

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL
ASSOCIATE EXAMINERS**

In the Matter of:)
)
CAROLINE M. PETERS) OAH No. 10-0105-PSY
) Agency File No. 2950-10-001
_____)

DECISION

I. INTRODUCTION

Caroline M. Peters appeals from a decision by the Board of Psychologist and Psychological Associate Examiners denying her application for a license to practice psychology. Based on the information known to the board at the time, its initial decision was warranted. The evidence subsequently developed at the hearing, however, justifies modification of the board's previous decision to permit Dr. Peters to continue working toward licensure subject to certain conditions.

II. FACTS

Caroline Peters' application for licensure as a psychologist was received by the Division of Corporations, Business and Professional Licensing on December 6, 2007.¹ A one year temporary license was issued effective December 14, 2007.² On November 25, 2008, Dr. Peters requested an extension of her temporary license.³ This request was granted and a new temporary license was issued effective December 14, 2008.⁴

The division received four complaints concerning Dr. Peters in December of 2008.⁵ Notice that a complaint had been filed was sent by certified mail to Dr. Peters on January 6, 2009.⁶ That notice was returned to the division unclaimed.⁷ A second notice was sent by certified mail on February 3, 2009.⁸ This notice was also returned unclaimed.⁹

Division investigator David Newman wrote a memorandum to the board dated September 18, 2009.¹⁰ He summarized the information in three of the complaints and advised the board that it might wish to consider whether Dr. Peters' request for a temporary license should be denied.

¹ Exhibit A, at 59.
² Exhibit A, at 57.
³ Exhibit A, at 49.
⁴ Exhibit A, at 47.
⁵ Exhibit B, at 73 – 84.
⁶ Exhibit B, at 42.
⁷ Exhibit B, at 41.
⁸ Exhibit B, at 39.
⁹ Exhibit B, at 38.
¹⁰ Exhibit B, at 15.

On September 24, 2009, the board voted to disapprove Dr. Peters' supervision plan.¹¹ Dr. Peters was notified of this decision by certified mail dated October 15, 2009.¹²

At its December 3–4, 2009 meeting, the board reconsidered its prior action. It modified its prior decision so that, instead of disapproving the supervision plan, the board denied Dr. Peters' application for licensure.¹³ Dr. Peters was notified of this decision by certified mail in a letter dated January 11, 2010.¹⁴ The decision relied on two findings:

1. Dr. Peters failed to safeguard client confidentiality as required by 12 AAC 60.200 and the American Psychological Association (APA) Code of Conduct §§ 6.01 & 6.02(a)(c);
2. Dr. Peters failed to cooperate with the division's investigation as required by the APA Code of Conduct § 1.06.

After Dr. Peters requested a hearing, the division issued a document titled "Revised Statement of Issues" that purported to replace the board's January 11 letter.¹⁵ It consists of numbered paragraphs containing allegations reminiscent of an accusation used to initiate a disciplinary action. The division subsequently issued a second revised statement of issues similar in content but correcting a typographical error on May 27, 2010. Dr. Peters did not object to replacement of the board's letter with these accusation-like documents. The revised statement added new issues and set out the allegations against Dr. Peters in six counts:

1. Failure to record 27 intake assessments in client files in violation of the APA Code of Conduct §§ 6.01 & 6.02, and APA General Guideline 2.3.5 in violation of AS 08.86.204(a)(5);
2. Misleading her employer about the missing intake assessments in violation of AS 08.86.204(a)(2);
3. Failure to record 82 progress notes in client files in violation of the APA Code of Conduct §§ 6.01 & 6.02, and APA General Guideline 2.3.5 in violation of AS 08.86.204(a)(5);
4. Misleading her employer about the missing progress notes in violation of AS 08.86.204(a)(2);
5. Leaving confidential client information including progress notes and intake assessments in a box at her desk rather than in a locked cabinet or file in violation of the APA Code of

¹¹ Exhibit E, at 3.

¹² Exhibit B, at 12.

¹³ Exhibit F, at 3.

¹⁴ Exhibit B, at 10.

¹⁵ May 19, 2010 Revised Statement of Issues.

Conduct § 4.01 and APA General Guideline 2.3.7 in violation of AS 08.86.204(a)(5) & (6); and

6. Failure to cooperate with the investigation of the complaints against her.

A hearing was conducted over two days in June 2010. Nine witnesses testified, most in person. Exhibits A through H were admitted into evidence. As established through the testimony and exhibits, most of the facts related to the various charges in this matter are uncontested.

Dr. Peters was employed at Fairbanks Counseling and Adoption as a clinician in the family therapy department of that agency. The executive director of the agency, Camille Connelly-Terhune, hired Dr. Peters in January of 2008 and terminated her employment in October of 2008. Anne Brainerd is the clinical supervisor and was Dr. Peters' direct supervisor. Dr. Mikki Barker is the Medical Director and Clinical Director at Fairbanks Counseling and Adoption. All three testified to the concerns they had with Dr. Peters' recordkeeping and interpersonal relationships, but none expressed the opinion that she is incapable of becoming qualified to practice as a psychologist.

Counts I and III of the Second Revised Statement of Issues allege that 27 intake assessments and 82 progress notes were missing from the files of Dr. Peters' clients. It is uncontested that these assessments and intake notes had been handwritten by Dr. Peters but not transcribed into the client files. Dr. Peters conceded that the failure to place them in the files likely was an ethical violation.

Counts II and IV allege that Dr. Peters misled Ms. Brainerd when Dr. Peters was asked about the status of her files. It is uncontested that Dr. Peters and Ms. Brainerd discussed the fact that Dr. Peters was behind in her recordkeeping. This occurred sometime in August of 2008. Dr. Peters was given a "paperwork day" to catch up. It is also undisputed that Ms. Brainerd inquired about the status of Dr. Peters' files after this paperwork day. Ms. Brainerd testified that Dr. Peters told her that she – Dr. Peters – was "on top of it." Dr. Peters testified that she said she was caught up in some areas, making progress catching up in others, and still behind with some of her paperwork. Based on their demeanor, each witness' testimony was as credible as that of the other, though the details Dr. Peters provided suggest that her recollection of the communications was clearer than that of Ms. Brainerd.

Count V alleges that Dr. Peters left client notes in an unsecured area. Ms. Brainerd testified that she found client notes in a box next to Dr. Peters' desk after Dr. Peters was terminated. Dr. Peters testified that she had kept those notes in her desk and might have placed

them in a box as she was cleaning out her office after her termination. Dr. Peters conceded that those files were not properly secured in a locked file cabinet and that this failure likely constituted an ethical violation under the APA Code of Conduct. Ms. Connelly-Terhune and Ms. Brainerd conceded that the notes contained the missing progress notes and intake assessments referred to in Counts I and III.

Count VI alleges that Dr. Peters failed to cooperate with the division's investigation. There is no dispute that notices concerning the investigation were sent to Dr. Peters and that she did not respond to them. Dr. Peters' uncontradicted testimony was that she thought the certified mail was from two storage companies in California. She explained that because she had already been in contact with the companies, she did not bother to pick up the letters. Dr. Peters did pick up the certified letter informing her of the board's decision to deny her application, but she did not open that letter for an extended period of time.

There was also evidence in the record concerning Dr. Peters' interactions with various staff members. Dr. Peters' version of these interactions is significantly different than the version presented by Dr. Barker, Ms. Connelly-Terhune and Ms. Brainerd. It is not unusual for people to view the same events differently, and for purposes of this decision it is not necessary to determine which version is more accurate. None of the allegations in the Second Revised Statement of Issues are based on these interactions. Since the division is not asserting that these interpersonal interactions are reasons for denying Dr. Peters' application, the board does not need to consider them.

III. DISCUSSION

A. Dr. Peters' Burden of Proof

The question in this case is whether Dr. Peters should be allowed to proceed with her licensure application. Dr. Peters has the burden of persuading the board that its decision denying her the right to proceed with her application should be reversed.¹⁶ This does not mean that the board can arbitrarily deny an application. The board is required to state its reasons for its decision in the form of a statement of issues.¹⁷ It is then the applicant's burden to show that those reasons do not justify the denial of the application.

The board provided the statement of issues in its January 11, 2010 letter, concluding that Dr. Peters had engaged in dishonorable conduct by failing to safeguard confidential information

¹⁶ AS 44.62.460(e)(2).

¹⁷ AS 44.62.370.

and failing to respond to inquiries from the division's investigator but without any details about the board's rationale.¹⁸ In contrast to disciplinary actions, in appeals of licensure denial, the procedural statutes do not explicitly provide for revision of the board's statement of issues.¹⁹ Since the division's document purporting to revise the board's statement of issues provided Dr. Peters with better notice of the factual bases likely underlying the board's initial denial, and because she did not object to the statement being revised in this fashion, the division's revised statement document can function as the touchstone for considering whether the board's initial conclusion that Dr. Peters engaged in dishonorable conduct should stand in the face of the evidence developed through the hearing process.

Accordingly, Dr. Peters took on the burden of convincing the board by a preponderance of the evidence that either the allegations in the division's Second Revised Statement of Issues are not true or, if true, that they are not sufficient grounds to deny her the right to proceed down the path to licensure.²⁰ Dr. Peters concedes the accuracy of some of the allegations. However, just as not every violation results in an automatic license revocation in a disciplinary action concerning a professional who has already earned a permanent license, not every violation demands that the temporary license and supervision plan approval be withheld from someone pursuing permanent licensure.

B. Counts I & III

The failure to comply with minimal professional standards is grounds for imposing discipline on a licensed psychologist.²¹ It follows that the failure to comply with such standards by one practicing under a temporary license can constitute dishonorable conduct related to the practice of counseling and thereby create a bar to permanent licensure under AS 08.86.130(a)(2). Indeed, if the holder of a temporary license necessary to complete the prerequisites for permanent licensure engaged in conduct warranting suspension or revocation, the board would be within its authority to take disciplinary action against the temporary licensee, with the result that the pathway to permanent licensure might be blocked.

¹⁸ Exhibit A, at 14.

¹⁹ Compare AS 44.62.400 (providing for amended accusation in disciplinary actions) with AS 44.62.330 – AS 44.62.630 (adjudication provisions of Administrative Procedures Act).

²⁰ She still needs to pass her licensure exam, complete her supervised practice, and not take any other action that would raise concerns with the board about her qualifications to be a licensed psychologist.

²¹ AS 08.86.204(a)(5).

One source for the professional standards applicable to psychologists is the APA Code of Conduct.²² It imposes an obligation to create records in order to

(1) facilitate provision of services later by them or by other professionals,

* * *

(3) meet institutional requirements, [and]

(4) ensure accuracy of billing and payments.^[23]

The division's expert witness, Dr. Marsha Hedrick, testified that failure to maintain up-to-date records is an ethical violation.²⁴ Dr. Peters conceded that her failure to transcribe her notes into the client files was an ethical violation. It is evident from the testimony that this failure would make it difficult for other professionals to provide services to Dr. Peters' clients, as well as that the failure to transcribe the notes did not meet institutional requirements and made it difficult to ensure the accuracy of the agency's billings. Dr. Peters, therefore, failed to comply with this APA Code of Conduct standard for recordkeeping.

C. Counts II & IV

These two counts allege deceit or misrepresentation in the course of engaging in professional activities in violation of AS 08.86.204(a)(2). Specifically, the division has asserted that when asked whether she was up to date on transcribing her intake assessments and progress notes into the client files, Dr. Peters stated that she was "on top of it."²⁵ Dr. Peters testified that she actually gave more detail about her status. According to Dr. Peters, she accurately informed Ms. Brainerd that she was current with the treatment plans, mostly current with her client progress notes, but still behind on transcribing her intake assessments.

Based on their demeanor, each witness testified as credibly as the other, and seemingly honestly within the limits of their recollections. Because Dr. Peters' testimony was more detailed, her recollection appears to have been better. More likely than not, Dr. Peters and Ms. Brainerd failed to have clear and complete communications about the status of Dr. Peters' recordkeeping efforts, but the evidence was insufficient to establish deceit or misrepresentation on the part of Dr. Peters.

²² The Code of Conduct is attached to the Revised Statement of Issues dated May 19, 2010.

²³ APA Code of Conduct Standard 6.01.

²⁴ Dr. Hedrick's report was admitted as Exhibit B, at 21 – 22.

²⁵ Testimony of Ms. Brainerd.

D. Count V

Count V alleges Dr. Peters violated AS 08.86.200, 12 AAC 60.200, the APA Code of Conduct standard 4.01, and APA General Guideline 2.3.7 in her handling of confidential records. AS 08.86.200 states that a psychologist “may not reveal” confidential information. There is no evidence in this matter that Dr. Peters actually revealed any confidential information to anyone who was not authorized to have that information.²⁶ It is a closer question whether Dr. Peters violated 12 AAC 60.200. This regulation requires a psychologist to “safeguard” confidential information. APA Code of Conduct standard 4.01 imposes an obligation to take “reasonable precautions” to protect confidential information.

The client notes at issue in this matter were kept in Dr. Peters’ private office within the Fairbanks Counseling and Adoption agency’s office suite. According to Ms. Connelly-Terhune, the agency’s policy was that those notes should have been locked in the appropriate file cabinet each night. Dr. Peters conceded at the hearing that her method of storage was a violation of her obligation to adequately safeguard confidential information.

E. Count VI

This count alleges the failure to cooperate with the division’s investigation in violation of the APA Code of Conduct standard 1.06, which provides as follows:

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. . . . Failure to cooperate is itself an ethics violation.

On its face, this standard applies only to investigations by the APA or a state psychological association, not to investigations by state licensing authorities such as the division. Insofar as Alaska has made the APA Code of Conduct its own through incorporation by reference in 12 AAC 60.185, it has made failure to cooperate in an investigation a violation of state law.

Dr. Peters, however, has proven by a preponderance of the evidence that she did not fail to cooperate. She testified credibly that she was not aware of the investigation until after it was completed. Failure to cooperate would require, at a minimum, knowledge that an investigation was being conducted and her participation was requested. Had she known that the certified letters she failed to pick up were from the division, knowledge of an investigation might be inferred. She did not know with certainty by whom those letters had been sent. Thus, her

²⁶ Dr. Peters did reveal some information to her supervising psychologist, Dr. Nelson. Those discussions are permitted pursuant to AS 08.86.200(a)(1) which allows a case conference with another mental health professional.

decision not to pick them up may have been a poor one, but it did not constitute a failure to cooperate.

F. Placing Dr. Peters on a Path to Possible Licensure

Strictly speaking, this is not a disciplinary action, but it has the practical effect of being one to the extent that Dr. Peters has been prevented from continuing to practice under a temporary license so as to gain the supervised experience prerequisite to sitting for the examination. As such, this is less like an appeal of the board's January decision than a first-time consideration of evidence regarding allegations of misconduct not available to the board when it acted in January. The board, therefore, should view this matter with the same fresh perspective it would bring to deciding whether allegations proven in a disciplinary action warrant a severe sanction analogous to long-term suspense or revocation of a license.

Additionally, though it is not commonplace to impose disciplinary-like conditions on initial licensure, the division acknowledged that this has been done in some cases. Dr. Peters expressed a willingness to agree to imposition of conditions that would allow her to move forward with her efforts toward licensure. This appears to be a case well suited to such an approach because Dr. Peters has acknowledged her errors and the evidence did not show the willful disregard for her obligation to maintain and keep confidential client records, or to cooperate in investigations, that the board may have inferred from the complaints and lack of response to the division's communications.

Any violation of a statute, regulation, or ethical provision is serious. Not all violations are equally serious. When Fairbanks Counseling and Adoption first looked at Dr. Peters' files, it appeared that intake assessments and progress notes had not been completed at all. That would have been an extremely serious violation. As it turned out, those notes had been written, but not transcribed into the client files. This is a less serious violation because it could be corrected by transcribing the notes. The handwritten notes could even have been transferred to the appropriate files as written.

Ms. Brainerd testified that it was not unusual for new clinicians to encounter problems in keeping up with their paperwork. At the time, Fairbanks Counseling and Adoption did not have any internal procedures to ensure that its clinicians were entering their intake assessments and progress notes into the case files. It has since established a system of internal controls to do this, but at the time Dr. Peters worked there, the lack of an internal control system might have suggested that keeping files up to date was less important than it actually is.

Dr. Peters' notes, though not properly filed in the locked file room, were kept in a relatively safe location – her private office at Fairbanks Counseling and Adoption. She still violated the applicable provisions because they were not kept in a locked cabinet, but this was not as serious as some breaches of confidentiality one can imagine.

Dr. Peters' supervising psychologist, Franklin Nelson, has supervised other clinicians numerous times. He testified that Dr. Peters is an excellent therapist and that he has no concerns with the quality of her work. At the hearing, he expressed concern about Dr. Peters' failure to keep up with her paperwork requirements and wondered whether there was some aspect of self-destructive behavior related to that. He suggested Dr. Peters should receive psychotherapeutic treatment for two reasons. First, because he believes all psychotherapists should experience psychotherapy and, second, because there are some problems in her life and how she interacts with others that ought to be addressed. Ultimately, however, he testified that she was more talented than the average psychologist and that she is qualified to be licensed.

Significantly, no witness testified that Dr. Peters *should not* be licensed. Dr. Peters has been working for the Tanana Chiefs Conference at the Old Minto Rehabilitation Camp since July of 2009.²⁷ No evidence was produced at the hearing to indicate that she has experienced recordkeeping or confidentiality problems there. Dr. Peters has acknowledged her failures with regard to the recordkeeping and file confidentiality issues and appears to be sincerely committed to addressing the problems, even if that means accepting conditions on licensure that would not normally apply absent a disciplinary action.

IV. CONCLUSION

While working under a temporary license toward satisfying the prerequisites for permanent licensure, Dr. Peters failed to comply with her ethical obligations concerning recordkeeping and confidentiality, but that failure was not as serious a violation as it originally appeared. She did not fail to cooperate in the division's investigation, but she exercised poor judgment concerning written communications, which in return impeded her ability to promptly engage with the division about complaints from her former employer.

On the record resulting from the hearing, the board is justified in reversing its initial decision and returning Dr. Peters to a path to possible permanent licensure, subject to certain conditions. Specifically, in addition to meeting all of the standard requirements, including completion of her supervision hours and passing the examination, Dr. Peters' application should

²⁷ Peters' Testimony; Exhibit A, at 32.

be returned to approved status only if she enters into a memorandum of agreement with the division, and approved by the board, that includes the following requirements:

1. Upon approval by the board of a new supervision plan addressing the requirements below, Dr. Peters' temporary license shall be reinstated;
2. Dr. Peters shall undergo twice monthly, minimum 50-minutes-duration psychotherapy sessions to examine possible self-destructive behavior that might contribute to disregard of certain professional obligations for the duration of her temporary license and for one year after being granted a permanent license, if such a license is issued;
3. Dr. Peters shall submit a written report from Dr. Nelson, or another supervising psychologist if someone other than Dr. Nelson is substituted as supervising psychologist in the new supervision plan, showing that the supervising psychologist and Dr. Peters have discussed the importance of record keeping, confidentiality, and interpersonal relationships at work during their supervision sessions.

DATED this 10th day of July, 2010.

By: *Signed* _____
Terry L. Thurbon
Chief Administrative Law Judge

(DECISION OF THE BOARD ON NEXT PAGE)

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL
ASSOCIATE EXAMINERS**

In the Matter of:)
) OAH No. 10-0105-PSY
 CAROLINE M. PETERS) Agency File No. 2950-10-001
_____)

DECISION OF THE BOARD

After due deliberation in executive session at its September 2-3, 2010 meeting, in accordance with AS 44.64.060(e)(3), the Board of Psychologist and Psychological Associate Examiners adopts the findings of fact and conclusions of law in the administrative law judge’s July 10, 2010 proposed decision in this matter, but revises the disposition of the case by modifying the conditions for Dr. Peters to return to the path toward possible licensure as set out below for the following reasons:

1. The board’s initial denial of Dr. Peters’ application for a license to practice psychology was warranted on the information before the board at the time.
2. The board has the discretion under AS 08.86.135 to deny a temporary license to an applicant who does not meet the requirements for licensure and under 12 AAC 60.055 to deny an application for violation of ethical standards.
3. The evidence developed through the hearing process, as described in the July 10 decision document, has further informed the board of the specific facts underlying the complaints and the then-seeming lack of cooperation by Dr. Peters in the investigation of the complaints on which the board’s initial decision was based. The evidence, however, has not entirely alleviated the board’s concerns about Dr. Peters’ fitness to practice, especially in light of her observed and documented patterns of behavior regarding
 - (i) lack of diligence necessary to complete paperwork required to ensure that clients receive appropriate treatment,
 - (ii) management of personal affairs such as handling of mail to ensure that she can cooperate with her profession’s regulatory body,
 - (iii) meeting deadlines,
 - (iv) erratic behavior, and
 - (v) interpersonal and workplace relationships.

4. The board's primary goal in regulating the practice of psychology and the provision of psychological services is protection of public health and safety. For this reason and because of the board's continuing concerns about Dr. Peters' fitness to practice, the board concludes that the conditions proposed in the July 10 decision document would go only part way toward addressing the concerns raised in this matter.

Accordingly, the final paragraph of the "Conclusion" section beginning on page 9 and continuing through page 10 of the July 10, 2010 decision document is hereby stricken and replaced with the following:

On the record resulting from the hearing, the board is justified in reversing its initial decision and returning Dr. Peters to a path to possible permanent licensure, subject to certain conditions. Specifically, Dr. Peters' application may be returned to approved status only if she enters into a memorandum of agreement with the division, approved by the board, that includes the following requirements:

- A. Dr. Peters will submit to a psychological evaluation conducted by a provider designated by the board. The scope of the evaluation will include referral questions provided by the board. The full text of the provider's assessment of Dr. Peters will be provided to the board for its review before the board approves reinstatement of Dr. Peters' temporary license. Dr. Peters will follow all of the recommendations of the provider, unless the board, upon written request by Dr. Peters stating the reasons for the request, approves a departure from one or more recommendations.
- B. Unless another frequency or a longer time frame is recommended by the provider performing the evaluation required by A, Dr. Peters will undergo weekly, minimum 50-minutes-duration psychotherapy sessions for one year after her temporary license is reinstated, to examine possible self-destructive behavior that might contribute to disregard of certain professional obligations and any other subjects recommended by the provider as a result of the evaluation required by A.
- C. Dr. Peters will submit for board approval a new supervision plan. The supervising psychologist cannot be the psychotherapist providing the sessions required in B. Dr. Peters will submit a written report from the supervising psychologist showing that he/she and Dr. Peters have discussed during their supervision sessions the importance of record keeping, confidentiality, and interpersonal relationships at work.
- D. When Dr. Peters has complied with A and C, has engaged the psychotherapist required for compliance with B, and the board has approved the new supervision plan and the memorandum of agreement, the board will reconsider her application and decide whether to issue her a new temporary license.

In developing the memorandum of agreement, Dr. Peters and the division are to work out the timing details for submittal of the memorandum and the supervision plan to the board for

approval, as well as for the board's designation of a provider to conduct the evaluation and preparation of the referral questions.

This Decision of the Board and the July 10, 2010 decision document, as modified above, shall constitute the final decision of the Board of Psychologist and Psychological Associate Examiners in this matter, as adopted by a vote of the board this 3rd day of September, 2010.

By: Signed
Lisa C. Turner, Chair
On behalf of the Board of
Psychologist and Psychological
Associate Examiners

[This document has been modified to conform to technical standards for publication.]