone Duff as monitor of the psychotherapy he has been ordered to undergo by the  
27 court.  
28

1 18. A psychologist should not continue a professional relationship when the  
2 psychologist's objectivity is or could reasonably be expected to be impaired because of the  
3 psychologist's present or previous social, financial, supervisory or legal relationship with the  
4 individual. The fact that Tyrone Duff instituted this action and continues to owe Respondent  
5 money makes it likely that Respondent's professional objectivity is impaired and would  
6 adversely impact his subsequent monitoring of Tyrone Duff's therapy.  
7

8 19. The Board adopts as additional findings of fact the General Allegations in the  
9 following numbered paragraphs of the Board's Complaint and Notice of Hearing which were  
10 admitted by Respondent in his Answer or at the hearing: paragraphs 4, 5, 6, 7, 9, 11, 12, 14,  
11 15, 16, 21, 22, 23, 27, 28, 29, 30, 31, 32, 35, 37, 39, 40, 41, 42, 43, 44, 47, 48, 49, 51,  
12 52, 53, 54, 56, 57, 59, 60, 61, 64, 67, and 68.  
13

#### 14 CONCLUSIONS OF LAW

15 1. The Board had jurisdiction over this matter because Respondent is a  
16 psychologist licensed by the Board.  
17

18 2. Pursuant to NRS 641.230(7), if the Board finds by a preponderance of the  
19 evidence that a psychologist is guilty of violating a regulation adopted by the Board, it may  
20 impose discipline as authorized in NRS 641.240.  
21

22 3. Respondent violated NAC 641.210(7) because, on at least four occasions, he  
23 wrongfully withheld psychological information regarding Tyrone Duff from Dr. Everts.  
24

25 4. Respondent violated NAC 641.210(7) because he failed to provide in a timely  
26 manner to Dr. Everts with the small portion of his data he eventually did produce.  
27

28 5. Respondent violated NAC 641.210(7) because he wrongfully withheld  
psychological information regarding Tyrone Duff from Dr. Rasul.

6. Respondent violated NAC 641.210(23) because he failed to avoid misleading



1 the court when he reported without adequate qualification his data and conclusions drawn  
2 from the WAIS-R regarding Tyrone Duff's intellectual functioning. Even properly  
3 administered and validly interpreted psychological assessments such as the WAIS-R only  
4 measure a subject's intellectual functioning at the discrete period of time during which the test  
5 is taken. Poor performance on any psychological test can be due to a variety of transitory  
6 factors, including poor motivation, emotional problems, or medications. A psychologist must  
7 explain any limitations in the data he presents.  
8

9  
10 7. Respondent violated NAC 641.210(23) because he failed to avoid misleading  
11 the court when he did not explain that Tyrone Duff's performance on the WAIS-R indicated  
12 that his intellectual functioning fell within the average range. A psychologist appointed by  
13 the court to evaluate and assess parties in a custody matter must be independent and  
14 professionally objective. He must present psychological findings to the court in a meaningful  
15 and balanced manner to avoid misleading, and he must not cant the information supporting  
16 his conclusions in favor of either party.  
17

18 8. Respondent violated NAC 641.210(23) because he failed to avoid misleading  
19 the court in his manner of reporting the substantiating data regarding the comparative levels  
20 of Tyrone Duff's intellectual functioning and that of his former spouse. Especially when  
21 psychological findings are used in matters as critical as parental fitness, child custody and  
22 visitation, psychologists must make every effort to appropriately present all professional  
23 conclusions and supporting data so that the finder of fact is not left to operate on the basis of  
24 erroneous impressions or an incomplete understanding of the significance of those  
25 psychological findings.  
26

27 ///

28 ///

1 ORDER

2 Based on the foregoing Findings of Fact and Conclusions of Law, and good cause  
3 appearing therefor, the Board orders the following:

4 1. That Respondent be issued a private reprimand regarding his conduct in this  
5 matter.  
6

7 2. That Respondent be assessed the costs of these disciplinary proceedings,  
8 including the investigations, in the approximate amount of \$4,000, the exact amount to be  
9 determined as soon as practicable.

10 3. That Respondent pay the costs assessed in the preceding paragraph within the  
11 period of 24 months after the signing of this document by the president of the Board. To  
12 remain in compliance with this Order, Respondent shall make payment to the Board each and  
13 every month in the amount of \$167 or more.  
14

15 Dated this 20<sup>th</sup> day of July, 1995.

16  
17 STATE BOARD OF PSYCHOLOGICAL EXAMINERS

18  
19  
20 By:

Christa Peterson  
President of the Board

Case No. CV 95-05891

Department No. 9

'95 SEP -1 P12:58

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JUD. J. Barcena  
BY \_\_\_\_\_

Attorney General's  
Office

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF  
RICHARD W. LEWIS, Ph.D.,

PETITION FOR REVIEW  
OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER OF THE NEVADA STATE  
BOARD OF PSYCHOLOGICAL  
EXAMINERS

Petitioner.  
\_\_\_\_\_ /

COMES NOW, your Petitioner, RICHARD W. LEWIS, Ph.D., by and through his undersigned counsel, and pursuant to N.R.S. 233B.130, hereby petitions for review of the Findings of Fact, Conclusions of Law and Order made on July 20, 1995, filed on July 24, 1995, and served on Petitioner on August 2, 1995.

1. Petitioner is a resident of Washoe County, Nevada, and therefore is within the jurisdictional purview of N.R.S. 233B.130(2)(b).

2. Petitioner is a party of record within the meaning of N.R.S. 233B.130(1)(a).

3. Petitioner is aggrieved by the Findings of Fact, Conclusions of Law and Order of the NEVADA STATE BOARD OF PSYCHOLOGICAL EXAMINERS and is entitled to a judicial review of its decision. A copy of the Findings of Fact, Conclusions of Law and Order is attached hereto as Exhibit "A".

PAM WILLMORE, Attorney  
One E. First St., Suite 1100, Reno, NV 89501  
(702) 786-5383

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4. The Respondent is the NEVADA STATE BOARD OF PSYCHOLOGICAL EXAMINERS.


5. Petitioner and Respondent are the only parties of record in the administrative proceeding to be reviewed.

6. The Respondent's Findings of Fact, Conclusions of Law and Order was served upon Petitioner on August 2, 1995. Accordingly, the filing of this Petition is timely, having been filed within THIRTY (30) days after service of the BOARD's Findings of Facts, Conclusions of Law, and Decision.

WHEREFORE, your Petitioner/Appellant prays and appeals as follows:

- 1. That the Findings of Fact, Conclusions of Law and Order of the NEVADA STATE BOARD OF PSYCHOLOGICAL EXAMINERS be reversed;
- 2. For such other and further relief as to the Court may seem proper in the premises.

DATED this 1st day of September, 1995.

  
\_\_\_\_\_  
PAM WILLMORE,  
Attorney for Petitioner  
One E. First St., Suite 1100  
Reno, Nevada 89501

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Case No. CV95-05891  
Department No. 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF  
  
RICHARD W. LEWIS, Ph.D.,  
  
Petitioner.

WITHDRAWAL OF  
PETITION FOR REVIEW  
OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF THE NEVADA STATE  
BOARD OF PSYCHOLOGICAL  
EXAMINERS

\_\_\_\_\_ /

COMES NOW Petitioner, RICHARD W. LEWIS, Ph.D., by and through his undersigned counsel, to withdraw his "Petition for Review of Findings of Fact, Conclusions of Law, and Order of the Nevada State Board of Psychological Examiners" entered by the Nevada State Board of Psychological Examiners on July 20, 1995. The Petition was filed with this court on September 1, 1995.

DATED this 20<sup>th</sup> day of November, 1995.

*Pam Willmore*

PAM WILLMORE,  
Attorney for Petitioner  
One E. First St., Suite 1100  
Reno, Nevada 89501

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CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of PAM WILLMORE, Attorney at Law, and that on the 21st day of November, 1995, I deposited for mailing at Reno, Nevada, postage prepaid, a true and correct copy of the foregoing or attached document, entitled **WITHDRAWAL OF PETITION FOR REVIEW OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE NEVADA STATE BOARD OF PSYCHOLOGICAL EXAMINERS**, addressed to:

Ronda L. Moore,  
Deputy Attorney General, Civil  
198 S. Carson St.  
Capitol Complex  
Carson City, NV 89710

Keith D. Marcher,  
Deputy Attorney General  
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