

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
Phyllis W. Phelan, Ph.D., L.P.
License No. LP1119

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

The above-entitled matter came on for a prehearing conference on March 23, 2011, before Administrative Law Judge (“ALJ”) Beverly Jones Heydinger 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 January 27, 2011. Daphne A. Lundstrom, Assistant Attorney General, represented the Committee. Phyllis W., Phelan, Ph.D., L.P., Respondent, knowingly waived legal representation. On October 3, 2011, the Committee filed a Motion For Partial Summary Disposition.

On November 30, 2011, the ALJ issued an Order Granting Partial Summary Disposition (“ALJ’s report”), recommending the Board take disciplinary action against the license of Respondent. (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 February 17, 2012, at the Board Room on the third floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Benjamin R. Garbe, Assistant Attorney General, appeared and presented oral argument on behalf of the Committee. Respondent did not appear. Board members Susan Ward, Jeffrey Leichter, Ph.d, LP, and Patricia Orud, MA, LP, did not participate in deliberations and did not vote in the matter. Patricia LaBrocca, Regulations Analysts for the Board, did not participate in the

deliberations. Geoffrey Karls, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the November 30, 2011, ALJ's report and accordingly adopts and incorporates by reference the findings of fact, order, and memorandum therein. For purposes of this Order, the relevant Findings of Fact are as follows:

1. Respondent was licensed to practice psychology in Minnesota on May 5, 1986.
2. In 1998, Respondent entered into an Agreement for Corrective Action with a Board Complaint Resolution Committee. The 1998 Agreement was based on Respondent's failure to maintain appropriate boundaries with a client diagnosed with a borderline personality disorder. Respondent accompanied the client on medical visits, attended the christening of the client's baby and met with the client at the Respondent's home.
3. The 1998 Agreement required Respondent to successfully complete an individualized boundaries course and consult with a licensed psychologist approved by the Committee. Respondent initially failed to comply with the terms of the 1998 Agreement. The Committee entered into an Amended Agreement for Corrective Action in 2000. Respondent subsequently completed the terms of the Amended Agreement.
4. In 2008, Respondent provided psychological services to client #1. At the time, client #1 was married, but Respondent believed that it was an abusive relationship and that client #1 should not continue in it.
5. In May 2009, Respondent sent client #1 to an apartment building in Prior Lake, Minnesota, to return a set of keys to another of Respondent's clients, client #2.

6. Respondent and her former husband were owners of the apartment building where client #1 was sent and where client #2 lived.

7. Respondent gave client #1 \$20.00 for gas money to make the trip to return keys to client #2.

8. Upon meeting at the apartment building, client #2 invited client #1 to go to a casino.

9. Client #1 subsequently reported that she had been uncomfortable meeting client #2 and, although she had accepted the invitation to go to the casino, felt unsafe. Respondent acknowledged to client #1 that she had not exercised good judgment.

10. Respondent subsequently stated, "I chose to creatively address [individual difficulties with client #1 and client #2] with a behavioral assignment for client #1 to take a drive into the country to return the gentleman's keys, and to consider the possibility that she might someday again become a caretaker of similar property." Respondent acknowledged: "In hindsight, the assignment involved boundary crossings at many levels with this client."

11. Respondent also solicited renters for the apartment building from colleagues through an American Psychological Association "listserv."

12. The Committee's expert, Gary Schoener, M.Eq., L.P., opined that sending a client to an apartment building owned by Respondent and her former husband for the client to consider rental or employment as a building caretaker was a professional boundary violation, exacerbated because the client had a personality disorder with increased potential for dependency on the therapist. Mr. Schoener also opined that "sending a client on a mission to return a key to another client with the goal of them meeting is grossly inappropriate and a boundary violation regarding her relationships with both individuals."

13. Mr. Schoener opined that Respondent violated professional boundaries by soliciting renters through a professional “listserv” for property that she owned.

14. In his expert opinion, Mr. Schoener concluded that Respondent clearly engaged in unprofessional conduct.

15. The ALJ concluded that “[i]n light of the Respondent’s failure to produce any credible evidence to rebut Mr. Schoener’s professional opinion, it is appropriate to grant summary disposition to the Committee on the claim that the Respondent engaged in unprofessional conduct.”

16. On January 27, 2011, the Complaint Resolution Committee issued a Notice and Order for Prehearing Conference and Hearing (“NOH”). The NOH set forth nine alleged violations of the statutes and rules governing the practice of psychology.

17. In a letter dated February 24, 2011, the Respondent replied to the Board’s allegations. Respondent also sent notes dated March 9, 2011 and March 10, 2011, notifying the Committee that she wanted to surrender her license, and also stated that she did not want to be licensed in any state.

18. Pursuant to the NOH, a Prehearing Conference was set for March 23, 2011. For the convenience of the Respondent, the Prehearing Conference was conducted by telephone. The Respondent participated for approximately a minute, claimed that she had given notice of her intent to give up her license in Minnesota, and then hung up. The Committee requested a schedule to file a Motion for Summary Disposition and a schedule was set.

19. In a letter dated March 23, 2011, the Respondent confirmed that she wished to surrender her license, and requested no more contact from the Board, except that she requested a signed statement from the Board that she had been licensed from May 5, 1986 - March 9, 2011.

20. In May 2011, Respondent notified counsel for the Committee that the Board was not applying the standard of practice for cognitive behavioral therapy, as established by Aaron Beck and Marsha Linehan. She requested that the Committee consider this and contact her within a day or two to resolve the matter. In a few subsequent voicemail messages the Respondent restated her claim about the standard of care.

21. On May 26, 2011, the Committee served Respondent with requests for admission. The Respondent received the requests for admission but did not respond to them.

22. In light of Respondent's assertion that the Committee misunderstood the standard of care, the Committee requested an extension of the schedule to obtain the opinion of an expert. A Second Prehearing Order was issued on June 10, 2011, setting a schedule for each party to obtain an expert opinion addressing the standard of care.

23. On July 18, 2011, the ALJ received a letter from the Respondent dated June 21, 2011, stating that the Board completely misunderstood the standard of care.

24. On July 25, 2011, the Committee requested a Protective Order to allow full discovery. The Protective Order was issued on July 29, 2011, and by accompanying letter, the Respondent was reminded of the schedule for her to submit an expert opinion.

25. On July 27, 2011, the Committee filed the Expert Report of Gary R. Schoener, M.E., L.P.

26. On September 15, 2011, the ALJ received a letter from the Respondent with her explanation of the circumstances surrounding the Committee's complaint, and a letter of reference and explanation from Dr. Gerry Foo, the Respondent's expert witness.

27. On October 3, 2011, the Complaint Resolution Committee of the Minnesota Board of Psychology filed a Notice of Motion and Motion for Partial Summary Disposition with

accompanying documents with the Administrative Law Judge. The Motion alleged that Respondent Phyllis W. Phelan, Ph.D., L.P., violated the Minnesota Psychology Practice Act, specifically Minn. Stat. § 148.941, subd. 2(a)(3) and Minnesota Rules 7200.5700 by violating an Order that the Board issued or is empowered to enforce.

28. By letter dated October 25, 2011, the Respondent filed a letter stating that she provided all the explanation that she could, that she had obtained a license to practice in Virginia, and that she did not intend to renew her Minnesota license, which expires in May 2012. She requested that the matter be “tabled indefinitely.”

29. By letter date November 15, 2011, the Committee requested that the ALJ rule on the pending motion because the Respondent’s statement that she did not intend to renew her licensee was not determinative of the pending disciplinary matter.

30. On November 30, 2011, the ALJ granted the Committee’s motion and recommended that the Board impose disciplinary action on Respondent. The ALJ found that Respondent had 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 the minimum standards of acceptable and prevailing practice without actual injury having to be established, in violation of Minnesota Statutes section 148.941, subd. 2(a)(3), and Minnesota Rules 7200.5700.

CONCLUSIONS

1. Respondent has engaged in unprofessional conduct, in violation of Minnesota Statutes section 148.941, subd. 2(a)(3), and Minnesota Rules 7200.5700.

2. The Board must take disciplinary action against Respondent for the protection of the public.

ORDER

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

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respondent to practice psychology in the State of Minnesota is **INDEFINITELY SUSPENDED**.

2. IT IS FURTHER ORDERED that Respondent shall, after the date this Order is adopted, take and attain passing score on the Professional Responsibility Examination, described in Minn. R. 7200.3000, subp. 1.B.

3. IT IS FURTHER ORDERED that Respondent shall pay a civil penalty to the Board in the amount of one thousand dollars (\$1,000.00) for engaging in the conduct and violations described within this Order. Payment of \$1,000.00 shall be remitted in full to the Minnesota Board of Psychology at Suite 320, 2829 University Avenue SE, Minneapolis, Minnesota 55414.

4. IT IS FURTHER ORDERED that Respondent may petition the Board for reinstatement of her license upon submission of proof that Respondent attained a passing score on the Professional Responsibility Examination and upon payment in full of the \$1,000.00 civil penalty.

5. IT IS FURTHER ORDERED that upon petitioning for reinstatement, Respondent shall appear before the Committee to discuss her petition. Upon hearing Respondent's petition, the Committee may recommend that the Board continue, modify, or remove the suspension, or impose conditions and restrictions as deemed necessary.

6. 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: 2/17, 2012

MINNESOTA BOARD OF PSYCHOLOGY

By: 
CHRIS BONNELL, J.D.
Board Chair

AG: #2946586-v1



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101



Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

November 30, 2011

**THIS REPORT CONTAINS
NOT PUBLIC INFORMATION**

Angelina M. Barnes, Executive Director
Board of Psychology
2829 University Avenue SE, Suite 320
Minneapolis, MN 55414

In re: *In the Matter of the License of Phyllis W. Phelan, Ph.D., L.P.*
OAH 15-0907-21823-2, License No. LP1119

Dear Ms. Barnes:

Enclosed and served upon you by mail or courier service is a copy of the Administrative Law Judge's Order Granting Partial Summary Disposition for the above matter.

Sincerely,

Nancy J. Hansen
Legal Assistant

Telephone No. (651) 361-7874

Enclosure

cc: Kermit N. Fruechte
Phyllis W. Phelan



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

In the Matter of the License of
Phyllis W. Phelan, Ph.D., L.P.

**ORDER GRANTING PARTIAL
SUMMARY DISPOSITION**

Appearances

Daphne A. Lundstrom, Assistant Attorney General, on behalf of the Complaint Resolution Committee (Committee) of the Board of Psychology (Board).

Phyllis W. Phelan (Respondent) appeared on her own behalf without benefit of counsel.

Jurisdiction

The Department and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 148.905 and 148.941.¹

The Respondent received proper and timely notice of the motion and had the opportunity to file a response.

Procedural Background

On January 27, 2011, the Committee issued a Notice and Order for Prehearing Conference and Hearing (NOH). The NOH set forth nine alleged violations of the statutes and rules governing the practice of psychology.

In a letter dated February 24, 2011, the Respondent replied to the Board's allegations. She also sent notes dated March 9, 2011, and March 10, 2011, notifying the Committee that she wanted to surrender her license, and also stated that she did not want to be licensed in any state.²

Pursuant to the NOH, a Prehearing Conference was set for March 23, 2011. For the convenience of the Respondent, the Prehearing Conference was conducted by

¹ Minnesota Statutes are cited to the 2010 Edition.

² Affidavit of Daphne A. Lundstrom (Aff. of Lundstrom), Ex. D.

telephone.³ The Respondent participated for approximately a minute, claimed that she had given notice of her intent to give up her license in Minnesota, and then hung up. The Committee requested a schedule to file a Motion for Summary Disposition and a schedule was set.⁴

In a letter dated March 23, 2011, the Respondent confirmed that she wished to surrender her license, and requested no more contact from the Board, except that she requested a signed statement from the Board that she had been licensed from May 5, 1986 – March 9, 2011.

In May 2011, the Respondent notified counsel for the Committee that the Board was not applying the standard of practice for cognitive behavioral therapy, as established by Aaron Beck and Marsha Linehan. She requested that the Committee consider this and contact her within a day or two to resolve the matter. In a few subsequent voicemail messages the Respondent restated her claim about the standard of care.⁵

On May 26, 2011, the Committee served Respondent with requests for admission.⁶ The Respondent received the requests for admission but did not respond to them.⁷

In light of the Respondent's assertion that the Committee misunderstood the standard of care, the Committee requested an extension of the schedule to obtain the opinion of an expert.⁸ A Second Prehearing Order was issued on June 10, 2011, setting a schedule for each party to obtain an expert opinion addressing the standard of care.

On July 18, 2011, the ALJ received a letter from the Respondent dated June 21, 2011, stating that the Board completely misunderstood the standard of care.⁹

On July 25, 2011, the Committee requested a Protective Order to allow full discovery. The Protective Order was issued on July 29, 2011, and by accompanying letter, the Respondent was reminded of the schedule for her to submit an expert opinion.

On July 27, 2011, the Committee filed the Expert Report of Gary R. Schoener, M.Eq., L.P.¹⁰

³ See Letter from Administrative Law Judge to Respondent, March 9, 2011.

⁴ Prehearing Order, March 24, 2011.

⁵ Aff. of Lundstrom, Ex. B.

⁶ Aff. of Lundstrom, Ex. A.

⁷ Aff. of Lundstrom, ¶ 4 and Ex. B.

⁸ Letter to ALJ from Daphne A. Lundstrom, June 8, 2011.

⁹ Due to the Minnesota State Government Shut-down, the Office of Administrative Hearings was closed from July 1 to July 21, 2011. Some mail was processed on July 18, 2011.

¹⁰ Aff. of Lundstrom, Ex. E.

On September 15, 2011, the ALJ received a letter from the Respondent with her explanation of the circumstances surrounding the Committee's complaint, and a letter of reference and explanation from Dr. Gerry Foo, the Respondent's expert witness.

On October 3, 2011, the Committee filed its Notice of Motion and Motion for Partial Summary Disposition and accompanying documents. By letter dated October 25, 2011, the Respondent filed a letter stating that she had provided all the explanation that she could, that she had obtained a license to practice in Virginia, and that she did not intend to renew her Minnesota license, which expires in May 2012. She requested that the matter be "tabled indefinitely."

By letter dated November 15, 2011, the Committee requested that the ALJ rule on the pending motion because the Respondent's statement that she did not intend to renew her license was not determinative of the pending disciplinary matter.¹¹

Scope of the Motion

In the NOH, the Committee alleged nine violations of statute and rule. It requests partial summary disposition on one allegation: that Respondent "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 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), and Minnesota Rules 7200.5700.

For the reasons set forth below, the Administrative Law Judge concludes that the Complaint Resolution Committee has demonstrated that there are no material facts at issue and that, the Respondent has violated Minn. Stat. § 148.941, subd. 2 (a)(3).

ORDER

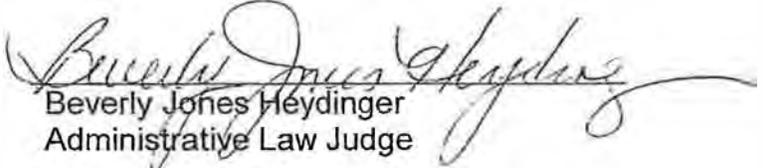
IT IS HEREBY ORDERED:

1. Partial Summary Disposition is GRANTED. The Respondent "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 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), and Minnesota Rules 7200.5700; and

¹¹See Minn. R. 7200.3700 ("A license may be voluntarily terminated at any time upon written notification to the board, unless a complaint is pending against the licensee"). Minnesota Rules are cited to the 2011 Edition.

2. This Order will be forwarded to the Board of Psychology to determine whether discipline will be imposed based on this claim, or whether it will proceed to hearing on the remaining allegations.

Dated: November 30, 2011


Beverly Jones Heydinger
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. Pursuant to 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 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, (612) 617-2230, 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.

Pursuant to 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

Standard for Summary Disposition

Summary disposition is the administrative equivalent of summary judgment.¹² The standards for summary disposition in a contested case proceeding are equivalent to the standards for summary judgment under Rule 56.03 of the Minnesota Rules of

¹² *Pietsch v. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. 1400.5500 (K).

Civil Procedure.¹³ The ALJ may recommend summary disposition of the case or any part of the case "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law."¹⁴ A genuine issue is one that is not a sham or frivolous. A fact is material if its resolution will affect the result or outcome of the case.¹⁵

When considering a motion for summary disposition, the ALJ must view the facts in the light most favorable to the non-moving party and resolve all doubts and factual inferences in that party's favor.¹⁶ The Board, as the moving party, has the initial burden to show that there is no genuine issue concerning any material fact.¹⁷ To successfully resist a motion for summary disposition, the non-moving party cannot rely upon general statements or allegations, but must show by substantial evidence that there are specific facts in dispute that have a bearing on the outcome of the case.¹⁸ "Substantial evidence" refers to the legal sufficiency of the evidence and not the quantum of evidence.¹⁹ Speculation alone, without some concrete evidence, is insufficient to survive summary disposition.²⁰ However, if reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.²¹

In this instance, the Respondent has not responded to the Motion. However, in consideration of her status as *pro se*, and her assertion that she has previously stated her objections to the Board's attempt to impose discipline, the ALJ will treat the arguments presented by the Respondent in her letter dated August 25, 2011, with attached submissions dated August 11, 2011, August 24, 2009, (sic) and September 8, 2011, (received at OAH on September 15, 2011), as her response.

Factual Background

There are no material facts in dispute. Respondent was licensed to practice psychology in Minnesota on May 5, 1986. In 1998, Respondent entered into an Agreement for Corrective Action (1998 Agreement) with a Board Complaint Resolution Committee.²² The 1998 Agreement was based on Respondent's failure to maintain appropriate boundaries with a client diagnosed with a borderline personality disorder.

¹³ See Minn. R. 1400.6600 (the Minnesota Rules of Civil Procedure may apply to motions in contested cases as appropriate).

¹⁴ Minn. R. Civ. P. 56.03; *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (citing *Anderson v. State Dep't of Natural Res.*, 683 N.W. 2d 181, 186 (Minn. 2005)); *Sauter v. Sauter*, 244 Minn. 482, 484-85, 70 N.W.2d 351, 353 (Minn. 1955)

¹⁵ *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

¹⁶ *Osborne*, 749 N.W.2d at 371; *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

¹⁷ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

¹⁸ *Papenhausen v. Schoen*, 268 N.W.2d 565, 571 (Minn. 1978).

¹⁹ *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69-70 (Minn. 1997); *Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976).

²⁰ *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

²¹ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986); *DLH, Inc.*, 566 N.W.2d at 69.

²² Aff. of Lundstrom, Ex. 1.

Respondent accompanied the client on medical visits, attended the christening of the client's baby and met with the client at the Respondent's home. The 1998 Agreement required Respondent to successfully complete an individualized professional boundaries course and consult with a licensed psychologist approved by the Committee.²³ The Respondent initially failed to comply with the terms of the 1998 Agreement. The Complaint Resolution Committee entered into an Amended Agreement for Corrective Action in 2000. Respondent completed the terms of the Amended Agreement.²⁴

In 2008, Respondent provided psychological services to Client #1 (S.L.). At the time, Client #1 was married, but Respondent believed that it was an abusive relationship and the Client should not continue in it.²⁵

In May 2009, Respondent sent Client #1 to an apartment building in Prior Lake, Minnesota, to return a set of keys to another of Respondent's clients, Client #2. It is unclear whether the Respondent also intended that Client #1 consider the possibility of applying for a job as a building caretaker at the apartment building. Taken in a light most favorable to the Respondent, Respondent did not intend that Client #1 would actually apply for a job at that time, but believed that the trip would help Client #1 envision this type of position as a possibility for the future. Also, Respondent thought it would be helpful for Client #1 to take a drive on a lovely day and begin to see possible options for her future. Respondent gave the client \$20.00 for gas money to make the trip.²⁶

The Respondent and her former husband were part owners of the apartment building where Client #1 was sent and where Client #2 lived.²⁷

Following the trip to Prior Lake, Client #1 told the Respondent that she was upset about the visit, that she had been uncomfortable about meeting Client #2, and that she had accepted his invitation to go to the casino with him but had felt unsafe. The Respondent apologized for sending Client #1 to the apartment building and acknowledged that it was not good judgment. Respondent noted that she would continue to work with Client #1 to repair boundary issues.²⁸

In a letter to the Board dated February 24, 2011, Respondent stated that "I found myself with two dilemmas: [Client #1] struggling to move forward with a divorce from a man clearly displaying psychopathic behavior and [Client #2] who had left his keys in my office." In the same letter she stated: "I chose to creatively address both difficulties with a behavioral assignment for [Client #1] to take a drive into the country to return the gentleman's keys, and to consider the possibility that she might someday again become

²³ Aff. of Lundstrom, Ex. I.

²⁴ Aff. of Lundstrom, Ex. I (letter from Marilyn J. Arneson to Respondent, May 16, 2000).

²⁵ Aff. of Lundstrom, Ex. C (Interview with Respondent).

²⁶ Aff. of Lundstrom, Ex. C (Interview with Respondent).

²⁷ Aff. of Lundstrom, Ex. C (Interview at 8).

²⁸ Aff. of Lundstrom, Ex. C (therapy notes dated May 16, 2009)

a caretaker for similar property.” Respondent acknowledged: “In hindsight, the assignment involved boundary crossings at many levels with this client.”²⁹

The Respondent continued providing services to Client #1 through February 2010.³⁰

The Respondent also solicited renters for the apartment building from colleagues through an American Psychological Association list serve.³¹

Application of the Professional Standard

The Board has a statutory obligation to protect the public from unprofessional and unethical conduct by persons licensed to practice psychology,³² and may revoke, suspend, limit, condition or otherwise discipline a license holder when grounds for discipline exist under the Minnesota Psychology Practice Act.³³

The Board may impose discipline when the license holder 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 the minimum standards of acceptable and prevailing practice without actual injury having to be established.³⁴

The Board’s rules further define unprofessional conduct.

A psychologist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating parts 7200.4600 to 7200.5600 or violating those standards of professional behavior that have become established by consensus of the expert opinion of psychologists as reasonably necessary for the protection of the public interest.³⁵

In this instance, the Committee asserted that Respondent engaged in unprofessional conduct when she failed to conform to minimum standards of acceptable and prevailing practice for maintaining professional boundaries in her treatment of Client #1, as established by the opinion of its expert.

²⁹ Aff. of Lundstrom, Ex. C (letter from Respondent, Feb. 24, 2011).

³⁰ Aff. of Lundstrom, Ex. A. During her interview on January 5, 2010, Respondent stated that she intended to see Client #1 on February 27, 2010, her last day of practice in Minnesota. Ex. C at 9. However, she also stated that she closed her practice in December 2009. See Ex. G, letter to ALJ dated August 24, 2009 (sic), and letter to ALJ dated Sept. 8, 2011. The difference is not material to the claim.

³¹ Aff. of Lundstrom, Ex. A. In its First Set of Requests for Admissions, the Complaint Resolution Committee included Request No. 15: “Admit that on January 29, 2010, Respondent sent an e-mail to a listserv through the American Psychological Association, in which she solicited her colleagues for rental tenants.” The Respondent did not respond to the Requests for Admissions nor did she address this allegation in her submissions to the Administrative Law Judge. Thus, it will be deemed admitted.

³² Minn. Stat. §§ 148.88-148.98.

³³ Minn. Stat. § 148.941, subd. 2(b).

³⁴ Minn. Stat. § 148.941, subd. 2(a)(3).

³⁵ Minn. R. 7200.5700.

The Committee produced the opinion of Gary Schoener, M.Eq., L.P. Mr. Schoener's education, background and experience are set forth in his curriculum vitae.³⁶

Mr. Schoener's expert opinion, to a reasonable degree of psychological and professional certainty, was that sending a client to an apartment building owned by Respondent and her former husband for the client to consider rental or employment as a building caretaker was a professional boundary violation, exacerbated because the client had a personality disorder with increased potential for dependency on the therapist. He also opined that "sending a client on a mission to return a key to another client with the goal of them meeting is grossly inappropriate and a boundary violation regarding her relationships with both individuals."³⁷

Mr. Schoener did not accept the Respondent's attempt to distinguish a "boundary crossing" from a "boundary violation."³⁸ The Respondent's conduct could not be fairly characterized as a cognitive exercise with some sort of therapeutic purpose, nor was her conduct mitigated or excused as some type of assignment-based therapy.³⁹

Mr. Schoener also concluded that Respondent violated professional boundaries by soliciting renters through a professional listserve for property that she owned with her husband.

In his expert opinion, Mr. Schoener concluded that Respondent clearly engaged in unprofessional conduct.

The Respondent did not submit an expert opinion. However, she did submit a letter from Dr. Gerry Foo, opining about what he perceived as the difference between boundary crossings and boundary violations. His discussion did not reference the facts pertaining to the Respondent's conduct concerning Client #1, nor did he offer an opinion whether that conduct violated professional standards.⁴⁰

In her own defense, the Respondent stated that she acknowledged that she had engaged in an inappropriate boundary crossing, but maintained that she had handled it effectively. She asserted that her appropriate handling of the incident could be verified by Dr. Tom Winegarden, but she provided no statement from Dr. Winegarden to that effect.⁴¹

In the same response, Respondent described her assignment to Client #1 as a "practice interview with the management company, ASK Properties, Minneapolis, MN, for the position of care-taker of a 35-unit apartment building owned jointly by my ex-husband ... and myself, I appreciate, and have acknowledged that a boundary crossing

³⁶ Aff. of Lundstrom, Ex. F.

³⁷ Aff. of Lundstrom, Ex. E at 7.

³⁸ See Aff. of Lundstrom, Ex. G (letter to ALJ from Respondent, dated August 24, 2009 (sic)).

³⁹ Aff. of Lundstrom, Ex. E at 6.

⁴⁰ Aff. of Lundstrom, Ex. G (letter to ALJ from Dr. Foo, dated Sept. 8, 2011).

⁴¹ Aff. of Lundstrom, Ex. G (letters to ALJ from Respondent, dated August 24, 2009 (sic), and Sept. 8, 2011).

occurred. As ASK is a completely independent management company, I did not think the risks of the assignment outweighed the potential benefit of the assignment.”

Respondent also stated that she continued to provide therapy to Client #1 until Respondent closed her Minnesota practice. Respondent believed that Client #1’s expression of concern about the assignment to go to the apartment building was evidence that the client progressed in therapy and also showed that the client had demonstrated appropriate boundaries.

After reviewing Respondent’s submitted statements and the letter from Dr. Foo, Mr. Schoener confirmed his earlier opinion that Respondent failed to maintain appropriate professional boundaries and failed to meet minimum standards of practice in her treatment of Client #1. He also questioned other actions by the Respondent, including her communications with the Board.⁴²

Mr. Schoener’s conclusion is further supported by the Respondent’s confusing and inconsistent responses to the complaint. These included shifting versions of the events concerning Client #1, Respondent’s relationship with Client #1’s husband, Respondent’s ownership interest in the apartment building where Client #2 lived, and her plans to continue to practice psychology. Her inarticulate and occasionally threatening messages, as well as her references to her own mental and physical health, raise additional concerns about her conduct.

In light of the Respondent’s failure to produce any credible evidence to rebut the facts that led to the complaint or to rebut Mr. Schoener’s professional opinion, it is appropriate to grant summary disposition to the Committee on the claim that the Respondent engaged in unprofessional conduct.

The Respondent has clearly stated that she does not intend to pursue this matter. Thus, it is appropriate for the Board to consider whether it will impose discipline based on the claim addressed in this motion and withdraw the balance of the NOH, or whether it will proceed to litigate the remaining claims. The Committee should notify the ALJ of how it intends to proceed.

B.J.H.

⁴² Aff. of Lundstrom, Ex. H.