BEFORE THE MINNESOTA

BOARD OF PSYCHOLOGY

In the Matter of
Jeffrey L. Olson, Psy.D., L.P.
License No. LP4532

FINDINGS OF FACT, CONCLUSIONS, FINAL ORDER, AND MEMORANDUM

The above-entitled matter came on before Administrative Law Judge ("ALJ") Barbara L. Neilson at the request of the Minnesota Board of Psychology ("Board") Complaint Resolution Committee ("Committee"). The matter was initiated pursuant to a Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") which was issued by the Committee on June 5, 2014. On October 9, 2015, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendation ("ALJ's Report"), recommending the Board take disciplinary action against Respondent's license to practice psychology in the State of Minnesota. Attached and incorporated is a copy of the ALJ's Report, amended with the Exceptions approved by the Board.

The Board convened to consider this matter, including the Committee's exceptions, on November 20, 2015, at University Park Plaza, 2829 University Avenue S.E., Suite 320, Minneapolis, Minnesota. Hans A. Anderson, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Thomas H. Priebe, Esq., appeared and presented oral argument on behalf of Jeffrey L. Olson, Psy.D., L.P. ("Respondent"). Board members Scott A. Fischer, Ph.D., L.P., and Raja David, Psy.D., L.P., did not participate in deliberations and did not vote in the matter. Board staff that assisted the Committee did not participate in the deliberations. Jennifer Coates, Assistant Attorney General, was present as legal advisor to the Board. After careful and thorough deliberation, the Board granted both of the Committee's exceptions and also made two additional modifications to the ALJ's Report. These modifications are described and explained in the memorandum portion of this Order.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the Findings of Fact set forth in the ALJ's Report, except as described in its memorandum. Accordingly, based upon its review of the evidence in the hearing record and after careful and thorough deliberation, the Board makes the following Findings of Fact:

1. Respondent received a Bachelor of Arts degree in psychology from the University of Minnesota-Morris and a Ph.D. in clinical psychology in 2003 from Minnesota School of Professional Psychology (now known as Argosy University). His coursework included classes on professional boundaries. Respondent has been licensed by the Board to practice in the state since 2004.

2. Respondent currently is engaged in the private practice of clinical psychology through his business, Lake Superior Psychological Services, Inc., which has offices in Hermantown (a suburb of Duluth) and Nashwauk (a town with a population of approximately 1,100 people). He is the only licensed psychologist involved in Lake Superior Psychological Services. At the time of the hearing, Respondent estimated that he has approximately 100-120 clients, many of whom have been diagnosed with serious and persistent mental illness. He has been seeing some of his clients since 2001.

3. In May of 2012, Respondent was employed by Northland Counseling Center in Grand Rapids, Minnesota. At that time, the Client (an adult female) was seeing another psychologist on an out-patient basis for counseling. She also saw a separate medical provider.

4. At the request of the Client's medical provider, Respondent agreed to conduct psychological testing of the Client. On May 30, 2012, Respondent met with the Client and administered objective psychological tests. Respondent later called the Client to schedule a follow-up appointment. During the conversation, the Client told Respondent that she felt there

was a mutual connection between them and they had a lot in common, and she would like to be Respondent's friend if it were possible. On June 12, 2012, Respondent met with the Client to discuss the results of the testing.

5. The May 30 and June 12, 2012, sessions were the only two sessions held between Respondent and the Client, and their doctor-patient relationship ended after the June 12, 2012, appointment. During those sessions, and the intervening telephone call, Respondent conducted himself in a professional manner. The only physical contact between Respondent and the Client was a handshake.

6. Because the Client's regular psychologist's office was located across the hall from Respondent's office, she and Respondent frequently engaged in conversation after her appointments with her psychologist.

7. In approximately July of 2012, the Client sent a text message to Respondent inviting him to an informal get-together at a friend's house in Duluth. She said that several of her friends who were involved in the Duluth theatre community would also be present. Respondent had an interest in theatre, and accepted the invitation.

8. At the time of the Client's text message, both Respondent and the Client were involved in relationships with other people. Respondent did not initially intend to start a romantic relationship with the Client.

9. Although the relationship between the Client and Respondent began as a friendship, as time went on they developed feelings for each other. In August or September 2012, Respondent and the Client's relationship became sexual.

10. In approximately September 2012, Respondent told the Client that he could lose his license if they became involved romantically but she was worth the risk.

11. In October 2012, Respondent invited the Client to move in with him and she did so.

12. On November 1, 2012, Respondent opened Lake Superior Psychological Services, Inc. The Client was given a 49% ownership interest in the business. Respondent provided psychological services and the Client served as the office manager.

13. The relationship between Respondent and the Client was mutual and caring.

14. At some point between November 2012 and November 2013, the personal relationship between Respondent and the Client began to deteriorate, and the Client became involved in a relationship with another person.

15. After their romantic relationship ended, Respondent and the Client attempted to continue operating Lake Superior Psychological Services together. However, money was tight and their business was not at the point they had hoped it would be. Things became very tense between them. Emotions ran high, they were both stressed out, and they ended up in a physical fight.

16. In November 2013, the Client obtained an order for protection against Respondent. In December 2013, Respondent violated the order for protection by contacting the Client. Respondent pled guilty to Misdemeanor Domestic Abuse-Violate Order for Protection on May 23, 2014.

17. As the relationship between Respondent and the Client deteriorated, a report was made to the Board concerning Respondent.

18. The Client later contacted Respondent's counsel's office to ask if there was anything she could do to help with the Order for Protection. She also contacted the Board and asked that the Board not discipline Respondent.

19. The Client does not regret her relationship with Respondent, but she does regret the way it ended. She also wishes that a report would never have been made to the Board. She does not want the Board to punish Respondent because of her.

20. Respondent did not treat the Client or prescribe any medication for her during the course of their relationship. The Client never considered Respondent to be her psychologist.

21. The Client has never observed Respondent act in an unprofessional manner as a psychologist. She does not believe that Respondent poses a risk to others or that he will ever again enter into a personal or romantic relationship with a client. Based upon her observations of Respondent at Lake Superior Psychological Services, she believes Respondent is a very caring psychologist who has his patients' best interests in mind.

CONCLUSIONS

The Board has reviewed the record of this proceeding and hereby accepts the Conclusions of Law set forth in the ALJ's Report, except as described in the attached memorandum. Accordingly, the Board makes the following Conclusions:

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes sections 148.905, subd. 1(2), 148.941, subd. 1, 214.10, and 214.103.

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

3. The Committee has proven by a preponderance of the evidence that Respondent engaged in a sexual relationship with a former client, in violation of Minn. R. 7200.4900, subp. 8 (2012), Minn. Stat. § 148.941, subd. 2(a)(1) (2012); and Minn. Stat. § 148.941, subd. 2(a)(3) (2012).

4. Disciplinary action is warranted in this matter due to Respondent's violation of Minn. R. 7200.4900, subp. 8 (2012), which falls within the grounds specified in Minn. Stat. § 148.941, subd. 2(a)(1) and (3) (2012), for the imposition of disciplinary action.

5. The Board utilized its experience and expertise in determining whether mitigating and/or aggravating factors exist in this matter for determining the type and severity of discipline to impose.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice psychology in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time.

2. IT IS FURTHER ORDERED that during the period of suspension Respondent shall not engage in any conduct that constitutes the practice of psychology as defined in Minnesota Statutes section 148.89, subdivision 5, and shall not imply to any person by words or conduct that Respondent is authorized to practice psychology in the State of Minnesota.

3. IT IS FURTHER ORDERED that Respondent may petition the Board to have the suspended status removed from his license following **36 MONTHS** from the date of this Order. Respondent's license may be reinstated, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that he is capable of conducting himself in a fit and competent manner in the practice of psychology. At the time of Respondent's petition, Respondent may be ordered to meet with the Committee to discuss his petition. In petitioning for removal of the

suspension, Respondent shall comply with or provide the Board with, at a minimum, the following:

a. A response to each separate fact contained in the Findings of Fact.

b. Evidence of compliance with the provisions of this Order. As part of the proof of compliance, Respondent shall submit the following in support of his petition:

1) **Self-Report.** Licensee shall submit to the Committee a report from Licensee himself. The report shall be submitted at the time Licensee petitions for reinstatement of his license. The report shall provide and address:

i. How Licensee believes he came to engage in a sexual relationship with a former client, how he could have prevented the violation, and how he plans to avoid similar violations in his future practice.

ii. Licensee's physical and mental health status, and if applicable, any treatment plan, medications, and compliance with treatment;

iii. Licensee's future plans in the practice of psychology and the steps he has taken to prepare himself to return to practice; and

iv. Any other information Licensee believes would assist the Board in its ultimate review of this matter.

2) **Psychological Evaluation.** Licensee shall obtain a psychological evaluation no more than 90 days prior to petitioning for reinstatement of his license. The evaluation shall be performed by a licensed psychologist who has been approved in advance by the Committee. Licensee is responsible for the cost of the evaluation; however, the results of the evaluation shall be sent directly to the Board office and shall meet the following requirements:

i) Verification the evaluator has received a copy of this Order and the information submitted by the Board;

ii) A summary of the results of the evaluation and recommendations for treatment if necessary; and

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

3) **Compliance With Evaluator's Recommendations.** Respondent shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

4) **Boundaries Course**. No more than 60 days prior to petitioning, Licensee must complete a one-to-one, individualized training course of no less than ten (10) hours on professional boundaries taught by an experienced licensed psychologist. The course must address the following topics:

- Boundaries in the practice of psychology and other professional relationships;
- Identifying boundaries issues in practice;
- Dealing with boundaries issues when they arise;
- Identifying when a client-psychologist relationship has been initiated; and
- Any other topic deemed relevant by the instructor.

The Committee will provide Licensee with a list of pre-approved courses or course instructors for purposes of satisfying this requirement. If the Committee and Licensee concur that there is sufficient reason for Licensee not to utilize the pre-approved options, Licensee 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. Licensee shall also submit the course instructor's *curriculum vitae* to

the Committee for its pre-approval of the instructor. All fees for the course must be paid by Licensee. To show satisfactory completion of the Course, Licensee must submit the following:

i) *Report on Boundaries Course from Licensee.* Licensee must submit a written report to the Committee which provides and/or addresses the following:

a) The dates Licensee began and completed the Course;

b) A brief statement of the topics covered in the Course;

c) A detailed discussion of what Licensee has learned from the Course, including Licensee's comprehension and knowledge of the topics reviewed in the Course as well as the various ethical issues encountered in practice, and how this Course will affect Licensee's practice in the future;

d) A detailed discussion of the violations that occurred, including how Licensee came to violate her professional boundaries, the harm that may have occurred to Licensee's clients as a result of Licensee's conduct, and how Licensee now believes the violations could have been averted;

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

f) Licensee's reasons for believing she is capable of conducting herself in a fit, competent, and ethical manner in the practice of psychology; and

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

ii) *Report on Boundaries Course from Instructor.* Licensee must cause to be submitted to the Committee a report from the instructor of the Course. This report must address:

a) The extent of Licensee's participation in the Course; and

b) The instructor's assessment of Licensee's knowledge obtained from the Course, comprehension of the material issues, and opinion as to Licensee's fitness to engage in the practice of psychology.

5) **Waivers.** If requested by the Board at any time during the petition process, Respondent shall complete and sign health and/or any medical or treatment records waivers supplied by the Board to allow representatives of the Board to discuss Respondent's case with and to obtain written evaluations and reports and copies of all of Respondent's health or mental health records from his physician, mental health treatment professional/therapist, or others from whom Respondent has sought or obtained treatment, support, or assistance during the pendency of this Order.

6) **Additional Information**. Licensee shall provide the Committee with any additional information relevant to Licensee's petition reasonably requested by the Committee.

4. IT IS FURTHER ORDERED that Respondent shall meet all reregistration requirements in effect at the time of his petition, including but not limited to completing the appropriate application, paying the requisite fees, and completing any necessary continuing education requirements.

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

6. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement pursuant to paragraph 3 above, take any of the following actions:

a. Issue Respondent an unconditional license;

b. Issue Respondent a license with limitations upon the scope of Respondent's practice and/or with conditions for Respondent's practice; or

c. Continue the suspension of Respondent's license upon his failure to meet the burden of proof.

Dated: 12/18/2015

MINNESOTA BOARD OF PSYCHOLOGY

PRESIDING OFFICER

MEMORANDUM

On October 12, 2015, the Administrative Law Judge filed and served Findings of Fact, Conclusions of Law, and Recommendation in the above-referenced matter ("ALJ Report"). On November 13, 2015, the Minnesota Board of Psychology ("Board") Complaint Resolution Committee ("Committee") filed two exceptions to the ALJ Report. On November 20, 2015, the Board convened and deliberated on this matter and the Committee's exceptions. The Board granted both of the Committee's exceptions and also made two additional modifications to the ALJ's Report. These modifications are described below along with the Board's reasons for making the modifications.

I. MITIGATING AND AGGRAVATING FACTORS

The Board granted the Committee's exception seeking to delete reference to mitigating factors. Specifically, the Board rejected the ALJ's reference to "mitigating" factors in the ALJ's Report. Pursuant to Minnesota Statutes section 14.62, subdivision 1, the Board provides the following reasons for rejecting the ALJ's reference to "mitigating" factors:

The Board, and not the ALJ, has the authority to determine whether a fact mitigates or aggravates a licensee's violation of the psychology practice act in determining discipline. *See* Minn. Stat. § 148.941, subd. 2(b) (granting the Board authority to take disciplinary action against psychologists); Minn. Stat. § 14.62, subd. 2a (granting the administrative law judge authority to determine disciplinary action ***only*** "[w]hen the agency fails to act within 90 days after the record of the proceeding closes under section 14.61."); and *Padilla v. Minn. State Bd. of Med. Exam'rs*, 382 N.W.2d 876, 887 (Minn. Ct. App. 1986) ("The legislature has conferred upon [the Board], and not upon the ALJ, a discretion to determine the type of discipline to impose."). Therefore, the Board utilized its own experience and expertise in determining whether individual facts in this matter mitigate or aggravate Respondent's violation of Minn. R. 7200.4900, subp. 8 (2012).

II. IDENTIFYING THE COMPLAINANT

The Board granted the Committee's exception seeking redaction of the identity of the complainants. Specifically, the Board modified the ALJ's Report by redacting references to the identity of the complainant[s] in this matter. The Board then used language in its Final Order that does not identify the complainant but that still illustrates the findings of the ALJ. Pursuant to Minnesota Statutes section 14.62, subdivision 1, the Board provides the following reasons for modifying the ALJ's report to de-identify the complainant[s] in this matter:

Under Minnesota Statutes section 13.41, "the identity of complainants who have made reports concerning licensees" is classified as private data. *See* Minn. Stat. § 13.41, subd. 2(a) (classifying licensing data). Private data maintained by government agencies are not accessible to the public. *See* Minn. Stat. § 13.02, subd. 12 (defining private data on individuals). The Board was able to redact out references to the identity of the complainant in the ALJ's Report

and changed to passive voice these references in its Final Order without compromising the findings of the ALJ.

III. REJECTION OF FINDING 21

The Board rejected Finding 21 in the ALJ's Report. Pursuant to Minnesota Statutes section 14.62, subdivision 1, the Board provides the following reasons for its rejection of Finding 21:

Finding 21 of the ALJ's Report provides "The Respondent never used his position as a psychologist to exert control or power over Client during the course of their relationship. Neither of them bears any ill will toward the other." (citations omitted) ALJ Report at 5.

The Board may uses its experience, technical competence and specialized knowledge in evaluation of evidence in the hearing record. Minn. Stat. § 14.60, subd. 4 (2014). The Board rejects this finding based on its experience and expertise concerning the practice of psychology. In the practice of psychology, there is an inherent power differential in a patient-therapist relationship. In other words, the very nature of the therapist-client relationship creates a power dynamic wherein the therapist exercises power over the client. Due to the inherent nature of this power differential, a therapist always holds power over the client, whether obvious or circumspect. Contrary to Finding 21, it cannot be definitively stated that Respondent did not use his power to the determinant of the Client. On the contrary, the temporal proximity of the intimate relationship with the termination of care, the necessity for the client to obtain an Order for Protection against Respondent, Respondent's violation of the Order for Protection, and the contradictory statements of the client all suggest that Respondent wielded significant power over the client. *See* (Complaint Resolution Committee's Notice of Motion and Motion for Partial Summary Disposition; Memorandum of Law in Support of Committee's Motion for Partial Summary Disposition; Affidavit of Hans Anderson in Support of Committee's Motion for

Partial Summary Disposition; and Affidavit of Service by mail, dated Mary 12, 2015). For these reasons, the Board rejects Finding 21 of the ALJ Report.

IV. REJECTION OF FINDING 23

The Board also rejected Finding 23 in the ALJ's Report. Pursuant to Minnesota Statutes section 14.62, subdivision 1, the Board provides the following reasons for rejecting Finding 23:

Finding 23 of the ALJ's Report provides

> A prolonged suspension of the Respondent's license would likely cause harm to the Respondent's patients, many of whom suffer from serious and persistent mental illness. He is the only psychologist many of his clients have ever seen. A prolonged suspension also may cause the Respondent to lose his business.

As a threshold matter, Finding 23 appears to be a factor that the ALJ identifies as mitigating. As articulated above, the Board, and not the ALJ, has the authority to determine whether a fact mitigates or aggravates a licensee's violation of the psychology practice act in determining discipline. Therefore, the Board will use its own experience and expertise to determine which factors should be considered in determining what disciplinary action is appropriate in this matter.

Second, the Board's mission is to protect the public. *See* Minn. Stat. § 148.881 (2014). When determining disciplinary action, it is necessary that the Board consider the public, health, safety, and welfare of Minnesota's citizens. *See Id.* The function of the Board is also to consider the deterrent effect the discipline it imposes has upon other licensees. *See Padilla*, 382 N.W.2d at 887. The Board believes that patients who suffer from serious and persistent mental illness are the most vulnerable patients being served by the mental health community. Care of these patients absolutely requires a therapist that has a solid understanding and practice of maintaining good boundaries. The Respondent in this matter has not demonstrated this requirement, nor does the record demonstrate that he has remediated this deficiency to the satisfaction of the Board.

The Board believes that Respondent's conduct has jeopardized the public safety and requires that he not provide mental health services during the duration of his suspension. The alleged harm that may befall licensee and his patients was caused by the licensee himself and takes a back seat to the Board's need to protect the public.

Dated: 12/18/2015

MINNESOTA BOARD OF PSYCHOLOGY

PRESIDING OFFICER

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

In the Matter of
Jeffrey L. Olson, Psy. D., L.P.
License No.: LP4532

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

This matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice and Order for Hearing dated June 3, 2014.

On July 15, 2015, the Administrative Law Judge issued an Order recommending that the Motion for Partial Summary Disposition filed by the Complaint Resolution Committee of the Board of Psychology (Committee) be granted as to the violations set forth in Counts 1, 2, and 5 of the Notice and Order for Hearing. By letter dated July 31, 2015, the Committee provided notice that it had decided to dismiss Counts 3 and 4 set forth in the Notice and Order for Hearing as well as Allegations 4, 6, 7, and 8 and the disputed portions of Allegations 2 and 3. A redlined copy of the Notice and Order for Hearing showing the allegations and counts that have been dismissed by the Committee is attached hereto as Attachment A.

On August 14, 2015, this matter came on for hearing at the Office of Administrative Hearings in St. Paul to afford the Respondent an opportunity to provide additional evidence regarding any mitigating circumstances that he believes the Board of Psychology should consider in connection with Counts 1, 2, and 5 in this matter.

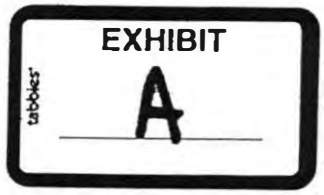
Hans A. Anderson, Assistant Attorney General, appeared on behalf of the Committee. Thomas H. Priebe, Villaume & Schiek, P.A., appeared on behalf of Jeffrey L. Olson, Psy.D., L.P. (Respondent).

STATEMENT OF ISSUE

In connection with its review of the Recommended Order of the Administrative Law Judge Granting Partial Summary Disposition in this matter, are there any mitigating circumstances that may be relevant to the Board's consideration of what, if any, discipline should be imposed against the Respondent?

SUMMARY OF RECOMMENDATION

The Respondent has admitted that he engaged in conduct that violated a rule adopted by the Board, and the Board has shown that it has grounds to impose disciplinary action against the Respondent pursuant to Minn. Stat. § 148.941,



subd. 2(a)(1) and (3) (2012). The Administrative Law Judge previously recommended that the Committee's Motion for Partial Summary Disposition be granted as to the violations set forth in Counts 1, 2, and 5 of the original Notice and Order for Hearing.

The specific type and severity of discipline to be imposed will be determined by the members of the Board based upon their expertise. The Respondent demonstrated at the hearing that there are several [redacted] factors that the Board may wish to consider in determining what, if any, discipline is appropriate in this case. The Administrative Law Judge recommends that, after reviewing the record as a whole, the Board take reasonable and appropriate disciplinary action against the Respondent.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent received a Bachelor of Arts degree in psychology from the University of Minnesota-Morris and a Ph.D. in clinical psychology in 2003 from Minnesota School of Professional Psychology (now known as Argosy University). His coursework included classes on professional boundaries. The Respondent has been licensed by the Minnesota Board of Psychology (Board) to practice in the state since 2004.[1]

2. The Respondent currently is engaged in the private practice of clinical psychology through his business, Lake Superior Psychological Services, Inc., which has offices in Hermantown (a suburb of Duluth) and Nashwauk (a town with a population of approximately 1,100 people). He is the only licensed psychologist involved in Lake Superior Psychological Services. At the time of the hearing, the Respondent estimated that he has approximately 100-120 clients, many of whom have been diagnosed with serious and persistent mental illness. He has been seeing some of his clients since 2001.[2]

3. In May of 2012, the Respondent was employed by Northland Counseling Center in Grand Rapids, Minnesota. At that time, the Client (an adult female) was seeing another psychologist on an out-patient basis for counseling. She also saw a separate medical provider.[3]

4. At the request of the Client's medical provider, the Respondent agreed to conduct psychological testing of the Client. On May 30, 2012, the Respondent met with the Client and administered objective psychological tests.[4] The Respondent later called the Client to schedule a follow-up appointment. During the conversation, the Client told the Respondent that she felt there was a mutual connection between them and they had

[1] Testimony of Jeffrey Olson.
[2] Test. of the Client; Test. of Dr. Olson.
[3] *Id.*
[4] *Id.*

a lot in common, and she would like to be the Respondent's friend if it were possible.[5] On June 12, 2012, the Respondent met with the Client to discuss the results of the testing.[6]

5. The May 30 and June 12, 2012, sessions were the only two sessions held between the Respondent and the Client, and their doctor-patient relationship ended after the June 12, 2012, appointment.[7] During those sessions, and the intervening telephone call, the Respondent conducted himself in a professional manner. The only physical contact between the Respondent and Client was a handshake.[8]

6. Because the Client's regular psychologist's office was located across the hall from the Respondent's office, she and the Respondent frequently engaged in conversation after her appointments with her psychologist.[9]

7. In approximately July of 2012, the Client sent a text message to the Respondent inviting him to an informal get-together at a friend's house in Duluth.[10] She said that several of her friends who were involved in the Duluth theatre community would also be present. The Respondent had an interest in theatre, and accepted the invitation.[11]

8. At the time of the Client's text message, both the Respondent and the Client were involved in relationships with other people. The Respondent did not initially intend to start a romantic relationship with the Client.[12]

9. Although the relationship between the Client and the Respondent began as a friendship, as time went on they developed feelings for each other. In August or September 2012, the Respondent and the Client's relationship became sexual.[13]

10. In approximately September 2012, the Respondent told the Client that he could lose his license if they became involved romantically but she was worth the risk.[14]

11. In October 2012, the Respondent invited the Client to move in with him and she did so.[15]

12. On November 1, 2012, the Respondent opened Lake Superior Psychological Services, Inc. The Client was given a 49% ownership interest in the

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[5] Test. of the Client.
[6] Test. of Dr. Olson; Test. of the Client.
[7] *Id.*
[8] Test. of the Client.
[9] Test. of the Client; Test. of Dr. Olson.
[10] *Id.*
[11] Test. of Dr. Olson.
[12] *Id.*
[13] Test. of Dr. Olson; Test. of the Client.
[14] Test. of Dr. Olson.
[15] *Id.*

business. The Respondent provided psychological services and the Client served as the office manager.[16]

13. The relationship between the Respondent and the Client was mutual and caring.[17]

14. At some point between November 2012 and November 2013, the personal relationship between the Respondent and the Client began to deteriorate, and the Client became involved in a relationship with another person.[18]

15. After their romantic relationship ended, the Respondent and the Client attempted to continue operating Lake Superior Psychological Services together. However, money was tight and their business was not at the point they had hoped it would be. Things became very tense between them. Emotions ran high, they were both stressed out, and they ended up in a physical fight.[19]

16. In November 2013, the Client obtained an order for protection against the Respondent. In December 2013, the Respondent violated the order for protection by contacting the Client. The Respondent pled guilty to Misdemeanor Domestic Abuse-Violate Order for Protection on May 23, 2014.[20]

17. As the relationship between the Respondent and the Client deteriorated, a report was made to the Board concerning the Respondent.[21]

18. The Client later contacted the Respondent's counsel's office to ask if there was anything she could do to help with the Order for Protection. She also contacted the Board and asked that the Board not discipline the Respondent.[22]

19. The Client does not regret her relationship with the Respondent, but she does regret the way it ended. She also wishes that their relationship would never have been reported to the Board. She does not want the Board to punish the Respondent because of her.[23]

20. The Respondent did not treat the Client or prescribe any medication for her during the course of their relationship.[24] The Client never considered the Respondent to be her psychologist.[25]

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[16] Test. of Dr. Olson; Test. of the Client.
[17] *Id.*
[18] Test. of Dr. Olson.
[19] Test. of the Client.
[20] Test. of Dr. Olson; Test. of the Client.
[21] Test. of the Client.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

21. The Respondent never used his position as a psychologist to exert control or power over Client during the course of their relationship. Neither of them bears any ill will toward the other.[26]

22. The Client has never observed the Respondent act in an unprofessional manner as a psychologist. She does not believe that the Respondent poses a risk to others or that he will ever again enter into a personal or romantic relationship with a client. Based upon her observations of the Respondent at Lake Superior Psychological Services, she believes the Respondent is a very caring psychologist who has his patients' best interests in mind.

23. A prolonged suspension of the Respondent's license would likely cause harm to the Respondent's patients, many of whom suffer from serious and persistent mental illness. He is the only psychologist many of his clients have ever seen. A prolonged suspension also may cause the Respondent to lose his business.[27]

Procedural History

24. On June 5, 2014, the Committee issued a Notice for Hearing initiating the present contested case proceeding against the Respondent. Five counts were identified by the Committee in the Notice of Hearing as providing grounds for the imposition of disciplinary action against the Respondent:

> (1) Violating a statute, rule, or order that the Board issued or is empowered to enforce, in violation of Minn. Stat. §148.941, subd. 2(a)(1) (2012);
>
> (2) Engaging in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, without actual injury having to be established, in violation of Minn. Stat. §148.941, subd. 2(a)(3) (2012) and Minn. R. 7200.5700 (2011);
>
> (3) Providing psychological services to a client when the psychologist's objectivity or effectiveness is impaired by a dual relationship with the client, in violation of Minn. R. 7200.4810, subp. 2(A) (2011);
>
> (4) Exploiting the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit, in violation of Minn. R. 7200.4810, subp. 2(E) (2011), and Minn. R. 7200.4900, subp. 7a (2011); and

[26] Test. of the Client; Test. of Dr. Olson.
[27] Test. of Dr. Olson.

(5) Engaging in sexual intercourse or other physical intimacies with a client and/or engaging in verbal or physical behavior which was sexually seductive or sexually demeaning to a client, in violation of Minn. R. 7200.4900, subp. 8 (2011).[28]

25. On May 12, 2015, after conducting discovery in this matter, the Board filed a Motion for Partial Summary Disposition on Counts 1, 2, and 5. The motion was based on various admissions that were made by the Respondent during discovery.[29]

26. The Respondent and the Client were both deposed on May 18, 2015.[30] Following these depositions, the Respondent, through his attorney, filed a Memorandum in Opposition to the Committee's Motion for Partial Summary Disposition. While the Respondent noted that he agreed with the majority of the Undisputed Facts cited by the Board in its Motion, the Respondent contended that there were still a number of allegations that he denied. The Respondent also argued that a hearing should be held to ensure that all of the relevant circumstances were explained, allow the interconnected allegations and underlying facts to be addressed, and establish a record for the Board to consider when deciding what, if any, discipline to impose.[31]

27. On July 15, 2015, the undersigned Administrative Law Judge recommended that the Committee's Motion for Partial Summary Disposition be granted as to Counts 1, 2, and 5 in the Notice and Order for Hearing. In addition, the Administrative Law Judge ordered that the matter proceed to a hearing to allow an opportunity for both parties to address the remaining counts (3 and 4), any mitigating circumstances, and what, if any, discipline should be imposed by the Board.[32]

28. Following the granting of partial summary disposition, the Committee notified the Administrative Law Judge and Respondent by letter dated July 31, 2015, that it had dismissed Counts 3 and 4, as well as Allegations 4, 6, 7, and 8 and the disputed portions of Allegations 2 and 3 contained in the Notice of Hearing.[33]

29. After receiving further submissions from the parties and engaging in further discussion during a Prehearing Conference held on August 12, 2015, the Administrative Law Judge determined that the Respondent should be afforded an opportunity to provide additional evidence regarding appropriate discipline and any mitigating circumstances that he believes the Board should consider.

30. An evidentiary hearing took place on August 14, 2015. Both the Respondent and the Client testified regarding their relationship during the hearing.

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[28] Notice and Order for Prehearing Conference and Hearing (June 6, 2014).
[29] Committee's Motion for Partial Summary Disposition (May 12, 2015).
[30] *See* Respondent's Memorandum in Opposition to Committee's Motion for Partial Summary Disposition (May 29, 2015), Exs. 1 and 2.
[31] Respondent's Memorandum in Opposition to Committee's Motion for Partial Summary Disposition.
[32] RECOMMENDED ORDER ON MOTION FOR PARTIAL SUMMARY DISPOSITION AND PREHEARING ORDER (July 15, 2015).
[33] ORDER FOR PREHEARING CONFERENCE (August 10, 2015).

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

CONCLUSIONS OF LAW

1. The Board and the Office of Administrative Hearings have jurisdiction in this matter pursuant to Minn. Stat. §§ 148.905, subd. 1(2), 148.941, subd. 1, 214.103, subds. 6, 7, and 14.50 (2014).

2. The Committee gave proper and timely notice of the hearing, and has complied with all relevant procedural requirements of law and rule.

3. Under Minnesota law, the Board may impose disciplinary action against a licensee whom the Board determines, by a preponderance of the evidence, "has violated a statute, rule or order the Board issued or is empowered to enforce"[34] or "has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to minimum standards of acceptable and prevailing practice, without actual injury having to be established."[35]

4. If grounds for disciplinary action against a licensee exist, the Board may suspend, revoke or refuse to renew a license; censure or reprimand the licensee; impose limitations or conditions on a licensee's practice of psychology; and/or impose a civil penalty.[36] The Board is also empowered to require licensees to submit to a quality review, complete educational courses; and reimburse the Board for costs resulting from the licensee's failure to comply with remedies ordered by the Board or corrective actions included in an agreement for corrective action.[37]

5. The Board's rules in effect during 2012 prohibited a licensed psychologist from engaging in "sexual intercourse or physical intimacies with a former client for a period of two years following the date of the last professional contact with the client," regardless of whether or not the psychologist had formally terminated the professional relationship.[38]

6. The Respondent has admitted that he engaged in a sexual relationship with a former client that started in August or September 2012, approximately two or three months after their last professional contact on June 12, 2012. As reflected in the Recommended Order on the Committee's Motion for Partial Summary Disposition issued by the Administrative Law Judge on July 15, 2015, the Respondent's conduct violated Minn. R. 7200.4900, subp. 8 (2011), and falls within the grounds specified in Minn. Stat. §§ 148.941, subd. 2(a)(1) and (3), for the imposition of disciplinary action.

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[34] Minn. Stat. § 148.941, subd. 2(a)(1) (2012).
[35] *Id.* subd. 2(a)(3).
[36] *Id.*, subd. 2(b).
[37] *Id.*, subd. 2(c).
[38] Minn. R. 7200.4900, subp. 8 (2011).

7. The Board may impose disciplinary action against the Respondent pursuant to Minn. Stat. § 148.941, subd. 2(a)(1) and (3).

8. The Memorandum below further explains these Conclusions of Law and is incorporated by reference in these Conclusions.

Based upon the Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED THAT the Board take reasonable and appropriate disciplinary action against the Respondent.

Dated: October 9, 2015

Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Respondent admits to having a sexual relationship with the Client starting approximately three months after the termination of their professional relationship. He has also acknowledged that he was aware at the time that his conduct violated the rules applicable to his profession. The facts surrounding this relationship are not in dispute, and the Administrative Law Judge has already recommended that partial summary disposition be granted on Counts 1, 2 and 5 as set forth in the original Notice and Order for Hearing. The purpose of the evidentiary hearing held on August 14, 2015, was to afford the Respondent an opportunity to provide additional evidence regarding appropriate discipline and any mitigating circumstances that he believes the Board of Psychology should consider in connection with this matter.[39]

The Respondent's conduct was clearly in violation of applicable statutes and rules, and the Board has shown that it has grounds to impose disciplinary action against the Respondent. As noted in the August 10, 2015, Order issued by the Administrative Law Judge,[40] the specific type and severity of discipline to be imposed will be determined by the members of the Board based upon their expertise in the profession of psychology.[41]

Based upon the evidence presented during the hearing, there are several [redacted] factors that the Board may wish to consider in determining what, if any, discipline is appropriate in this case.

[39] *See Falgren v. Minnesota Board of Teaching*, 545 N.W.2d 901, 908 (Minn. 1996).
[40] ORDER FOR PREHEARING CONFERENCE (Aug. 10, 2015).
[41] *See Padilla v. Minnesota State Board of Medical Examiners*, 382 N.W.2d 876 (Minn. Ct. App. 1986), *rev. denied* (Minn. April 24, 1986).

First, the professional relationship between the Respondent and the Client was very limited in duration and scope. The Client's medical provider referred the Client to the Respondent for testing, and the Respondent held only two sessions with the Client. During the first session, the Respondent administered objective psychological tests to the Client. During the second session a few weeks later, the Respondent provided the Client with feedback about the testing results. The Respondent never provided counseling or treatment to the Client, and the Client never viewed the Respondent as her psychologist. The Client continued to see her regular treating psychologist on an on-going basis.

Second, it does not appear that the Respondent engaged in any improper conduct during his professional interactions with the Client. The Client agreed during the hearing that the Respondent had acted in a professional manner during their two sessions and that physical contact was limited to a handshake.

Third, there is no evidence that the Client was harmed by her relationship with the Respondent due to his status as a clinical psychologist or that the relationship was anything but consensual. The undisputed evidence shows that it was the Client, and not the Respondent, who sought to initiate a personal relationship between them after the psychological testing was completed. She told the Respondent she would like to develop a friendship with him and later contacted him to invite him to a get-together in Duluth. Both the Client and the Respondent agree that the romantic relationship that ultimately developed between them was mutual and caring. They were in love for a period of time and discussed marriage. It is evident that they both have misgivings about the manner in which their relationship ended. However, the Client testified that the Respondent never used his position as a clinical psychologist to control her during the course of the relationship. She also stated that she does not regret her relationship with the Respondent and does not wish any harm to come to him because he was reported to the Board. In fact, the Client expressed regret that Respondent was reported and has requested that the Board forego any disciplinary action against him.

Finally, it should be noted that the Respondent was genuinely remorseful about his violation of the statutes and rules relating to his profession. Both the Respondent and the Client indicated that they do not believe that the Respondent would ever again engage in a similar violation. In addition, it is evident that the imposition of a lengthy suspension of the Respondent's license may result in harm to the clients he sees, particularly those who suffer from serious and persistent mental illness who have been treated by the Respondent over a prolonged period of time.

The Administrative Law Judge urges the Board to take the entire record in this matter, including the above factors, into consideration when considering what, if any, discipline is appropriate.

B. L. N.