

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2147-09T2

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF

SAMUELLE KLEIN-VON REICHE, PSY.D.,  
LICENSE NO. 35SI00324600

TO PRACTICE PSYCHOLOGY  
IN THE STATE OF NEW JERSEY

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Argued May 25, 2010 - Decided September 1, 2010

Before Judges Grall and LeWinn.

On appeal from a Final Agency Decision of  
the New Jersey State Board of Psychological  
Examiners, Division of Consumer Affairs.

Steven I. Kern argued the cause for  
appellant Samuelle Klein-Von Reiche, Psy. D.  
(Kern Augustine Conroy & Schoppmann, P.C.,  
attorneys; Mr. Kern, of counsel; R. Bruce  
Crelin, on the brief).

Siobhan B. Krier, Deputy Attorney General,  
argued the cause for respondent New Jersey  
State Board of Psychological Examiners  
(Paula T. Dow, Attorney General, attorney;  
Andrea M. Silkowitz, Assistant Attorney  
General, of counsel; Ms. Krier, on the  
brief).

PER CURIAM

Appellant appeals from the November 30, 2009 Final Agency Decision of the State Board of Psychological Examiners (Board) suspending her license to practice psychology in the state "for one year with six months active and six months stayed," provided that she comply with certain conditions; and providing further that "[u]pon the completion of six months of active suspension, [she] shall be granted leave to petition the Board . . . for consideration of reinstatement of her license[,]" subject to the condition that a "licensed New Jersey psychologist . . . shall provide supervision as directed by the Board of her practice for a minimum of one year"; and requiring her to "pay a penalty in the amount of \$5000 for the violations found herein."<sup>1</sup> Appellant also appeals from the January 14, 2010 Supplemental Order of the Board requiring her to pay a total of \$32,855.29 in fees and costs incurred by the State in this matter.

On appeal, appellant attacks the Board's decision on both procedural and substantive grounds. She contends that: (1) the Board's decision is invalid because it acted without the statutorily required quorum; (2) the Board's decision is an impermissible effort to regulate the practice of psychology through the disciplinary process; (3) findings in the decision

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<sup>1</sup> The Board's suspension order was stayed by this court on December 9, 2009.

of the Administrative Law Judge (ALJ) are "[c]ontrary to [l]aw"; and (4) the Board's decision to impose a more severe penalty than that recommended by the ALJ was arbitrary and capricious. We find no merit to any of these contentions and affirm.

I.

On February 4, 2008, the Attorney General charged appellant in a three-count complaint. Count I charged her with violating "appropriate boundaries between a therapist and a client," N.J.S.A. 45:1-21(e); endangering the health, welfare and safety of "the patients C.V. and M.A.," N.J.S.A. 45:1-21(c); repeated acts of negligence, N.J.S.A. 45:1-21(d); and the "failure to fulfill the ongoing statutory requirement of good moral character," N.J.S.A. 45:14B-14(b). Count II charged her with "[g]ross malpractice[,]" N.J.S.A. 45:1-21(c) and the misuse of her "influence as a therapist in a manner that exploited C.V.'s and M.A.'s trust and dependency," N.J.A.C. 13:42-10.8 and N.J.S.A. 45:1-21(h). Count III charged her with the "use or employment of dishonesty, fraud, deception, misrepresentation and false pretense[,]" N.J.S.A. 45:1-21(b); the "failure to cooperate with an inquiry of the Board[,]" N.J.A.C. 13:45C-1.2 and N.J.S.A. 45:1-21(h); and "[p]rofessional misconduct[,]" N.J.S.A. 45:1-21(e).

The gravamen of these allegations was that appellant, a licensed psychologist specializing in behavioral therapy, "developed an inappropriately close, personal and social relationship with her patient C.V.[,]" in that, at C.V.'s expense, she accompanied him to a professional convention in the Bahamas, shared a hotel room with him "for at least two nights," and spent "considerable time . . . and dined together" with C.V. on at least two occasions. The complaint further alleged that appellant "discussed intimate details of her personal life with C.V."

The complaint also alleged that M.A., who had been in and out of a relationship with C.V., "divulged to [appellant] the most intimate emotional and sexual details of [her] relationship [with] C.V.[,] . . . and . . . [appellant] inappropriately exploited . . . her position as C.V.'s therapist and improperly used the information she acquired during psychotherapy to develop a close social relationship with C.V."

Finally, the complaint charged that, when the Board sent appellant a request for a written response to its initial inquiry, appellant withheld information and engaged in "dishonesty, fraud, deception . . . and false pretense" in her response.

The matter was referred to the Office of Administrative Law (OAL) as a contested case. The Board moved for summary disposition; appellant cross-moved for summary disposition in her favor. On November 17, 2008, the ALJ entered an Order on Partial Summary Decision, noting that, as a result of a pre-hearing conference on May 15, 2008, "the issues to be resolved are 1) whether the doctor violated the standard of care with respect to a former patient, and 2) if there was a violation, then what would be the proper penalty[.]" The order set forth the following "[u]ndisputed [f]acts":

1. [Appellant] . . . is a licensed psychologist in New Jersey . . . .
2. C.V. is a fifty-three-year-old police officer who began seeing [appellant] for individual psychotherapy on or about November 28, 2003. He complained of anger-management problems and stress from his adult son and caring for his elderly father. He was also experiencing problems with his girlfriend, M.A.
3. The [appellant] saw C.V. on a weekly basis for nine months.
4. During C.V.'s sessions with [appellant], he discussed family issues, including difficulties in his relationship with his long-term girlfriend, M.A. M.A. attended three joint sessions with C.V.
5. On September 7, 2004, C.V. and [appellant] agreed to terminate the professional relationship because C.V. had achieved his treatment goals.

6. C.V. was scheduled to attend a Police Benevolent Association (PBA) convention in the Bahamas from September 19 to September 25, 2004. Originally, M.A. was supposed to accompany C.V. on the trip. However, M.A. and C.V. had difficulties and M.A. decided not to attend.

7. A few days after C.V. stopped treating with [appellant], he telephoned her and asked her to accompany him to the PBA convention. [Appellant] initially declined the invitation, but a few days later she agreed to go with him.

8. [Appellant] and C.V. traveled together from Newark to the Atlantis resort in the Bahamas on September 19, 2004. [Appellant] and C.V. shared a hotel room for several days between September 19 and September 24, 2004. According to C.V., they shared one bed.

9. [Appellant] left the Bahamas before C.V. on or about September 24, 2004.

10. [Appellant] received a letter from the Board dated January 14, 2005.

11. [Appellant] sent a letter to the Board on January 31, 2005, in which she stated: "At no point during or following treatment did I socialize with [C.V.] in any capacity, including but not limited to accompanying him on a cruise."

The ALJ summarized the parties' arguments as set forth in their respective motions for summary disposition. The ALJ concluded that appellant "[e]ngag[ed] in an inappropriate personal and social relationship with C.V. for her own benefit and one that exploited his trust and dependence on her[,]" in

violation of N.J.S.A. 45:1-21(c) to (e), 45:14B-14(b) and N.J.A.C. 13:42-10.8.

The ALJ rejected appellant's assertion that her professional relationship with C.V. had terminated two weeks before the trip to the Bahamas; the ALJ found that appellant's actions "basically foreclosed C.V. from returning for further treatment[,]" and that "two weeks is not a sufficient time for a patient to decide that his relationship with his therapist would be permanently severed."

The ALJ next addressed the Board's charges of dishonesty, fraud, deception or misrepresentation, and made the following findings. On January 14, 2005, having received a complaint from M.A., the Board sent appellant a letter asking her to respond to certain questions in response to M.A.'s allegations that appellant "discussed [her] personal life with [her] patients[,]. . . [and] contacted [her] client [C.V.] for personal favors and accompanied [C.V.] on a cruise." Plaintiff's response is set forth in number eleven of the "undisputed facts" above.

The ALJ concluded that appellant "certainly put too fine a point on her argument that she did not in fact go on a cruise with C.V. [Appellant] knew full well that the Board was referring to the Bahamas vacation and she also knew what socializing 'in any capacity' meant." The ALJ found that

appellant's "statement that she spontaneously decided to clarify her initial response before she testified before the Board lacks credibility. . . . It is clear that [appellant's] response to the Board's initial letter of inquiry violated" the requirement that "a licensee . . . cooperate with the Board's inquiry and . . . timely provide truthful, accurate information."

The ALJ further found that appellant "tried to minimize the extent of the infraction by stating [to the Board] that she was only in the Bahamas one and a half or two and half days." The ALJ noted the Board's determination that appellant "was away from September 19 to 24, 2004[,]" and considered that as "another indication that [appellant] was not straightforward with the Board."

The ALJ also rejected appellant's contention that the Board was required to present expert testimony to establish its claim of professional misconduct. The ALJ agreed with the Board's position that it "'has the authority to determine professional misconduct . . . on a case-by-case basis pursuant to the Uniform Enforcement Act at N.J.S.A. 45:1-21(e).'" The ALJ found further that "while professional misconduct is not defined by statute or regulation, it is recognized that the nature of such conduct is 'malum in se', which does not need to be specifically enumerated because it is 'conduct inherently wrong and obviously



unprofessional[,]" citing In re Heller, 73 N.J. 292, 306 (1977).<sup>2</sup>

The ALJ determined that it was necessary to hold a separate hearing regarding penalty. Because the Board's recommendation of a one-year suspension "involve[d] substantial property rights," the ALJ held that appellant would have the opportunity "to present testimony regarding the penalty to be imposed, including mitigating factors to be considered."

Prior to the hearing on penalty, appellant filed a motion for reconsideration. The ALJ denied that motion in a decision issued on December 4, 2008.

At the penalty hearing,<sup>3</sup> Frank J. Dyer, Ph.D., testified "as an expert on the issue of penalty." Dyer concluded that appellant was "a risk to her patients because her behavior showed that something had gone wrong with her judgment." He opined that "if she were allowed to practice unrestricted, . . . she would likely repeat the violation with another patient."

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<sup>2</sup> In Heller, supra, the Court noted that while not all "misdeeds or aberrations are tabulated as acts of professional misconduct in the . . . statute or regulations, . . . that fact does not make them any less so." Id. at 306. See further discussion below.

<sup>3</sup> Our synopsis of the evidence presented at the penalty hearing is taken from the ALJ's summary "of what [she] considered[ed] to be the important points of the witnesses' testimony[,]" which we find to be supported by the record. Appellant does not dispute that summary in her briefs.

Dyer acknowledged that "there was no formal adoption by the New Jersey Psychological Association of a policy regarding contact following treatment, nor is there a guideline or rule regarding (non-sexual) contact following treatment in the . . . Association's Code of Conduct." Nonetheless, Dyer concluded that "the actions taken by [appellant] were a gross abandonment of her role as a psychologist and could trigger latent problems in her patient[s]." He believed that by "basically substituting for M.A. in the Bahamas [appellant] did not help C.V.'s relationship issues." Dyer further acknowledged that he was not aware of "any reported boundary violations by [appellant] since the 2004 incident which would impact on the chances of there being other boundary violations."

C.V. testified and described the trip to the Bahamas. He stated that, even though he and appellant shared a bed, "there was no sex or touching between them and he might have kissed her once on the cheek." C.V. stated that "he did not feel exploited or dominated by the doctor." Other than his therapy sessions, he did not feel "dependent upon [appellant] for advice."

Dr. Howard Baum, a medical doctor who has seen appellant as a patient, testified that she "has become a valuable resource for treating his patients who have drug problems[,]" and that he

"has never had a single complaint from any patient that he referred to [appellant]."

Appellant testified that she has been a licensed clinical psychologist since 1993 in New York and since 1994 in New Jersey, and has maintained a private practice throughout that time. She described her field of "cognitive behavioral therapy . . . as focusing on the present and working in a supportive setting where the therapist is an active participant." She stated that "[d]ependency is not a relevant concept; the patient is supposed to maximize his existing coping skills." She described her therapeutic relationship with C.V., and explained that her professional relationship with him ended on September 7, 2004, since C.V. "decided that he had accomplished his goals . . . ." She decided to accompany C.V. to the Bahamas because "she felt bad that he would be alone[,] and "at the time she was looking for a male to be friends with." She denied being "interested in a sexual relationship with C.V."

Appellant stated that C.V. was supposed to book a second room for her, but when they arrived all rooms were booked and they shared a bed in his room. She testified that she "slept on her side wearing her pajamas. C.V. did not disrobe and stayed on the far side of the other side of the bed."

Appellant further testified that she had "limited contact with C.V. during the convention" in the Bahamas and "saw him in the evenings at the . . . dinners. During the day . . . she stayed at the beach or went to the workout room. C.V. was out of the room before she got up. No romantic or sexual activity occurred during the trip."

Appellant stated that she did not know C.V. had "renewed contact with M.A.[,]" and that if "she had known, she would not have gone away with him, because she did not want to complicate his life. She knew that M.A. was jealous."

Regarding the dishonesty, fraud and misrepresentation charges, appellant explained that when she responded to the Board's questionnaire that she did not socialize with C.V. in any capacity, she was upset about the complaint and she was responding to M.A.'s allegations of sexual misconduct. Appellant claimed that "at the time she appeared before the Board she did not know that the Board had undertaken an independent investigation of the incident."

Appellant acknowledged that she had told the Board "that C.V. wanted to date her, . . . [but] he was respectful of her decision not to date and the boundaries that she had set." Appellant "did not think that she was giving [C.V.] a mixed message" by agreeing to accompany him to the Bahamas.

Dr. Laurie Deerfield, a psychiatrist, conducted an assessment of appellant for purposes of the penalty hearing. She reviewed appellant's "past pattern of behavior and mental status[,]" and found "no sign of sexual addiction . . . ." Appellant "seemed to stay in relationships [with her patients] longer than she should in an attempt to try to fix the person, even when the relationships were hurtful to her." Deerfield opined that appellant was "the exploited rather than the exploiter." She further opined that "if allowed to practice without restrictions, [appellant] would not engage in behavior similar to what occurred with C.V."

Several of appellant's patients testified. Each described how he or she had benefited from therapy with appellant, and how difficult it would be if appellant were not available to continue providing therapy.

Edith Selzer, a clinical social worker who practices individual, couples and group psychotherapy and works with appellant, testified that "she thought that [appellant is] exceptional, extremely intelligent and professional. She is devoted to her patients and shows great insight into their problems and needs." Selzer opined that "it would be a mess if [appellant's] patients could not see her, and [Selzer] could not

imagine being able to find another therapist to substitute for [appellant]."

After reviewing the testimony and the arguments of the parties, the ALJ concluded that: (1) "it appears that [C.V.] did not suffer any type of mental breakdown as a result of [appellant's] accompanying him to the [Bahamas]"; (2) appellant "showed a lack of insight into the possible ramifications of her actions"; (3) there had been no proof presented "that [appellant] is likely to commit a boundary violation again"; (4) Dr. Dyer did not evaluate appellant directly; therefore "not . . . much weight [was given] to his analogy with more severe sexual violations between therapist and patient"; (5) appellant's claim that "it was only a bad idea" to go to the Bahamas with C.V. "because it caused unanticipated 'complications in C.V.'s life' and because of the legal proceedings that followed[,]" made it appear that appellant "was reshaping her prior testimony to place it in the best light"; and (6) appellant's "testimony that she went on the trip because she felt bad that C.V. would be alone" was "troubl[ing] . . . ."

The ALJ concluded that she had "no reason to disturb [her] prior conclusions" in her decision; however, "information gleaned in the mitigation portion of the case d[id] affect the penalty to be imposed." The ALJ concluded that appellant

"should receive a reprimand[,]" and "should be required to take a Board approved course in boundary violations . . . ." This latter condition was imposed "not necessarily because [the ALJ] believe[d] that [appellant] would intentionally violate boundaries again, but because [the ALJ was] not confident that [appellant] understands what the boundaries are." In addition, the ALJ assessed appellant "civil penalties in the amount of \$5,000, as well as costs, including costs of investigation, expert witness fees, attorney's fees and transcripts . . . ."

Both the Attorney General and appellant filed exceptions to the ALJ's decision with the Board. The Board heard oral argument on the exceptions on October 5, 2009, and held a mitigation hearing immediately following argument. Only four Board members were present at these proceedings.

In its November 30, 2009, Final Decision, the Board rejected appellant's arguments that: (1) the ALJ had "improperly granted Summary Decision to the State because the facts when viewed in the light most favorable to [appellant] would demonstrate that [she] had not violated any of the Board's statutes and regulations"; and (2) the ALJ improperly found that appellant's "written and oral responses to the Board concerning her actions with the former patient constituted the use of dishonesty, fraud, deception or misrepresentation . . . ."

The Board

adopted the ALJ's findings that the actions of [appellant] in engaging in a close personal and social relationship with her former patient constituted inter alia, professional misconduct . . . and gross negligence and repeated negligence . . . ; and that [appellant's] response to the Board and to the ALJ constituted engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense . . . , failure to cooperate in a Board inquiry . . . and professional misconduct . . . .

Nine witnesses testified before the Board on behalf of appellant at the mitigation hearing. They consisted of current patients and professionals who have worked with appellant; the patients testified "as to the effectiveness of her treatment and their dependency on [appellant] to assist them in working on outstanding issues." The professional colleagues "testified as to her moral character and her intelligence and clinical skills."

The Board determined to impose the sanctions set forth at the outset of this opinion. In support of its decision on sanctions, the Board found:

the formal reprimand imposed by the ALJ was insufficient. [Appellant's] conduct includes serious violations of basic standards of practice, involving repeated boundary violations, [appellant's] inability to handle transference issues appropriately and dishonesty to the Board in writing and at an investigative inquiry, all require a more



stringent disciplinary response. This matter involves an extraordinary lack of insight by [appellant] into the nature of her misconduct, a failure to take responsibility for her actions, and repeated dishonesty to the Board. In order to protect patients, sanction the improprieties found, and ensure future safe practice, the Board chose to impose a one year suspension with six months active and six months stayed, with restrictions on practice upon re-entry to practice including supervision of practice and ongoing therapy for [appellant] in addition to the conditions recommended by the ALJ.

. . . .

. . . [Appellant's] professional misconduct and misrepresentations manifested themselves in a variety of ways. The Board agrees with the ALJ's finding that it is professional misconduct for [appellant] to accompany a former patient to the Bahamas and share a bedroom with that former patient, twelve days after the treatment was terminated. The transgression is exacerbated by [appellant's] acknowledgment that the patient had evidenced transference issues during the treatment as demonstrated by his interest in dating her. [Appellant's] decision to attend the convention in the Bahamas with the former patient because he was afraid to be alone demonstrates to the Board that this patient may have had outstanding issues that were not addressed fully in therapy; [appellant's] failure to take the initiative in obtaining a separate room coupled with delegating of her professional responsibility to the former patient for securing separate sleeping arrangements again demonstrates poor judgment and that [appellant's] actions constituted professional misconduct. Furthermore, [appellant's] letter to the Board affirming that she had not socialized

in any way with the former patient constitutes a clear misrepresentation which she has attempted to minimize. The undisputed evidence and testimony are that she accompanied C.V. to a PBA convention in the Bahamas, shared a hotel room with him and she attended at least two dinners with him while at the convention. . . .

Additionally, the Board agrees with the ALJ's finding that [appellant's] testimony . . . regarding her establishing of boundaries with the former patient before accompanying him to the [c]onvention lacks truthfulness and candor as the former patient's testimony denies any conversation with [appellant] regarding engaging in sexual activities or establishing of boundaries regarding their respective roles on this trip prior to attending the convention in the Bahamas.

The Board was further troubled by [appellant's] changing rationale for accompanying her former patient to the Bahamas. [Appellant's] testimony at the investigative inquiry before the Board demonstrated that she saw the former patient as a caretaker and someone she could lean on as she was going through a divorce herself and that she allowed her personal needs to interfere with her professional judgment. In her testimony before [the] ALJ . . . she represented that she attended the convention with her former patient because she "felt bad for him that he was going by himself and she was not accompanying him as a therapist but a friend." These differing versions were inconsistent and demonstrated her poor judgment and professional misconduct in accompanying a recent former patient, especially one who had professed an interest in dating her during the course of the therapy which in the very least sent the former patient mixed signals.

In sum, the actions of [appellant] in this matter taken as a whole demonstrate an egregious breach of professional standards and misrepresentation. [Appellant's] testimony and actions demonstrated that she put her needs above her patient and when confronted with her actions, [appellant] was quick to deny the conduct and misrepresent the facts. This professional misconduct continued from the initial confrontation of the allegations by the Board through the testimony provided before the [OAL] hearing. Such flagrant transgressions of professional standards coupled with repeated dishonesty to the Board, mandate [the sanctions imposed] . . . . As [appellant] has demonstrated, even currently she lacks an understanding of the boundaries that she must establish with patients as a licensed psychologist.

On January 14, 2010, pursuant to submissions by the Attorney General regarding the costs of investigating and prosecuting this matter, the Board issued its Supplemental Order requiring appellant to pay a total of \$32,855.29 in costs and fees.

## II.

We first address appellant's argument that the Board's actions are invalid because it "acted without the statutorily required quorum." Appellant points out that the Board "shall consist of ten members[,]" seven "professional" members under N.J.S.A. 45:14B-9, two "public" members under N.J.S.A. 45:1-2.2(b), and one "state" member under N.J.S.A. 45:1-2.2(c). N.J.S.A. 45:1-2.2(d) provides that a "majority of the voting

members" of the Board "shall constitute a quorum thereof and no action . . . shall be taken except upon the affirmative vote of a majority of the members of the entire board . . . ."

Therefore, appellant argues, because "the entire Board" consists of ten members, the four members present at her hearing on October 5, 2009, all of whom were "professional members of the Board," did not constitute a quorum.

The Board notes that there were three vacancies at the time of appellant's hearing and, therefore, four members constituted a quorum. The Board points to Attorney General's Formal Opinion No. 6-1978, which provides the following interpretation of the pertinent statutes:

[T]he legislative intent [is] to continue to require a majority of the existing membership of a professional board to constitute a quorum, but that no action be taken except upon the affirmative vote of a majority of the existing members of the board. A majority of a quorum would not be sufficient unless the same is equivalent to or more than a majority of the existing appointed membership of the professional board.

For these reasons, . . . pursuant to N.J.S.A. 45:1-2.2(d) a majority of the membership of a professional board shall constitute a quorum, but . . . no affirmative action [shall] be taken in the conduct of the business of a board unless upon the affirmative vote of the majority of the present appointed members of the board . . . .

[(Emphasis added).]

It is undisputed that vacancies existed on the Board at the time of appellant's hearing in October 2009. We are satisfied that the Attorney General's opinion is intended to address just this situation.

Appellant argues that the Attorney General's Opinion is not binding precedent upon this court. However,

[a]lthough we as a court are not bound to adopt the Attorney General's Formal Opinion as a correct statement of the law, it is nonetheless entitled to a degree of deference, in recognition of the Attorney General's special role as the sole legal advisor to most agencies of State Government  
. . . .

[Quarto v. Adams, 395 N.J. Super. 502, 513 (App. Div. 2007).]

We consider the Attorney General's construction of the statutes to be reasonable.

We briefly address appellant's remaining arguments, which we consider to be "without sufficient merit to warrant discussion in a written opinion[,]" Rule 2:11-3(e)(1)(E), beyond the following comments. We affirm substantially for the reasons set forth in the final decision of the Board, which we find are "supported by sufficient credible evidence on the record as whole . . . ." R. 2:11-3(e)(1)(D).

We must be mindful of our limited scope of review, not only as to the misconduct findings by also as to the appropriate penalty. An administrative agency's decision will be upheld "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007). A reviewing court will only decide whether there is "sufficient credible evidence" in the record by considering the "proofs as a whole." Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (internal quotation marks omitted). Additionally, an appellate court accords "due regard" to the agency's expertise where that is a factor. Ibid. Thus, courts will "afford substantial deference to the actions of administrative agencies such as" the Board of Psychological Examiners "because of [its] 'expertise and superior knowledge' in [its] specialized field[]." In re Zahl, 186 N.J. 341, 353 (2006) (Zahl I).

In sum, an appellate court will not substitute its own judgment for that of the administrative agency. Id. at 354 (citing In re Polk, 90 N.J. 550, 578 (1982)). In Zahl I, the Supreme Court also reminded this court that our review of an agency's choice of sanctions is limited and that we must afford substantial deference to such actions of specialized boards like the Board of Psychological Examiners. Id. at 353-54.

The Board did not "enact[] a new rule applicable to post-treatment, non-sexual interactions between psychologists and former clients[,]" as appellant contends. In this regard, appellant's reliance upon Metromedia, Inc. v. Dir., Div. of Taxation, 97 N.J. 313 (1984), is misplaced. There, the Court identified various factors to be considered when determining whether agency action must be validated through formal rulemaking.

Here, the Board was exercising its duly authorized power to control the professional conduct of its licensees. In this context, we consider In re Heller, supra, 73 N.J. 292, dispositive. In that case, the Court upheld the authority of the Board of Pharmacy to take disciplinary action against a licensed pharmacist in the absence of express statutory or regulatory prohibitions of the conduct charged, noting that "[t]his conclusion is, to a large extent, a consequence of the exigencies and practicalities of the modern regulatory process." Id. at 303. The Court recognized that "[w]here, as here, the task of the regulatory agency is 'to protect the health and welfare of members of the public' by assuring that all licensed practitioners are qualified, competent and honest, the grant of implied powers is particularly important." Id. at 303-04 (quoting Rite Aid of NJ, Inc. v. Bd. of Pharmacy, 124 N.J.

Super. 62, 66-68 (App. Div.), certif. denied, 63 N.J. 503 (1973)).

As with the pharmacist in Heller, supra, appellant "can hardly claim that the statutory language led h[er] to believe that h[er] conduct was permissible." Id. at 307. We are satisfied that the Board did not act arbitrarily in concluding that appellant's continuing effort to characterize her behavior with C.V. merely as "a psychologist's social interactions with a former client," completely misrepresented, or denied, the unprofessional nature of her conduct.

For this reason, we also reject appellant's challenge to the ALJ's finding that her conduct was malum in se. We note that the Board, in fact, did not base any part of its decision on this finding by the ALJ. As discussed, the Board made its own extensive, independent findings of fact with respect both to appellant's exercise of poor professional judgment in her conduct with C.V., as well as her dishonesty and misrepresentation in her response to the Board's initial inquiry. As noted, we have determined that these findings are adequately supported by the record.


Finally, we are satisfied that the Board properly exercised its authority in rendering an independent assessment of the appropriate sanctions to be imposed. We defer to the Board's



broad discretion in determining the appropriate sanctions to be imposed on licensees who have engaged in professional misconduct. In re Polk, supra, 90 N.J. at 563-65. We will not substitute our judgment for that of the Board. Id. at 578. Here, appellant not only engaged in professional misconduct with C.V., but she also exacerbated the situation by her less than forthcoming response to the Board's initial inquiry, as well as her ongoing effort to minimize the highly inappropriate and unprofessional nature of her conduct. Under these circumstances, we find nothing untoward about the sanctions imposed by the Board. Zahl I, supra, 186 N.J. at 354.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION