

BEFORE THE
BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

YAACOV MICHYOYL GINSBURG
145 N. Fuller Ave.
Los Angeles, CA 90036

Marriage and Family Therapist Intern
Registration No. IMF 35418,

Respondent.

OAH NO. L-2003040712

CASE NO. IM-2003-329

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on September 25, 2003.

Deputy Attorney General Linda L. Sun represented complainant.

Respondent, Yaacov M. Ginsburg, personally appeared and represented himself.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Sherry Mehl ("complainant") while acting in her official capacity as Executive Officer of the Board of Behavioral Sciences ("the board"), Department of Consumer Affairs, State of California.

2. On July 7, 1999, the board issued Marriage and Family Therapist Intern Registration No. IMF 35418 to Yaacov M. Ginsburg ("respondent"). Respondent's registration expired on July 31, 2000, and has not been renewed, however, the board retains jurisdiction to proceed with this disciplinary action pursuant to Business and Professions Code section 118.

3. On December 18, 2001, respondent was convicted in Los Angeles Municipal Court, State of California, after entry of a *nolo contendere* plea, of one count of violating Penal Code section 273g (Degrading, immoral, or vicious practices or habitual drunkenness in presence of children), a misdemeanor crime, which is substantially related to the qualifications, functions and duties of a registrant.

The facts and circumstances underlying respondent's conviction are unclear from the current record. Respondent testified at the hearing that three to four months before July 27, 2001, his father had died in an "untimely fashion". Respondent was still suffering from "shock" and "grief" due to his "guilt over not taking good care of" his father. Respondent was driving in the vicinity of Vermont Street in the County of Los Angeles. According to respondent, he began thinking about his father and he became distraught, so he pulled off the road, into a parking lot, to get himself together. After respondent quit crying, and composed himself, he began driving out of the parking lot. As he pulled out over the sidewalk area into the roadway he almost hit two young women. The women got very upset and began yelling profanities at respondent. Respondent was very emotional and he responded "in kind". As he drove away, respondent claims he heard one of the women yell to him that they would "get even." As it turns out, one of the "women" was under 18 years of age. According to respondent, the women contacted the authorities and wrongfully accused him of exposing his penis and scrotum to them. Respondent was initially charged with violating Penal Code sections 647.6 (Unlawfully annoy and molest a child under the age of 18) and 314, subdivision (1) (Willfully and unlawfully exposing his person and private parts thereof, in a public place). Respondent, and his attorney (via hearsay evidence) contend that due to lack of evidence the prosecution and court allowed respondent to plead *nolo* to the lesser offense of violating Penal Code section 273g (Degrading, immoral, or vicious practices or habitual drunkenness in presence of children), a misdemeanor.

Respondent's version of the facts do not, however, correspond with the statements he made to the investigating police officer during his October 4, 2001 telephone interview. During the October 4, 2001 telephone interview the investigating officer asked respondent if he could recall the encounter with the two women on July 27, 2001. Respondent said he could not remember what happened that specific day. Respondent told the officer that he, respondent, worked in sales and visits clients throughout his normal workday. When the officer asked respondent if he denied encountering the girls, respondent stated: "Maybe I cut them off and they got mad. Maybe they were pedestrians and I cut them off while they were walking across the street." When the officer asked if he could provide any explanation why the girls would contact the police and make-up such a tale respondent claimed that he did not remember any such occurrence. Respondent said he "would not do such a thing. Maybe they wanted to have a good time and this is the way they are trying to get back at him. Maybe they are pranksters." (Exhibit 4.)

Respondent's explanation at the hearing and his explanation to the investigating police officer have contradictions. Furthermore, common sense and experience dictates that two young women would not make up such a detailed and consistent account of what happened, report it to the police, and take the matter as far as it went simply because they were mad at respondent for narrowly missing them on the sidewalk.

4. Although the ALJ does not believe respondent's version of what occurred, there was a lack of credible evidence presented to allow the ALJ to determine what the specific facts underlying respondent's ultimate conviction were. Nonetheless, the conviction itself, and respondent's plea thereto, establish the following elements: respondent, in the presence of a child (a person under 18 years of age) indulged in a degrading, lewd, immoral or vicious habit or practice. (See Penal Code section 273g) These elements establish that respondent admitted to doing more than just exchange cuss words with a couple young women, one of whom turned out to be younger than 18. A violation of Penal Code section 273g is viewed by at least one profession; which, like Marriage and Family Therapist Interns, deals with children, as being so egregious as to mandate revocation of a county teaching certificate. As set forth in California Education Code section 44435, a violation, or attempted violation of Penal Code section 273g requires the County Board of Education to revoke the teacher's teaching certificate. In pertinent part, Education Code section 44435 states: "Upon...conviction of the holder of a certificate issued by a county board of education of a violation or attempted violation of...Penal Code sections...273g...the county board of education shall forthwith revoke the certificate." (emphasis added.)

5. The reasonable costs of the investigation and enforcement of this case against respondent totals \$1,758.75.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's registration pursuant to California Business and Professions Code ("Code") section 4982, subdivision (a) because, as set forth in Finding 3, respondent was convicted of a crime, which is substantially related to the qualifications, functions and duties of a registrant.

2. In order to fix the degree of discipline, the board may inquire into the circumstances surrounding the commission of the crime. As noted in Finding 4, there was a lack of credible evidence presented to allow the ALJ to determine what the specific facts underlying respondent's ultimate conviction were. Nonetheless, the conviction itself, and respondent's plea thereto, establish the following elements:

respondent, in the presence of a child (a person under 18 years of age) indulged in a degrading, lewd, immoral or vicious habit or practice. (See Penal Code section 273g) These elements establish that respondent admitted to doing more than just exchanging cuss words with a couple young women, one of whom turned out to be younger than 18. A violation of Penal Code section 273g is viewed by at least one profession; which, like Marriage and Family Therapist Interns, deals with children, as being so egregious as to mandate revocation of a county teaching certificate. (See Education Code section 44435.) In the present instance there is no similar statute mandating revocation, however, given the elements involved in violating Penal Code section 273g, to wit: indulging in degrading, lewd, immoral or vicious habit(s) or practice(e), the ALJ concludes that in order to adequately protect the public, revocation is warranted.

3. As set forth in Finding 5, the reasonable costs of the investigation and enforcement of this case against respondent, recoverable by the board pursuant to Code section 125.3, totals \$1,758.75.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's Marriage and Family Therapist Intern Registration and all rights appurtenant thereto is/are revoked.

IT IS FURTHER ORDERED that:

Respondent shall pay the board \$1,758.75 as cost recovery pursuant to Business and Professions Code section 125.3.

Dated: October 25, 2003.



ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings

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BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

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Case No. IM-2003-329

12 YAACOV MICHYOYL GINSBURG
145 N. Fuller Ave.
13 Los Angeles, CA 90036

A C C U S A T I O N

14 Marriage and Family Therapist Intern
15 Registration No. IMF 35418

Respondent.

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17 Complainant alleges:

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PARTIES

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

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24 2. On or about July 7, 1999, the Board of Behavioral Sciences issued
25 Marriage and Family Therapist Intern Registration No. IMF 35418 to Yaacov Michoyl Ginsburg
26 (Respondent). The Marriage and Family Therapist Intern Registration expired on July 31, 2000,
27 and has not been renewed.

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1 CAUSE FOR DISCIPLINE

2 8. Respondent is subject to disciplinary action pursuant to section 4982 of
3 the Code on the grounds of unprofessional conduct as defined in sections 490 and 4982(a) of the
4 Code for a conviction substantially related to the qualifications, functions, or duties of a marriage
5 and family therapist intern as follows:

6 a. On December 18, 2001, Respondent was convicted by the court on his plea
7 of nolo contendere to violating section 273(g) of the Penal Code (immoral acts before a child - a
8 misdemeanor) in the case entitled People v. Yaacov Ginsburg, in the Municipal Court of
9 California, County of Los Angeles, Central Judicial District, Case No. 1CR12731.

10 b. The circumstances of the conviction are that on or about July 27, 2001,
11 Respondent approached a minor child and exposed his private parts to her.

12 PRAYER

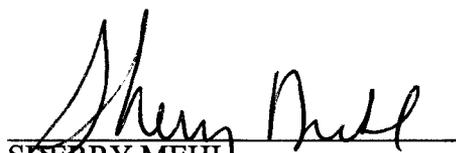
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein
14 alleged, and that following the hearing, the Board of Behavioral Sciences issue a decision:

15 1. Revoking or suspending Marriage and Family Therapist Intern
16 Registration Number IMF 35418, issued to Yaacov Michoyl Ginsburg;

17 2. Ordering Yaacov Michoyl Ginsburg to pay the Board of Behavioral
18 Sciences the reasonable costs of the investigation and enforcement of this case, pursuant to
19 Business and Professions Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: February 4, 2003

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24 SHERRY MEHL
25 Executive Officer
26 Board of Behavioral Sciences
27 Department of Consumer Affairs
28 State of California
Complainant