STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PSYCHOLOGICAL EXAMINERS

FILED WITH THE BOARD OF PSYCHOLOGICAL EXAMINERS ON March 6, 2009

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF **ALVIN KRASS, PH.D.** License No. 275 TO PRACTICE PSYCHOLOGY IN THE STATE OF NEW JERSEY	Administrative Action **FINAL ORDER GRANTING SUMMARY DECISION**

This matter was opened to the New Jersey State Board of Psychological Examiners (hereinafter "the Board") upon the filing of an Administrative Complaint by the Attorney General of New Jersey, by Kim D. Ringler, Deputy Attorney General on October 16, 2008. The complaint alleged that the respondent, Alvin Krass, Ph.D. engaged in conduct constituting professional misconduct with a client in violation of N.J.S.A. 45:1-21(e) and N.J.S.A. 45:1-21(h) and violations of regulations, including N.J.A.C. 13:42-10.13(c) which prohibits continuing any treatment relationship in which he has a financial interest; N.J.A.C. 13:42-10.13(d) which prohibits entering into a dual relationship with a client including any business relationship with a current client; N.J.A.C. 13:42-10.13(e) which requires a licensee to take action to terminate a conflict or dual relationship; and N.J.A.C. 13:42-10.13(f) which prohibits entering into financial arrangements with clients which

are likely to impair professional judgment including loans to or from a client. Specifically, the complaint in Count One alleged that the respondent in the 1970's began treating client B.N.[1] for severe depression, anxiety, agoraphobic symptoms, issues arising from health crises including a diagnosis of breast cancer and a mastectomy, and family issues including spousal abuse and the suicide of her husband. Between 1992 and 2001, Respondent entered into several loans with this long term therapy client to help finance two enterprises: (a) Selective Testing Services, a research project to develop a neuropsychological screening device and (b) Key Education, Inc. The loans were memorialized in nine promissory notes for amounts varying from $5000 to $46,825.57 over the course of seven years for a total of over $140,000.00. The respondent failed to make a scheduled payment at the end of 2006 and the client sought independent civil legal counsel to recover the outstanding balance and reported the respondent's conduct to the Board.

Count Two of the Complaint further alleged that respondent's conduct in offsetting charges for the professional psychological services he provided to client, B.N. against his debt from loans received from the client, memorialized in an accounting with

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[1]Although documents submitted in this matter have been redacted to protect patient privacy, in some, instances the full name of the patient appears. The State requested to submit fully redacted exhibits and the Board shall not release copies of the exhibits until fully redacted versions are received.

entries for the period ending July 20, 1995 was in violation of N.J.A.C.13:42-10.13(d) and also constituted professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or (h). The complaint concludes with a demand for an order suspending, revoking or otherwise limiting Respondent's license to practice psychology, assessing civil penalties, costs of investigation and attorney fees, and directing other relief as the Board deems equitable.

Respondent, represented by I. Mark Cohen, Esquire, filed an answer with the Board dated November 24, 2008. Respondent admitted that he was licensed to practice psychology since 1967. Respondent admitted that he provided psychological services to client, B.N. beginning in the 1970s. He also admitted that he entered into several loans with the client between 1992 and 2001 to help finance two enterprises as referred to in the complaint. Respondent admits that he executed a promissory note dated August 16, 2001 reflecting the outstanding balance due on the loans and that he subsequently completely repaid the loan in full with interest. Respondent denied that his conduct constituted professional misconduct in violation of N.J.S.A. 45: 1-21(e) or (h) and further denied that he violated any of the Board's regulations referred to in count one of the complaint. Respondent asserted that his conduct did not warrant revocation of his license to practice psychology; that he had a valid professional reason for entering into the financial transaction; that he had satisfied in full any

and all outstanding monies owed to the client and that the Respondent had an otherwise unblemished professional record.

On or about January 8, 2009, the Attorney General filed a motion for summary decision in this matter pursuant to N.J.A.C. 1:1-12.5(a) asserting that there were no material issues of fact to be decided at a hearing. The Attorney General in support of its application relied upon its letter brief and the Certification of Deputy Attorney General Ringler including as attached exhibits a copy of the Complaint, Respondent's Answer to the Complaint, Transcript of Respondent's testimony provided at an investigative inquiry on October 1, 2007, copies of the promissory notes, interest statements and statement memorializing offset to Interest Due of Psychological services (attached as Exhibits A-F respectively to DAG Ringler's Certification). In addition to the documentary evidence, the facts, as set forth by the Attorney General and undisputed by Respondent, that he is a licensed New Jersey psychologist who treated B.N., a longstanding client, over a period of approximately thirty years for a variety of psychological problems, including marital abuse, her husband's suicide, depression, breast cancer, mastectomy issues, difficulty with children and social isolation. Respondent admitted borrowing money from the client from approximately August 1992, and continuing through May of 2001. Respondent signed promissory notes to B.N. reflecting loans of money from her to him. The amounts of

the notes total in excess of $140,000, including principal and interest.

In his responsive papers to the motion for summary decision, respondent did not "dispute the factual allegations set forth in the motion" but requested a mitigation hearing and expressed his desire to testify in mitigation of the quantum of discipline to be imposed by the Board.

On February 2, 2009, the Board entertained argument on the motion for summary decision. The Attorney General reiterated the arguments found in her brief, that there were no genuine issues of fact to be determined by the Board based on the overwhelming documentary evidence and the respondent's testimony and admissions in this matter. The uncontested facts that Respondent borrowed money from a client who he was treating for psychological problems, and offset charges for therapy against his outstanding debt, support findings he violated specific regulations as outlined in the complaint, and findings of professional misconduct and therefore warrant disciplinary action. Therefore, the State argued that the evidence presented supports the granting of an order for summary decision.

Counsel for the respondent confirmed that the respondent was not disputing the factual allegations in the complaint. He reminded the Board that the respondent had fully repaid the debt owed to the client, and he requested that the Board afford him a

mitigation hearing and consider the certification and the testimony of the respondent.

Following oral argument on the motion, the Board found that no genuine issues of material fact existed and that the moving party was entitled to prevail as a matter of law pursuant to N.J.A.C. 1:1-12.5(b). The Board's conclusion is amply supported by the respondent's sworn admissions at the investigative inquiry, the admissions to the answer to the Complaint and the documentary evidence consisting of the promissory notes, interest statements, and the statement "offsetting the interest due of psychological services" coupled with the respondent's representations to the Board that he was not disputing the factual allegations. The Board finds that the conduct engaged in by the respondent with a long term client was in violation of N.J.A.C. 13:42-10.13(c) regarding the continuation of treatment with a client in which a licensed psychologist has a financial relationship; in violation of N.J.A.C. 13:42-10.13(d) prohibiting entering dual relationship with a client including any business relationship with a current client and the prohibition of bartering for services provided to any current client; N.J.A.C. 13:42-10.13(e) requiring a licensed psychologist to take action and terminate a conflict or dual relationship; N.J.A.C. 13:42-10.13(f)prohibiting entering a financial arrangement with a client which is likely to impair professional judgment including loans from client; and that his conduct with B.N.

constituted professional misconduct in violation of N.J.S.A. 45:1-21(e)and(h). Having determined that grounds exist for disciplinary action, the Board then ordered the parties to proceed in the mitigation phase of the hearing.

In mitigation, respondent introduced the Settlement Agreement memorialized between the client and respondent and executed on April 19, 2007 by the respondent which acknowledged that the respondent was in default of the note, that the client had properly demanded payment of the amount due under the note and that he did not have defenses to or setoff rights as to the note. November 7, 2007 was established as the date for full payment on the outstanding amount of the debt. This settlement agreement was marked and moved into evidence as R-1.

Respondent testified that his statements in the Certification in Mitigation of Sanctions in response to the motion for summary decision were truthful. He testified that has been practicing as a psychologist since 1967. He was one of the first to be licensed as a psychologist in the State of New Jersey. Respondent claimed to have seven patents for psychological testing instruments and thirteen copyrights for psychological tests used primarily in screening the vocational capabilities among persons identified as handicapped, hard to employ and demonstrating special needs.

Respondent also testified that he currently has an agreement with the Veterans Administration to provide counseling to

servicemen returning from active duty. He is working with Health South, the Rehabilitation Hospital of Tinton Falls to provide cognitive screening for persons who think they may have mild dementia. He is actively working with Christian Brothers housed at the De La Salle Hall, the nursing and rehabilitation center, in Lincroft, New Jersey evaluating patients with dementia. He screens all the new applicants for employment with the Asbury Park Police and Fire Department, the Irvington Police Department Keansburg Police Department and eight or ten smaller local community police departments. Respondent also serves as the consulting psychologist for those departments providing counseling services for members of the department experiencing an emotional crisis or difficulties. His private practice consists of 10-15 patients. Several of his patients are Medicare recipients. Respondent believes that due to the current economic climate, his patients will become even more in need of his counseling and he is willing to continue to see them despite their inability to meet their financial obligation to him. It was respondent's testimony that he would require "a period of months to close down his office and refer his current patients to other psychologists."

Respondent testified that he had no infractions or complaints about his psychological services over the fifty years he practiced. He repaid the client in question in full. While he acknowledged that his conduct constituted professional misconduct and violated

several of the Board's regulations including the conflict of interest regulation at N.J.S.A. 13:42-10.13(c)and(d) as he bartered for a small part of the sum owed, he testified that he borrowed the money to pay for testing instruments that he was developing and not for his own personal gain. The money was used to pay the engineer and the software technician for the Acumen testing instrument. Therefore, Respondent did not believe that entering into the financial arrangement with his client impaired his professional judgment pursuant to N.J.A.C. 13:42-10.13(f). Respondent believed that the loans were beneficial to the client. He testified that the client "had a terrible history of exploitation throughout her life" and that the client had made a success of a business on the brink of bankruptcy but "she had never really engaged in what I would call an altruistic activity." Respondent testified that by participating in the development of screening tools for Alzheimer's and cognitive development testing instruments, which is where the money she loaned to him was used, she could feel better about herself. However, he acknowledged that "the money she gave me...was a major factor in my being able to complete the Acumen," on which a patent was obtained. He did not believe that he had exploited the client in question. Furthermore, he testified that it was his professional opinion that the financial arrangement was therapeutic for his client.

Respondent also submitted correspondence from a patient regarding the professional services received from the respondent and from Peter C. Rutan, Ed.D. of Monmouth Neuropsychology Associates attesting to respondent's contributions to the profession, attached to the respondent's certification respectively as Exhibits A and B.

On cross-examination, Respondent confirmed that he is a Diplomate of the American Board of Family Psychology. He is also a school psychologist consulting for the Rugby School in Wall Township, New Jersey. He testified that he agreed to pay interest on the notes that he executed with the client and that the interest established was above the prime rate at the time. He also testified that in the Key Education enterprise he was an investor, having invested $50,000 and in Selective Testing Service he was a partner in the business and also served as an owner and director. Key Education is defunct according the respondent.

DAG Ringer marked and moved into evidence an expert report prepared by Susan Esquilin, Ph.D. (as S-1) with no objection from the respondent's attorney.

Upon questioning from the Board, the respondent clarified that while he has a written agreement with the Veterans Administration to see approximately four to five clients a week, he has not had any referrals from them. He also has not received any referrals

from Health South. He does not employ any psychologist in his practice.

In closing, counsel for the respondent reminded the Board that respondent has admitted that his conduct was in violation of the Board's statute and regulations. He claimed Respondent is providing services to those who cannot afford care. Counsel argued he should not have his license revoked because he did not have any other blemishes on his license in the fifty years he provided psychological services but for this incident and he understands the severity of his actions.

DAG Ringler argued that because of the nature of the psychological issues affecting the client in this matter and the length of time that she was in treatment, the client was highly vulnerable. The regulations that respondent violated are stated as prohibitions to the conduct of a psychologists. On behalf of the Attorney General, Ms. Ringler recommended that respondent's license to practice psychology be revoked and a civil penalty and costs be imposed.

Regarding costs Ms. Ringler informed the Board that costs including her attorney's fees and investigative costs were approximately $7035 without inclusion of the additional costs for the summary decision and mitigation hearing.[2] A certification of

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[2]Although the Board made a preliminary determination to grant costs to the State at the time of hearing, as Respondent requested (continued...)

costs was submitted on February 3, 2009 by DAG Ringer, and a corrected certification was submitted on February 18, 2009 to the respondent and the board. Before determining the costs to be imposed, the Board will provide the respondent the opportunity to respond concerning the certification of costs prepared by the State. Any response by Respondent shall be received by the Board within ten (10) days of the entry date of this order. The State shall have five days from receipt of any submission of the respondent to reply. The Board will consider and make a determination on the application for costs on the papers and a supplemental order regarding costs shall be issued.

DISCUSSION

There is no dispute that the respondent provided psychological services to B.N. over a thirty year period. Respondent describes the client as having multiple serious problems including an abusive marital relationship, issues dealing with life threatening disease, difficulties with children and the untimely death of a spouse via suicide. The nature of the client's difficulties and the length of time the client was in therapy suggested that the client was highly vulnerable to respondent by virtue of the therapeutic relationship. The Board in its expertise

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[2](...continued)
to review and respond to a cost certification, the Board will provide an opportunity for response to the certifications received after the date of hearing.

agrees with the assessment of the state's expert, Susan Esquilin, Ph.D., that "given the nature of this therapeutic relationship, the risk of exploitation of the client is very high, in that the client could have expected to feel the need to please the respondent by complying with the explicit requests or by meeting his stated (economic) needs. This is exacerbated by the fact that the loans were on-going and repeated."

The Uniform Enforcement Act empowers the Board to discipline a licensee who engages in professional or occupational misconduct at N.J.S.A. 45:1-21(e). The Legislature has given the Board broad powers to achieve the statute's objectives to protect the public. The Respondent's actions in this case, repeatedly borrowing large sums of money from his client whom he was treating for psychological issues, offsetting his charges for therapy against his outstanding debt, are precisely the type of harmful practice that constitutes professional misconduct and warrants discipline.

A counseling relationship creates a fiduciary relationship whereby "one party places trust and confidence in another who is in a dominant or superior position. F.G. v. Macdowell, 150 N.J. 550, 563 (1997). We agree with the argument of the State that the therapeutic relationship a psychologist has with a client places the psychologist in a position of authority in relationship to the client. As clients in a therapeutic relationship reveal to the psychologist intimate details of their emotional lives, as part of

the treatment process, they may be vulnerable to exploitation. These highly personal disclosures create the risk of an exploitive situation when a psychologist enters into a personal or financial relationship with a client whom he is treating. Protecting against this potential for exploitation and maintaining the public's trust in the integrity of professional boundaries between a psychologist and a client are essential to the practice of psychology. These prohibitions on dual relationships and financial arrangements likely to impair judgment are basic and fundamental aspects of practice.

Thus the standards established by the Board's regulations are that psychologists are not to continue in a treating relationship with a client in which he has a financial relationship; a psychologist is prohibited from entering into a dual relationship with a client including any business relationship with a current client; a psychologist is not to barter for psychological services with a current client as it compromises the professional relationship between the client and the psychologist; requires a psychologist to terminate a conflict or dual relationship and prohibits a psychologist from entering into a financial relationship with client which is likely to impair professional judgment including loans to or from a client. in violation of the board's regulations at N.J.A.C 13:42-10.13(c),(d), (e) and (f).

The regulatory scheme aims to prohibit financial and business relationships because of the inequality of power between psychologists and their clients and the likelihood of damage to clients vulnerable to the treating psychologists's abuse of his authority. In addition to the harm to the client is the risk that the public will lose trust in the psychological professional as a result of the breach of professional and personal boundaries.

As noted by Susan Esquilin, Ph.D. (S-1), the respondent's repeated acts "represent a gross deviation from generally accepted standards, as they indicate that a vulnerable client was taken advantage of by a therapist upon whom she had been dependent for many years. The acts served the psychologist's needs, not the client's and, by the client's report, harmed the client by removing the psychologist as a source of help for the client..."

The Board was troubled by the respondent's lack of awareness of the inappropriateness of his actions which went on for a number of years and his lack of consideration that his actions may pose a risk to the client's welfare or even that he should obtain consultation regarding his actions.

Although the Board recognizes that the respondent paid the debt to the client in full, that does not address the inherent conflict created by respondent's borrowing of large sums of money, nor the disturbance to the therapeutic relationship caused by the dispute when the Respondent initially defaulted in payments. It

its shocking that the respondent, even today, could claim that his entering the financial arrangement with the client assisted the client by participation in altruistic endeavors and was part of her therapy. Respondent did not even claim in his testimony that he explored other modes of charitable works which the client could participate in which did not also involve his interests but would have permitted her to contribute to a socially redeemable activity.

The Board believes that Respondent's repeated conduct is sufficiently serious to warrant revocation of his license. In determining penalty, the Board individually weighs each case's specific mitigating and aggravating factors. The public relies upon the Board to review a licensed psychologist's conduct and impose discipline where required. Patients are vulnerable to their psychologists, especially those who are in long term therapeutic relationships. Patients must be reassured that psychologists will act only in their best interests, and the regulated community must be reminded that dual relationships and financial relationships with clients are improper and unacceptable, undermine the therapeutic relationship and may impair the judgment of the professional. The Respondent's conduct in executing ten separate promissory agreements memorializing substantial loans to him from a current patient constitutes flagrant and repetitive misconduct violating fundamental standards of psychological practice and result in actions that created a risk of harm to both his client

and the integrity of the profession. In this case, based on the undisputed egregious facts before it and considering the mitigation presented, the Board finds the most serious of sanctions to be appropriate. Therefore,

IT IS ON THIS 6th DAY OF MARCH, 2009

AS ANNOUNCED ORALLY ON THE RECORD ON FEBRUARY 2, 2009; HEREBY ORDERED:

1. Respondent's license to practice psychology in the State of New Jersey shall be and hereby is revoked effective March 16, 2009. By that date, respondent shall cease the practice of psychology and close his current office, he shall refer all of his patients to other licensed psychologists, or authorized mental health providers or terminate treatment if appropriate. Respondent shall notify all patients that he shall no longer engage in the practice of psychology and provide referrals and establish reasonable procedures for the preservation of client records in accordance with N.J.A.C. 13:42-8.1(h). He shall present to the Board by March 16, 2009 a written list identifying all of his clients by initials and indicating to whom he referred the particular client or reason termination was appropriate. He shall return his certificate of renewal and wall certificate to J. Michael Walker, Executive Director of the Board at the Board office

located at 124 Halsey Street, 6th floor, Newark, New Jersey no later than March 16, 2009.

2. Respondent shall not apply for reinstatement of his license to practice psychology for a minimum of five years from the date of the entry of this final order. Upon any re-application Respondent shall appear before the Board or a committee of the Board at which time the burden shall be upon him to establish that he is fit to practice psychology, including providing a psychological evaluation from a board approved psychologist who recommends he is fit and competent to practice and by presenting evidence of satisfactory completion of an ethics course pre-approved by the Board. Additionally, the Board reserves the right to place restrictions and/or limitations upon Respondent's license to practice psychology upon reinstatement.

3. Respondent shall pay a civil penalty in the amount of $10,000 for violation of N.J.S.A. 45:1-21(e) and (h) including violations of N.J..A.C. 13:42-10.13(c),(d),(e)and(f). The penalty shall be paid in full by March 16, 2009 by certified check or money order and sent to the attention of J. Michael Walker, Executive Director, Board of Psychological Examiners, P.O. Box 45017, Newark, New Jersey 07101.

4. Respondent shall pay costs in this matter. At the time of the hearing only a preliminary estimate of costs was made and a certification of costs was not available. Respondent shall

have ten days from the entry of this order to respond to the certification of costs which have been submitted. The State shall have five days from receipt of any submissions of respondent to reply. The Board will determine the application for costs on the papers. A supplemental order regarding costs will be issued.

5. Failure to remit any payment required by this order shall result in the filing of a certificate of debt.

NEW JERSEY STATE BOARD OF
PSYCHOLOGICAL EXAMINERS

By: Nancy E. Friedman, Ph.D.
Nancy E. Friedman, Ph.D.
Board Chairperson