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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER
SEP 30 2010
JANE CLARKE
EXECUTIVE OFFICER & CLERK
By Brandi Burke, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

JANE DOE,
Plaintiff,
v.
DYAN LEE CLARKE, MFT and DOES 1-10,
inclusive,
Defendants.

Case No.: 20100000020
COMPLAINT FOR DAMAGES
1. Professional Negligence
2. Breach of Fiduciary Duty
3. Intentional Infliction of Emotional Distress

GENERAL ALLEGATIONS **BY FAX**

1. Plaintiff is using a fictitious name in this Complaint under rights to privacy granted by the Constitution of the State of California due to the sensitive nature of this case. If, for any reason, Defendant cannot accurately determine the identity of the Plaintiff, her attorney can contact Plaintiff's attorney at the address on the face sheet of the Complaint, and the name of the Plaintiff will be provided.

2. Plaintiff JANE DOE is a natural person who was a resident of the County of Placer, State of California, at all relevant times mentioned herein.

3. Defendant DYAN LEE CLARKE, (hereinafter referred to as "DEFENDANT") is a natural person who rendered professional services to Plaintiff in the County of Placer, State of California, at all relevant times mentioned herein.

4. At all times mentioned in this Complaint, Defendant was licensed by the Board of

1 Behavioral Sciences, State of California.

2 5. At all times mentioned in this Complaint, Defendant held herself out as possessing
3 that degree of care, skill, ability, training and learning common to Marriage Family Therapists
4 who practice in the community.

5 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
6 DOES 1-10 or of the factors linking them to causes of action stated herein and therefore sues such
7 defendants by such fictitious names. Plaintiff will amend her Complaint to allege the true names
8 and capacities of DOES when ascertained. Plaintiff is informed and believes and thereon alleges
9 that each of the DOE Defendants is responsible in some manner for the events and happenings
10 hereinafter referred to, thereby proximately causing injury and damage to the Plaintiff as herein
11 alleged.

12 7. Plaintiff is informed and believes and thereon alleges that at all times herein
13 mentioned, Defendants and each of them, were the agents, servants, employees and/or joint
14 ventures of their co-defendants and were, as such, acting within the scope, course and authority of
15 said agency employment and/or joint venture and that each and every Defendant, as aforesaid, has
16 ratified and approved of the acts of his or her agent.

17 8. Plaintiff first consulted with Defendant for the purpose of an assessment and
18 treatment of her emotional conditions in or about January 2006. Defendant agreed to complete an
19 evaluation and treat Plaintiff, and did so for approximately 15 months.

20 9. Because of the nature of the transference phenomenon, a patient who has suffered
21 an abuse of transference is unable to believe that the abusing therapist has acted inappropriately
22 and harmed her even when told by other people that Defendant had acted inappropriately and
23 harmed her. Since it was Defendant's abuse of the transference, which prevented Plaintiff from
24 fully appreciating that Plaintiff had suffered appreciable harm as a result of Defendant's conduct
25 and filing a lawsuit sooner, Defendant should be estopped from raising the statute of limitations as
26 a defense. Defendant, in addition to relying on transference or deter Plaintiff, told Plaintiff that
27 everything that happened in the psychotherapy session with her did so "because of God."

28 10. Plaintiff first suffered appreciable harm and first appreciated that she had been

1 injured as a result of the conduct of Defendant within one year of filing this Complaint. Further,
2 Plaintiff alleges that she used reasonable diligence in ascertaining if the care given by Defendant
3 was within the standard of care, and Plaintiff did not know of sufficient facts prior to May 11,
4 2010, when she learned of the Board's decision to attempt to discipline Defendant.

5 11. A Notice to Health Care Provider was not sent to Defendant because of issues
6 related to the statute of limitations. The allegations of Plaintiff hereinafter delineated were found
7 to be sufficiently credible by the Medical Board of California that the Board issued the accusation
8 attached as Exhibit A against Defendant on May 11, 2010.

9 12. At least some of the wrongful acts mentioned herein occurred in Roseville,
10 California; therefore, venue is properly placed in County of Placer.

11 **FIRST CAUSE OF ACTION**
12 **(Professional Negligence)**

13 13. Plaintiff incorporates herein by reference all General Allegations as though fully set
14 forth herein and with the same force and effect.

15 14. During the course of the aforementioned treatment and assessment of Plaintiff by
16 Defendant, Defendant agreed to diagnose and treat Plaintiff's emotional problems, and to do all
17 things necessary and proper in connection therewith, thus establishing the relationship of
18 psychotherapist and patient between said Defendant and Plaintiff.

19 15. During the course of said professional relationship, Defendant rendered ineffective
20 and substandard assessment and therapy. Such negligent and careless treatment included, but was
21 not limited to:

22 a. Not attempting to assess and treat Plaintiff for her presenting problems;
23 rather, Defendant developed her own agenda, which constituted the meeting of her own personal
24 needs.

25 b. Engaged Plaintiff in various harmful multiple relationships including
26 texting and telephoning Plaintiff and engaging in numerous communications outside of the clinical
27 setting.

1 c. Failure to obtain supervision or seek consultation or peer review regarding
2 the rendering of professional services to Plaintiff, including supervision of Defendant's own
3 counter-transference issues.

4 16. All of the above allegations, which are not meant to be exhaustive, but only
5 examples of Defendant's negligence, constitute actions and omissions below the standard of care
6 in the community and exist wholly and separately from the intentional acts alleged in other parts
7 of this Complaint. If Defendant never performed the intentional misconduct hereinafter alleged,
8 she would have still violated the standard of care in her assessment and treatment of Plaintiff as
9 alleged above.

10 17. As a result of the foregoing conduct of Defendant, Plaintiff was harmed as more
11 fully set forth below.

12 **SECOND CAUSE OF ACTION**
13 **(Breach of Fiduciary Duty)**

14 18. Plaintiff herein repeats and realleges as though fully set forth herein each and every
15 paragraph of this Complaint, except for the paragraphs inconsistent with a Cause of Action for
16 Breach of Fiduciary Duty.

17 19. Because of the position of authority and trust occupied by the Defendant and the
18 nature of the therapy and the transference phenomenon, the Plaintiff was induced to place special
19 trust and confidence in the Defendant with respect to the course of treatment.

20 20. Because of the relationship of confidentiality and trust fostered by the Defendant,
21 and Plaintiff's reliance on the confidence of the Defendant, a fiduciary relationship existed
22 between Plaintiff and Defendant.

23 21. The Defendant fostered this fiduciary relationship from the beginning of the
24 professional relationship and caused Plaintiff harm as more fully set forth below.

25 22. Defendant's actions in this regard constitute a breach of fiduciary relationship that
26 existed between Plaintiff and Defendant.

27 23. Defendant's actions in this regard represent despicable conduct which was done
28 with the intent to cause injury to Plaintiff and was done willfully with a conscious disregard of the

1 rights of Plaintiff, thereby entitling Plaintiff to punitive damages against said Defendant according
2 to proof at the time of trial.

3 24. As a proximate result of the above, Plaintiff was harmed as more fully set forth
4 below.

5 **THIRD CAUSE OF ACTION**
6 **(Intentional Infliction of Emotional Distress)**

7 25. Plaintiff incorporates herein by reference all allegations contained in the Second
8 Cause of Action as if fully set forth herein and with the same force and effect.

9 26. All of the acts of Defendant listed below were done and committed with the intent
10 to cause Plaintiff severe emotional distress and/or were of such an outrageous character as to be
11 beyond all bounds of decency and to shock the conscience of a reasonable person. In doing the
12 despicable acts complained of below, Defendant acted with oppression, fraud, malice, and
13 conscious disregard of the safety and welfare of plaintiff. Defendant knew that her acts would
14 expose Plaintiff to a foreseeable risk of serious and grievous harm, and Plaintiff was injured as a
15 result of said conduct as more fully set forth below.

16 27. Such conduct included, but was not limited to:

17 a. Defendant told Plaintiff "I need you"; "In caring for your infant, I was able
18 to turn that into love for my infant, which I never had before;" and, "I would trade everyone I am
19 with right now to be with you."

20 b. Defendant held, hugged, and let Plaintiff lay her head on Defendant's lap.

21 c. Defendant engaged in therapy with Plaintiff consisting of touching each
22 other's stomachs and moving their hands towards the pubic area, to be stopped short by the person
23 being touched.

24 d. Defendant stroked Plaintiff's cheek and let Plaintiff suckle on her pinky
25 finger, as would an infant.

26 The above mentioned conduct is so reprehensible and beyond the bounds of any standard
27 of psychotherapy that such conduct could only be perceived as manifesting a conscious disregard
28 for Plaintiff's welfare.

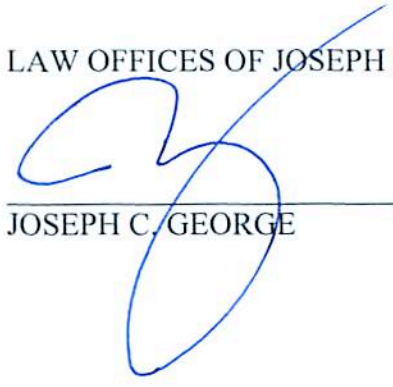
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5. For such other and further relief as the Court deems proper.

Dated: September 28, 2010

LAW OFFICES OF JOSEPH C. GEORGE, PH.D.

By:



JOSEPH C. GEORGE

Exhibit A

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7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF BEHAVIORAL SCIENCES
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. MF 2007-1240

12 **DYAN LEE CLARKE**
13 **609 Oak Street**
Roseville, CA 95678

ACCUSATION

14 **Marriage and Family Therapist License No.**
15 **MFC 37633**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kim Madsen (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.

22 2. On or about March 16, 2001, the Board of Behavioral Sciences issued Marriage and
23 Family Therapist License Number MFC 37633 to Dyan Lee Clarke (Respondent). The license
24 was current at all times relevant herein and will expire on January 31, 2011, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Behavioral Sciences (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4982 states:

"The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct.

Unprofessional conduct includes, but is not limited to, the following:

...

"(d) Gross negligence or incompetence in the performance of marriage and family therapy.

"(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

...

"(i) Intentionally or recklessly causing physical or emotional harm to any client.

5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

6. On January 30, 2006, D.W., a 43 year old female, sought treatment from respondent for depression, suicidal ideation and self-harmful behaviors (cutting). D.W. was referred to respondent by a trusted therapist at her church who told D.W. that respondent was a Christian therapist. On intake, respondent diagnosed D.W. as follows:

Axis I: 311. Depressive Disorder [not otherwise specified]

Axis II: 301.83 Borderline Personality Disorder [rule out]

Axis III: none

Axis IV: Primary Support Group Stress

Axis V: 55 with suicidal ideation

1 7. The treatment plan included a referral for psychiatric consultation and to the
2 dialectical behavior therapy group at Kaiser, so awareness of emotional fragility and border
3 vulnerability were clear at treatment outset. Early in the treatment, D.W. openly expressed
4 sexual/romantic feelings for respondent.

5 8. The course of treatment with D.W. was tumultuous, including escalation of suicidal
6 ideation to the point where respondent participated in the WIC 5150 hospitalization of D.W. in
7 April 2006.

8 9. Between January 2006 and March 2007, during the course of treatment, respondent
9 engaged in numerous inappropriate behaviors and therapies which resulted in exacerbation of
10 emotional/psychological harm to D.W. as follows:

11 a. Respondent told D.W. that everything that happened in therapy with her did so
12 because of God;

13 b. Respondent told D.W. "I need you", "In caring for your infant, I was able to
14 turn that into love for my infant, which I never had before"; and, "I would trade everyone I am
15 with right now to be with you".

16 c. Respondent held, hugged, and let D.W. lay her head on respondent's lap.

17 d. Respondent engaged in therapy with D.W. consisting of touching each other's
18 stomachs and moving their hands towards the pubic area, to be stopped short by the person being
19 touched.

20 e. Respondent stroked D.W.'s cheek and let D.W. suckle on her pinky finger as
21 would an infant.

22 f. Respondent texted and called D.W. and engaged in numerous communications
23 outside the clinical setting, including conversations and text messages wherein respondent stated:

24 1. "My body aches to hold you."

25 2. "I wish I could suckle you at my breast."

26 3. "I hope when you are done needing me you will still want me."

27 4. "Are you O.K.? I am sitting here obsessing about you and worrying if
28 you are O.K."

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5. "I have given you what I haven't even given my own daughter."

6. "I feel bad taking your money; I should be paying you."

7. "You should be grateful---I went through what you are going through and no one was there for me at that time."

g. Respondent engaged in inappropriate self- disclosure by giving D.W. an article with handwritten notes in the margins applying the contents of the article to respondent's own life experiences.

10. After termination of treatment with respondent, D.W. engaged in lengthy therapy to try to overcome the emotional/psychological damage she suffered as a result of respondent's inappropriate conduct.

FIRST CAUSE FOR DISCIPLINE

(Incompetence)

11. Respondent is subject to disciplinary action for unprofessional conduct under section 4982(d) for incompetence in her treatment of D.W. as set forth above in paragraphs 6-10 and all of their subparts, in that she failed to maintain appropriate boundaries with D.W. Respondent engaged in the inappropriate behaviors/therapies, even though respondent knew D.W. was emotionally fragile with borderline features, and respondent was aware of D.W.'s emotional/sexual feelings towards her. This led to D.W.'s heightened dependency, fantasies of an expanded relationship, and anger/despair at being ultimately rejected by respondent.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

12. Respondent is subject to disciplinary action for unprofessional conduct under section 4982(d) for gross negligence in her treatment of D.W. as set forth above in paragraphs 6-11 and all of their subparts above.

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THIRD CAUSE FOR DISCIPLINE

(Recklessly Causing Emotional Harm to Client)


13. Respondent is subject to disciplinary action for unprofessional conduct under section 4982(i) for intentionally or recklessly causing emotional/psychological harm to D.W. as set forth in paragraphs 6-12 and all of their subparts above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Behavioral Sciences issue a decision:

1. Revoking or suspending Marriage and Family Therapist License Number MFC 37633, issued to Dyan Lee Clarke.
2. Ordering Dyan Lee Clarke to pay the Board of Behavioral Sciences the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 11, 2010


KIM MADSEN
Executive Officer
Board of Behavioral Sciences
Department of Consumer Affairs
State of California
Complainant

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accusation.rtf