

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
John P. Cronin, Ph.D., L.P.
License No. LP0458

**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

The above-entitled matter came on for a hearing on October 28, 2013, before Administrative Law Judge (“ALJ”) Thomas W. Wexler at the request of the Minnesota Board of Psychology (“Board”) Complaint Resolution Committee (“Committee”). The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing (“Notice of Hearing”) issued by the Committee on February 10, 2012. Sara P. Boeshans, Assistant Attorney General, represented the Committee. Mark W. Gehan, Esq., appeared on behalf of John P. Cronin, Ph.D., L.P. (“Respondent”).

On March 24, 2014, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation (“ALJ’s report”), with the following recommendation, “Dr. Cronin was involved in a dual relationship when he supervised his daughter, but there are mitigating circumstances that reasonably require equitable consideration.”¹ (A true and accurate copy of the ALJ’s report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on May 23, 2014, in the Board’s conference room, 2829 University Avenue S.E., Suite 320, Minneapolis, Minnesota. Sara P. Boeshans, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent appeared before the Board. Mark W. Gehan, Esq., appeared on behalf of

¹ ALJ’s report Ex. A-9.

Respondent and presented oral argument. Board members Jeffrey Leichter, Ph.D., L.P., and Raja M. David, Psy.D., L.P., did not participate in deliberations and did not vote in the matter. Scott Payne, Compliance Director for the Board, did not participate in the deliberations. Gregory J. Schaefer, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board reviewed the record of this proceeding and hereby accepts the Findings of Fact set forth in the March 24, 2014, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein.

1. Dr. Cronin earned a Ph.D. in special education and child psychology in 1980. He then also earned a master's degree in public health in 1983. He was licensed as a school psychologist in 1976 by the Minnesota Department of Education. He was licensed as a psychologist by the Board in approximately 1983, and has been continually licensed since that time. Dr. Cronin has owned and managed the Behavioral Health Clinic for approximately 33 years. The clinic provides comprehensive mental health services, and typically employs seven or eight people including two licensed psychologists, a biofeedback specialist and support staff.

2. At all times relevant herein, Dr. Cronin has been familiar with the rules of the Board prohibiting dual relationships and the purpose of the rule. He understands that a dual relationship can harm the supervisor, the supervisee and the patient or the client, due to impaired judgment. He understands that the remedy, when a dual relationship exists, is to fix it when possible by withdrawing from the relationship, finding a replacement, or seeking Board approval if the circumstances require.

3. Dr. Cronin's daughter, Cassandra Patricia Gomez (Ms. Gomez), completed a master's degree program in psychology at the University of St. Thomas and began employment as a counselor at Dr. Cronin's clinic in April 2008. She applied to the Minnesota Board of Behavioral Health and Therapy (BBHT) for licensure as a "Professional Counselor." To become licensed, the BBHT required her to perform 2000 hours of supervised work. Marilyn Mason, Ph.D., L.P., who also worked at Dr. Cronin's clinic, agreed to perform the supervision.

4. Dr. Mason's health did not permit her to continue performing the supervision. She retired in November 2008. Ms. Gomez was unable to find a replacement supervisor.

5. Dr. Cronin thus performed the supervision beginning in November 2008. On January 12, 2009, Dr. Cronin formally applied to the BBHT to be the supervisor. The application form included Ms. Gomez's married name as well as her maiden name of Cronin, but did not otherwise highlight that she was Dr. Cronin's daughter.

6. The BBHT then sent an email to Dr. Cronin requesting information about his qualifications to act as a supervisor. Dr. Cronin responded by letter dated February 15, 2009, reflecting extensive education and experience in supervision.

7. On February 23, 2009, the BBHT granted Dr. Cronin's request to act as a supervisor. However, in mid-April 2009, the BBHT became aware of the family relationship and requested that Dr. Cronin submit a request for a supervision variance.

8. On April 16, 2009, Dr. Cronin sent a letter to the BBHT stating his request for a supervision variance relating to his daughter. The letter stated that he had already provided supervision of over 500 hours to his daughter since April of 2008, and that it would be an undue hardship to her if she were to lose credit for that time. In his oral testimony, Dr. Cronin stated that his supervision likely began in November 2008 when Dr. Mason retired for health reasons,

and that the reference to “April” in the letter was likely a typographical error. November 2008 is the mostly likely start date of his supervision.

9. On May 8, 2009, the BBHT notified Ms. Gomez that the request for Dr. Cronin to be her supervisor was denied, however, the BBHT did approve 500 hours of supervision that had occurred with Dr. Cronin.

10. Thereafter, Ms. Gomez arranged for Dr. Thomas Alberg to provide the needed supervision.

11. In May 2009, the BBHT notified the Board that Dr. Cronin had supervised his own daughter. On December 2, 2009, the Board served Dr. Cronin with a Notice of Conference alleging an improper dual relationship by Dr. Cronin supervising his daughter. The notice did not state a date for the conference.

12. The conference was held on March 19, 2010. The Board offered Dr. Cronin a public reprimand, which Dr. Cronin refused to accept. Over the next two years, the Board repeated this offer and it was rejected each time. Thus, on February 10, 2012, the Board served a Notice of Hearing which brought the matter to the Office of Administrative Hearings. Dr. Cronin contends that the three year delay in bringing this case to a Notice of Hearing was prejudicial and that the proceeding should be dismissed for failure to prosecute under Minn. R. Civ. P. 41.02(a).

13. Gary R. Schoener, a licensed psychologist, is an expert in the area of dual relationships. He has been a licensed psychologist in Minnesota since 1974. He is employed as director of the Walk-in Counseling Center and he also does forensic work in psychology. He has extensive experience providing training for psychology licensing candidates and for ongoing training of licensees. The problems inherent in dual relationships are part of all the training

programs that he conducts. He has also testified extensively on issues of dual relationships and has written many articles addressing professional ethics in the field of psychology and boundary issues.

14. A dual relationship is a professional relationship coupled with some other kind of relationship. There are many concerns raised by this conduct. It could be a biased relationship. There could be blind spots to work done by one's own child. The supervision might not be accepted by every board. The supervisee's experience may be discounted. A client might be reluctant to make a complaint to the supervisor. The supervisor might not intervene when necessary.

15. A dual relationship may create a conflict of interest that undermines the professional relationship.

16. A dual relationship may cause a third party to devalue the professional relationship.

17. "Supervision" includes establishing a plan for training, reviewing case materials, evaluating progress in diagnosis and treatment, and evaluating client progress.

18. The Minnesota Psychology Practice Act does not define supervision [as it relates to applicants of the BBHT].²

19. A supervisor must have the authority to make orders as to how something is to be done.

20. A supervisor has ultimate responsibility for the work. In contrast, a consultant does not have that responsibility.

² *But cf.* Minn. Stat. § 148.925, subd. 1 (defining supervision relating to applicants of the Board of Psychology).

21. "Teaching" is different than "supervision."
22. A close friend could be a supervisor. That would not likely be considered a dual relationship.
23. Persons applying to the BBHT for licensure often have difficulty finding someone to supervise their required 2,000 hours of work.
24. Although Ms. Gomez was applying for licensure before the BBHT, Dr. Cronin would still be bound by the psychologists' code of conduct.
25. Mr. Schoener opined that Dr. Cronin breached the psychologists' code of conduct by functioning as Ms. Gomez's supervisor.
26. In situations in which the Board finds that an improper dual relationship occurred, the supervisor's intent is a relevant factor for the Board to consider when determining the appropriate remedy.
27. By supervising his daughter, Dr. Cronin intended to protect the clinic's counseling clients and avoid an interruption of his daughter's training.
28. There is no indication that Dr. Cronin exploited his daughter in the supervisory relationship.
29. Rules 3.05 and 3.06 of the American Psychological Association Code of Conduct, with 2010 amendments, have similar provisions to the Minnesota code of conduct relating to dual or multiple relationships.
30. A dual relationship is improper even in the absence of any demonstrable harm.
31. The standard of care is what a reasonable person would do in the same or similar circumstances.

32. When Dr. Mason could not continue with supervision, Ms. Gomez and Dr. Cronin took the following steps to find a replacement supervisor:

- A. Dr. Cronin told Ms. Gomez to check on her options.
- B. Dr. Cronin suggested that Ms. Gomez call her classmates to see who was available to do supervision. Ms. Gomez did make calls but without success to find a replacement supervisor.
- C. Ms. Gomez asked her masters' program supervisor at the University of St. Thomas for assistance in finding a replacement supervisor, but no potential supervisor was identified.
- D. Dr. Cronin called Mr. Ayers, the former director at the Walk-in Counseling Center, for assistance in finding a replacement supervisor. No potential supervisor was identified.
- E. Dr. Cronin suggested to Ms. Gomez that she seek permission from the BBHT for him to be her supervisor on an interim basis. Ms. Gomez made that inquiry, obtained the necessary BBHT forms, and applied for permission to have Dr. Cronin serve as her supervisor.
- F. Dr. Cronin reviewed the rules of the BBHT, the Board, and the American Psychological Association.
- G. Dr. Cronin obtained opinions from two attorneys who did not think it was a problem for him to be the supervisor.

33. Dr. Cronin did not want to supervise his daughter.

34. Dr. Cronin did not feel that his relationship with his daughter would impact his ability to be an objective supervisor.

35. After the BBHT denied Ms. Gomez's request that Dr. Cronin be permitted to serve as her supervisor, she arranged for Dr. Thomas Alberg to serve as her supervisor.

36. In March 2009, Dr. Cronin instructed his office manager, Carole Sax, to contact the Board to determine the Board's position on his acting as the supervisor. Ms. Sax was told that she needed to talk to Pauline Singleton and left a message. Ms. Singleton did not return the call, and Ms. Sax did not follow up on the call.

37. In September 1995, Dr. Cronin signed a stipulation and consent order providing for a conditional license for failing to supervise employees or independent contractors in the administration and scoring of psychological tests, and for engaging in a dual relationship with a client. The dual relationship involved his providing therapeutic service to a friend who was also a professional colleague. The conditional license was then made unconditional in January 1998.

CONCLUSIONS

Based on the foregoing Findings of Fact, the Board makes the following conclusions of law:

1. The Board and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 148.905, subd. 1(2), 214.103, subds. 6, 7, and 14.50.

2. The Board gave proper and timely notice of the hearing.

3. The Board has complied with all relevant substantive and procedural requirements of law and rule.

4. The “Minnesota Psychology Practice Act” is found at Minn. Stat. §§ 148.88 to 148.98.

5. Minnesota Statutes section 148.90 establishes a Board of Psychology “with powers and duties described in this section.”

6. Minnesota Statutes section 148.905 requires the Board to adopt and enforce rules to regulate the professional conduct of psychologists. Dr. Cronin is subject to the enforcement powers of the Board.

7. Minnesota Statutes section 148.925 defines what supervision means and the qualifications required of a supervisor of a person applying for licensure as a “licensed

psychologist.” Ms. Gomez was not applying to be a licensed psychologist. The plain language of this section does not apply to the facts of this case, and the supervision of Ms. Gomez provided by Dr. Cronin was not the type of supervision referred to in this section.

8. Minnesota Statutes section 148.89, subdivision 5(6), provides that the practice of psychology includes supervision, regardless of whether the supervisor receives payment for the services. The word “supervision” is ambiguous, because it does not describe who or what is supervised. That ambiguity is clarified by reference to Minn. Stat. § 148.89, subd. 2a, which includes as a “client” a person who receives services from a person regulated by chapter 148.

9. Ms. Gomez was a “client” of Dr. Cronin, and he provided supervision to her under Minn. Stat. § 148.89, subd. 5(6).

10. Minnesota Statutes section 148B.51 establishes the BBHT. The BBHT is responsible for the licensing and supervision of licensed professional counselors (and now licensed professional clinical counselors). Ms. Gomez applied to the BBHT to become a licensed professional counselor and thus was required to meet the supervision requirements of the BBHT. Dr. Cronin was qualified by education, experience and licensing to be an approved supervisor under Minn. Stat. § 148B.50, subd. 2.

11. Minnesota Statutes section 148.941, subdivisions 2(a)(1) and 2(a)(3), permit the Board to impose disciplinary action against a licensee, who violates a statute or rule that the Board is empowered to enforce, if the Board determines the violation by a preponderance of the evidence. The Board may also impose discipline if the licensee has engaged in unprofessional conduct which has the potential for causing harm to the public. Injury does not have to be established.

12. Minnesota Rules chapter 7200 (2007) apply to the 2008-2009 conduct in this case. A Statement of Need and Reasonableness (SONAR) finalized in July 2012 may nonetheless be helpful in addressing equitable considerations.

13. Minnesota Rules part 7200.4500, subpart 1 (2007) provides that the Rules of Conduct constitute the standards against which the conduct of psychologists are measured. Minnesota Rules part 7200.0100, subpart 5a provides that a dual relationship includes a relationship of a psychologist that is both professional and familial. Subparts 5b and 5c define offspring to be included as part of a familial relationship.

14. Minnesota Rules part 7200.4810, subpart 1, prohibits provision of services to a client when the psychologist's objectivity is impaired. Subpart 2 provides that objectivity is impaired in a dual relationship with a client.

15. Dr. Cronin was in a dual or multiple relationship with Ms. Gomez in violation of Minn. R. 7200.4810 (2007) when he supervised her with respect to her application to become a licensed professional counselor.

ORDER

Based on the foregoing Findings of Fact and Conclusions and upon the recommendation of the ALJ, the Board issues the following Order:

1. IT IS HEREBY ORDERED that Respondent successfully complete an individualized professional boundaries training course within 90 days of the date of this Order. The Committee will provide Respondent with a list of such courses, which have been approved, for the purposes of satisfying this requirement. If the Committee and Respondent concur that there is sufficient reason for Respondent not to enroll in any of the courses the Committee has listed, Respondent shall submit to the Committee for approval a syllabus that includes goals,

objectives, assignments, projects, methods, and frequency of evaluation, etc., for a similar individualized professional boundaries training course. Respondent shall also submit the course instructor's vitae to the Committee for its approval of the instructor. The instructor shall be either a licensed psychologist or have a doctoral degree in psychology. All fees for the course shall be paid by Respondent. Successful completion of the boundaries course shall be determined by the Committee.

2. IT IS FURTHER ORDERED that Respondent, within 30 days of completing the professional boundaries course referenced above, shall submit a report to the Committee which provides and addresses:

a) The dates Respondent began and completed the boundaries training course;

b) A brief statement of the topics covered in the professional boundaries training course;

c) A detailed discussion of what Respondent has learned from the boundaries training course, including Respondent's comprehension and knowledge of boundary issues, as well as various ethical issues encountered in practice, and how this course will affect his practice in the future;

d) A detailed discussion of each boundary violation that occurred regarding the circumstances described in the Findings of Fact section of this Final Order, including (1) how Respondent came to violate these boundaries; (2) the manner in which Respondent violated these boundaries; (3) the specific harm to specific individuals that resulted or could have resulted from the boundary violations; and (4) how Respondent now believes the boundary violations could have been averted;

e) A detailed discussion of the specific ways this course will affect Respondent's practice in the future;

f) Respondent's reasons for believing he is capable of conducting himself in a fit, competent, and ethical manner in the practice of psychology; and

g) Any other information Respondent believes would assist the Board in its ultimate review of this matter.

3. IT IS FURTHER ORDERED that Respondent must refrain from clinical supervision. The limitation on Respondent's license not to perform clinical supervision shall be administratively removed upon successful compliance with all requirements imposed by this Order.

4. IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Board in the amount of three thousand five hundred (\$3,500.00) dollars for engaging in the conduct and violations described in the Findings of Fact herein. Payment of \$3,500.00 shall be remitted in full to the Minnesota Board of Psychology at Suite 320, 2829 University Avenue SE, Minneapolis, Minnesota 55414, within sixty (60) days of the date of this Order.

5. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute the violation of a Board order for purposes of Minnesota Statutes section 148.941, subdivision 2(a)(1), and provide grounds for further disciplinary action.

Dated: 6/31/14, 2014

MINNESOTA BOARD OF PSYCHOLOGY

By: Scott A. Fischer, Ph.D., L.P.
SCOTT A. FISCHER, Ph.D., L.P.
Vice-Chair

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF PSYCHOLOGY

In the Matter of the License of
John P. Cronin, Ph.D., L.P.
License # LP 0458

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter was heard on October 28, 2013, at the Office of Administrative Hearings in St. Paul, Minnesota. Simultaneous memoranda were submitted on December 2, 2013. The record closed on December 2, 2013.

Sara P. Boeshans, Assistant Attorney General, represented the Board of Psychology (Board). Mark W. Gehan, Collins, Buckley, Sauntry & Haugh, PLLP, represented Dr. John P. Cronin (Dr. Cronin).

STATEMENT OF THE ISSUES

1. Did Dr. Cronin engage in an impermissible dual or multiple relationship under the facts of this case?
2. If so, are there mitigating equitable considerations?

SUMMARY OF CONCLUSION

Dr. Cronin engaged in a dual relationship, however, there are mitigating equitable considerations that the Board must consider.

Upon the evidence presented and the arguments of counsel, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Dr. Cronin earned a Ph.D. in special education and child psychology in 1980. He then also earned a master's degree in public health in 1983. He was licensed as a school psychologist in 1976 by the Minnesota Department of Education. He was licensed as a psychologist by the Board in approximately 1983, and has been continually licensed since that time. Dr. Cronin has owned and managed the Behavioral Health Clinic for approximately 33 years. The clinic provides comprehensive mental



health services, and typically employs seven or eight people including two licensed psychologists, a biofeedback specialist and support staff.¹

2. At all times relevant herein, Dr. Cronin has been familiar with the rules of the Board prohibiting dual relationships and the purpose of the rule. He understands that a dual relationship can harm the supervisor, the supervisee and the patient or client, due to impaired judgment. He understands that the remedy, when a dual relationship exists, is to fix it when possible by withdrawing from the relationship, finding a replacement, or seeking Board approval if the circumstances require.²

3. Dr. Cronin's daughter, Cassandra Patricia Gomez (Ms. Gomez), completed a master's degree program in psychology at the University of St. Thomas and began employment as a counselor at Dr. Cronin's clinic in April 2008.³ She applied to the Minnesota Board of Behavioral Health and Therapy (BBHT) for licensure as a "Professional Counselor." To become licensed, the BBHT required her to perform 2000 hours of supervised work. Marilyn Mason, Ph.D., L.P., who also worked at Dr. Cronin's clinic, agreed to perform the supervision.⁴

4. Dr. Mason's health did not permit her to continue performing the supervision. She retired in November 2008. Ms. Gomez was unable to find a replacement supervisor.⁵

5. Dr. Cronin thus performed the supervision beginning in November 2008.⁶ On January 12, 2009, Dr. Cronin formally applied to the BBHT to be the supervisor.⁷ The application form included Ms. Gomez's married name as well as her maiden name of Cronin, but did not otherwise highlight that she was Dr. Cronin's daughter.⁸

6. The BBHT then sent an email to Dr. Cronin requesting information about his qualifications to act as a supervisor. Dr. Cronin responded by letter dated February 15, 2009, reflecting extensive education and experience in supervision.⁹

7. On February 23, 2009, the BBHT granted Dr. Cronin's request to act as a supervisor.¹⁰ However, in mid-April 2009, the BBHT became aware of the family relationship and requested that Dr. Cronin submit a request for a supervision variance.¹¹

¹ Testimony of Dr. John Cronin and Exhibit 5.

² Test. of Dr. Cronin.

³ Ex. 9.

⁴ *Id.* and Test. of Dr. Cronin.

⁵ Test. of Dr. Cronin.

⁶ Ex. 7.

⁷ Exs. 4 and 5.

⁸ *Id.*

⁹ Ex. 6.

¹⁰ Ex. 9.

¹¹ *Id.*

8. On April 16, 2009, Dr. Cronin sent a letter to the BBHT stating his request for a supervision variance relating to his daughter. The letter stated that he had already provided supervision of over 500 hours to his daughter since April of 2008, and that it would be an undue hardship to her if she were to lose credit for that time.¹² In his oral testimony, Dr. Cronin stated that his supervision likely began in November 2008 when Dr. Mason retired for health reasons, and that the reference to "April" in the letter was likely a typographical error. November 2008 is the most likely start date of his supervision.¹³

9. On May 8, 2009, the BBHT notified Ms. Gomez that the request for Dr. Cronin to be her supervisor was denied, however, the BBHT did approve 500 hours of supervision that had occurred with Dr. Cronin.¹⁴

10. Thereafter, Ms. Gomez arranged for Dr. Thomas Ahlberg to provide the needed supervision.¹⁵

11. In May 2009, the BBHT notified the Board that Dr. Cronin had supervised his own daughter. On December 2, 2009, the Board served Dr. Cronin with a Notice of Conference alleging an improper dual relationship by Dr. Cronin supervising his daughter. The notice did not state a date for the conference.¹⁶

12. The conference was held on March 19, 2010. The Board offered Dr. Cronin a public reprimand, which Dr. Cronin refused to accept. Over the next two years, the Board repeated this offer and it was rejected each time. Thus, on February 10, 2012, the Board served a Notice of Hearing which brought the matter to the Office of Administrative Hearings. Dr. Cronin contends that the three year delay in bringing this case to a Notice of Hearing was prejudicial and that the proceeding should be dismissed for failure to prosecute under Minn. R. Civ. P. 41.02(a).¹⁷

13. Gary R. Schoener, a licensed psychologist, is an expert in the area of dual relationships. He has been a licensed psychologist in Minnesota since 1974. He is employed as director of the Walk-in Counseling Center and he also does forensic work in psychology. He has extensive experience providing training for psychology licensing candidates and for ongoing training of licensees. The problems inherent in dual relationships are part of all the training programs that he conducts. He has also testified extensively on issues of dual relationships and has written many articles addressing professional ethics in the field of psychology and boundary issues.¹⁸

14. A dual relationship is a professional relationship coupled with some other kind of relationship. There are many concerns raised by this conduct. It could be a

¹² *Id.*

¹³ Test. of Dr. Cronin.

¹⁴ Ex. 9.

¹⁵ *Id.*

¹⁶ Ex. 8.

¹⁷ Orders in OAH file.

¹⁸ Test. of Gary Schoener and Ex. 1.

biased relationship. There could be blind spots to work done by one's own child. The supervision might not be accepted by every board. The supervisee's experience may be discounted. A client might be reluctant to make a complaint to the supervisor. The supervisor might not intervene when necessary.¹⁹

15. A dual relationship may create a conflict of interest that undermines the professional relationship.²⁰

16. A dual relationship may cause a third party to devalue the professional relationship.²¹

17. "Supervision" includes establishing a plan for training, reviewing case materials, evaluating progress in diagnosis and treatment, and evaluating client progress.²²

18. The Minnesota Psychology Practice Act²³ does not define supervision.

19. A supervisor must have the authority to make orders as to how something is to be done.²⁴

20. A supervisor has ultimate responsibility for the work. In contrast, a consultant does not have that responsibility.²⁵

21. "Teaching" is different than "supervision."²⁶

22. A close friend could be a supervisor. That would not likely be considered a dual relationship.²⁷

23. Persons applying to the BBHT for licensure often have difficulty finding someone to supervise their required 2,000 hours of work.²⁸

24. Although Ms. Gomez was applying for licensure before the BBHT, Dr. Cronin would still be bound by the psychologists' code of conduct.²⁹

25. Mr. Schoener opined that Dr. Cronin breached the psychologists' code of conduct by functioning as Ms. Gomez's supervisor.³⁰

¹⁹ Test. of G. Schoener.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Minn. Stat. §§ 148.88 to 148.98.

²⁴ Test. of G. Schoener.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

2011.01.01

26. In situations in which the Board finds that an improper dual relationship occurred, the supervisor's intent is a relevant factor for the Board to consider when determining the appropriate remedy.³¹

27. By supervising his daughter, Dr. Cronin intended to protect the clinic's counseling clients and avoid an interruption of his daughter's training.³²

28. There is no indication that Dr. Cronin exploited his daughter in the supervisory relationship.³³

29. Rules 3.05 and 3.06 of the American Psychological Association Code of Conduct, with 2010 amendments, have similar provisions to the Minnesota code of conduct relating to dual or multiple relationships.³⁴

30. A dual relationship is improper even in the absence of any demonstrable harm.³⁵

31. The standard of care is what a reasonable person would do in the same or similar circumstances.³⁶

32. When Dr. Mason could not continue with supervision, Ms. Gomez and Dr. Cronin took the following steps to find a replacement supervisor:

- A. Dr. Cronin told Ms. Gomez to check on her options.³⁷
- B. Dr. Cronin suggested that Ms. Gomez call her classmates to see who was available to do supervision. Ms. Gomez did make calls but without success to find a replacement supervisor.³⁸
- C. Ms. Gomez asked her masters' program supervisor at the University of St. Thomas for assistance in finding a replacement supervisor, but no potential supervisor was identified.³⁹
- D. Dr. Cronin called Mr. Ayers, the former director at the Walk-in Counseling Center, for assistance in finding a replacement supervisor. No potential supervisor was identified.⁴⁰

³¹ *Id.*

³² Test. of Dr. Cronin.

³³ *Id.*

³⁴ Ex. B.

³⁵ Test. of G. Schoener.

³⁶ *Id.*

³⁷ Test. of Dr. Cronin.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

E. Dr. Cronin suggested to Ms. Gomez that she seek permission from the BBHT for him to be her supervisor on an interim basis. Ms. Gomez made that inquiry, obtained the necessary BBHT forms, and applied for permission to have Dr. Cronin serve as her supervisor.⁴¹

F. Dr. Cronin reviewed the rules of the BBHT, the Board, and the American Psychological Association.⁴²

G. Dr. Cronin obtained opinions from two attorneys who did not think it was a problem for him to be the supervisor.⁴³

33. Dr. Cronin did not want to supervise his daughter.⁴⁴

34. Dr. Cronin did not feel that his relationship with his daughter would impact his ability to be an objective supervisor.⁴⁵

35. After the BBHT denied Ms. Gomez's request that Dr. Cronin be permitted to serve as her supervisor, she arranged for Dr. Thomas Ahlberg to serve as her supervisor.⁴⁶

36. In March 2009, Dr. Cronin instructed his office manager, Carole Sax, to contact the Board to determine the Board's position on his acting as the supervisor. Ms. Sax was told that she needed to talk to Pauline Singleton and left a message. Ms. Singleton did not return the call, and Ms. Sax did not follow up on the call.⁴⁷

37. In September 1995, Dr. Cronin signed a stipulation and consent order providing for a conditional license for failing to supervise employees or independent contractors in the administration and scoring of psychological tests, and for engaging in a dual relationship with a client. The dual relationship involved his providing therapeutic service to a friend who was also a professional colleague.⁴⁸ The conditional license was then made unconditional in January 1998.⁴⁹

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Test. of Carole Sax.

⁴⁸ Ex. 2.

⁴⁹ Ex. 3.

CONCLUSIONS OF LAW

1. The Board and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 148.905, subd. 1(2), 214.103, subds. 6, 7, and 14.50.
2. The Board gave proper and timely notice of the hearing.
3. The Board has complied with all relevant substantive and procedural requirements of law and rule.
4. The "Minnesota Psychology Practice Act" is found at Minn. Stat. §§ 148.88 to 148.98.
5. Minnesota Statutes section 148.90 establishes a Board of Psychology "with powers and duties described in this section."⁵⁰
6. Minnesota Statutes section 148.905 requires the Board to adopt and enforce rules to regulate the professional conduct of psychologists. Dr. Cronin is subject to the enforcement powers of the Board.
7. Minnesota Statutes section 148.925 defines what supervision means and the qualifications required of a supervisor of a person applying for licensure as a "licensed psychologist." Ms. Gomez was not applying to be a licensed psychologist. The plain language of this section does not apply to the facts of this case, and the supervision of Ms. Gomez provided by Dr. Cronin was not the type of supervision referred to in this section.
8. Minnesota Statutes section 148.89, subdivision 5(6), provides that the practice of psychology includes supervision, regardless of whether the supervisor receives payment for the services. The word "supervision" is ambiguous, because it does not describe who or what is supervised.⁵¹ That ambiguity is clarified by reference to Minn. Stat. § 148.89, subd. 2a, which includes as a "client" a person who receives services from a person regulated by chapter 148.⁵²
9. Ms. Gomez was a "client" of Dr. Cronin, and he provided supervision to her under Minn. Stat. § 148.89, subd. 5(6).
10. Minnesota Statutes section 148B.51 establishes the BBHT. The BBHT is responsible for the licensing and supervision of licensed professional counselors (and

⁵⁰ The reference to "this section" is intended to mean the entire chapter 148. Otherwise the reference to "section" would make no sense, because there are no powers and duties described in section 148.90.

⁵¹ One type of supervision specifically referenced at Minn. Stat. § 148.908, subd. 1, is the supervision of a "licensed psychological practitioner" employed by the psychologist or by an agency which the psychologist is employed at or has contracted with to provide supervision. This is not the kind of supervision Dr. Cronin was providing to Ms. Gomez; she was not a licensed psychological practitioner.

⁵² See also Minn. R. 7200.0100, subp. 2a

now licensed professional clinical counselors). Ms. Gomez applied to the BBHT to become a licensed professional counselor and thus was required to meet the supervision requirements of the BBHT. Dr. Cronin was qualified by education, experience and licensing to be an approved supervisor under Minn. Stat. § 148B.50, subd. 2.

11. Minnesota Statutes section 148.941, subdivisions 2(a)(1) and 2(a)(3), permit the Board to impose disciplinary action against a licensee, who violates a statute or rule that the Board is empowered to enforce, if the Board determines the violation by a preponderance of the evidence. The Board may also impose discipline if the licensee has engaged in unprofessional conduct which has the potential for causing harm to the public. Injury does not have to be established.

12. Minnesota Rules chapter 7200 (2007) apply to the 2008-2009 conduct in this case. A Statement of Need and Reasonableness (SONAR) finalized in July 2012 may nonetheless be helpful in addressing equitable considerations.

13. Minnesota Rules part 7500.4500, subpart 1 (2007) provides that the Rules of Conduct constitute the standards against which the conduct of psychologists are measured. Minnesota Rules part 7200.0100, subpart 5a provides that a dual relationship includes a relationship of a psychologist that is both professional and familial. Subparts 5b and 5c define offspring to be included as part of a familial relationship.

14. Minnesota Rules part 7200.4810, subpart 1, prohibits provision of services to a client when the psychologist's objectivity is impaired. Subpart 2 provides that objectivity is impaired in a dual relationship with a client.

15. Dr. Cronin was in a dual or multiple relationship with Ms. Gomez in violation of Minn. R. 7200.4810 (2007) when he supervised her with respect to her application to become a licensed professional counselor.

16. The attached memorandum is incorporated herein.

Based upon the foregoing Conclusions of Law the Administrative Law Judge makes the following:

RECOMMENDATION

Dr. Cronin was involved in a dual relationship when he supervised his daughter, but there are mitigating circumstances that reasonably require equitable consideration.

Dated: March 24, 2014

Barbara Case for

THOMAS W. WEXLER
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Board shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Board must consider the exceptions in making a final decision. Parties should contact Angelina M. Barnes, Executive Director, Board of Psychology, 2829 University Avenue SE, Suite 320, Minneapolis, MN 55414, telephone 612-548-2100, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and Administrative Law Judge of the date the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Prejudice by delay

The Board has been dilatory in pursuit of this matter. Generally, however, the defense of laches is not available against the state when acting in its sovereign capacity, unless there is a showing of prejudice.⁵³ Dr. Cronin contends there is prejudice

⁵³ *Leisure Hills v. Minnesota Department of Human Services*, 480 N.W. 2d 149 (Minn. Ct. App. 1992).

with respect to the attorney's fees he has incurred. He has repeatedly appeared at conferences before the Board.⁵⁴ The Board repeatedly made the same offer of a public reprimand. Dr. Cronin repeatedly rejected that offer. Minnesota Statutes section 148.941, subdivision 7, requires Board proceedings to be initiated within seven years from some portion of the alleged misconduct. There does not appear to be any procedure or time limits that must follow a Notice of Conference, other than the authorities cited above. The repeated scheduling of conferences by the Board, and their repeated offers of a public reprimand, are likely indicative of their desire to resolve the case at a level of discipline which they consistently felt was appropriate. Dr. Cronin has shown some prejudice by the repeated scheduling of conferences, because he is required to cooperate with the process each time or else face disciplinary action for non-cooperation.⁵⁵ Though the Board's repeated scheduling of conferences appears to be inappropriate, there is not a showing of prejudice sufficient to cause a dismissal of the proceeding.

Teaching versus supervision

Minnesota Rules part 7200.4810 was amended in 2012 in part to clarify the rule that was previously in effect during 2008-2009, the period during which Dr. Cronin is alleged to have engaged in an improper dual relationship while supervising his daughter. Dr. Cronin contends that his supervisory functions were "teaching" under new Minn. R. 7200.4810, subp. 1.A., which expressly permits teaching if the relationship cannot reasonably be avoided. However, subpart 1.B refers to both supervision and teaching, which reasonably indicates that they have different meanings. Teaching is not otherwise defined in the statutes or the rules, but most likely refers to a relationship that is not as personal as a supervisory relationship.

Equitable considerations

The principle thrust of Dr. Cronin's contentions are equitable.

1. That a proper supervisory relationship was interrupted by illness of the supervisor.
2. That he and his daughter were unable to find a replacement supervisor after good faith efforts to do so.
3. That qualified and affordable supervisors are difficult to find.
4. That he realized there was some question about his acting as a supervisor and sought BBHT approval and legal advice.
5. That unless he filled the void there would be unfair hardship to his daughter's clients, who were also clinic clients, and to his daughter.
6. As the owner of the clinic, he would have supervisory responsibilities over his daughter anyway.

⁵⁴ Test. of Dr. Cronin.

⁵⁵ Minn. Stat. § 148.941, subd. 2(2) and (4).

Dr. Cronin's daughter had commenced a valid supervisory relationship with Dr. Mason and had ongoing counseling relationships with office clients which would be interrupted if she could not arrange for supervision. She would be harmed and the clients might be harmed. She and Dr. Cronin made an effort to find another qualified supervisor. Time was of the essence and they were unsuccessful. It was a difficult situation which they proposed to resolve by having Dr. Cronin fill the need.

Dual relationships should be avoided, but under the facts of this case there is no evidence that either Ms. Gomez or her clients were actually harmed or complained.

There was reasonable cause for Dr. Cronin to initially become involved in this dual, or multiple relationship, due to the unavailability of the previous supervisor, the unavailability of other supervisors and the unfair hardship that would be caused to Ms. Gomez and the office clients if she could not continue with her counseling and with her licensing application.

Two boards had jurisdiction with respect to Dr. Cronin acting as the supervisor for Ms. Gomez: the Board and the BBHT. Dr. Cronin promptly sought approval of his function as Ms. Gomez's supervisor from the BBHT. His supervision likely began in November 2008 and he applied for approval in December 2008. The timing of that application was reasonable. It was reasonable for Dr. Cronin to continue to function as the supervisor while that application was pending. The application was approved in February 2009, and it was thus reasonable for Dr. Cronin to believe that he could continue in that capacity. The BBHT reversed its decision in April 2009, and Ms. Gomez was then successful in locating another supervisor.

Mr. Schoener testified that the standard of care includes the concept of what a reasonable person (in this case a reasonable psychologist who was also the clinic owner with supervisory responsibility for the clinic business) would have done in the same or similar circumstances. Dr. Cronin sought other supervisors, and when that was unsuccessful, he sought BBHT approval and in the interim adopted a course of action that minimized the harm to the clinic clients and to his daughter's licensing process.

Mr. Schoener also agrees that it is sometimes difficult to find a qualified supervisor. He also agrees that there is no evidence that Dr. Cronin exploited his daughter. He further testified that a close friend could probably be a supervisor under the standards of practice. Thus there appear to be some gray areas involved in the prohibition against dual relationships. In the present case, the facts indicate a need to balance the potential harm, particularly to the counseling clients, that may have occurred if Dr. Cronin had not provided supervision.

The BBHT apparently recognized some of these equities and granted credit for 500 hours of Dr. Cronin's supervisory time.

Conclusion

The Board has established by a preponderance of the evidence that Dr. Cronin improperly engaged in a dual relationship. The evidence also establishes that there are valid significant mitigating circumstances which the Board must consider when deciding what discipline, if any, to impose.

T. W. W.