

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action)
) DECISION AND ORDER
Carl Metzger, M.D.)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine on November 9, 2004. The hearing was continued from September 15, 2004 at the State's request and from the proposed October 12 date at the request of counsel for Dr. Metzger. The purpose of the hearing was to decide whether Dr. Metzger's Maine license to practice medicine should be subject to discipline for alleged violations of the standards established in the practice of medicine. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Gary Hatfield, M.D., Bettianne Holmes (public member), David Nyberg, Ph. D., (public member), Kimberly K. Gooch, M.D., Daniel Onion, M.D., Sheridan R. Oldham, M.D., George Dreher, M.D., and Cheryl Clukey (public member). Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Metzger was present and represented by Karen Frink Wolf, Esq. James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding. The State's exhibits 1,2,3,6,7,8,9,10 and Respondent's 1-8, and 1-A were admitted into the Record.

II. FINDINGS OF FACT

A. Testimony and records of Carl Metzger and Patient C from 1992-1994

Carl Metzger, M.D., graduated from medical school in 1968. He has a specialty in the field of psychiatry which he has practiced for 31 years. Dr. Metzger was first licensed as a psychiatrist in

the State of Maine on December 20, 1973. His current license expired on September 30, 2002 and his license renewal application was placed on hold September 11, 2002, pending resolution of the subject complaint. Dr. Metzger specializes in family therapy which includes treatment of children, adolescents, and adults. He is board certified in adult psychiatry, although he is not board certified in child psychiatry. His customary practice, after a parent contacts his office, is to schedule an initial appointment with the parent(s) during which time the reasons for the request for therapy are discussed, as well as family experiences and dynamics. During the second session, Dr. Metzger meets alone with the child and then a third session is held with solely the parent(s) in attendance. At that time, Dr. Metzger shares with them his opinions, the child's diagnosis, and treatment plan. During the course of treatment, Dr. Metzger will continue to give the parent(s) feedback and keep them informed for the purpose of reassuring the child that other family members are involved in order to hopefully make their respective lives better. Dr. Metzger makes it very clear to the parents and children that he will see them by themselves and not together as a family.

Dr. Metzger, in his capacity as a psychiatrist, first began providing therapy to Ms. X and her eldest son in 1992. In December of that year, Ms. X referred C, her 20 year old son who was attending an out of state college, to Dr. Metzger for treatment. Dr. Metzger testified that C had typical adolescent problems but much development had not taken place due to his relationship with his mother who was well intentioned but emotionally distant from C. C was diagnosed with a depressive neurosis and was angry with his parents who had divorced. Dr. Metzger described C's father, who had moved to California, as a successful attorney with alcohol related problems.

The licensee, at the beginning of the therapy sessions, informed C that whatever was shared with him in confidence was important and would only be shared with a parent if the communication seriously affected C's health or was extremely important to his well-being. However, this policy was subject to an exception, which was to "bend that confidentiality if [Dr. Metzger] felt it is important." This "bending" led to trust related questions by C, especially when C discovered that Dr. Metzger had obtained his work and home phone number from other sources. Moreover, after C became a member of the track team in 1993, it was Dr. Metzger who told C's mother of his accomplishment, rather than C, which eroded C's trust in Dr. Metzger. Dr. Metzger testified that he told the mother because C had made progress and she was paying for it.

Also, at the initiation of therapy, Dr. Metzger informed C that the primary issue to be addressed revolved around basic care and the development of competency. Dr. Metzger was concerned regarding whether he was strong enough to provide such care and, if Metzger was, how it would be received by C who suffered from a great deal of anxiety when confronted with new situations. A secondary goal of treatment was for C to achieve independence by knowing that he had a secure care base and the realization that his mother would be intimately involved in his care.

C's mother is very wealthy and, according to Dr. Metzger, paid for "everything for the boys," including their cars and credit cards. At the outset of therapy in 1992, C's mother agreed to pay for C's sessions at an hourly rate of \$250 which was increased to \$270 in 1995, \$290 in 1997, and \$320 in 1999. Dr. Metzger's hourly rate for his patients increased to \$350 in 2002, but C's rate was retained at \$320. The licensee does not charge for phone calls if made outside regularly scheduled sessions. C expressed his concern regarding the amount of the fees on a fairly regular basis beginning in February 1993.

B. Testimony and records of Carl Metzger and Patient C from 1995-1997

C initially treated with Dr. Metzger on a routine basis until 1995 when he was 23 years of age. At that time, C was finishing his final year of college and was questioning the value of both past and continuing therapy sessions. **C also told Dr. Metzger on numerous occasions not to call him**, which requests were basically disregarded. Excerpts from Dr. Metzger's patient notes are revealing regarding these issues. For example, on January 22, 1995, C phoned Dr. Metzger and informed him, among other things that "he didn't want to do this therapy session anymore," "couldn't see what the purpose was of staying," and "wasn't planning on continuing." Dr. Metzger responded that it was important to continue the discussion. On January 30, 1995, C didn't call the licensee during his scheduled session so Dr. Metzger called C and left a message on C's answering machine. According to Metzger's treatment notes of that date, "we got into a discussion about why I was scheduling him if he didn't want to be scheduled, but during this whole discussion he was laughing." Later on in the conversation, C said that he "shouldn't be scheduled for Thursday" and Dr. Metzger offered to reschedule him for another day to which C made a joke saying that Dr. Metzger "could schedule him for Thursday at 8:30 a.m. but for the year 2000."

Dr. Metzger's subsequent treatment notes reveal that on or about February 2, 1995, C did not call during his "scheduled" session so Dr. Metzger called him and left a message. The message was not returned so the licensee called again on February 6 and left another message with the same result. The next note states that "I called at 8 a.m. on February 7. He was resistant but agreed to a session on February 9" which occurred by telephone. The sessions continued with C sometimes appearing in person, sometimes not appearing or calling and at other times questioning why the therapy was necessary, its effectiveness and the costs. Dr. Metzger continued to call C if he did not call Dr. Metzger and the latter would insist that C continue therapy with him. On April 28, 1995, C didn't make a scheduled phone call to Dr. Metzger who then called him. Following a discussion about Dr. Metzger's availability and C's failures to timely inform Dr. Metzger of his intention to miss appointments, C disconnected from the phone call. Dr. Metzger responded by calling C back and telling him to call him back. "But he never did, in fact." On May 1, the licensee once again called C and left a message. On May 5, C called on time for his session and eventually hung up before the session was over. Although Dr. Metzger called him back and left a message, C didn't return the call. On June 8, 1995, C related to Dr. Metzger that he was planning to travel to Wisconsin to take a temporary job. Although 3 appointments were scheduled for the next week, C did not call on June 13 or 14. Dr. Metzger then called him at 8:00 a.m. the following day and scheduled a phone session for 2:00 that afternoon. C neither called nor did he leave a forwarding number. C next made contact on July 5 to cancel his appointment and did not call on the 7th. On the 9th, C stated to the licensee that he did not want to continue the therapy and did not want Dr. Metzger to call him again. No further sessions were scheduled but Dr. Metzger urged him to call when he was ready to resume his therapy. On September 12, 1995, C called and restarted the therapy although at the session on the following day, he said "that he was not going to be coming back." One week later, when C did not appear for a session, Dr. Metzger called his mother's house and reminded C of his appointment.

This pattern of no shows and Dr. Metzger repeatedly calling C to remind him of appointments continued on a regular basis as demonstrated by the licensee's notes of October 4 and 6. The former reads: "I left a message in three places-He called late-Why I doing this. Am I talking with his mother? Mixed message about keeping appointments" and the latter notes: "No call.-I called all 3 numbers twice; once to let him know it was 11:20-then again to tell him time of next

appointment.” Subsequent notes reflect that C did not show for his October 11, 13, 18 or 20, 1995 appointments, and did not again make contact with the licensee until December 27, 1996. Shortly before, C’s father called Dr. Metzger on December 20, 1996, apparently with only reassurance from the father that it was with C’s permission, and made various inquiries regarding the nature of the licensee’s work with C.

Treatment again resumed in early 1997. However, the payment scheme was altered in that C’s mother directly gave C the funds from which C could pay Dr. Metzger’s fees. The amount of the fee and number of sessions continued to be serious issues with C. On March 3, 1997, Dr. Metzger noted that “the patient has done a number of calls trying to talk with me on the phone about the fee and what it should be...and issues about how many sessions...” Dr. Metzger informed him that “it was not in his best interest to call until he had made the decision to commit to two sessions a week,” which C did. Sessions continued through April and May of 1997 and in June, C began either missing or canceling the sessions. Payment became a large issue and many of the sessions revolved around C’s not paying and the reasons for his nonpayment.

During the March 3, 1997 session, C once more raised the issue of trust since Metzger had talked to his mother in the past and the licensee assured him that “his work in here was confidential and I could not tell anyone about it unless he gave me permission.” Almost 3 months later, the licensee’s notes show that C asked Dr. Metzger if Dr. Metzger had told his mother that “he would have trouble [at] college and he wanted to know if I truly said that.” Instead of answering the question directly, Dr. Metzger replied: “Course I never confirmed or denied it.” During the June 4, 1997 appointment, C informed Dr. Metzger that he couldn’t attend the next session “because he had used up all his money, which then led to a discussion back and forth about the importance of the therapy...doing it on a three time a week regular basis. **The issue of who he would get the money from. The issue of his mother and how he couldn’t possibly ask her and yet then found himself telling me not to say anything to her about it.**” Dr. Metzger’s following notes dated June 6 state that “**And in fact I had called his mother and had a brief conversation with her in a way that would preserve his confidentiality but let her know that some funding would be helpful at this point. And she agreed to do that.**”

Another issue of trust arose when C missed his August 11, 1997 appointment. Dr. Metzger called him at his place of work which prompted **C to inquire as to how the licensee obtained his**

work phone number. He did not receive a response addressing the question. Dr. Metzger's notes of August 19, 1997 demonstrate that this was a continuing issue with C-"he finally gave me his check after which **he asked again how I knew where he worked.**" The issue of trust or lack thereof was compounded on the next day, when the "**patient started off by making reference to the question that I didn't answer yet. I in turn told him that he was short in his check** 1st time and that he owed for today's session and a payment should be kept up to date." On August 26, Dr. Metzger initiated the issue of payment to which C responded that he was still getting back to the issue of the fact that "**I had not told him how I knew that he was working where he was.**" On August 28, 1997, C missed another appointment and Dr. Metzger called him. The treatment notes of that date reflect the following:

"The patient did not show up so I called him five minutes after the session began and left a Message (sic) on his machine to the effect that it is important that he be here but it is also best for him to be here if he plans to pay me. I then called him ten minutes later and left a similar message. I then called then [sic] minutes later and this time he answered...he knew it was important to do this therapy...**How he already told me that he was not going to pay me until I'd given him the answer to his question.** ...I also told him that we could not schedule more sessions until he paid me."

By September 10, 1997, Dr. Metzger still had not answered C's question and neither had he been paid in full. Accordingly, he sent a letter to C that if the past due balance was not paid, no further treatment would be scheduled. Despite the fact that Dr. Metzger did not answer the question, C returned to therapy and made payments for the sessions. The therapy continued sporadically until July 1998 at which time C was about to begin his first year of law school. Dr. Metzger had written him a letter of recommendation dated January 8, 1998.

C. Testimony and records of Carl Metzger and Patient C from 1998-2002

C testified that he missed numerous sessions with Dr. Metzger during May, June and July of 1998 since he felt that the therapy was "not doing anything for him" and had doubts as to whether his mother was benefiting from her therapy. In fact, C did not appear for 14 of 20 sessions scheduled in May, 14 of 22 sessions in June and numerous no shows in July. However, Dr. Metzger continued to schedule appointments at the rate of 5 times per week despite the fact that C neither called nor appeared for the appointments. C's mother continued to pay for them at the rate of \$290 per session and Dr. Metzger continued to call or send letters to C stating that C, even if he didn't attend therapy, was receiving "therapeutic value." Also during this time, C lived with two roommates who were made privy to Dr. Metzger's many phone messages without the consent of C. In fact, Dr. Metzger was aware that C had roommates as noted in his July 10, 1998 record as follows: "C has not been been calling for his therapy session and I have continued to call his answering machine ... where he is listed as one of three roommates and I've left the times for him each week for the exact days and times of his sessions. He has not called back..." The messages, left on a common answering machine, revealed the fact that Dr. Metzger was "waiting at his office for C for his appointment" or would implore C to "give me a call at the office." The constant messages from Dr. Metzger prompted C to call the licensee on September 13, 1998. According to Dr. Metzger, C "indicated that he was feeling embarrassed by my calls." Dr. Metzger indicated to C that the therapy sessions were important and that they could arrange for scheduling the sessions in a way that would not embarrass C. "At that point, C hung up the phone." Not taking the "hint," Dr. Metzger called C once again the same day and left a message which C returned the following morning questioning why Dr. Metzger had called. Metzger urged him to come into the office and, following further discussion and a reference by C that he had reported Metzger to a board, C "hung up the phone."

Subsequent notes reveal that Metzger continued to schedule appointments on September 16, 17, 18, 21, all of which were "missed." On the 21st, he called and left a message with a roommate to have C call him. His notes of September 22, 1998 reveal that: "the patient called me late last night and had me on the phone for about fifteen to twenty minutes-where he was engaging me in a repetitive (sic) about why was I calling him. What was this all about. What was I hoping to do. With my response consistently being that his question was important but that it was best to

discuss it in person. **With him then saying that he was not coming back in and...why are you doing this, don't you hear me...?"**

Metzger continued to schedule the appointments 5 days per week at the hourly rate of \$290 despite receiving little to no communication from C. On October 18, 1998, Metzger received a phone call from an attorney representing the Maine Medical Association. **The attorney informed Dr. Metzger that C had called him several times a week for several weeks and had complained that Metzger had been calling him even though he was no longer a patient. Metzger continued to schedule C 5 times per week at the regular rate-C continued to miss the appointments, and C's mother continued to pay.** A typical letter from Dr. Metzger to C would read: "Hi C-Good times for next week are: Mon-2-Tues-8:30-Wed-2Thurs-830-Fri-11" (quoted from October 23, 1998 letter).

Dr. Metzger next received a letter from C dated October 23, 1998 which stated that C planned to write a letter to Metzger and send a copy to the "Board of Registration" requesting that Metzger not call him at home. C told Metzger that he could write to him and gave him his address but asked "why have I been going through this all this time?" to which Metzger responded that "that is something he should really understand in a personal discussion." C responded by calling Metzger "a prick" and hung up on him. **Metzger, in turn, considered this exchange definite "progress" and sent C a letter listing more appointments for the next week and thereafter for another 2 years. The only act of significance that took place from January 1999 until June 4 of that year was an increase in the hourly rate to \$320 which his mother continued to pay. This, despite the fact that C did not attend any sessions which were still being scheduled 5 days a week.**

On June 4, 1999, C called Metzger and once again requested that he stop sending him the scheduling letters. Metzger told this almost 27 year old adult that it "would be important to discuss this in person." His notes go on to relate that C then informed Metzger that he did not want to meet and that he would hire an attorney if necessary to stop Metzger from harassing him. Metzger kept stating that it "would be best to discuss this in person." C then "said that he was assuming from my responses that I was not going to stop sending him the letters and of course I did not indicate either way, I was just telling him that it was best to talk about that in person." The last line of Dr. Metzger's notes of that day state that "So at this point it is best to continue sending him the

appointments rather than to appear to lose interest and to withdraw that care.” **The appointments then continued to be mailed to C until Metzger received a letter from an attorney retained by C informing him that he should honor C’s request to stop communicating with him. Although Metzger did indeed refrain from communicating with C, he continued to schedule 5 sessions a week for C at a rate of \$320 per session for which he continued to bill and be paid by C’s mother.**

C returned to Metzger on September 28, 2001 at his mother’s urging. Dr. Metzger had maintained contact with her during the entire period in question. Metzger stated that C questioned the number of sessions that he’d had during the past 3 years and whether he had known about them. Metzger responded that it “was best for us to think about sessions in terms of the present and how they applied to the future...and I also told him that it was important for him to schedule the five sessions at his convenience.” At first, C said he wouldn’t do that, and then stated that he would but that he would pay for the sessions, to which Metzger responded that it would be best if C’s mother paid for them. At a later point during the session, C knocked a clock and a tissue box off a table in anger although later seemed to calm down. **This was apparently the only session attended by C during 2001.**

The next notations in C’s treatment file appear on March 26, 2002. C testified that he caved in to his mother’s “relentless urging” that he return to Dr. Metzger. **During that year, C attended approximately 6 sessions although his mother continued to be billed for 5 sessions per week at a rate of \$320 per session.** On March 26, C’s mother called Dr. Metzger to inquire as to when the next appointment was. She was informed that the appointment was at noon following which C, now approaching 30 years of age, did not commit to. C then asked his mother “what the f--- are you calling him for?” Later, C called Metzger who informed him that “he should be coming in five times a week...” to which C would not commit. The next day, C appeared at Metzger’s office and questioned his treatment and appointments. The session ended up with C knocking over a calendar, knocking over the tissue box, knocking over a stool and throwing his cup across the room. Afterwards, Dr. Metzger called C’s mother and “advised her about telling him clearly and definitively that he has five appointments a week and needed to keep them.” **C’s mother kept insisting to him, after communicating again with Dr. Metzger, that C attend 5 sessions per week.** C briefly stopped communicating with his mother on March 28, 2002. This pattern of

behavior continued until May 2, 2002 when C made his last appearance at Dr. Metzger's office. C asked Metzger why he was having him attend these sessions and "what do you do to get his mother off his back?" The answer was "to come to his sessions." C then eventually left, flipping the light off in the room as he departed. Dr. Metzger continued to schedule and charge for sessions for at least the following week.

D. Testimony and records of Carl Metzger and Patient C from April 2002-2004

C currently resides in a western state and is engaged in an educational program to educate GED candidates and others. He arrived by plane to testify at Dr. Metzger's hearing. He filed the subject complaint with the Board at the end of April 2002 since he didn't feel that charging his mother for the session fees was "healthy," particularly during the years that he was in law school and didn't avail himself of the services charged by Dr. Metzger. He also felt that Dr. Metzger was leveraging his mother for both C's and his brother's fees. C expressed his opinion that Dr. Metzger was either greedy or power hungry. C further testified that he received individual therapy, not family therapy, since he never had a session with any member of his family during the 10 years that he was involved with Dr. Metzger. He has not participated in any therapy since he last met with Dr. Metzger and doesn't intend to participate in any in the future. He was angry with Dr. Metzger and acted out primarily due to the billing concerns and did not feel as though Dr. Metzger satisfactorily addressed those concerns. C also expressed to the Board that he felt as though Dr. Metzger and his mother had colluded against him to attend counseling and was "really, really, really upset and angry that his mother wouldn't ask for her money back" from Dr. Metzger when "she was being taken advantage of and brainwashed." C also testified that many of the sessions centered on billing and the need for so many sessions and that the goals of treatment as expressed to him by Dr. Metzger were "pretty vague". He understood, for example, that the therapy would end after he fully understood his conflicts which, to him, appeared in large part to keep revolving around the billing and cost issues which were never satisfactorily addressed by Dr. Metzger.

Dr. Metzger testified that he is available to his patients day or night. The licensee stated that he was not concerned that having the mother pay for all of C's treatment would breed further dependency on her by C. Additionally, he usually requires payment in cash at the time of the

session. The fact that many of the sessions with C were conducted by telephone was, in fact, preferred by Dr. Metzger. The licensee believes that listening to a patient's voice is more important than seeing them in person where he can observe a patient's body gestures and facial expressions during treatment. Dr. Metzger testified that C never communicated to him in a clear way that he wanted to end his treatment. Dr. Metzger was of the opinion that C had benefited from the sessions since he graduated from law school, had gained more confidence, and his relations with his mother appear to be better now that his mother is "strong" rather than "weak." Additionally, Dr. Metzger felt that he gave C both dignified and respectful care and that both C and his mother benefited from her participation in the management of C's care. Although acknowledging that adults have the right to self-determination regarding their treatment, Dr. Metzger stated that some sessions were held in which C was treated like a child since some of C's dynamics were more consistent with those of a fifteen year old.

The licensee further testified that during the spring of 2004, he scheduled 5 sessions per week for C for 6 months but did not charge for those sessions, none of which were attended by C. In connection therewith, the Board was critical of the fact that Dr. Metzger did not properly terminate C's therapy and the excessive length and cost of C's treatment. Dr. Metzger testified that the only thing he would have done differently in his treatment of C would have been to be more aggressive in having C's mother pay for all of his sessions rather than having her transfer the funds during a brief period of time to C so that he could pay Dr. Metzger.

The Board was concerned that Dr. Metzger didn't counsel C in regards to his possible exposure to a potentially fatal disease. The Board expressed further concern that Dr. Metzger does not seek counseling for himself or "compare notes" with one or more psychiatrists to ensure that his treatment of patients is appropriate under the circumstances. Apparently, he has a professionally isolated psychiatric practice and doesn't attend professional conferences or seminars. The Board was critical of Dr. Metzger for sharing children's or adolescents' or young adults' therapy with parents but never allowing the family to meet together in therapy, thereby bringing into serious question whether Dr. Metzger actually practices family therapy. Moreover, Metzger could not name another psychiatrist who as a matter of course involves adult parents in the treatment of their adult children. The Board was further critical of the licensee when, during the hearing, Dr. Metzger

revealed some personal information regarding C's father and additionally was not that familiar with federal rules concerning the confidentiality of substance abuse information.

Dr. Metzger's office manager also testified. She schedules 9 appointments a day but scheduled only 8 during the years when C was in law school since she kept a slot open for him. She further stated that Dr. Metzger doesn't treat any of his patients 5 days a week and perhaps sees 3-4 patients more than once a week. She was unable to recall how many patients during the past 26 years were scheduled 5 days a week except for C.

E. Testimony of John Maltzberger, M.D.

The Board additionally heard the expert testimony of psychiatrist John Maltzberger. Dr. Maltzberger has an extensive curriculum vitae and has been a licensed psychiatrist since 1960. He performed his residency in the field of child and adult psychiatry and has practiced adolescent psychiatry since 1965. He currently has an active practice in his chosen profession and treats 30-35 patients each week. Additionally, he remains an Associate Clinical Professor of Psychiatry at Harvard Medical School and as a Visiting Professor in the Department of Psychiatry at the Mayo Clinic. He has been widely published in the field of psychiatry, unlike the licensee who has self-published one paperback which was subsequently reprinted by a publisher.

Dr. Maltzberger testified that he has a fairly extensive practice counseling couples and has child and family therapy training. He stated that most therapists treat family members at the same time although he might meet with each member individually at first in order to receive an initial understanding of the family's problems. He would also stress to the family members that he would keep no secrets among any of the family. He also discourages the treatment of two members of the same family individually since such therapy can be fraught with danger due to the often complex struggles which arise. Dr. Maltzberger was unaware of any other psychiatrist performing family therapy without at some point treating them together. In fact, Dr. Metzger's sharing of some of C's confidences upset C and should have been remedied by having both C and his mother present to air out their feelings to aid them in resolving their differences.

Dr. Maltzberger was also of the opinion that Dr. Metzger's diagnosis of C as "possible depressive neurosis" is not recognized in the DSM. He felt that Dr. Metzger kept C in the state of

adolescence for an unnecessarily long length of time which could be seen as a form of therapeutic bondage. Moreover, the struggles which were present with the treatment of C as well as the numerous missed appointments were a clear indication that Dr. Metzger should have consulted with a peer for advice and considered ending the therapeutic relationship, especially after 10 years.

Dr. Maltzberger further testified that although psychoanalysis would usually entail 4 or 5 sessions per week for 3-5 years, C was not receiving that form of treatment. Instead, C was receiving some form of psychotherapy which customarily results in treatment once or twice per week. Moreover, charging for 5 sessions per week was also unusual in the profession.

F. Dr. Maltzberger's Opinions Re: American Medical Association Standards

Dr. Maltzberger reviewed the relevant records in this matter and was present throughout the testimony of C and a portion of Dr. Metzger's. He rendered several opinions based on his education, training, and experience in the field of psychiatry regarding Dr. Metzger's treatment of C. First, he testified that Dr. Metzger violated the following two provisions of the American Medical and Psychiatric Association's Principles of Medical Ethics, 2001 edition (Amendments up to November 2002).

Preamble

Section 1. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

Dr. Maltzberger stated that Dr. Metzger significantly violated C's right to cancel appointments and not be subjected to unwanted verbal or written communications. In fact, the letters did not stop until Metzger received a letter from C's lawyer. Moreover, Metzger continued to charge fees for appointments that C didn't want. Even after C protested to Metzger, the appointments were not cancelled. Instead, the letters and phone calls bordered on harassment. C was 27 years old in the summer of 1999 and had the right to be left alone. It was also apparent that C was concerned about his mother having to pay for his session bills and that he was under both her and Metzger's influence.

Section 6. It is unethical for the psychiatrist to make a charge for a missed appointment when this falls within the terms of the specific contractual agreement with the patient. Charging for a missed appointment or for one not canceled 24 hours in advance need not, in itself, be considered unethical if a patient is fully advised that the physician will make such a charge. The practice, however, should be resorted to infrequently and always with the utmost consideration for the patient and his or her circumstances.

Dr. Maltzberger testified that this practice was resorted to in the extreme, especially considering that the patient neither agreed to nor attended many of the sessions for which he was charged.

Second, Dr. Maltzberger testified that Dr. Metzger violated the following provisions of the American Medical Association's Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, opinions 6.05 and 8.03, 2002-2003 Edition which reads as follows:

6.05. Fees for Medical Services. A physician shall not charge or collect an illegal or excessive fee. A fee is excessive when after a review of the facts a person knowledgeable as to current charges made by physicians would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the difficulty and/or uniqueness of the services performed and the time, skill, and experience required;
- (2) the fee customarily charged in the locality for similar physician services;
- (3) the amount of the charges involved;
- (4) the quality of performance;
- (5) the experience, reputation, and ability of the physician in performing the kind of services involved.

Dr. Maltzberger stated that Dr. Metzger's fees, sometimes charged for 5 days a week over long periods of time, were excessive. This practice was particularly egregious since many of the

appointments were neither requested by the patient nor kept by him. In Boston, Massachusetts, fees for psychotherapy currently range from \$125-\$250 per hour. Fees for psychoanalysis are less since the patient receives 5 sessions per week. During the early portion of C's treatment, some 5-10 years ago, fees would have been 2/3rds of the preceding amounts. A reasonable rate for Dr. Metzger's services during the treatment period would have been \$175 per session, not \$250-\$320.

Dr. Maltzberger was also of the opinion that Dr. Metzger violated the provisions of Section 10.01 (2), Fundamental Elements of the Patient-Physician Relationship, which reads: "The patient has the right to make decisions regarding the health care that is recommended by his or her physician. Accordingly, patients may accept or refuse any recommended medical treatment." Section 8.08, Informed Consent, was also violated. That section states that "The patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an intelligent choice. The patient should make his or her own determination on treatment...."

C made repeated efforts to extricate himself from Dr. Metzger's treatment. His ambivalence was due in large measure to his dependency on his mother and Dr. Metzger. Dr. Metzger kept C returning for treatment despite his efforts to refuse to accept same and C had little in the way of an alliance between Dr. Metzger and himself which would promote success in his treatment rather than dependency. Additionally, C did not receive enough information to be able to ascertain whether the fee charged by Dr. Metzger was reasonable. The terms were not written down and/or communicated to him in a clear manner and neither did he agree with them at all times. The fee structure was inconsistent in that Metzger wanted C's mother to pay, but that placed C in the untenable position of attending therapy, the value of which he questioned and did not want to attend, or disobeying his mother's wishes that he attend therapy. Either choice resulted in C's displaying anger toward his mother and Dr. Metzger for having her pay for sessions whether he attended or not. This proved damaging to C's self-reliance and was inappropriate. Moreover, according to Dr. Maltzberger, Dr. Metzger acted unethically after being explicitly told by C, "do not call my mother," by doing so anyway. According to Dr. Maltzberger, the most therapeutic

result achieved by C occurred when C declared his independence by filing this complaint with the Board.

Dr. Maltzberger further expressed his opinion that Dr. Metzger violated the provisions of Section 10.01 (4) which state that “[T]he patient has the right to confidentiality. The physician should not reveal confidential communications or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest.”

Violations of this section occurred when Dr. Metzger contacted C’s mother in 1997 and suggested that she pay C’s session bills even after C had requested that he not call her. He also violated this section when he told C’s mother that C had made the track team. Dr. Metzger additionally failed to follow this standard by leaving messages relating to treatment on C’s message machine which were listened to by his roommates. As an alternative, Dr. Metzger could have left a message for C to call “Carl” or Carl Metzger” without mentioning that he was a doctor.

Dr. Metzger’s contacting C’s mother for payment was also contrary to the provisions of the American Medical Association’s Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, opinion 8.03, 2002-2003 Edition which reads:

“Conflicts of Interest Guidelines. Under no circumstance may physicians place their own financial interests above the welfare of their patients...”

Additionally, Dr. Metzger continued to schedule, bill and collect for sessions which his patient did not want. These sessions also resulted in increased dependency on Dr. Metzger and C’s mother and compromised the physician-patient relationship by creating a conflict of interest between the mother’s desire to pay for services and her son’s desire not to receive those services. Dr. Metzger further breached this standard by “suggesting” to C’s mother that he continue to receive 5 sessions per week when, at numerous times, he didn’t want any.

III.

CONCLUSIONS OF LAW

The Board, exercising its knowledge, experience, and training, and having considered all of the evidence, hereby unanimously concludes that the State has met its burden of proof by a preponderance of the evidence that Carl Metzger, M.D., violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(F) by his unprofessional conduct as evidenced by his disregard of the cited standards of professional behavior that have been established for psychiatrists. Dr. Metzger further violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(E)(1) which defines incompetence to be conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. The Board additionally bases its findings and conclusions on the opinions of Dr. John Maltzberger that Dr. Metzger violated the cited provisions of the American Medical and Psychiatric Association's Principles of Medical Ethics, 2001 edition (Amendments up to November 2002) and the American Medical Association's Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, 2002-2003 Edition.

More specifically, the Board found that Dr. Metzger violated the provisions of:

I. 32 M.R.S.A. Sec. 3282-A(2)(F) by his unprofessional conduct as evidenced by his disregard of the cited standards of professional behavior that have been established for psychiatrists. Those standards include:

A. American Medical and Psychiatric Association's Principles of Medical Ethics, 2001 edition (Amendments up to November 2002).

Preamble

Section 1. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

1. Dr. Metzger repeatedly and egregiously breached C's confidentiality regarding his communications to C's mother and roommates. In particular, he called C's mother, "indirectly" requesting payment for C's continuing treatment even though told not to by C.
2. Dr. Metzger, over the course of several years, took C's "no" concerning more treatment or communications to mean "yes" which resulted in C having to escalate his behavior to reassert his

“no” message. The licensee did not respect C’s rights to be left alone until C retained an attorney to protect his rights.

3. Dr. Metzger wrongfully continued to bill C and his mother for services even after receiving a letter from C’s lawyer requesting that he not schedule any further sessions.

4. The provided care was not competent, as Dr. Metzger did not accomplish any meaningful positive therapeutic goals over the 10 year period of treatment, developed and promoted an unhealthy alliance between C’s mother and Dr. Metzger, and fostered C’s unhealthy dependence on both.

B. Section 6. It is unethical for the psychiatrist to make a charge for a missed appointment when this falls within the terms of the specific contractual agreement with the patient. Charging for a missed appointment or for one not canceled 24 hours in advance need not, in itself, be considered unethical if a patient is fully advised that the physician will make such a charge. The practice, however, should be resorted to infrequently and always with the utmost consideration for the patient and his or her circumstances.

Dr. Metzger’s actions in billing C for more than 500 sessions, a great number of which he did not attend, was patently unethical, paternalistic and amounted to incompetent conduct. This practice was not resorted to infrequently. C was basically not treated with any consideration, especially since he was an adult, and he made it clear on numerous occasions that he did not want these sessions.

C. American Medical Association’s Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, 2002-2003 Edition, Section 10.01 (4), Fundamental Elements of the Patient-Physician Relationship. That section reads:

“[T]he patient has the right to confidentiality. The physician should not reveal confidential communications or information without the consent of the patient, unless provided for by law or by the need to protect the welfare of the individual or the public interest.”

1. Violations of this section occurred when Dr. Metzger contacted C’s mother in 1997 and suggested that she pay C’s session bills.

2. Dr. Metzger also violated this section when he told C's mother that C had made the track team.
3. Dr. Metzger additionally failed to follow this standard by leaving messages relating to treatment on C's message machine, some of which were listened to by his roommates.

D. American Medical Association's Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, opinion 6.05, 2002-2003 Edition which reads as follows:

6.05. Fees for Medical Services. A physician shall not charge or collect an illegal or excessive fee. A fee is excessive when after a review of the facts a person knowledgeable as to current charges made by physicians would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the difficulty and/or uniqueness of the services performed and the time, skill, and experience required;
- (2) the fee customarily charged in the locality for similar physician services;
- (3) the amount of the charges involved;
- (4) the quality of performance;
- (5) the experience, reputation, and ability of the physician in performing the kind of services involved.

1. The physician members of the Board, which include a psychiatrist, are knowledgeable as to current and past charges for physician/psychiatric services and have a definite and firm conviction, as do the public members and Dr. Maltzberger, that Dr. Metzger's bills for C's sessions were excessive, totaling well in the hundreds of thousands of dollars.
2. There was nothing unique or particularly difficult regarding the services performed, and the time, skill and experience was that required of a psychiatrist with average skills.
3. A reasonable fee for Dr. Metzger's treatment would have been \$175 over the course of 10 years, not \$250-\$320.
4. The amount of the charges was grossly excessive, particularly in light of the fact that C did not want nor attend numerous appointments yet either his mother or C was billed for same.

5. The quality of performance was deficient and Dr. Metzger's experience and reputation were average, whereas his ability to provide the services involved was below average.

E. American Medical Association's Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, 2002-2003 Edition, Sections 8.08, Informed Consent, and 10.01 (2), Fundamental Elements of the Patient-Physician Relationship. Those sections read: Section 8.08. "The patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an intelligent choice. The patient should make his or her own determination on treatment...."

Section 10.01(2). "The patient has the right to make decisions regarding the health care that is recommended by his or her physician. Accordingly, patients may accept or refuse any recommended medical treatment."

1. Dr. Metzger denied C the right to choose his treatment by having C's mother be responsible for payment for his sessions, which resulted in C feeling guilty if he did not attend since his mother would have to pay whether he attended or not.
2. Dr. Metzger further placed pressure on C to receive treatment from him by continuously sending him letters and contacting him by phone despite C's attempts to refuse treatment.
3. Dr. Metzger further involved C's mother in his attempts to continue the relationship.

F. American Medical Association's Council on Ethical and Judicial Affairs, Code of Medical Ethics: Current Opinions with Annotations, opinion 8.03, 2002-2003 Edition which reads: "Conflicts of Interest Guidelines. Under no circumstance may physicians place their own financial interests above the welfare of their patients..."

1. Dr. Metzger continued to schedule and bill and collect for sessions which his patient did not want.
2. These sessions also resulted in increased dependency on Dr. Metzger and C's mother and compromised the physician-patient relationship by creating a conflict of interest between the mother's desire to pay for services and her son's desires not to receive many of those services.
3. Dr. Metzger further breached this standard by "suggesting" to C's mother that C continue to receive 5 sessions per week when, on numerous occasions, he didn't want any.

II. Dr. Metzger further violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(E)(1) which defines incompetence to be conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.

Dr. Metzger's acts were manipulative of C and his mother. If done consciously, then Dr. Metzger was morally culpable. If done unconsciously, then the psychiatrist demonstrated profound ignorance or denial. Dr. Metzger realized that C's mother's wealth was analogous to having a "cash cow" at his disposal. Dr. Metzger does not recognize any need to change his approach to billing or therapy and did not demonstrate any ability to empathize with C's plight. His billing for 5 sessions per week over a period of approximately 3 years was done without shame or remorse.

Furthermore, Dr. Metzger did not articulate bona fide reasons to support his treatment model. He did not appear to recognize that treating an adult like a child may result in the adult remaining a child emotionally. Additionally, Dr. Metzger rationalized not accepting C's request for him to stop communicating with him and was disconnected from the practice of his profession which resulted in damage at least to C. Finally, Dr. Metzger's testimony bears repeating that the only thing he would have done differently in his treatment of C would have been to be more aggressive in having C's mother pay for all of C's sessions rather than having her transfer the funds during a brief period of time to C so that he directly could pay Dr. Metzger.

As a result of the above violations, the Board, by a unanimous vote, ordered the following sanctions regarding Dr. Metzger's license.

1. Dr. Metzger shall receive a written **Reprimand** due to the above noted violations.
2. Dr. Metzger's application for license **renewal is hereby denied**. His current license shall remain in effect until midnight of December 9, 2004 in order to allow for Dr. Metzger to arrange for the orderly transfer of his patients to other appropriate therapists. The Board does not take this action lightly but finds that the above noted improprieties are egregious and that Dr. Metzger has not demonstrated any insight or recognition of the inappropriateness of his actions. There does not appear to be any meaningful corrective action that Dr. Metzger could take in order to preserve his license at the present time.

3. Dr. Metzger shall **pay the Board's costs of this hearing which total \$8,795.59**. Dr. Metzger's counsel stated that he has the financial wherewithal to pay these costs. Hearing officer-(3.45 hours pre and post-hearing; 13.15 hours presiding at the hearings; 13 hours writing and rewriting the Decision = \$3,000); Expert witness costs for preliminary opinion-(Dr. Maltzberger-\$1000.00); investigations - (209.50) Copying costs, publication, binders (\$2754.84); Hearing record and transcription (\$1831.25). Payment shall be by certified check or money order **made payable to: "Maine Board of Licensure in Medicine"** and remitted to Randal L. Manning, Executive Director, 137 State House Station, Augusta, Maine 04333-0137 by January 9, 2005.

SO ORDERED.

Dated: November 30, 2004



Edward David, M.D., J.D., Chairman
Maine Board of Licensure in Medicine

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

MAINE STATE BOARD OF LICENSURE IN MEDICINE


IN RE: Licensure Disciplinary Action) APPLICATION FOR STAY
) DECISION AND ORDER
Carl Metzger, M.D.)

Pursuant to the authority found in 5 M.R.S.A. Sec. 11004, 32 M.R.S.A. Sec. 3263, et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. Sec. 8001, et seq., the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine on November 30, 2004. The purpose of the hearing was to decide whether to grant Dr. Metzger's application for a Stay of the Board's November 9, 2004 Decision and Order. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Bettsanne Holmes (public member), Daniel Onion, M.D., Sheridan R. Oldham, M.D., and Cheryl Clukey (public member). Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Metzger was not present although was represented by Karen Frink Wolf, Esq. James E. Smith, Esq. served as Presiding Officer.

The Board finds and concludes by a vote of 5-0 that Dr. Metzger has not demonstrated that there is a strong likelihood of success on the merits and that the general public will not be exposed to substantial harm if the stay is granted.

WHEREFORE, the Application for Stay is Denied.

Dated: November 30, 2004


Edward David, M.D., J.D. Chairman
Maine State Board of Licensure in
Medicine