COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

BEFORE THE STATE BOARD OF PSYCHOLOGY

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

V.

RICHARD SCOTT LENHART, Ph.D.
DOCKET NO. 0121-63-13
FILE NO. 12-63-11617

FINAL ADJUDICATION AND ORDER

SALVATORE CULLARI, PH.D., CHAIRMAN
STATE PSYCHOLOGY

KATIE TRUE, COMMISSIONER
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

2601 North Third Street
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
This matter comes before the State Board of Psychology (Board) to determine whether Richard Scott Lenhart, Ph.D. ("Respondent"), violated the Professional Psychologists Practice Act (Act). The Order to Show Cause, filed January 28, 2013, set forth 111 counts alleging that Respondent violated the Act and/or the regulations of the Board, subjecting him to disciplinary sanctions and the imposition of the costs of investigations under section 8 and 11(b) of the Act, 63 P.S. § 1208 and § 1211(b), as well as under section 5(b)(4) and (5) of Act 48 of 1993 ("Act 48"), 63 P.S. § 2205(b)(4) and (5).

Hearing Examiner Ruth D. Dunnewold, Esquire, conducted the formal hearing in this matter on March 22, 2013. Respondent appeared and was represented by Philip M. Masorti, Esquire. Bridget K. Guilfoyle, Esquire, represented the Commonwealth.

On March 29, 2013, the hearing examiner issued a Proposed Adjudication and Order revoking Respondent's license, directing Respondent to pay the Commonwealth's costs of investigation in the amount of $18,433, and imposing a $50,000 civil penalty.

On April 12, 2013, Respondent filed exceptions to the Proposed Adjudication and Order. Respondent takes exception to the imposition of the costs of investigation in the amount of $18,433 because the costs were not itemized, to the imposition of the $50,000 civil penalty as excessive, and to the hearing examiner's proposal that Respondent pay the costs of investigation and civil penalty within 30 days without considering his financial status and ability to pay. The Commonwealth filed a reply to Respondent's exceptions on April 27, 2013.

All Board members participating in the deliberation and decision in this matter have reviewed

the entire record. The Board now issues this Final Adjudication and Order.

2 Board Members Karen W. Edelstein, Psy.D., Joseph L. French, Ed.D. and Richard F. Small, Ph.D., recused themselves and have not participated in the deliberation or decision in this matter.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is consistent with the authority of the Board under the Act, the Administrative Agency Law, 2 Pa. C.S. §504, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 35.205 and 35.226, for the Board to adopt the Findings of Fact, Conclusions of Law, and Discussion of the hearing examiner if the Board determines that they are complete and supported by the evidence and the Act.

The Board has reviewed the entire record and reached the conclusion that the hearing examiner's proposed findings of fact, conclusions of law, and discussion are complete and supported by the evidence and the Act. Accordingly, the Board hereby adopts and incorporates by reference as if fully set forth the Findings of Fact, Conclusions of Law, and Discussion contained in the hearing examiner's March 29, 2013, Proposed Adjudication and Order. The hearing examiner's Proposed Adjudication and Order is appended hereto as Appendix "A."
Having adopted the hearing examiner's proposed Findings of Fact, Conclusions of Law and Discussion, the Board adds the following discussion to address the exceptions Respondent filed.


In its Order of Intent to Review, the Board advised the parties that it “may impose a greater or lesser sanction than that imposed by the hearing examiner, without regard to the relief requested or the position argued by any party.” Because the Board is the ultimate fact finder, it has the authority to increase or decrease a sanction recommended by the hearing examiner where the Findings of Fact support it. *Yousufzai, supra; Telang, supra.*

Respondent raised three exceptions to the hearing examiner’s Proposed Adjudication and Order. First, “Respondent objects to the finding of fact/conclusion of law at page 66 of the Proposed Adjudication and Order... that the investigative costs in this matter totaled Eighteen Thousand Four Hundred Thirty-Three ($18,433.00)” and asserts that the imposition of the obligation to pay the investigative costs on Respondent is “ultra vires since an itemization of this claimed expense was not... put forth the underlying hearing.” (Respondent, R. Scott Lenhart, Ph.D.’s Brief on Exceptions to Proposed Adjudication and Order Dated March 29, 2013, p. 2).
The Board notes that, in each of the 111 counts of the Order to Show Cause, the Commonwealth informed Respondent that pursuant to Section 5(b)(5) of Act 48, 63 P.S. §2205(b)(5), the Board was authorized to "impose the costs of the investigation." In the Penalties Section, immediately following Count One Hundred Eleven, the Commonwealth informed Respondent that the Board may impose, as part of any disciplinary sanction, "the costs of investigation underlying that disciplinary action in the amount of $18,433.00." (Order to Show Cause, p. 75). At the hearing, the Commonwealth introduced Exhibit C-5 which sets forth the investigative hours that two investigators expended as well as the cost of the services that an expert performed on this matter prior to the filing of the Order to Show Cause. (N.T. at Exhibit C-5). Respondent had prior notice that the Commonwealth was seeking to recover the costs of its investigation and had an opportunity to challenge the Commonwealth's evidence of investigative costs at the formal hearing but did not. In so much as the attestation of investigative costs contained in Exhibit C-5 was admitted without objection, Respondent has waived his demand for an itemization and accounting for the costs of investigation. (N.T. 19-22).

Act 48 authorizes the Board to assess the costs of investigation underlying a disciplinary sanction against a Respondent as part of a sanction, so the Board's imposition of investigative costs is not ultra vires. 63 P.S. §2205(b)(5). The only statutory restriction on the Board's imposition of investigative costs is that the costs may not include any costs incurred after the filing of the Order to Show Cause. Id. Exhibit C-5, which is uncontroverted, indicates that the Commonwealth incurred all of the investigative costs it claimed prior to the filing of the Order to Show Cause.

In his second and third exceptions, Respondent asserts that the proposed imposition of a $50,000 civil penalty to be paid within 30 days is tantamount to a fine, “certainly punitive,” “manifestly excessive,” constitutes too severe a punishment, and “violates fundamental notions of due process and equal protection of the law under the United States Constitution and the Pennsylvania Constitution.” (Respondent’s Brief on Exception, pp. 3-4). Respondent argues that the hearing examiner was obligated to determine “whether Respondent was financially able to pay such a sanction” within the time prescribed. *Id.* Respondent cites a number of criminal cases, none of which relates to Act 48 or the civil penalty provisions of the Professional Psychologists Practice Act, 63 P.S. § 1211(b), to support his argument that the Board must consider the financial resources of the licensee being penalized before issuing such a sanction. *Id.* at p4.

The Pennsylvania appellate courts have recognized that “administrative bodies having expertise in specific professional areas are to be entrusted to fashion administrative remedies that are fair and appropriate.” *Eckhart v. Department of Agriculture*, 8 A.3d 401, 407 (Pa. Commw. 2010); *see also Slawek v. State Bd. of Medical Educ. and Licensure*, 526 Pa. 316, 322, 586 A.2d 362, 365 (1991). The Commonwealth Court has declared that “[i]f a sentence imposed is within the statutory limits, there is no abuse of discretion unless the sentence is manifestly excessive so as to inflict too severe a punishment.” *Eckhart*, 8 A.3d at 407; *Borough of Kennett Square v. Lal*, 164 Pa. Commw. 654, 643 A.2d 1172, 1175 (Pa. Cmwlth.), *appeal denied*, 540 Pa. 586, 655 A.2d 517 (1994).

Act 48 authorizes the Board to “levy a civil penalty of not more than $10,000 per violation on any licensee . . . who violates any provision of the applicable licensing act or board regulation.” 63 P.S. § 2205(b)(5). Nothing within Act 48 directs the Board to consider the financial status of the licensee before imposing the civil penalties for which it provides. The Professional Psychologists Practice Act authorizes the Board to “levy a civil penalty of up to one thousand ($1,000) dollars on
any current licensee who violates any provisions of this act . . .” 63 P.S. § 1211(b). Similarly, nothing within the civil penalty section of the Professional Psychologists Practice Act directs the Board to consider the financial status of the licensee before imposing a civil penalty. The only statutory restriction regarding the imposition of a civil penalty is that Act 48 precludes the Board from imposing “a civil penalty under any other act for the same violation for which a civil penalty has been imposed pursuant to this section.” 63 P.S. § 2205(c).

Having received notice in each of the Order to Show Cause’s 111 counts that the Board was authorized “to impose a civil penalty under Section 11(b) of the [Professional Psychologists Practice] Act, 63 P.S. § 1211(b), and/or Section 5(b)(4) of Act 48, 63 P.S. § 2205(b)(4),” Respondent had an opportunity to offer mitigating evidence related to his financial circumstance at the formal hearing. Respondent elected not to offer any evidence related to his financial status although he had received notice in the Order to Show Cause that pursuant to Act 48 he was potentially facing a maximum civil penalty of $10,000 for each of the 111 counts or, in the alternative, pursuant to the Professional Psychologists Practice Act, he was potentially facing a maximum civil penalty of $1,000 for each of the 111 counts. The Statutory Construction Act provides that “[w]henever a penalty or forfeiture is provided for the violation of a statute, such penalty or forfeiture shall be construed to be for each such violation.” 1 Pa. C.S. § 1930. In the present case, the hearing examiner determined that Respondent committed 111 violations, which could have resulted in the imposition of a $1.11 million civil penalty. Under the Professional Psychologists Practice Act, the determination that Respondent committed 111 violations could have resulted in the imposition of an $111,000 civil penalty.

The proposed $50,000 civil penalty is well within the statutory limits of Act 48 and the Professional Psychologists Practice Act. In fact, the civil penalty that the hearing examiner proposed
is approximately $450 per violation. The Board agrees with the hearing examiner’s determination that a civil penalty is necessary given the duration of Respondent’s conduct and his refusal to take responsibility for his conduct. The Board is responsible for ensuring the public safety and welfare and for protecting the public from unprofessional conduct by persons licensed to practice psychology. 63 P.S. § 1201. The civil penalty is necessary to deter other licensees from similar conduct. The civil penalty will further serve to protect public safety and welfare by informing the public just how seriously the Board takes violations of the kind brought to light in this matter and encourage the members of the public who experience similar misconduct in the future to report such violations to the Board.

Accordingly, the Board issues the following Order:
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF PSYCHOLOGY

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Richard Scott Lenhart, Ph.D.
Respondent

Docket No. 0121-63-13

and

File No. 12-63-11617

FINAL ORDER

AND NOW, this 26th day of April 2013, the State Board of Psychology hereby
ADOPTS the findings of fact, conclusions of law, and discussion within the hearing examiner’s
Proposed Adjudication and Order dated March 29, 2013, along with the foregoing additional
discussion, and hereby ORDERS as follows:

1. The license to practice psychology of Richard Scott Lenhart, Ph.D., license number
PS006795L, is REVOKED.

2. Respondent shall relinquish his wall certificate, registration certificate, wallet card, and other
licensure documents within 30 days of the date of this Final Order by forwarding them to:

Board Counsel
State Board of Psychology
P.O. Box 2649
Harrisburg, PA 17105-2649.

3. Respondent shall pay the Commonwealth’s COSTS OF INVESTIGATION in the amount
of $18,433.

4. Respondent shall pay a CIVIL PENALTY of $50,000.

5. Respondent shall pay the COSTS OF INVESTIGATION and the CIVIL PENALTY
within 30 days of this Final Order, and shall make payment by certified check, attorney's check, or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," by forwarding it to:

Board Counsel  
State Board of Psychology  
P.O. Box 2649  
Harrisburg, PA 17105-2609

within 30 days of the date of this Final Order.

This Order is effective immediately. The sanction shall take effect 30 days from the date of mailing of this Order, namely, May 24, 2013.

BY ORDER:
STATE BOARD OF PSYCHOLOGY

SALVATORE S. CULLARI, Ph.D.  
CHAIRPERSON

Wayne E. Bradburn, Jr., Esquire  
302 South Borrowes Street  
State College, PA 16801

Bridget K. Guilfoyle, Esquire

Wesley J. Rish, Esquire

April 24, 2013
Appendix A
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PSYCHOLOGY

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Richard Scott Lenhart, Ph.D.,
Respondent

Docket no. 0121-63-13
File no. 12-63-11617

PROPOSED ADJUDICATION AND ORDER

Ruth D. Dunnewold
Hearing Examiner

2601 North Third Street
Harrisburg, PA 17110

DATE DISTRIBUTED 3/29/13
PROSECUTION
COUNSEL
HEARING EXAMINER
OTHER
HISTORY

This matter was initiated by the filing of an order to show cause alleging that Respondent Richard Scott Lenhart, Ph.D. ("Respondent"), violated the Professional Psychologists Practice Act ("Act"). The order to show cause, filed January 28, 2013, set forth 111 counts alleging that Respondent violated the Act and/or the regulations of the State Board of Psychology ("Board"), subjecting him to disciplinary sanctions and the imposition of the costs of investigation under sections 8 and 11(b) of the Act, 63 P.S. § 1208 and § 1211(b), as well as under section 5(b)(4)

---


2 The relevant portions of sections 8 and 11, 63 P.S. §§ 1208 and 1211, which authorize disciplinary action, provide as follows:

Section 8. Refusal, Suspension or Revocation of License.-(a) The board may refuse to issue a license or may suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following reasons...

***

(b) When the board finds that the license or application for license of any person may be refused, revoked, restricted or suspended under the terms of subsection (a), the board may:

(1) Deny the application for a license.
(2) Administer a public reprimand.
(3) Revoke, suspend, limit or otherwise restrict a license as determined by the board.
(4) Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
(5) Suspend enforcement of its findings thereof and place a licensee on probation with the right to vacate the probationary order for noncompliance.
(6) Restore a suspended license to practice psychology and impose any disciplinary or corrective measure which it might originally have imposed.

***

Section 11. Penalties and Injunctions Against Unlawful Practice.

***

(b) In addition to any other civil remedy or criminal penalty provided for in this act, the board... may levy a civil penalty of up to one thousand dollars ($1,000) on any current licensee who violates any provision of this act...
and (5) of Act 48 of 1993 ("Act 48"), 3 63 P.S. § 2205(b)(4) and (5). 4

More specifically, the order to show cause alleged that Respondent

- committed immoral or unprofessional conduct by departing from, or failing to
conform to, the standards of acceptable and prevailing psychological practice, in
violation of the Act at section 8(a)(11), 63 P.S. § 1208(a)(11) 5 (counts 1, 7, 12, 17, 23,


\footnotesize\textsuperscript{4} The relevant portions of Act 48 provide as follows:

(b) Additional powers.--In addition to the disciplinary powers and duties of the boards and commissions within the
Bureau of Professional and Occupational Affairs under their respective practice acts, boards and commissions shall
have the power, respectively:

\* \* \*

(4) To levy a civil penalty of not more than $10,000 per violation on any licensee, registrant, certificate holder,
permit holder or unlicensed person who violates any provision of the applicable licensing act or board regulation.

(5) To assess against the respondent determined to be in violation of the disciplinary provisions administered by a
licensing board or commission in a disciplinary proceeding pending before the board or commission for final
determination, as part of the sanction, the costs of investigation underlying that disciplinary action. The cost of
investigation shall not include those costs incurred by the board or commission after the filing of formal actions or
disciplinary charges against the respondent.

\* \* \*

\footnotesize\textsuperscript{5} The relevant portions of section 8(a), 63 P.S. § 1208(a), which are cited in the order to show cause and are at issue
here, subsections (a)(4) and (11), as well as of subsection (a)(9), which authorizes disciplinary actions if a licensee
violates a regulation of the Board, provide as follows:

Section 8. Refusal, Suspension or Revocation of License.--(a) The board may refuse to issue a license or may
suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following reasons:

\* \* \*

(4) Displaying gross incompetence, negligence or misconduct in carrying on the practice of psychology.

\* \* \*

(9) Violating a lawful regulation promulgated by the board, including, but not limited to, ethical regulations, or
violating a lawful order of the board previously entered in a disciplinary proceeding.

\* \* \*

(footnotes continued on next page)
29, 35, 41, 46, 54, 56, 58, 63, 68, 73, 78, 84, 90, 96, 104, 106, and 109) (total of 22 counts);

- displayed gross incompetence, negligence or misconduct in carrying on the practice of psychology, in violation of the Act at section 8(a)(4), 63 P.S. § 1208(a)(4)\(^6\) (counts 2, 8, 13, 18, 24, 30, 36, 42, 47, 55, 57, 59, 64, 69, 74, 79, 85, 91, 97, 105, 107, and 110) (total of 22 counts);

- deviated from the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct, section 3.08,\(^7\) by developing and engaging in an exploitative relationship with a patient, in violation of the Board's regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e)\(^8\) (counts 3, 9, 14, 19, 25, 31, 37, 43, 60, 65, 70, 75, 80, 86, 92, 98, and 108) (total of 17 counts);

(11) Committing immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing psychological practice. Actual injury to a client need not be established.

** * **

\(^6\)See footnote 5 for the text of section 8(a)(4), 63 P.S. § 1208(a)(4).

\(^7\)Section 3.08 of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct provides as follows:

3.08 Exploitative Relationships
Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants and employees. (See also Standards 3.05, Multiple Relationships; 6.04, Fees and Financial Arrangements; 6.05, Barter with Clients/Patients; 7.07, Sexual Relationships with Students and Supervisees; 10.05, Sexual Intimacies with Current Therapy Clients/Patients; 10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients; 10.07, Therapy with Former Sexual Partners; and 10.08, Sexual Intimacies with Former Therapy Clients/Patients.)

AMERICAN PSYCHOLOGICAL ASSOCIATION, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT 6 (2010).

\(^8\)The relevant portions of the Code of Ethics adopted by the Board, which are cited in the order to show cause and are at issue here, Ethical Principles 2(a), 3(e), and 6(b), found in the Board's regulations at 49 Pa. Code § 41.61, provide as follows:

(footnotes continued on next page)
§ 41.61. Code of Ethics.

Whereas the Board is empowered by section 3.2(2) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(2)), to promulgate rules and regulations, including, but not limited to, a code of ethics for psychologists in this Commonwealth and whereas the Board finds and determines that the following rules are necessary to establish and maintain the high standard of integrity and dignity in the profession of psychology and are necessary in the public interest to protect the public against unprofessional conduct on the part of a psychologist, in accordance with the act, the Board does hereby adopt this code of ethics for psychologists in this Commonwealth.

***

Principle 2. Competency.

(a) The maintenance of high standards of professional competence is a responsibility shared by psychologists in the interest of the public and the profession as a whole. Psychologists recognize the boundaries of their competence and the limitations of their techniques. They provide only services and use only techniques for which they are qualified by education and training, consistent with the American Psychological Association's General Guidelines for Providers of Psychological Services. In areas in which recognized standards do not yet exist, psychologists take whatever precautions are necessary to protect the welfare of their clients. They maintain knowledge of current scientific and professional information related to the services they render.

***


***

(c) As practitioners and researchers, psychologists act in accord with American Psychological Association standards and guidelines related to practice and to the conduct of research with human beings and animals. In the ordinary course of events, psychologists adhere to relevant governmental laws and institutional regulations. Whenever the laws, regulations or standards are in conflict, psychologists make known their commitment to a resolution of the conflict. Both practitioners and researchers are concerned with the development of laws and regulations which best serve the public interest.

***


***

(b) Psychologists are continually cognizant of their own needs and their inherently powerful position vis a vis clients, students and subordinates, in order to avoid exploiting their trust and dependency. Psychologists make every effort to avoid dual relationships with clients or relationships which might impair their professional judgment or increase the risk of exploitation. Examples of dual relationships include treating employees, supervisees, close friends or relatives. Sexual intimacies with clients are unethical.

***
- deviated from the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct, section 3.04, by failing to take reasonable steps to avoid harming his client/patient, in violation of the Board's regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e) (counts 4, 10, 15, 20, 26, 32, 38, 44, 61, 66, 71, 76, 81, 87, 93, 99, and 111) (total of 17 counts);
- engaged in sexual intimacies with a current client, in violation of the Board's regulations at 49 Pa. Code § 41.81(a) (counts 5, 21, 27, 33, 39, 82, 88 and 94) (total of 8 counts);
- exploited the trust and dependency of a client/patient and engaged in an exploitative dual relationship with patients, in violation of the Board's regulations at 49 Pa. Code § 41.61, Ethical Principle 6(b) (counts 6, 11, 16, 22, 28, 34, 40, 45, 50, 62, 67, 72, 77, 83, 89, 95 and 100) (total of 17 counts);

9 Section 3.04 of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct provides as follows:

3.04 Avoiding Harm
Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

AMERICAN PSYCHOLOGICAL ASSOCIATION, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT 6 (2010)

10 See footnote 8 for the text of Ethical Principle 3(e).

11 The relevant portions of the Board's regulation at 49 Pa. Code § 41.81 provides as follows:

§ 41.81. Prohibited conduct.

(a) Sexual intimacies between a psychologist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

***

12 See footnote 8 for the text of Ethical Principle 6(b).
• deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, section 2.01,\textsuperscript{13} by committing serious clinical errors while providing psychotherapy, resulting in harm to the patient, and by providing services outside the boundaries of his competence, in violation of the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e)\textsuperscript{14} (count 48) (one count);
• failed to maintain high standards of professional competence, committed serious clinical errors while providing psychotherapy, resulting in harm to the patient, and provided services for which he was not qualified by education and training to perform, in

\textsuperscript{13}Section 2.01 of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct provides as follows:

2.01 Boundaries of Competence
(a) Psychologists provide services, teach and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience.
(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies.
(c) Psychologists planning to provide services, teach or conduct research involving populations, areas, techniques or technologies new to them undertake relevant education, training, supervised experience, consultation or study.
(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation or study.
(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients and others from harm.
(f) When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

\textbf{AMERICAN PSYCHOLOGICAL ASSOCIATION, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT 4 – 5 (2010)}

\textsuperscript{14}See footnote 8 for the text of Ethical Principle 3(e).
violation of the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 2(a)\textsuperscript{15} (count 49) (one count);

- deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, section 3.10,\textsuperscript{16} by failing to obtain the informed consent of a client/patient using language that is reasonably understandable to the client/patient, in violation of the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e)\textsuperscript{17} (counts 51 and 101) (total of two counts);

- deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, section 10.01(a),\textsuperscript{18} by failing to obtain the informed

\textsuperscript{15} See footnote 8 for the text of Ethical Principle 2(a).

\textsuperscript{16} Section 3.10 of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct provides as follows:

3.10 Informed Consent
(a) When psychologists conduct research or provide assessment, therapy, counseling or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual’s assent, (3) consider such persons’ preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual’s rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

\textsuperscript{17} See footnote 8 for the text of Ethical Principle 3(e).

\textsuperscript{18} Section 10.01 of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct provides as follows:

\textsuperscript{(footnotes continued on next page)}
consent of a client/patient and inform her as early as was possible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and to provide the client/patient with sufficient opportunity to ask questions and receive answers, in violation of the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e)\(^19\) (counts 52 and 102) (total of two counts);

- deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, section 10.01(b),\(^20\) by failing to obtain the informed consent of a client/patient for treatment for which generally recognized techniques and procedures have not been established and inform her of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available and the voluntary nature of her participation, in violation of the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 3(e)\(^21\) (counts 53 and 103) (total of two counts).

On February 19, 2013, Respondent, through counsel, filed a timely answer to the order to show cause and demanded a hearing. By Order of February 25, 2013, the Board delegated the

---

10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent, psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards 4.02, Discussing the Limits of Confidentiality, and 6.04, Fees and Financial Arrangements.)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available and the voluntary nature of their participation. (See also Standards 2.01e, Boundaries of Competence, and 3.10, Informed Consent.)

AMERICAN PSYCHOLOGICAL ASSOCIATION, ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT (2010)

\(^{19}\)See footnote 8 for the text of Ethical Principle 3(e).

\(^{20}\)See footnote 18 for the text of Section 10.01(b) of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct.

\(^{21}\)See footnote 8 for the text of Ethical Principle 3(e).
matter to a hearing examiner for an expedited hearing and the filing of a proposed report which
the Board indicated the intent to review at its regularly scheduled meeting on April 24 – 25,
2013. A Notice of Hearing dated February 27, 2013 scheduled the matter for a hearing to occur
on March 22, 2013. The hearing occurred as scheduled. Respondent appeared and was
represented by Philip M. Masorti, Esquire, while Bridget K. Guilfoyle, Esquire, Prosecuting
Attorney, represented the Commonwealth. The parties waived the filing of post-hearing briefs
and the record was closed with the expedited filing of the Notes of Testimony on March 25,
2013.
FINDINGS OF FACT

1. Respondent holds a license to practice psychology in the Commonwealth of Pennsylvania, license no. PS006795L. Official notice of Board records; Commonwealth Exhibit C-1, paragraph 1; Commonwealth Exhibit C-2, paragraph 1.

2. Respondent's license was originally issued on May 27, 1993, and was active through November 30, 2013; however, Respondent's license is currently suspended pursuant to an Order of Temporary Suspension and Notice of Hearing issued by the Board's Probable Cause Screening Committee on November 5, 2012. Board records; Commonwealth Exhibit C-1, paragraph 2; Commonwealth Exhibit C-2, paragraph 2; Commonwealth Exhibit C-3; Commonwealth Exhibit C-4.

3. At all relevant times, Respondent held a license to practice as a psychologist in the Commonwealth of Pennsylvania. Board records; Commonwealth Exhibit C-1, paragraph 3; Commonwealth Exhibit C-2, paragraph 3.

4. Respondent's current address on file with the Board is 293 Homan Avenue, State College, PA 16801. Board records; Commonwealth Exhibit C-1, paragraph 4; Commonwealth Exhibit C-2, paragraph 4.

22 At the hearing, the Commonwealth asked that official notice be taken of Respondent's licensing status in this case, which was granted without objection from Respondent. Notes of Testimony at 5. Any reference to "Board records" in the Findings of Fact is based on that grant of official notice.

I. Patient Amy McKelvey

5. From June 17, 2003 until March 1, 2010, Respondent provided psychological services to Amy McKelvey, an adult female. Commonwealth Exhibit C-1, paragraph 6; Commonwealth Exhibit C-2, paragraph 6; Notes of Testimony (NT) at 23, 84, 90, 306.

6. Ms. McKelvey initially saw Respondent on a biweekly basis, however, her sessions with Respondent increased over time to where she saw Respondent for two-hour sessions twice per week. Commonwealth Exhibit C-1, paragraph 7; Commonwealth Exhibit C-2, paragraph 7; Commonwealth Exhibit C-18, page 1; NT at 24 – 25.

7. Ms. McKelvey was a complex patient who presented with symptoms of mood disturbance, anxiety, depression, dissociation, post-traumatic stress disorder, unresolved family issues, self-abuse, and notably, a history of childhood sexual abuse. Commonwealth Exhibit C-1, paragraph 8; Commonwealth Exhibit C-2, paragraph 8; Commonwealth Exhibit C-18, page 2; NT at 23.

8. Ms. McKelvey also had a history of eating disorders and had undergone bariatric surgery prior to beginning her treatment with Respondent. Commonwealth Exhibit C-1 paragraph 9; Commonwealth Exhibit C-2, paragraph 9; NT at 23 – 24.

9. Despite Ms. McKelvey’s clinical complexity, Respondent provided a very loose, unstructured treatment regimen that incorporated physical “holding,” touching, and sexualized behavior and attempting to resolve issues of trauma utilizing the clinical relationship, i.e.,

24 The patients in this matter were originally identified in the order to show cause by their initials. However, Amy McKelvey, who was identified in the order to show cause as “A.M.,” indicated prior to and during the hearing that she desires to be identified by her full name and does not desire the privacy protection afforded by the use of initials only. NT at 147 – 148. Accordingly, she will be identified throughout this proposed decision by her full name or by “Ms. McKelvey.” The second patient, N.M., will continue to be identified by her initials only, in order to protect her privacy.
transference. Commonwealth Exhibit C-1, paragraph 10; Commonwealth Exhibit C-2, paragraph 10; Commonwealth Exhibit C-18, pages 2, 11-12.

10. Over the course of the nearly seven-year treatment relationship, Respondent, through a variety of improper behaviors, developed an inappropriate and harmful personal and sexual relationship with Ms. McKelvey and provided treatment below the standard of care. Commonwealth Exhibit C-18, pages 2, 7, 10, 12, 14, 16, 18-21, 26-27, 29, 39, 42, 57, 59, 61.

A. Boundary Violations

11. During his therapeutic relationship with Ms. McKelvey, Respondent failed to develop and maintain appropriate professional boundaries with Ms. McKelvey. Commonwealth Exhibit C-18, pages 14, 19, 21-24, 27, 39, 57, 59.

1. Time Boundary Violations – Between-Session Contacts

12. Respondent engaged in a significant amount of between-session contacts with Ms. McKelvey through a variety of electronic media, including Facebook messaging, cell phone text messaging, and email. Commonwealth Exhibit C-1, paragraph 13; Commonwealth Exhibit C-2, paragraph 13; Commonwealth Exhibit C-6; Commonwealth Exhibit C-7; Commonwealth Exhibit C-18, pages 16-17; NT at 28-29, 30, 32-33, 40-41, 52-53.

13. The vast majority of the between-session contacts between Respondent and Ms. McKelvey had no therapeutic value and were unrelated to professional treatment; some of which were sexually suggestive. Commonwealth Exhibit C-6; Commonwealth Exhibit C-7; Commonwealth Exhibit C-18, pages 14, 16-17; NT at 40, 107-108, 109, 291.

14. Respondent’s significant number of between-session contacts with Ms. McKelvey jeopardized the therapeutic relationship and created an unhealthy personal dual relationship with
Ms. McKelvey, who came to feel like Respondent was her father or best friend. Commonwealth Exhibit C-18, pages 14 – 15, 17; NT at 98, 101, 121, 123, 132.

15. Respondent’s between-session contacts with Ms. McKelvey included the following:

   a. Respondent permitted Ms. McKelvey to “friend” him on Facebook. Commonwealth Exhibit C-1, paragraph 16a; Commonwealth Exhibit C-2, paragraph 16a; NT at 28 – 29.

   b. Respondent and Ms. McKelvey communicated and sent numerous personal messages via Facebook. Commonwealth Exhibit C-1, paragraph 16b; Commonwealth Exhibit C-2, paragraph 16b; Commonwealth Exhibit C-6; Commonwealth Exhibit C-18, pages 16 – 17; NT at 30, 32 – 33, 34, 35, 36, 103 – 104.

   c. Respondent provided Ms. McKelvey with his cell phone number and they communicated and sent numerous personal messages via text message, some of which were sexually suggestive. Commonwealth Exhibit C-1, paragraph 16c; Commonwealth Exhibit C-2, paragraph 16c; Commonwealth Exhibit C-7; Commonwealth Exhibit C-18, page 14; NT at 40, 107 – 108, 109, 291.

   d. Respondent and Ms. McKelvey communicated via email, at an email address Respondent provided, exchanging messages with much the same tone as those on Facebook, Respondent shared with her song lyrics he had written, and she provided her comments about his lyrics. Commonwealth Exhibit C-8; NT at 52 – 54, 121 – 122, 123.
e. Sometimes Ms. McKelvey would drive from her home to Respondent's office without an appointment, a round trip of approximately 64 miles, simply to get a hug from him. NT at 80, 105 – 106.

2. **Session Length Boundary Issues**

16. At the outset of the therapeutic relationship, Respondent and Ms. McKelvey agreed upon psychotherapy sessions of 45 – 50 minutes. Exhibit C-1, paragraph 29; Commonwealth Exhibit C-2, paragraph 29; Commonwealth Exhibit C-18, pages 1, 18 – 19; NT at 25.

17. As the therapeutic relationship continued, Respondent continually extended the length of sessions until each session reached two hours in duration. Exhibit C-1, paragraph 30; Commonwealth Exhibit C-2, paragraph 30; Commonwealth Exhibit C-18, pages 1, 18 – 19; NT at 25.

18. There is no notation in Ms. McKelvey's records to document this change in the therapeutic arrangement. Commonwealth Exhibit C-18, page 19.

19. Respondent failed to obtain informed consent prior to deviating from the agreed upon session length. Commonwealth Exhibit C-18, page 19; NT at 25.

3. **Space Boundary Issues**

20. During the course of the psychotherapeutic relationship, Respondent conducted sessions with Ms. McKelvey outside the office. Exhibit C-1, paragraph 43; Commonwealth Exhibit C-2, paragraph 43; Commonwealth Exhibit C-18, pages 19 – 20; NT at 28, 58, 124.

21. Respondent accompanied Ms. McKelvey out of the office to engage in psychotherapy sessions at a specialty toy store, the Penn State Campus, a parking garage, and a
public library. Exhibit C-1, paragraph 44; Commonwealth Exhibit C-2, paragraph 44; Commonwealth Exhibit C-18, pages 19–20; NT at 58.


23. There was no therapeutic purpose for Respondent’s conducting psychotherapy sessions with Ms. McKelvey outside the office. Id.

4. Clothing Boundary Issues

24. During a psychotherapy session, Respondent unbuttoned his shirt so that Ms. McKelvey could feel his skin. Exhibit C-1, paragraph 57; Commonwealth Exhibit C-2, paragraph 57; Commonwealth Exhibit C-18, page 21; NT at 67–68.

25. During another psychotherapy session, Respondent placed his hand underneath Ms. McKelvey’s shirt in order to touch her stomach. Exhibit C-1, paragraph 58; Commonwealth Exhibit C-2, paragraph 58; Commonwealth Exhibit C-18, page 21; NT at 68.

26. During the course of providing psychological services to Ms. McKelvey, Respondent gave Ms. McKelvey one of his shirts so she could smell it and be reminded of him when they were not together. Exhibit C-1, paragraph 59; Commonwealth Exhibit C-2, paragraph 59; Commonwealth Exhibit C-18, page 50; NT at 61–62.

5. Self-disclosure Boundary Issues

27. Respondent made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship. Commonwealth Exhibit C-18, pages 21, 22; NT at 59–60, 61.
28. Respondent made excessive self-disclosures to Ms. McKelvey during therapy sessions and between sessions through a variety of electronic media, including Facebook and text messages. Commonwealth Exhibit C-18, pages 21 – 22, 31 – 33; NT at 59 – 60, 61.

29. Respondent’s self-disclosures included the following:

   a. Respondent discussed his past sexual relationships;

   b. Respondent’s awareness of Ms. McKelvey’s body and that he could have been attracted to her in another context;

   c. Respondent’s belief that he could become sexually aroused by his patients and not act on it;

   d. Respondent’s potential to desire Ms. McKelvey sexually and that he would never act on it;

   e. Respondent’s sexual attraction to Ms. McKelvey without a desire to be intimate with her;

   f. Respondent’s belief that he might become sexually aroused if Ms. McKelvey took her clothes off in his office;

   g. Respondent’s admission that he became sexually aroused by a fantasy that Ms. McKelvey wrote; and

   h. Respondent’s admission that under different circumstances, he would be attracted to her.

Commonwealth Exhibit C-18, pages 22 – 23, 41; NT at 59 – 60, 61.

6. Physical Contact Boundary Issues

31. Respondent used physical contact with Ms. McKelvey for the majority of her treatment and believed that physical contact and touching were essential ingredients to effective psychotherapy. Commonwealth Exhibit C-1, paragraph 88; Commonwealth Exhibit C-2, paragraph 88; Commonwealth Exhibit C-18, page 23; NT at 64.

32. Respondent engaged in the following physical contact with Ms. McKelvey during the course of the treatment relationship:

a. Physical holding in which Respondent would hold Ms. McKelvey in his arms while seated. Commonwealth Exhibit C-10; Commonwealth Exhibit C-18, pages 23–24; NT at 66.

b. Physical holding in which Respondent would hold Ms. McKelvey while she sat on his lap. Commonwealth Exhibit C-10; Commonwealth Exhibit C-18, page 24; NT at 64.

c. Physical holding in which Respondent agreed to lie down on the floor to hold Ms. McKelvey. Commonwealth Exhibit C-18, pages 23–24; NT at 63–64, 66–67.

d. Frequent hugging that became a regular part of the treatment relationship. Commonwealth Exhibit C-18, pages 24–26; NT at 63, 67.

e. Role playing with Ms. McKelvey focusing on physical contact. Commonwealth Exhibit C-18, page 25.

g. Writing messages on parts of Ms. McKelvey’s body. Commonwealth Exhibit C-11; Commonwealth Exhibit C-18, page 26; NT at 74 – 75, 113 – 114.

h. Respondent’s rubbing lotion on parts of Ms. McKelvey’s body. Commonwealth Exhibit C-18, page 27; NT at 73, 310.

i. Respondent’s allowing Ms. McKelvey to rub lotion on parts of his body. Commonwealth Exhibit C-18, page 28; NT at 73, 310.

j. Rubbing and massaging each other during sessions. Commonwealth Exhibit C-18, page 28; NT at 72 – 73, 310 – 311.

k. Brushing Ms. McKelvey’s hair during treatment sessions. Commonwealth Exhibit C-18, page 29; NT at 72.

l. Lying on the couch together, sometimes one on top of the other, stroking faces and kissing foreheads. NT at 67, 72.

m. Respondent’s putting his fingers under her waistband. NT at 68, 99, 126, 127.

7. Sexual Boundary Issues

33. Respondent engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey. Commonwealth Exhibit C-18, pages 22, 24, 25, 27, 28, 29, 30, 31, 38, 39, 41, 42, 46, 50, 56; NT at 96.

34. Respondent’s behaviors began with touching, hugging and holding and progressed to more direct sexualizing of the therapeutic relationship. Commonwealth Exhibit C-1, paragraph 103; Commonwealth Exhibit C-2, paragraph 103; Commonwealth Exhibit C-18, pages 22, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 41, 42, 46, 50, 56; NT at 63 – 64.
Respondent’s romantic and sexual behaviors toward Ms. McKelvey included the following:

a. Overt sexualized and romantic writing by Respondent ("Dear Sweetheart," "I love you," "I’ve loved you for a long time," "Would you accept my sexual needs and desires, etc. Yes, I would be aware that you are physically attractive, but would we be compatible in what we liked about sex"). Commonwealth Exhibit C-9; Commonwealth Exhibit C-18 at pages 29 – 30; NT at 55 – 56, 57.

b. Sexualized, romantic and crude Facebook and text messaging by Respondent, sent to Ms. McKelvey by Respondent, examples of which include: "Down here they call me long horn," "Only if you take off the clothes from your bottom half," "thanks. I’m well hung too," "I’m too busy downloading porn. Back Door Trombonista." Commonwealth Exhibit C-7 at pages 9, 12, 21, 25; Commonwealth Exhibit C-18 at pages 31 – 32, 22; NT at 43, 44, 45, 46.

c. Sexual topics and sexualized fantasies and feelings as part of treatment endorsed and supported by Respondent and unrelated to any treatment goal. Commonwealth Exhibit C-1, paragraph 104c; Commonwealth Exhibit C-2, paragraph 104c; Commonwealth Exhibit C-18, pages 33, 34, 35, 36, 37, 38, 39; NT at 60 – 61.

d. Sexual and romantic behaviors during sessions, including Ms. McKelvey’s sitting on Respondent’s lap and straddling him, Respondent’s holding Ms. McKelvey’s genitals over her clothing, and Respondent and Ms. McKelvey laying together on the couch and pulling their shirts up.


g. Respondent endorsed Ms. McKelvey’s sexual feelings for him as a natural part of the psychotherapy relationship and indicated that Ms. McKelvey was making progress when she felt sexually connected or sexually aroused by treatment. Commonwealth Exhibit C-18, pages 40 – 41, 42 – 43; NT at 61.


B. Patient Abuse

37. On or about June 13, 2006, Respondent provided psychological services to Ms. McKelvey. Commonwealth Exhibit C-1, paragraph 118; Commonwealth Exhibit C-2, paragraph 118.

38. During this emotionally-charged therapy session, Ms. McKelvey asked that Respondent hurt her. Commonwealth Exhibit C-18, pages 56 – 57; NT at 77.
39. In response, Respondent struck Ms. McKelvey on the back, which, in turn, provoked severe fright and fear on the part of Ms. McKelvey due to her history of physical and sexual abuse by men. Commonwealth Exhibit C-18, pages 56 – 57; NT at 77, 314.

40. Respondent kissed the back of Ms. McKelvey's neck to make her feel better. Commonwealth Exhibit C-18, pages 56 – 57; NT at 77 – 78, 315.

C. Critical Errors in Treatment

41. Throughout the course of the psychotherapeutic relationship, Respondent made serious clinical errors that created a harmful treatment relationship with Ms. McKelvey. Commonwealth Exhibit C-18, page 49.

42. Respondent decided to start holding Ms. McKelvey during their 20th session and continued holding Ms. McKelvey throughout the course of the treatment relationship. Commonwealth Exhibit C-18, pages 49, 50.

43. The holding technique utilized by Respondent is not a generally acceptable form of psychotherapy within the community of professional psychologists. Commonwealth Exhibit C-18, page 49; NT at 236 – 237.

44. Respondent continued the holding technique despite Ms. McKelvey's expressing romantic feelings for and sexual attraction to Respondent. Commonwealth Exhibit C-18, page 49.

45. Respondent failed to recognize or understand Ms. McKelvey's feeling of transference in the relationship and Respondent's actions of holding Ms. McKelvey contributed to sexualizing the relationship. Commonwealth Exhibit C-18, page 50.

46. When not working on eating disorder treatment, Respondent focused many sessions on Ms. McKelvey's past history of emotional, sexual, and physical abuse.
47. Respondent approached Ms. McKelvey’s possible recovered memories of childhood abuse with a preconceived notion that the abuse must have happened and documented his belief that all of Ms. McKelvey’s recovered memories of abuse were true. Commonwealth Exhibit C-18, page 51 – 52, 53.

48. Respondent’s treatment of Ms. McKelvey involved using physical contact as a means to “help” Ms. McKelvey feel safe and connected in order to recover and cope with her memories of abuse even though Ms. McKelvey informed Respondent that she used the sexual nature of their relationship to avoid dealing with her thoughts and memories of abuse. Commonwealth Exhibit C-18, page 53.

49. In February 2006, Ms. McKelvey expressed her desire to see an unlicensed therapist in Canada who advocated the use of physical contact, including primal therapy, holding therapy and suckling therapy and claimed to help individuals work through childhood trauma by allowing patients to suckle his nipple. Commonwealth Exhibit C-1, paragraph 140; Commonwealth Exhibit C-2, paragraph 140; Commonwealth Exhibit C-18, page 54; NT at 76, 130.

50. This Canadian therapist previously had his medical license suspended for allegations of sexual misconduct and later surrendered his license to practice the profession. Commonwealth Exhibit C-18, page 54

51. Respondent agreed that Ms. McKelvey may benefit from seeking alternative treatment from that practitioner whose license had been suspended and later surrendered. Commonwealth Exhibit C-18, page 54 – 55; NT at 76 – 77, 131.
52. Respondent’s endorsement of alternative treatment of primal therapy in Canada showed a complete disregard for Ms. McKelvey’s safety and wellbeing. Commonwealth Exhibit C-18, page 55.

53. In March 2008, Ms. McKelvey recounted a memory in which she felt sexually aroused as a child when one of her cousins got on top of her to simulate sexual intercourse, and Ms. McKelvey became sexually aroused recounting this memory. Commonwealth Exhibit C-18, page 58.

54. In response to this recounted memory, Respondent informed Ms. McKelvey that this was a positive experience as a child and that becoming sexually aroused by a childhood memory of sexual play was healthy for Ms. McKelvey. Commonwealth Exhibit C-18, page 58–59.

55. In September 2009, Ms. McKelvey presented with fantasies of her as a child being sexual with an adult male. Commonwealth Exhibit C-18, page 59.

56. Respondent described this pedophilic fantasy as positive and appealing in that the fantasy involved innocence, gentleness and joy. Id.

D. Informed Consent

57. A psychologist must communicate to a patient, as early in therapy as possible, the nature of and anticipated length of therapy, all fees, the involvement of third parties, and the limits of confidentiality. Commonwealth Exhibit C-18, page 3.

58. Informed consent also includes an explanation of the procedures that will be used as well as their purpose; the role of the person who is providing the therapy; the professional qualifications of that provider; discomforts and risks reasonably to be expected; benefits that are reasonably to be expected; alternative treatment options that may be of similar benefit; a
statement that questions will be answered at any time; and a statement that the individual can withdraw his or her consent and discontinue participation in therapy at any time. *Id.*

59. Informed consent does not have to be in written form, but there is no indication in Respondent's treatment records of Ms. McKelvey that he provided any oral version of informed consent at the outset of psychotherapy. Commonwealth Exhibit C-18, page 4, 7.

60. There is nothing in Respondent's treatment records of Ms. McKelvey which shows that Respondent provided written informed consent to Ms. McKelvey. Commonwealth Exhibit C-18, page 3, 4, 7.

61. There is no indication from Respondent's treatment records that Respondent provided information about typical length of treatment; the length of treatment sessions with Ms. McKelvey varied from 45-50 minutes to over two hours. Commonwealth Exhibit C-18, page 5.

62. There is no indication from Respondent's treatment records that Respondent outlined how he worked with eating disorder patients. *Id.*

63. There is no indication from Respondent's treatment records that Respondent outlined how he worked with patients who have been sexually, emotionally or physically traumatized. *Id.*

64. There is no indication from Respondent's treatment records that Respondent explained how he works with other family members as part of the treatment process. Commonwealth Exhibit C-18, page 6.

65. There is no indication from Respondent's treatment records that Respondent explained that his "multi-modal" approach to treatment involved frequent physical touching and hugging of patients. *Id.*
66. Although there is no indication from Respondent's treatment records that Respondent disclosed, prior to the initiation of holding Ms. McKeelvey, that his holding technique was not mainstream psychological practice, Respondent told Ms. McKeelvey at the outset of treatment that the practice was controversial and that his colleagues in a prior group practice had advised him against using it. Commonwealth Exhibit C-18, page 6; NT at 69.

67. There is no indication from Respondent’s treatment records that Respondent disclosed that holding the patient was a significant part of his treatment; Respondent did not disclose the benefits and risks of such a procedure and did not highlight that holding may lead to sexual arousal or to create romantic feelings for his patients. Commonwealth Exhibit C-18, page 6.

68. There is no indication from Respondent’s treatment records that Respondent disclosed that hugging the patient was a significant part of his treatment; Respondent did not disclose the benefits and risks of such a technique and did not highlight that hugging may lead to sexual arousal or to create romantic feelings for his patients. Commonwealth Exhibit C-18, page 6; NT at 70.

69. There is no indication from Respondent’s treatment records that Respondent disclosed that touching the patient’s genitals, stomach, shoulders, feet, or hands was a part of his treatment; he did not disclose the benefits and risks of such a technique and did not highlight that touching Ms. McKeelvey’s body may lead to sexual arousal or to create romantic feelings toward him. Commonwealth Exhibit C-18, page 6; NT at 70, 71, 73, 74.

70. There is no indication from Respondent’s treatment records that Respondent outlined his social media policy, even though he used Facebook to communicate with Ms. McKeelvey. Commonwealth Exhibit C-18, page 6; NT at 40.
71. Respondent's use of Facebook to communicate with Ms. McKelvey was inconsistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Security Rule, which requires appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information. Commonwealth Exhibit C-18, page 6.

72. There is no indication from Respondent's treatment records that Respondent outlined how he managed between-session contacts with patients; he did not indicate the types, frequency, or appropriateness of contacts between sessions, and whether or not he would bill for such services. Commonwealth Exhibit C-18, page 6; NT at 55.

73. There is no indication from Respondent's treatment records that Respondent outlined how he handled between-session contacts with text messages, even though he used text messages to communicate with Ms. McKelvey between sessions; there is no indication that the text messaging was compliant with the HIPAA Security Rule, which requires appropriate administrative, physical and technical safeguards to safeguard the confidentiality, integrity, and security of electronic protected health information. Commonwealth Exhibit C-18, page 6.

74. There is no indication from Respondent's treatment records that Respondent disclosed, at the beginning of treatment, that his secretary was also his wife. Commonwealth Exhibit C-18, page 7; NT at 39.

E. Diagnostic Formulation Errors and Misdiagnosis

75. Respondent billed for completing a Comprehensive Psychological Evaluation of Ms. McKelvey; however, there is no indication in his records that he completed such an evaluation at the outset of treatment. Commonwealth Exhibit C-18, page 8.
76. Respondent’s records are devoid of any notations that he used the Diagnostic and Statistical Manual’s multi-axial system or the International Classification of Diseases’ classification system to diagnose Ms. McKelvey. Id.

77. In spite of the lack of a diagnostic interview, Respondent concluded that Ms. McKelvey suffered with Anorexia Nervosa even though there is no information in the record to support a diagnosis of Anorexia Nervosa. Commonwealth Exhibit C-1, paragraph 188; Commonwealth Exhibit C-2, paragraph 188; Commonwealth Exhibit C-18, pages 8 – 9; NT at 26 – 27.

78. Respondent made this diagnosis of Anorexia Nervosa despite the fact that Ms. McKelvey had undergone bariatric surgery and was required to restrict her food intake as part of the aftercare program. Commonwealth Exhibit C-1, paragraph 189; Commonwealth Exhibit C-2, paragraph 189; Commonwealth Exhibit C-18, pages 8 – 9, 10; NT at 26 – 27.

79. Later in the treatment relationship, in 2010, Respondent changed Ms. McKelvey’s diagnosis to Bulimia Nervosa even though there was no diagnostic work-up which highlighted the signs and symptoms of Bulimia Nervosa. Commonwealth Exhibit C-1, paragraph 190; Commonwealth Exhibit C-2, paragraph 190; Commonwealth Exhibit C-18, page 9; NT at 27.

80. Respondent failed to complete a sufficient diagnostic procedure to reach the conclusion that Ms. McKelvey suffered from Bulimia Nervosa. Commonwealth Exhibit C-18, page 9; NT at 27.

II. Patient N.M.

81. From approximately 1994 through approximately early 2012, Respondent provided psychological services to Patient N.M., an adult female. Commonwealth Exhibit C-1, paragraph 196; Commonwealth Exhibit C-2, paragraph 196; NT at 150.
82. N.M. worked with Respondent in individual therapy on both a weekly and twice weekly basis; however, most of the treatment utilized psychotherapy sessions that occurred twice per week for 17 years. Commonwealth Exhibit C-1, paragraph 197; Commonwealth Exhibit C-2, paragraph 197; Commonwealth Exhibit C-19, page 1; NT at 151.

83. Respondent provided psychotherapy sessions with N.M. that initially lasted one hour; however, the majority of treatment sessions lasted two hours. Commonwealth Exhibit C-1, paragraph 198; Commonwealth Exhibit C-2, paragraph 198; Commonwealth Exhibit C-19, page 1; NT at 151-152.

84. N.M. was a complex patient who presented with symptoms of mood disturbance, anger management difficulties, anxiety, dissociation, unresolved family issues, chronic suicidal tendencies and notably, a history of childhood sexual trauma with sequelae of depression and PTSD. Commonwealth Exhibit C-1, paragraph 199; Commonwealth Exhibit C-2, paragraph 199; Commonwealth Exhibit C-19, page 1; NT at 151.

85. Despite N.M.'s clinical complexity, Respondent provided a very loose, unstructured treatment regimen that incorporated physical “holding,” resolving issues of trauma utilizing the clinical relationship, *i.e.*, transference, helping N.M. feel more autonomous, reducing the number of flashbacks and coping with job difficulties. Commonwealth Exhibit C-1, paragraph 200; Commonwealth Exhibit C-2, paragraph 200; Commonwealth Exhibit C-19, page 1.

86. Respondent's treatment records contain no clear treatment plan, a lack of therapeutic structure and no written definitive treatment goals. Commonwealth Exhibit C-19, page 2.
87. Over the course of the more than 17-year treatment relationship, Respondent, through a variety of improper behaviors, developed an inappropriate and harmful personal and sexual relationship with N.M. and provided treatment below the standard of care. Commonwealth Exhibit C-19, pages 2, 6, 9, 10, 12, 13, 15, 20, 21.

A. Multiple Boundary Violations

88. During his therapeutic relationship with N.M., Respondent failed to develop and maintain appropriate professional boundaries with N.M. Exhibit C-19, pages 7, 8, 10, 11, 12, 14, 18.

1. Financial Assistance Provided to N.M.

89. During the course of the treatment relationship in 2003, N.M. experienced financial difficulties. Commonwealth Exhibit C-1, paragraph 204; Commonwealth Exhibit C-2, paragraph 204; Commonwealth Exhibit C-19, page 8; NT at 154.

90. Respondent wrote a check to N.M. in order to provide financial support for her. Commonwealth Exhibit C-1, paragraph 205; Commonwealth Exhibit C-2, paragraph 205; Commonwealth Exhibit C-19, page 8; NT at 154–155.

2. Time Boundary Violations – Between Session Contacts

91. Respondent engaged in a significant amount of between session contacts with N.M. by telephone and email. Commonwealth Exhibit C-1, paragraph 216; Commonwealth Exhibit C-2, paragraph 216; Commonwealth Exhibit C-12; Commonwealth Exhibit C-19, page 11; NT at 155, 156.

92. Respondent provided N.M. with his cell phone number and they engaged in numerous lengthy telephone calls, averaging 60 to 90 minutes, between sessions.
Commonwealth Exhibit C-1, paragraph 217; Commonwealth Exhibit C-2, paragraph 217; NT at 155.

93. Respondent and N.M. engaged in multiple phone contacts per week to the point where Respondent damaged the treatment relationship and declared that he could not be an effective psychologist to N.M.; nonetheless, Respondent continued to provide psychological services to N.M. Commonwealth Exhibit C-1, paragraph 218; Commonwealth Exhibit C-2, paragraph 218; Commonwealth Exhibit C-19, page 11; NT at 176.

94. By email, Respondent sent N.M. song lyrics he had written and asked her for tax advice, which she provided; she sent articles to him which she thought would interest or benefit him, and she proposed writing a book together concerning the therapeutic relationship. NT at 156, 157–158, 160, 161–162, 200.

95. Respondent brought a birthday cake to N.M. at her home in November 2011, while N.M. was still in treatment with him. NT at 164–165.

3. Session Length Boundary Issues

96. Respondent engaged in various lengths of psychotherapy sessions with N.M. Commonwealth Exhibit C-1, paragraph 229; Commonwealth Exhibit C-2, paragraph 229; Commonwealth Exhibit C-19, page 11, 12.

97. At times, Respondent spent one hour with N.M. and at other times, the sessions lasted two hours. Commonwealth Exhibit C-1, paragraph 230; Commonwealth Exhibit C-2, paragraph 230; Commonwealth Exhibit C-19, page 11, 12; NT at 151–152.

98. On numerous occasions throughout the treatment relationship, Respondent could not keep to the agreed-upon session length of 45 to 50 minutes and the sessions with N.M. would
last for two hours or longer. Commonwealth Exhibit C-1, paragraph 231; Commonwealth Exhibit C-2, paragraph 231; Commonwealth Exhibit C-19, page 11, 12.

99. There is no notation in N.M.'s records to document this change in the therapeutic relationship. Commonwealth Exhibit C-19, page 12.

100. Respondent failed to obtain informed consent prior to deviating from the agreed-upon session length. Id.

4. Clothing Boundary Issues

101. During a psychotherapy session, Respondent gave N.M. one of his shirts to help her feel safe during sessions. Commonwealth Exhibit C-1, paragraph 244; Commonwealth Exhibit C-2, paragraph 244; Commonwealth Exhibit C-19, page 12; NT at 167 – 168.

102. During another psychotherapy session, Respondent permitted N.M. to lift her shirt and Respondent placed his hand on her bare abdomen. Commonwealth Exhibit C-19, page 12; NT at 167, 168 – 169.

5. Self-disclosure Boundary Issues

103. Respondent made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the treatment relationship. Commonwealth Exhibit C-19, pages 8, 9, 13; NT at 152 – 153, 276.

104. Respondent self-disclosed information to N.M. about his sexual arousal with N.M., his sexual arousal with other patients, his sex life in general, issues with his health, his ongoing legal issues with another patient, treatment interventions with other patients, issues related to his adopted children, his spiritual struggles, his emotional and sexual injuries, and his fear of losing his license. Commonwealth Exhibit C-1, paragraph 257; Commonwealth Exhibit
C-2, paragraph 257; Commonwealth Exhibit C-19, pages 8, 9, 13; NT at 152, 158, 177 – 178, 181, 278 – 279.

105. Over the course of time, the relationship between Respondent and N.M. changed such that N.M. was supporting and counseling Respondent with his painful issues by holding him while he cried and comforting him, including sexually, on many occasions. NT at 152 – 153, 181.


6. Physical Contact Boundaries

107. Respondent used physical contact, both sexual and non-sexual, with N.M. for the majority of her treatment and believed that physical contact and touching were essential ingredients to effective psychotherapy. Commonwealth Exhibit C-1, paragraph 272; Commonwealth Exhibit C-2, paragraph 272; Commonwealth Exhibit C-19, pages 13, 14, 15.

108. Respondent engaged in the following physical contact with N.M. during the course of the treatment relationship:

a. Physically holding and embracing N.M., which Respondent used in the majority of their sessions. Commonwealth Exhibit C-19, pages 8, 9, 14; NT at 166 – 167.


c. Frequent hugging that made it appear that it was a normal part of treatment. Id.
d. Physical touch in which N.M. in a regressed state touched Respondent’s lips and teeth. Commonwealth Exhibit C-19, page 15.

e. Respondent would put his hand under N.M.’s shirt for skin-to-skin contact. NT at 167.

7. Sexual Boundary Issues

109. Respondent engaged in a variety of behaviors that sexualized his relationship with N.M., ultimately culminating in a sexual relationship between them. Commonwealth Exhibit C-19, pages 8, 9, 14, 15; NT at 169.


111. Respondent’s sexualized behaviors during sessions with N.M. included the following:

a. Questions by Respondent about N.M.’s personal sex life and sex habits. NT at 165.

b. Allowing N.M. to sit on his lap and straddle him. Commonwealth Exhibit C-19, pages 15 - 16; NT at 169.

c. Lying on top of N.M. and placing his leg between her legs. Commonwealth Exhibit C-19, page 16;


e. Stroking and touching N.M.’s body, including her breasts and genitals. Commonwealth Exhibit C-19, page 17; NT at 169.
112. About seven or eight years ago, nine years into N.M.'s therapy, the holding progressed to Respondent's and N.M.'s engaging in sexual activity in Respondent's office, which activity continued through all but about the last year of her therapy with him; she stopped seeing him in June 2012. Commonwealth Exhibit C-2, paragraph 272; Commonwealth Exhibit C-19, page 17; NT at 169, 170 – 171, 172, 180, 183.

113. The sexual activity included N.M.'s masturbating Respondent to orgasm, Respondent's performing oral sex on N.M., Respondent's and N.M.'s fondling each other's genitalia, the removal of clothing, and Respondent's rubbing his face in or sucking on N.M.'s breasts. Commonwealth Exhibit C-2, paragraph 272; Commonwealth Exhibit C-19, page 17; NT at 169, 170, 180, 243, 252.

114. Sexual intimacies began between Respondent and N.M. with the activities framed as the only likely bridge remaining for N.M. to heal from her childhood sexual trauma. NT at 169, 204.

8. **Unnecessary and Unhealthy Dependency**

115. Through his multiple boundary violations, Respondent's inappropriate actions and improper behaviors created an unhealthy and unnecessary dependency by N.M., who had a very difficult time functioning if she did not see respondent on a regular basis. Commonwealth Exhibit C-19, pages 2, 6, 8, 17; NT at 173.

116. Respondent spent at least four hours per week with N.M., in addition to having numerous telephone conversations with her, during which N.M. struggled to get off the phone with Respondent, each week for 17 years or more. Commonwealth Exhibit C-19, pages 17 – 18; NT at 173.
117. Many of N.M.’s sessions with Respondent involved discussing intimate details about each other’s lives, including sexual issues. Commonwealth Exhibit C-19, pages 8, 17; Finding of Fact 104; NT at 181.

118. Treatment sessions regularly involved physical touching, including Respondent’s touching of N.M.’s genitals and anus. Commonwealth Exhibit C-1, paragraph 307; Commonwealth Exhibit C-2, paragraph 307; Commonwealth Exhibit C-19, pages 16, 17; NT at 168–169.

119. Respondent and N.M. also engaged in sexual activity during treatment sessions. Commonwealth Exhibit C-2, paragraph 272; Commonwealth Exhibit C-19, pages 16, 17; Finding of Fact 113.

120. The dependency created by Respondent’s actions became such that Respondent once informed N.M. that he had more weekly quality time with N.M. than he did with his wife and children. Commonwealth Exhibit C-19, pages 17–18; NT at 173, 174.

121. Her dependency was such that N.M. was unable to disengage from Respondent, NT at 186.

122. Although N.M. began the process of terminating her treatment with Respondent in March 2010, Respondent continued to engage in sexual intimacies and other unhealthy behaviors with N.M. that promoted N.M.’s unhealthy reliance on him, so they did not effectively work on her dependency issues over the course of her therapy with Respondent. Commonwealth Exhibit C-19, page 18; NT at 173, 270–271.
B. Informed Consent

123. A psychologist must communicate to a patient, as early in therapy as possible, the nature of and anticipated length of therapy, all fees, the involvement of third parties, and the limits of confidentiality. Commonwealth Exhibit C-19, page 3.

124. Informed consent also includes an explanation of the procedures that will be used as well as their purpose; the role of the person who is providing the therapy; the professional qualifications of that provider; discomforts and risks reasonably to be expected; benefits that are reasonably to be expected; alternative treatment options that may be of similar benefit; a statement that questions will be answered at any time; and a statement that the individual can withdraw his or her consent and discontinue participation in therapy at any time. Id.

125. Informed consent does not have to be in written form, but there is no indication in Respondent’s treatment records of N.M. that he provided any oral version of appropriate informed consent at the outset of psychotherapy. Id.

126. There is nothing in Respondent’s treatment records of N.M. which shows that Respondent provided appropriate written informed consent to N.M. Id.

127. There is nothing in Respondent’s treatment records of N.M. to indicate that Respondent provided information about typical length of treatment sessions; the length of treatment sessions varied from 45 to 50 minutes to over two hours, with multiple sessions in which treatment lasted even longer than two hours. Commonwealth Exhibit C-19, page 5; NT at 152.

128. There is nothing in Respondent’s treatment records of N.M. to indicate that Respondent provided information about the typical length of treatment in terms of the number of sessions for treatment. Commonwealth Exhibit C-19, page 5.
129. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent outlined how he worked with suicidal patients. Id.

130. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent outlined how he worked with patients who have been sexually, emotionally or physically traumatized. Id.

131. "Abreaction" is a re-experiencing of prior sexual trauma during psychotherapy sessions. Commonwealth Exhibit C-19, page 3.

132. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent explained his treatment approach to working with survivors of sexual and emotional abuse, nor did he inform N.M. of his liberal use of abreaction as part of treatment or how abreaction can be used to treat victims of sexual and emotional abuse. Commonwealth Exhibit C-19, pages 3, 5.

133. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed, prior to the initiation of holding N.M., that his holding technique was not mainstream practice. Commonwealth Exhibit C-19, page 5; NT at 167.

134. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed that holding the patient was a significant part of his treatment; Respondent did not disclose the benefits and risks of such a procedure or highlight that holding may lead to sexual arousal, create romantic feelings for his patients, or produce dependency on the psychologist. Id.

135. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed that holding the patient may risk sexual arousal on the part of Respondent
or that he highlighted that holding and Respondent's sexual arousal may create a barrier in the working relationship. *Id.*

136. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed that hugging the patient was a significant part of his treatment; Respondent did not disclose the benefits and risks of such a technique or highlight that hugging may lead to sexual arousal, create romantic feelings for his patients, and produce dependency on the part of his patients. Commonwealth Exhibit C-19, page 6; NT at 167.

137. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed that touching the patient's genitals, face, legs, anus, or back was a part of his treatment; Respondent did not disclose the benefits and risks of such a technique and did not highlight that touching N.M.'s body may lead to sexual arousal or create romantic feelings toward him, or produce dependency. Commonwealth Exhibit C-19, page 6; NT at 169, 170.

138. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent disclosed that engaging in sexual relations was a part of his treatment; Respondent did not disclose the benefits and risks of such a technique and did not highlight that sexual relations is contraindicated in all forms of psychotherapy. Commonwealth Exhibit C-19, page 6; NT at 172.

139. There is nothing in Respondent's treatment records of N.M. to indicate that Respondent outlined how he handled between-session contacts with phone calls before they started, even though he permitted the use of phone calls between sessions. Commonwealth Exhibit C-19, page 6; NT at 155 – 156.

140. Respondent does not believe there is any benefit to having documentation in his records regarding informed consent. NT at 288.
C. Failure to Obtain Consultation.

141. Any time a psychologist believes that he is struggling with a patient, he should consider consulting with a peer to obtain more technical information, such as assistance in formulating treatment plans or types of clinical interventions, or identification of ways to strengthen the clinical relationship, to receive feedback as to his emotional response to the patient, or to help him think through his own case conceptualization. Commonwealth Exhibit C-19, page 19.

142. In spite of N.M.'s chronic suicidal ideation, breakdowns in the therapeutic alliance, frequent flashbacks and abreacts by N.M., and other therapeutic problems on the part of N.M., Respondent failed to seek consultation or supervision except prior to or in the year 2000, and he continued to see N.M. for 12 years thereafter. Commonwealth Exhibit C-19, page 19; NT at 175 – 176, 274 – 275.

143. Respondent's lack of ability to engage in this type of support demonstrates Respondent's lack of insight into his professional role and how badly the therapeutic relationship with N.M. had been damaged. Commonwealth Exhibit C-19, page 19.

144. Although N.M. encouraged Respondent multiple times to seek consultation to help with problems in their therapeutic relationship, Respondent refused, informing her that he did not have the time, energy or courage to lay out what had been happening with N.M. for the duration of their treatment relationship. Commonwealth Exhibit C-19, pages 19 – 20; NT at 176, 177, 231.

145. Despite admitting that he did not know what to do for N.M. anymore because he had reached the limits of his capabilities in helping her, Respondent decided to continue providing her with poor, uninformed and possibly dangerous treatment rather than consult a
colleague or make the decision to refer N.M. to another psychologist; he did not refer her to another practitioner until late 2011. Commonwealth Exhibit C-19, page 20; NT at 175–176, 232, 273–274.

III. Pattern of Conduct with Patients Ms. McKelvey and N.M.

146. Ms. McKelvey's treatment relationship with Respondent ended in March 2010 and Ms. McKelvey is currently under the care of another licensed healthcare provider to help her deal with the years of inappropriate treatment provided by Respondent. NT at 81, 115.

147. N.M.'s treatment relationship with Respondent ended in June 2012 and N.M. immediately began treatment with, and is currently under the care of, another licensed healthcare provider to help her deal with the years of inappropriate treatment provided by Respondent. NT at 172, 174, 175, 193–194.

148. Respondent engaged in a pattern of conduct involving multiple boundary violations, including physical touch, sexualized the treatment relationship, engaged in sexual intimacies, and created damaging and unhealthy dependencies with Ms. McKelvey and N.M., and Respondent also engaged in sexual conduct with N.M. Commonwealth Exhibit C-2, paragraph 272; Commonwealth Exhibit C-18, pages 14, 19, 21–24, 27, 39, 57, 59; Commonwealth Exhibit C-19, pages 7, 8, 10–12, 14, 18; NT at 202, 216.

149. Throughout the therapeutic relationship, Ms. McKelvey trusted Respondent and would have done whatever treatment modality he recommended. NT at 135, 137, 141.

150. Ms. McKelvey could sometimes distinguish between her professional and personal relationships with Respondent, but most of the time she could not; it was confusing and blurred. NT at 136, 140–141.
151. It is never appropriate for a psychologist to have any kind of sexual contact with a patient, not even if the patient initiates it. NT at 218, 241–242.

152. Respondent acknowledged in his own words that “any sexual contact with any client, including Ms. McKelvey and Ms. N.M., that any sexual contact has the potential for destruction.” NT at 260.

153. Respondent's own notes reflect, and Respondent admitted at the hearing, that he had been told by his colleagues, when he was working in another practice, not to use what he termed “therapeutic holding,” but he used it, nonetheless, once he was in practice on his own. NT at 230–231, 276.

154. No professional school of psychotherapy encourages the type of approach Respondent took in treating women who have been physically, sexually or emotionally abused as children, no professional school of psychotherapy encourages the physical holding of a patient as part of the therapeutic process, and Respondent acknowledged this to be true. NT at 237, 241, 258–259.

155. Respondent exhibited a persistent and stunning lack of insight as to what actually transpired between him and Ms. McKelvey, and between him and N.M.; Respondent admitted this to be the case. Commonwealth Exhibit C-18; Commonwealth Exhibit C-19; NT at 218, 221, 232, 240, 330.

156. Respondent exploited and harmed two survivors of sexual trauma by re-traumatizing them in his role as a psychologist. Findings of Fact 7, 84; Commonwealth Exhibit C-18, pages 2, 42, 53, 59, 61; Commonwealth Exhibit C-19, pages 1, 21; NT at 194, 216.
157. It is the practitioner's responsibility to determine if a patient is becoming dependent and to do what is medically necessary to diminish that dependency; Respondent did not do those things. NT at 229 – 230.

158. The psychologist bears the responsibility to care for the patient and not exploit the power imbalance between them. Commonwealth Exhibit C-18, page 13.

159. Respondent's pattern of repeated sexual misconduct with female patients over years of treatment, his continued use of "therapeutic holding" when his peers had advised him to stop, and his refusal to seek consultation, despite the urging of N.M. on multiple occasions, makes him a threat to current and future patients, and he is not capable of practicing. NT at 216 – 217, 219, 230 – 231, 232, 235 – 236.

160. A preliminary hearing in this matter was held on November 30, 2012, at which Ms. McKelvey and N.M. testified. NT at 96, 99 – 100, 181, 191, 277.

161. Ms. McKelvey and N.M. did not know about each other until the preliminary hearing in November 2012, or just prior to that hearing, when Ms. McKelvey received a document that came out beforehand. NT at 99 – 100, 191 – 192.

162. Prior to the November 30, 2012 preliminary hearing, Ms. McKelvey and N.M. had never spoken to each other. NT at 135, 191 – 192.

163. Since the preliminary hearing on November 30, 2012, Ms. McKelvey and N.M. have had no discussions and have not spoken to each other. NT at 135 – 136, 191 – 192.

164. The total investigative cost of this matter prior to the filing of formal charges is $18,433. Commonwealth Exhibit C-5.

165. Respondent appeared at the formal hearing in this matter, was represented by counsel, and testified on his own behalf. NT at 4, 326 and passim.
CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1–3.

2. Respondent received notice of this proceeding and was afforded an opportunity to be heard in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. Finding of Fact 165.

3. Respondent violated the Act at section 8(a)(11), 63 P.S. §1208(a)(11), in that he committed immoral or unprofessional conduct by departing from, or failing to conform to, the standards of acceptable and prevailing psychological practice when he:
   a. engaged in significant between session contacts of a personal nature with Ms. McKelvey, as alleged in Count 1. Findings of Fact 5–15.
   b. significantly extended and deviated from the agreed-upon session length with Ms. McKelvey without informed consent, as alleged in Count 7. Findings of Fact 5–11, 16–19.
   c. conducted psychotherapy sessions with no legitimate therapeutic purpose with Ms. McKelvey outside the office, as alleged in Count 12. Findings of Fact 5–11, 20–23.
   d. gave an article of clothing to Ms. McKelvey, touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 17. Findings of Fact 5–11, 24–26.
   e. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 23. Findings of Fact 5–11, 27–30.
f. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 29. Findings of Fact 5 – 11, 31 – 32.

g. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 35. Findings of Fact 5 – 11, 33 – 36.

h. physically struck Ms. McKelvey during a therapy session, as alleged in Count 41. Findings of Fact 5 – 11, 37 – 40.

i. committed serious clinical errors while providing psychotherapy to Ms. McKelvey resulting in harm to the patient, as alleged in Count 46. Findings of Fact 5 – 11, 41 – 56.

j. failed to obtain the proper informed consent of Ms. McKelvey, as alleged in Count 54. Findings of Fact 5 – 11, 57 – 74.

k. incorrectly diagnosed Ms. McKelvey and failed to pursue psychological testing, self-report measures or a structured diagnostic interview to validate his clinical impressions of Ms. McKelvey, as alleged in Count 56. Findings of Fact 5 – 11, 75 – 80.

l. provided financial assistance to N.M. during the course of the treatment relationship, as alleged in Count 58. Findings of Fact 81 – 87, 81 – 90.

m. engaged in significant between session contacts with N.M., as alleged in Count 63. Findings of Fact 81 – 87, 91 – 93.

n. significantly extended and deviated from the agreed-upon session length with N.M. without informed consent, as alleged in Count 68. Findings of Fact 81 – 87, 96 – 100.
o. gave an article of clothing to N.M., allowed N.M. to lift her shirt, and touched N.M.'s bare stomach during therapy sessions, as alleged in Count 73. Findings of Fact 81 – 87, 101 – 102.

p. made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 78. Findings of Fact 81 – 87, 103 – 106.

q. repeatedly utilized physical touch of both a sexual and non-sexual nature with N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 84. Findings of Fact 81 – 87, 107 – 108.

r. engaged in sexual activity with N.M. during the course of the treatment relationship and engaged in a variety of behaviors that romanticized and sexualized his relationship with N.M., as alleged in Count 90. Findings of Fact 81 – 87, 107 – 114.

s. engaged in numerous improper behaviors that created an unhealthy and unnecessary dependency by N.M., as alleged in Count 96. Findings of Fact 81 – 87, 115 – 122.

t. failed to obtain the proper informed consent of N.M., as alleged in Count 104. Findings of Fact 81 – 87, 123 – 140.

u. failed to engage in consultation or supervision regarding his treatment of N.M. and when he failed to refer N.M. to another psychologist for treatment, as alleged in Count 106. Findings of Fact 81 – 87, 141 – 145.

v. engaged in a pattern of repeated sexual misconduct with female patients over years of treatment, as alleged in Count 109. Findings of Fact 81 – 87, 146 – 159.
4. Respondent violated the Act at section 8(a)(4), 63 P.S. §1208(a)(4) in that he displayed gross incompetence, negligence or misconduct in carrying on the practice of psychology when he:

a. engaged in significant between session contacts of a personal nature with Ms. McKelvey, as alleged in Count 2. Findings of Fact 5 – 15;

b. significantly extended and deviated from the agreed-upon session length with Ms. McKelvey without informed consent, as alleged in Count 8. Findings of Fact 5 – 11, 16 – 19.

c. conducted psychotherapy sessions with no legitimate therapeutic purpose with Ms. McKelvey outside the office, as alleged in Count 13. Findings of Fact 5 – 11, 20 – 23.

d. gave an article of clothing to Ms. McKelvey, touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 18. Findings of Fact 5 – 11, 24 – 26.

e. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 24. Findings of Fact 5 – 11, 27 – 30.

f. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 30. Findings of Fact 5 – 11, 31 – 32.
g. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 36. Findings of Fact 5–11, 33–36.

h. physically struck Ms. McKelvey during a therapy session, as alleged in Count 42. Findings of Fact 5–11, 37–40.

i. committed serious clinical errors while providing psychotherapy to Ms. McKelvey resulting in harm to the patient, as alleged in Count 47. Findings of Fact 5–11, 41–56.

j. failed to obtain the proper informed consent of Ms. McKelvey, as alleged in Count 55. Findings of Fact 5–11, 57–74.

k. incorrectly diagnosed Ms. McKelvey and failed to pursue psychological testing, self-report measures or a structured diagnostic interview to validate his clinical impressions of Ms. McKelvey, as alleged in Count 57. Findings of Fact 5–11, 75–80.

l. provided financial assistance to N.M. during the course of the treatment relationship, as alleged in Count 59. Findings of Fact 81–87, 81–90.

m. engaged in significant between session contacts with N.M., as alleged in Count 64. Findings of Fact 81–87, 91–93.

n. significantly extended and deviated from the agreed-upon session length with N.M. without informed consent, as alleged in Count 69. Findings of Fact 81–87, 96–100.

o. gave an article of clothing to N.M., allowed N.M. to lift her shirt, and touched N.M.'s bare stomach during therapy sessions, as alleged in Count 74. Findings of Fact 81–87, 101–102.
p. made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 79. Findings of Fact 81-87, 103-106.

q. repeatedly utilized physical touch of both a sexual and non-sexual nature with N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 85. Findings of Fact 81-87, 107-108.

r. engaged in sexual activity with N.M. during the course of the treatment relationship and engaged in a variety of behaviors that romanticized and sexualized his relationship with N.M., as alleged in Count 91. Findings of Fact 81-87, 107-114.

s. engaged in numerous improper behaviors that created an unhealthy and unnecessary dependency by N.M., as alleged in Count 97. Findings of Fact 81-87, 115-122.

t. failed to obtained the proper informed consent of N.M., as alleged in Count 105. Findings of Fact 81-87, 123-140.

u. failed to engage in consultation or supervision regarding his treatment of N.M. and when he failed to refer N.M. to another psychologist for treatment, as alleged in Count 107. Findings of Fact 81-87, 141-145.

v. engaged in a pattern of repeated sexual misconduct with female patients over years of treatment, as alleged in Count 110. Findings of Fact 5-15, 81-87, 146-159.

5. Respondent deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, Section 3.08, thereby violating the Board’s
regulations at 49 Pa. Code §41.61, Ethical Principle 3(e), in that he developed and engaged in an exploitative relationship with a patient, when he:

a. engaged in significant between session contacts of a personal, and sometimes sexual, nature with Ms. McKelvey, as alleged in Count 3. Findings of Fact 5 – 15.

b. significantly extended and deviated from the agreed-upon session length with Ms. McKelvey without informed consent, as alleged in Count 9. Findings of Fact 5 – 11, 16 – 19.

c. conducted psychotherapy sessions with no legitimate therapeutic purpose with Ms. McKelvey outside the office, as alleged in Count 14. Findings of Fact 5 – 11, 20 – 23.

d. gave an article of clothing to Ms. McKelvey, touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 19. Findings of Fact 5 – 11, 24 – 26.

e. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 25. Findings of Fact 5 – 11, 27 – 30.

f. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 31. Findings of Fact 5 – 11, 31 – 32.
g. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 37. Findings of Fact 5—11, 33—36.

h. physically struck Ms. McKelvey during a therapy session, as alleged in Count 43. Findings of Fact 5—11, 37—40.

i. provided financial assistance to N.M. during the course of the treatment relationship, as alleged in Count 60. Findings of Fact 81—87, 81—90.

j. engaged in significant between session contacts with N.M., as alleged in Count 65. Findings of Fact 81—87, 91—93.

k. significantly extended and deviated from the agreed-upon session length with N.M. without informed consent, as alleged in Count 70. Findings of Fact 81—87, 96—100.

l. gave an article of clothing to N.M., allowed N.M. to lift her shirt, and touched N.M.'s bare stomach during therapy sessions, as alleged in Count 75. Findings of Fact 81—87, 101—102.

m. made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 80. Findings of Fact 81—87, 103—106.

n. repeatedly utilized physical touch of both a sexual and non-sexual nature with N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 86. Findings of Fact 81—87, 107—108.
o. engaged in sexual activity with N.M. during the course of the treatment relationship and engaged in a variety of behaviors that romanticized and sexualized his relationship with N.M., as alleged in Count 92. Findings of Fact 81 – 87, 107 – 114.

p. engaged in numerous improper behaviors that created an unhealthy and unnecessary dependency by N.M., as alleged in Count 98. Findings of Fact 81 – 87, 115 – 122.

q. failed to engage in consultation or supervision regarding his treatment of N.M. and when he failed to refer N.M. to another psychologist for treatment, as alleged in Count 108. Findings of Fact 81 – 87, 141 – 145.

6. Respondent deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, Section 3.04, thereby violating the Board’s regulations at 49 Pa. Code §41.61, Ethical Principle 3(e), in that he failed to take reasonable steps to avoid harming his client/patient, when he:

a. engaged in significant between session contacts of a personal, and sometimes sexual, nature with Ms. McKelvey, as alleged in Count 4. Findings of Fact 5 – 15.

b. significantly extended and deviated from the agreed-upon session length with Ms. McKelvey without informed consent, as alleged in Count 10. Findings of Fact 5 – 11, 16 – 19.

c. conducted psychotherapy sessions with no legitimate therapeutic purpose with Ms. McKelvey outside the office, as alleged in Count 15. Findings of Fact 5 – 11, 20 – 23.
d. gave an article of clothing to Ms. McKelvey; touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 20. Findings of Fact 5-11, 24-26.

e. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 26. Findings of Fact 5-11, 27-30.

f. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 32. Findings of Fact 5-11, 31-32.

g. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 38. Findings of Fact 5-11, 33-36.

h. physically struck Ms. McKelvey during a therapy session, as alleged in Count 44. Findings of Fact 5-11, 37-40.

i. provided financial assistance to N.M. during the course of the treatment relationship, as alleged in Count 61. Findings of Fact 81-87, 81-90.

j. engaged in significant between session contacts with N.M., as alleged in Count 66. Findings of Fact 81-87, 91-93.

k. significantly extended and deviated from the agreed-upon session length with N.M. without informed consent, as alleged in Count 71. Findings of Fact 81-87, 96-100.
1. gave an article of clothing to N.M., allowed N.M. to lift her shirt, and
touched N.M.’s bare stomach during therapy sessions, as alleged in Count 76. Findings of

m. made excessive self-disclosures of a personal and sexual nature to N.M.
throughout the course of the psychotherapeutic relationship, as alleged in Count 81.
Findings of Fact 81 – 87, 103 – 106.

n. repeatedly utilized physical touch of both a sexual and non-sexual nature
with N.M. throughout the course of the psychotherapeutic relationship, as alleged in

o. engaged in sexual activity with N.M. during the course of the treatment
relationship and engaged in a variety of behaviors that romanticized and sexualized his

p. engaged in numerous improper behaviors that created an unhealthy and
unnecessary dependency by N.M., as alleged in Count 99. Findings of Fact 81 – 87, 115
– 122.

q. engaged in a pattern of repeated sexual misconduct with female patients
over years of treatment, as alleged in Count 111. Findings of Fact 5 – 15, 81 – 87, 146 –
159.

7. Respondent violated the Board’s regulations at 49 Pa. Code §41.81(a), in that he
engaged in sexual intimacies with a current client, when he:

a. engaged in significant between session contacts of a personal, and
sometimes sexual, nature with Ms. McKelvey, as alleged in Count 5. Findings of Fact 5 –
15.
b. gave an article of clothing to Ms. McKelvey, touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 21. Findings of Fact 5-11, 24-26.

c. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 27. Findings of Fact 5-11, 27-30.

d. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 33. Findings of Fact 5-11, 31-32.

e. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 39. Findings of Fact 5-11, 33-36.

f. made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 82. Findings of Fact 81-87, 103-106.

g. repeatedly utilized physical touch of both a sexual and non-sexual nature with N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 88. Findings of Fact 81-87, 107-108.

h. engaged in sexual activity with N.M. during the course of the treatment relationship and engaged in a variety of behaviors that romanticized and sexualized his relationship with N.M., as alleged in Count 94. Findings of Fact 81-87, 107-114.
8. Respondent violated the Board’s regulations at 49 Pa. Code §41.61, Ethical Principle 6(b), in that he exploited the trust and dependency of a client/patient and engaged in an exploitative dual relationship, when he:

   a. engaged in significant between session contacts of a personal, and sometimes sexual, nature with Ms. McKelvey, as alleged in Count 6. Findings of Fact 5 – 15.

   b. significantly extended and deviated from the agreed-upon session length with Ms. McKelvey without informed consent, as alleged in Count 11. Findings of Fact 5 – 11, 16 – 19.

   c. conducted psychotherapy sessions with no legitimate therapeutic purpose with Ms. McKelvey outside the office, as alleged in Count 16. Findings of Fact 5 – 11, 20 – 23.

   d. gave an article of clothing to Ms. McKelvey, touched Ms. McKelvey underneath her clothing and allowed Ms. McKelvey to touch his bare skin after unbuttoning his shirt during therapy sessions, as alleged in Count 22. Findings of Fact 5 – 11, 24 – 26.

   e. made excessive self-disclosures of a personal and sexual nature to Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 28. Findings of Fact 5 – 11, 27 – 30.

   f. repeatedly utilized physical touch with Ms. McKelvey throughout the course of the psychotherapeutic relationship, as alleged in Count 34. Findings of Fact 5 – 11, 31 – 32.
g. engaged in a variety of behaviors that romanticized and sexualized his relationship with Ms. McKelvey and resulted in an unhealthy and unnecessary dependency for Ms. McKelvey, as alleged in Count 40. Findings of Fact 5-11, 33-36.

h. physically struck Ms. McKelvey during a therapy session, as alleged in Count 45. Findings of Fact 5-11, 37-40.

i. committed serious clinical errors while providing psychotherapy to Ms. McKelvey resulting in harm to the patient, as alleged in Count 50. Findings of Fact 5-11, 41-56.

j. provided financial assistance to N.M. during the course of the treatment relationship, as alleged in Count 62. Findings of Fact 81-87, 81-90.

k. engaged in significant between session contacts with N.M., as alleged in Count 67. Findings of Fact 81-87, 91-93.

l. significantly extended and deviated from the agreed-upon session length with N.M. without informed consent, as alleged in Count 72. Findings of Fact 81-87, 96-100.

m. gave an article of clothing to N.M., allowed N.M. to lift her shirt; and touched N.M.’s bare stomach during therapy sessions, as alleged in Count 77. Findings of Fact 81-87, 101-102.

n. made excessive self-disclosures of a personal and sexual nature to N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 83. Findings of Fact 81-87, 103-106.
o. repeatedly utilized physical touch of both a sexual and non-sexual nature with N.M. throughout the course of the psychotherapeutic relationship, as alleged in Count 89. Findings of Fact 81–87, 107–108.

p. engaged in sexual activity with N.M. during the course of the treatment relationship and engaged in a variety of behaviors that romanticized and sexualized his relationship with N.M., as alleged in Count 95. Findings of Fact 81–87, 107–114.

q. engaged in numerous improper behaviors that created an unhealthy and unnecessary dependency by N.M., as alleged in Count 100. Findings of Fact 81–87, 115–122.

9. Respondent deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, Section 2.01, thereby violating the Board’s regulations at 49 Pa. Code §41.61, Ethical Principle 3(e), in that he committed serious clinical errors while providing psychotherapy to Ms. McKelvey, resulting in harm to the patient, and by providing services outside the boundaries of his competence, as alleged in Count 48. Findings of Fact 41–56.

10. Respondent violated the Board’s regulations at 49 Pa. Code §41.61, Ethical Principle 2(a), in that he failed to maintain high standards of professional competence, committed serious clinical errors while providing psychotherapy to Ms. McKelvey, resulting in harm to the patient, and provided services for which he was not qualified by education and training to perform, as alleged in Count 49. Findings of Fact 41–56.

11. Respondent deviated from the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, Section 3.10, thereby violating the Board’s regulations at 49 Pa. Code §41.61, Ethical Principle 3(e), in that he failed to obtain the informed
consent of Ms. McKelvey and N.M. using language that is reasonably understandable to the client/patient, as alleged in Counts 51 and 101. Findings of Fact 57 – 74, 123 – 140.

12. Respondent deviated from the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct, Section 10.01(a), thereby violating the Board's regulations at 49 Pa. Code §41.61, Ethical Principle 3(c), in that he failed to obtain the informed consent of Ms. McKelvey and N.M. by informing them as early as was feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality, and by providing Ms. McKelvey and N.M. with sufficient opportunity to ask questions and receive answers, as alleged in Counts 52 and 102. Findings of Fact 57 – 74, 123 – 140.

13. Respondent deviated from the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct, Section 10.01(b), thereby violating the Board's regulations at 49 Pa. Code §41.61, Ethical Principle 3(c), in that he failed to obtain the informed consent of Ms. McKelvey and N.M. for treatment for which generally recognized techniques and procedures have not been established and to inform them of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available and the voluntary nature of their participation, as alleged in Counts 53 and 103. Findings of Fact 57 – 74, 123 – 140.

14. Respondent’s violations of the Act and the Board’s regulations authorize the Board to suspend, revoke, or otherwise restrict Respondent's license under section 8 of the Act, 63 P.S. § 1208, to impose a civil penalty under section 11(b) of the Act, 63 P.S. § 1211(b), and/or under section 5(b)(4) of Act 48, 63 P.S. § 2205(b)(4), and/or to impose the costs of investigation under section 5(b)(5) of Act 48, 63 P.S. § 2205(b)(5).
DISCUSSION

Violations

Respondent is charged with 111 counts of violating the Act and the Board’s regulations, although Respondent did not dispute many of the factual allegations in the order to show cause. Both in his answer to the order to show cause and through his counsel at the hearing, Respondent acknowledged that there is “a mass of information which is beyond controversy.” NT at 15. Further, Respondent, through counsel, acknowledged “that there was sexual contact between [Respondent] and his patients,” id., and stated:

[T]here was sexual touching between Dr. Lenhart and his two patients. We also are going to have an acknowledgment that that’s not acceptable. That’s not acceptable behavior. It’s not accepted in the Commonwealth of Pennsylvania as an acceptable treatment modality, to engage in what would be described as sexual contact.

NT at 15 - 16. In addition to his admissions in his answer and in these initial statements, Respondent admitted in his testimony at the hearing that he had inappropriate physical and sexual contact with the patients in question. Moreover, his detailed treatment records, which the Commonwealth’s expert reviewed, support many of the allegations against him and, consequently, support many of the findings of fact in this decision.

The Commonwealth’s witnesses comprised the two patients who filed complaints against Respondent, Ms. McKelvey and N.M., the Commonwealth’s expert witness, John D. Gavazzi, Psy.D., ABPP, and Respondent, whom the Commonwealth called as on cross. Ms. McKelvey and N.M. testified quite credibly, and their testimony was quite consistent despite the fact that they never knew about each other until the November 2012 preliminary hearing in this matter, were sequestered during the hearing in this matter, and have never spoken with each other about their complaints at all. Also, Dr. Gavazzi testified that part of Ms. McKelvey’s and N.M.’s
credibility rests on the fact that much of what they said mirrored what was actually in Respondent’s treatment notes. NT at 226. Additionally, Respondent did not challenge the witnesses’ credibility except on minor points related to the number of times some of the inappropriate activities occurred and the validity of some (but not all) of the text messages which were admitted into evidence.

Dr. Gavazzi was also entirely credible. More to the point, Respondent conceded Dr. Gavazzi’s qualifications, did not object to, and actually suggested admission of, Dr. Gavazzi’s two written reports into the record in lieu of direct testimony, and then declined to cross-examine Dr. Gavazzi as to the content of those two written reports. Under the circumstances, all of Dr. Gavazzi’s findings, as laid out in those two reports, and as elaborated on, albeit briefly, in his testimony at the hearing, are accepted as true and valid.

There is no need to restate the facts as they have been established in the Findings of Fact set forth above. Suffice it to say, in summary, that the undisputed evidence demonstrates that Respondent engaged in a multitude of inappropriate behaviors when he touched the bare skin of his patients’ abdomens; self-disclosed the sexual content of his life to his patients; frequently hugged his patients; physically held his patients on his lap; lay down with them; allowed them to straddle him; held a patient with his leg positioned between her legs; engaged in genital holding and anal rubbing of a patient; wrestled on the floor with a patient; wrote on a patient’s hand and stomach; rubbed lotion on a patient and allowed her to reciprocate; rubbed a patient’s neck and shoulders and allow a patient to touch him in similar fashion; brushed a patient’s hair; exchanged sexual, crude, romantic and insulting text messages with a patient; listened to ongoing sexualized commentary from a patient; allowed himself to be part of a patient’s sexual fantasy world and encouraged her ongoing exploration of highly sexual themes; validated that her feelings of
sexual connection to him were necessary part of treatment; allowed her to engage in sexual types of behavior throughout her course of therapy, so that she presented as out of control regarding her sexual desire toward him; accepted and maintained naked pictures of a patient; looked at pictures of a patient who was wearing lingerie in the pictures; performed oral sex on a patient; and allowed a patient to masturbate Respondent to orgasm. See, for example, Commonwealth Exhibit C-18, pages 21, 23 - 26, 28 - 29, 33, 39, 42 - 44 and Commonwealth Exhibit C-19, pages 14 - 15, 16 - 17. These behaviors and activities amounted to sexual intimacies with these patients; the behaviors and activities also sexualized and romanticized his relationships with them. See, for example, Commonwealth Exhibit C-18, page 31.

Based upon Respondent’s admissions, the documentary evidence admitted into the record (particularly Dr. Gavazzi’s unchallenged written reports, which detail the manner in which these behaviors amount to sexual intimacies, sexual and other boundary violations, incompetence, and violations of the standard of care by Respondent), and the testimony of all of the Commonwealth’s witnesses, the Commonwealth has met its burden of proof as to the 111 counts set forth in the order to show cause, successfully demonstrating by a preponderance of the evidence that Respondent committed 11 different types of violation in a myriad of ways, as referenced in the summary above.

Consequently, in his treatment of Ms. McKelvey and N.M., Respondent engaged in immoral or unprofessional conduct; displayed gross incompetence, negligence or misconduct in

---

25 The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. Lansberry v. Pennsylvania Public Utility Commission, 578 A.2d 600, 602 (Pa. Commw. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth’s case must weigh slightly more than the opposing evidence. Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 (Pa. 1950). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. Lansberry, 578 A.2d at 602.
carrying on the practice of psychology; developed and engaged in exploitative relationships with the patients; failed to take reasonable steps to avoid harming his clients/patients; engaged in sexual intimacies with current clients; exploited the trust and dependency of clients/patients and engaged in exploitative dual relationships; committed serious clinical errors, resulting in harm to the patient; failed to maintain high standards of professional competence; provided services for which he was not qualified by education and training to perform, and failed to obtain appropriate informed consent of Ms. McKelvey and N.M.

_Sanction_

The Board has a duty to protect the health and safety of the public. Under professional licensing statutes such as the Act, the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. _Barran v. State Board of Medicine_, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), _appeal denied_ 679 A.2d 230 (Pa. 1996). In arriving at a determination as to sanction, it is appropriate to consider any aggravating or mitigating factors in the record.

Since Respondent challenged few of the factual allegations against him, his case comprised primarily mitigation, in the form of two arguments. First, he makes a "safe touch" or "therapeutic touch" argument, asserting that sexual contact and physical contact can be different, and that his contact with these patients was not intended as sexual, and was at all times in good faith, albeit not prudent. Second, he argues, essentially, that the patients asked him to do what he did because they believed it would facilitate their healing, and for that reason, all the fault should not be ascribed to him. However, neither of these arguments provides any mitigation of Respondent’s numerous offenses.
Respondent advocates in favor of the therapeutic value of “safe touch” or “therapeutic touching,” differentiating between sexual contact and nonsexual physical contact. He argues that there are “valid theoretical underpinnings” for creating a safe place of touch, where a person is not being sexually abused. NT at 331. He also believes that there are rare circumstances in which performing oral sex on a patient is therapeutic. NT at 243 – 244. At the same time, he admits that it would be destructive 90% of the time, and that it is very difficult to determine when it would be therapeutic and when it would be destructive. NT at 244, 246.

Dr. Gavazzi, on the other hand, the qualified expert in this matter, explained that the concept of “safe touch” arises in the context of educating children and adolescents about what is a safe touch versus what is not a safe touch, and in that context, safe touch basically can occur, for a female, outside the bikini line (ironically, Respondent did not even meet this definition of “safe touch” of a female), and for a male, outside the swimsuit lines. NT at 222. He also testified that he is not familiar with the term “safe touching” in relation to the genital area, NT at 221, 237, has never heard of “safe touch” involving a patient straddling the psychologist, the psychologist removing or unbuttoning his shirt to allow a patient to lie against his bare chest, or the psychologist touching a woman patient's breasts, NT at 236, and that there is no therapeutic modality or treatment that can be delivered which is recognized as “safe touch.” NT at 222.

Dr. Gavazzi also testified unequivocally that there is no professional school of psychotherapy that encourages or espouses Respondent’s approach, using physical holding of a patient, in treating women who have been physically, sexually or emotionally abused as children. NT at 237, 241. And finally, Dr. Gavazzi testified that it is never appropriate for a psychologist to have any sort of sexual contact with a patient. NT at 218, 242. Based on Dr. Gavazzi’s
testimony, there is no way in which Respondent's argument in favor of "safe touch" or "therapeutic touching" can be credited or be given any mitigation value whatsoever.

Respondent's second mitigation argument is that he only responded to what these two patients demanded from him in the way of therapy and a path to healing; he did not initiate these behaviors and activities. NT at 338 – 339. Indeed, he professed to be amazed that everything has been ascribed to him without any acknowledgment that these patients requested these therapies. NT at 261. He goes so far as to say that he was a victim of "vicarious traumatization," in which he experienced some of the same trauma as the patients he was working with. NT at 249 – 250. Respondent says that made him want to heal them, so when, for example, he says N.M. pushed and pushed, NT at 244, 248, 259, 264 – 265, 302, 329, asking him to "cross a fence" for her and provide her with a safe sexual experience for healing, NT at 251, 259,26 he finally did what she asked, despite his misgivings, out of his desire to make her whole. NT at 252, 257.

This is nothing but the persistent and discredited "blame the victim" argument. It demonstrates an egregious lack of responsibility for his actions on Respondent's part. While a psychologist may form a collaborative relationship with his patients, NT at 219, he should not allow something to occur which is outside the ethical rules. Id. If that were permissible, there would be no reason to have ethical rules. Moreover, the psychologist bears the responsibility to care for the patient and not exploit the power imbalance between them. Commonwealth Exhibit C-18, page 13. Respondent's argument also exhibits what Dr. Gavazzi termed a "stunning" lack of awareness and insight into how Respondent's behavior impacted N.M. Commonwealth Exhibit C-19, page 18. Respondent's argument that it was his patients' fault that these

26 Ms. McKelvey testified that Respondent actually told her that he was willing to "climb over a fence" for her. NT at 70, 71.
inappropriate things occurred is anathema to the ethical rules and code of conduct, and it cannot
provide any mitigation whatsoever.

The impropriety and damaging nature of Respondent’s behaviors and activities cannot be
downplayed. As Dr. Gavazzi put it, throughout Respondent’s course of treatment of Ms.
McKelvey and N.M., Respondent
did not demonstrate appropriate professional boundaries in many instances. By
losing the framework of therapy, [Respondent] lost his role as a professional in
the relationship. . . Additionally, [Respondent] engaged in highly unusual,
inappropriate, corrupt, and exploitative behaviors during treatment. . . Once
again, this level of ineptitude and his inability to understand the treatment
relationship dynamics demonstrates [Respondent’s] level of incompetence.

Commonwealth Exhibit C-18, pages 14 and 53. Not only is there no mitigation available to him
from the record, but also, Respondent’s complete lack of insight into the nature of his
relationships with these two patients, a lack of insight to which he admitted in testimony,
aggravates his behavior.

Section 8(a) of the Act, 63 P.S. § 1208, authorizes the Board to suspend, revoke, limit
or restrict a license or reprimand a licensee if the licensee violates any of the subsections
enumerated there. Additionally, section 11(b) of the Act, 63 P.S. § 1211(b), authorizes the
Board to impose a civil penalty of up to $1000 on any current licensee who violates any
provision of the Act. And subsections 5(b)(4) and (5) of Act 48, respectively, permit the Board
to levy a civil penalty of not more than $10,000 per violation on any licensee who violates any
provision of the applicable licensing act or board regulations, and to assess the costs of
investigation against a respondent found in violation of the licensing act in a disciplinary matter.

27 See footnote 2 for the text of section 8(a) of the Act, 63 P.S. § 1208(a).
28 See footnote 5 for the text of section 11(b) of the Act, 63 P.S. § 1211(b).
29 See footnote 4 for the relevant provisions of Act 48.
In this case, Respondent violated the Act at section 8(a)(11), 63 P.S. § 1208(a)(11) and at section 8(a)(4), 63 P.S. § 1208(a)(4). Additionally, he violated the Board’s regulations at 49 Pa. Code § 41.61, Ethical Principle 2(a), Ethical Principle 3(e), Ethical Principle 6(b) at 49 Pa. Code § 41.81(a), which subjects him to disciplinary sanctions pursuant to the Act at section 8(a)(9), 63 P.S. § 1208(a)(9). Therefore, the Board is authorized to impose any or all of the full panoply of sanctions outlined in the Act and in Act 48.

Respondent exhibited a persistent and stunning lack of insight as to what actually transpired between him and Ms. McKelvey, and between him and N.M., and he even admitted this to be the case at the hearing. Respondent exploited and harmed two survivors of sexual trauma by re-traumatizing them in his role as a psychologist. He had a responsibility to determine if a patient is becoming dependent and to do what is medically necessary to diminish that dependency, but he did not do those things. He had a responsibility to care for the patients and not exploit the power imbalance between them and himself. Respondent did not fulfill his responsibilities as a psychologist.

Respondent’s attitude in this matter is best illustrated by a telling remark in his testimony. He stated that he did not come to the hearing to get his license back. Rather, he chose a hearing over writing letters of apology. NT at 334. That clearly signals that he does not believe he did anything wrong. In short, Respondent has not taken responsibility for his actions. Given all of these circumstances and facts, Respondent is, as Dr. Gavazzi opined, incapable of practicing, so revocation is the appropriate penalty to impose.

Additionally, Respondent’s egregious conduct resulted in an investigation by the Commonwealth which amassed costs totaling $18,433. It is permissible under Act 48 to assess these costs against Respondent. And finally, the Commonwealth requested the imposition of a
civil penalty of $50,000 on Respondent. There are 111 counts against him, and under Act 48, a civil penalty of $10,000 per count could be imposed. The requested amount of $50,000 is not, therefore, unreasonable, particularly in light of the duration of Respondent’s conduct and his refusal to take responsibility for it. Taking all of this into consideration, then, the following order shall issue:
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PSYCHOLOGY

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Richard Scott Lenhart, Ph.D.,
Respondent

PROPOSED ORDER

AND NOW, this 28th day of March, 2013, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is ordered as follows with regard to the license to practice psychology of Richard Scott Lenhart, Ph.D., license number PS006795L:

1. Respondent’s license is REVOKED.

2. Respondent shall relinquish his wall certificate, registration certificate, wallet card, and other licensure documents within 30 days of the date of the Board’s Final Order in this matter by forwarding them to:

   Board Counsel
   State Board of Psychology
   P.O. Box 2649
   Harrisburg, PA 17105-2649

3. Respondent shall pay the Commonwealth’s COSTS OF INVESTIGATION in the amount of $18,433.

4. Respondent shall pay a CIVIL PENALTY of $50,000.

5. Respondent shall pay the COSTS OF INVESTIGATION and the CIVIL PENALTY within 30 days of the date of the Board’s Final Order in this matter, and shall make payment by certified check, attorney’s check or U.S. Postal Service money order, made payable
to “Commonwealth of Pennsylvania,” by forwarding it to:

Board Counsel  
State Board of Psychology  
P.O. Box 2649  
Harrisburg, PA 17105-2649

within 30 days of the date of the Board’s Final Order.

The State Board of Psychology has announced its intention to review this Proposed Report in accordance with 1 Pa. Code § 35.226(a)(2).

BY ORDER

Ruth D. Dunnewold  
Hearing Examiner

For the Commonwealth:  
Bridget K. Guilfoyle, Esquire  
GOVERNOR’S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL  
PROSECUTION DIVISION  
P.O. Box 2649  
Harrisburg, PA 17105-2649

For Respondent:  
Philip M. Masorti, Esquire  
MASORTI & DONALDSON, P.C.  
302 South Burrowes Street  
State College, PA 16801

Date of mailing: MARCH 29, 2013
NOTICE

SERVICE OF PROPOSED REPORT:

The foregoing is the proposed report issued in this matter by a Hearing Examiner for the Department of State, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.207.

EXCEPTIONS TO PROPOSED REPORT:

Any participant who wishes to appeal all or part of the Hearing Examiner’s proposed report to the Board must file exceptions in the form of a Brief on Exceptions with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214.

The Brief on Exceptions shall contain a short statement of the case, a summary of the appealing party’s position, the grounds for filing exceptions to the proposed report, and the argument in support of the appealing party’s position with citations to the record and legal authority. The appealing party may also include proposed findings of fact and conclusions of law.

In the event any participant files exceptions, the Board may substitute its findings for those of the Hearing Examiner, and/or may impose a greater or lesser sanction than that imposed by the Hearing Examiner without regard to the relief requested or the position argued by any party, and without hearing additional argument or facing additional evidence.

Failure to file a Brief on Exceptions within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214 shall constitute a waiver of all objections to the proposed report.

FILING AND SERVICES:

An original and three (3) copies of the Brief on Exceptions shall be filed with:

Prothonotary
2601 North Third Street
P. O. Box 2649
Harrisburg, PA 17105-2649

Copies of the Brief on Exceptions must also be served on all participants to the proceeding.

Briefs on Exceptions must be received for filing by the Prothonotary within the time limits specified herein. Date of receipt by the Office of Prothonotary and not date of deposit in the mail is determinative.
NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.