BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE ALASKA BOARD OF SOCIAL WORK EXAMINERS

In the Matter of:	)	
	)	
W.R.	)	OAH No. 20-0659-CSW
	)	Agency No. 2017-000796 & 2018-0

DECISION

I. Introduction

W.R. is a licensed clinical social worker. The Division of Corporations, Business and Professional Licensing Division (Division) received a complaint from her employer that W.R. had crossed professional boundaries and violated the ethical standards for social workers when, while providing therapy, W.R. and a client became emotionally (but not sexually) close.

After an investigation, the Division filed an Accusation alleging that W.R. had violated two statutes governing social work, first by failing to meet minimum standards of professional care during the provision of social work services to a client, and second by forming an inappropriate personal relationship with the same client. The Accusation also alleged that W.R. renewed her license to practice clinical social work in the state of Alaska through deceit, fraud, or intentional misrepresentation in 2016 and 2018, because she did not disclose her own mental health issues and treatment.

W.R. appealed. A hearing was held.

The Division did not meet its burden of proof that deceit, fraud, or an intentional misrepresentation occurred in W.R.'s license renewal applications. The evidence showed that W.R. attempted to answer questions in the application truthfully and completely. Although her answers were mistaken, they were not fraudulent, deceitful, or an intentional misrepresentation.

The Division did meet its burden of proof that W.R. failed to meet the standard of care for provision of professional and ethical social work. Although W.R. argued that her emotional relationship with the client was appropriate within the type of therapy provided, in fact, it was not. Evidence at the hearing, including some untruthful testimony from W.R., proved that W.R. failed to meet minimum standards of professional care to provide competent social work services to a client, and that W.R. formed an inappropriate dual relationship with the same client.

Accordingly, this Decision concludes that W.R.'s conduct in 2017 and lack of transparency at the hearing clearly warrants a significant suspension of her clinical social worker license.

II. Facts[1]

A. W.R. Background

W.R. received her clinical social worker license in Alaska in 2010. From 2010 to 2015 W.R. practiced social work in a variety of rural locations. In July 2015 she moved from Alaska to Arizona with her new husband. The marriage was extremely violent. W.R. received serious injuries such as broken bones on more than one occasion. An attempt by her husband to kill her failed only after his firearm misfired and she was able to escape.[2]

W.R. fled Arizona after the attempt on her life. She ultimately returned to Alaska in September 2015, expecting never to see her husband again. W.R. went to work as a clinical social worker upon her return.[3].

W.R.'s husband appeared at her residence uninvited and unexpected in December 2015. W.R. sought emergency mental health treatment at Hospital A to deal with her panicked response. She remained at Hospital A from December 1-16, 2015.[4]

On or about January 19, 2016, W.R.'s husband contacted her again, demanding she return to Arizona with him. Rather than return, on January 20, 2016, W.R. attempted suicide by overdose. She was hospitalized at the Hospital B from January 27, 2016 through February 2, 2016. W.R. was diagnosed with a major depressive episode and post-traumatic stress disorder. W.R. took a leave of absence from work during this time.[5]

After her release from Hospital B, W.R. complied with recommendations for follow-up with Dr. A.B and Dr. B.R. On March 14, 2016, Dr. A.B. cleared her to return to work.[6] The letter stated he treated W.R. to help her resolve emotional issues involved with the 2016 suicide attempt. He found her mental status to be appropriate throughout her therapy. He found her to be attentive and exhibit good concentration on her recovery. According to him, she had "strong language skills" and "superior" memory functions, as well as strong "analytical and practical thinking abilities." He determined W.R. was "ready to resume her position as a psychotherapist capable of working productively with people with mental health needs."[7]

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1 These facts were established by a preponderance of the evidence.
2 W.R. testimony.
3 *Id.*
4 *Id.;* AR 000183-278.
5 *Id.*
6 AR 000309-10.
7 *Id.*

W.R. continued to work until March 2017 when she moved to City A, Alaska, to work at Company A

B. Employment at Company A

W.R. was employed by Company A in March 2017.[8] Company A is non-profit social service, mental health agency located in City A, Alaska. Company A is the primary mental health care provider in the area. It offers a wide array of community health services, including an adult mental health residential facility and a twenty-four-hour manned crisis line. As part of the mental health residential treatment program, Company A offers its clients individual therapy, group therapy, behavioral modification classes, and access to independent support groups such as Alcoholics Anonymous and Narcotics Anonymous.[9]

W.R. was assigned a professional email address with Company A. Company A staff were expected to use this email for all interactions with Company A clients. Company A policies required clinical social workers to cover shifts on the 24-hour crisis hotline. They were provided a Company A cellphone to do so. Other than when working the crisis hotline, Company A policies attempted to strictly enforce delineated work and non-work hours to prevent burnout and manipulation of staff by clients.[10] Company A policy also prohibited use of texting with clients, even when using the Company A crisis cell phone.[11]

In April 2017, Company A assigned a residential client, M.R.,[12] to W.R. for individual therapy. M.R. was diagnosed with Borderline Personality Disorder (BPD), Post-traumatic Stress Disorder (PTSD), and Acute Stress Reaction. She was 22-years old and had been in therapy since she was eight. M.R. was severely sexually and physically abused as a child. She had attempted suicide on repeated occasions. In 2017, she was involved in an acrimonious custody dispute over her daughter. M.R. was among Company A's highest-needs clients given her history and stressors related to the custody dispute[13]

From April 4, 2017, to June 19, 2017, M.R. had fifteen one-hour sessions with W.R. M.R. also had four half-hour sessions with W.R. During that time M.R. also accessed the crisis intervention line approximately seven times. [14]

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8 D.T. Testimony

9 *Id.*

10 *Id.*

11 2008 Policies Human Resources A-L/Cell Phones submitted to the Office of Administrative Hearings on December 9, 2020.

12 Initials used to protect privacy.

13 D.T. testimony; W.R. testimony.

14 AR 001566-2892.

M.R.'s treatment records indicate that her primary goal was to "move from the past and focus on the present and future."[15] On May 10, 2017, W.R. adopted a Dialectical Behavior Therapy (DBT) protocol for treating M.R.[16] DBT is a type of cognitive behavioral therapy. It was originally designed to treat people with BPD. The goal is to teach people how to live in the moment, develop healthy ways to cope with stress, regulate their emotions, and improve their relationships with others.[17] This approach focuses on mindfulness skills and developing empathy to assist the BPD patient reduce "black and white" thinking. Mindfulness strategies help the client slow down and use healthy coping skills when they are amid emotional pain. The strategy can also help them stay calm and avoid engaging in automatic negative thought patterns and impulsive behavior.[18]

M.R.'s therapy notes indicate that between April 11, 2017, and June 19, 2017, W.R. coached M.R. in active listening, muscle relaxation, and grounding. The notes indicated M.R. often reported transient suicidal thoughts, sexual impulsivity, and depression. She regularly reported a need to be thought of as "good" by the workers at Company A.[19]

In May 2017, W.R. gave M.R. the nickname "Mini-Me." This nickname arose after W.R. disclosed to M.R. that she, too, had overcome family and social difficulties to get an education and move toward a better life. W.R. testified she did so to encourage M.R. not to be discouraged by her own apparent limitations.[20] M.R. thereafter referred to W.R. as "Dr. Evil."[21]

W.R. later testified the only personal disclosures she made to M.R. in the May 2017 nickname session were a confession that W.R. cut herself in the past and an explanation why she became a therapist. W.R. explained her reasons for becoming a therapist to any client who asked. W.R. testified she did not disclose other family information such as her father's suicide, her mother's mental health issues, or her relationship with her stepfather to M.R. She did not know how M.R. became aware of some of that information. W.R. testified she also did not discuss her difficulties with her supervisor or other staff with M.R..

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15 *Id.*
16 AR 001502-03.
17 W.R. testimony; Dougherty testimony
18 *Id.*
19 AR 1566-2892.
20 W.R. testimony.
21 M.R. testimony. These nicknames refer to characters in the 1999 movie AUSTIN POWERS:THE SPY WHO SHAGGED ME (New Line Cinemas 1999) and its sequel, AUSTIN POWERS IN GOLDMEMBER (New Line Cinemas 2002).

By June 13, 2017, W.R. had decided to leave Company A.[22]

On June 16, 2017, W.R.'s mother died in Kentucky.[23]

On June 19, 2017, W.R. told M.R. that W.R. would be out of the office for the next two weeks.[24]

W.R. took leave from Company A from June 19, 2017, to July 5, 2017, to take care of her mother's estate in Kentucky. [25]

On July 2, 2017 W.R. submitted her resignation to Company A effective July 21, 2017.[26] Company A accepted her resignation, agreeing to pay her to July 21, 2017, but establishing July 11, 2017, as her last day in the office.[27]

M.R. had three sessions with W.R. between July 6, 2017, and July 11, 2017. [28] Session notes from July 6, 2017, indicate an emotionally difficult session regarding a sexual encounter between M.R. and an ex-boyfriend. M.R. was upset. She felt she had been used and discarded.[29]

Sexual issues between M.R. and her ex-boyfriend were also the subject of a session on July 11, 2017. The clinical notes do not reflect discussion of other topics.[30] However, at the hearing M.R. and W.R. described additional aspects of the appointment. Prior to July 11, 2017, M.R. gave W.R. personal court records regarding her on-going custody dispute and a book that M.R. described as emotionally important to her.[31] However, W.R. did not have those materials in her office on July 11, 2017; W.R. had taken them home to read.[32] W.R. promised to send them to M.R. at her personal mailing address rather than Company A as soon as possible.[33] The two women signed an agreement to that effect at the conclusion of the July 11 appointment.[34]

On July 11, 2017, the day she left Company A, W.R. changed her telephone number. W.R. testified that she regularly changed her number from 2015 through 2018 to avoid her ex-husband.[35]

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22 *Id*.
23 *Id.*
24 AR 002858.
25 W.R. testimony; D.T. testimony.
26 *Id.*
27 AR 001566-2892. .
28 AR 001566-2892.
29 AR 002819-20.
30 AR 002809-10.
31 M.R. testimony, W.R. testimony.
32 *Id.*
33 *Id*.
34 AR 00061.
35 W.R. testimony.

W.R. moved to City B, Alaska, on July 14, 2017. She accepted a job with Company B before she submitted her resignation to Company A. W.R. testified that she did not tell M.R. that she was moving to City B until her last session at Company A.[36]

M.R. called W.R. at her new number on or about July 18, 2017. At the hearing W.R. testified she was "100 percent sure she did not give" the new number to M.R. W.R. had no explanation of how M.R. obtained her number.[37]

On July 20, 2017, M.R. contacted Company A administration and reported what she considered to be theft because she had not received her book or court records from W.R.[38] On July 21, 2017, Company A sent an email to W.R. requesting the materials be immediately returned to the office.[39] On July 25, 2017, W.R. responded that she planned to return the materials directly to M.R.[40]

On July 26, 2017, Company A Behavioral Health Specialist filed a complaint with the Division.[41] Her complaint was supplemented with an affidavit from M.R. on July 28, 2017. [42]

W.R. sent text messages to M.R. after W.R. left Company A telling M.R. that staff at Company A were gaslighting her to make her feel crazy and attempting to make M.R. "snap" so the staff could feel like heroes when they responded.[43]

On July 26, 2017, a package from W.R. was delivered to M.R.[44]

W.R. worked in City B until she moved to Iowa in 2018.[45]

C. Testimony from the Hearing regarding July 26, 2017

On July 26, 2017, M.R. informed staff at Company A that she had received a package from W.R. D.T., the Executive Director, requested M.R. come to Company A with the package. M.R. arrived at the Company A office with a printed postal envelope.[46] The envelope was mailed by W.R. when she returned to City A to gather additional belongings.[47] Thus, it was mailed merely across town. The stamp indicates it cost $13.09 to do so.[48]

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36 *Id.*
37 *Id.*
38 MR testimony; D.T. testimony.
39 AR 000063.
40 AR 000069.
41 AR 000025.
42 AR 000028-33.
43 AR 000632-34.
44 AR 000716-26.
45 W.R. testimony
46 MR testimony; D.T. testimony; AR 000716-26.
47 W.R. testimony.
48 AR 007016-26.

D.T. testified that Company A staff asked M.R. to bring the package to Company A before she opened it because they were worried, she might be upset by the event. D.T. testified that the package was opened in her office. According to her, inside the package was the thin, softbound book lent by M.R. to W.R.; copies of M.R.'s custody paperwork; a letter directed to "John and Linda;"[49] and a key chain with a pink twine voodoo doll.[50]

M.R. testified that she picked the package up from the City A post office and took it to the Company A office. She opened the package in front of Company A staff. At the hearing, M.R. was confident that her book and custody paperwork, as well as the letter addressed to John and Linda were in the package. She was less certain about the voodoo doll; she believed it came in the package, but it was possible W.R. had given it to her earlier in July when she returned from Kentucky.[51]

M.R. testified she believed the letter addressed to John and Linda was a coded message to her. She believed it was a coded message for several reasons. First, the people listed- Angela, Kristopher, and Christine- had the same names as Company A workers. Second, the references to Austin Powers were a reminder of her nicknames with W.R. Third, she believed the person W.R. called "Hope" was intended to be her based on conversation they had during therapy.[52]

In contrast, W.R. testified that she went to City B immediately after July 11, 2017. She did not take all her belongings. The secure cabinet in which she kept M.R.'s property remained in City A. She could not afford to mail the items to M.R. before she left City A. W.R. stated she returned to City A the weekend of July 23-24, 2017. She mailed the package in City A not City B.[53] The package she mailed contained only the book and a few sheets of loose-leaf paper. It did not contain M.R.'s custody paperwork.[54]

W.R. testified she wrote the letter to John and Linda, her emotional grandparents, while traveling. She also purchased the pink voodoo doll keychain for them. She was adamant that she could not have placed the letter inside M.R.'s book while traveling and then mistakenly mailed it to M.R.[55] She said, "I did not do it. I did not put in the letter." She did not mail the keychain or the John and Linda letter to M.R. Nor did she give the keychain to M.R. in July. In

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49 AR 000628-29.
50 D.T. testimony.
51 MR testimony.
52 *Id.*
53 *Id.*
54 W.R. testimony.
55 *Id.*

her view, those items must have been taken from her office or backpack prior to her departure from Company A.[56]

W.R. asserted that D.T. and M.R.'s testimony- claiming the legal papers, letter, and keychain were in the package- was false. According to W.R., D.T. and M.R. "orchestrated" false testimony because she "caused them trouble and they are going to get me back."[57] W.R. directly requested the Administrative Law Judge resolve the credibility issue between the parties by carefully examining the pictures from July 26, 2017, AR 000716-26, then decide whether it was reasonable to believe the postal envelope could hold the materials.

D. The Electronic Communications Between W.R. and M.R.

In addition to personal sessions at Company A, W.R. and M.R. communicated electronically. These electronic communications are set out below in some detail. Whether they established the Division's claim that W.R. violated social work standards of care and Codes of Conduct was heavily litigated during the hearing.

Between June 5, 2017, and July 1, 2017, M.R. and W.R. exchanged 22 email messages.[58] The early emails involve questions regarding scheduling and availability. Those emails are primarily between W.R.'s official Company A email and M.R.'s private email.[59]

By mid-June however the two conversed using a private email belonging to W.R. called "lionruggles" and M.R.'s private email address. It appears the first email to lionruggles was on or about June 12, 2017.[60] W.R. testified at the hearing that she did not intentionally provide her private email, lionruggles, to M.R. When directly asked, W.R. stated "I don't remember how she got the email. I did not give it to her purposefully." W.R. speculated that disclosure could have accidentally occurred when she shifted between professional and private emails on her smartphone.[61]

Two of the June emails address M.R.'s concerns that her ex-boyfriend may be interested in a sexual relationship again and that visitation with her daughter will be interrupted. However, other emails were purely personal communications between M.R. and W.R. They repeatedly include comments like "miss your face" "love you" and "miss you." The women exchanged Instagram photos and memes. In late June, M.R. sent supportive emails to W.R. wishing her a

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56 *Id.*
57 *Id.*
58 AR 000716-726.
59 *Id.*
60 AR 006540-56.
61 W.R. testimony.

safe flight and strength regarding the death of her mother. W.R. responded by telling M.R., "oh Mini-Me, just remember we got this. If I don't throat punch anyone."[62] M.R. repeatedly told W.R. she loved and missed her. W.R. responded in kind. The expressions of affection continued through June while W.R. was in Kentucky. The emails were exchanged as early as 2:00 a.m. and as late as 7:00 p.m. Alaska Time.[63]

From July 2, 2017, to July 13, 2017, W.R., and M.R. exchanged 17 emails via their private address. The expressions "miss your face" and "love you" continued to appear. W.R. encouraged M.R. by calling her a "warrior princess" and an "amazing amazon princess, whether you like it or not."[64]

On July 2, 2017 at 11:52 pm Alaska Time, M.R. sent W.R. a private email that she had sex with an ex-boyfriend. W.R. responded, "was it fun?" at 8:53 p.m. Kentucky Time.[65] W.R. did not direct M.R. to contact the Company A hotline.

After July 11, 2017, and W.R.'s departure from Company A, M.R. repeatedly emailed W.R. asking for reassurance that her property will be returned to her. She informed W.R. that she was "tired of getting attached to therapists who leave" and did not want to try at therapy as a result. She told W.R. that she "freaked out at Company A" and "broke down crying" because she was tired of all her clinicians leaving and dealing the history with her family that she needs to confront. M.R. signed many of these emails with "love" or from "Mini-me."[66]

W.R. responded by reassuring M.R. that she was not angry at M.R. W.R. promised to return M.R.'s book. W.R. also stated that M.R. will always be her mini-me even if they are apart.[67],

On or about July 18, 2017, W.R. texted her new telephone number to M.R.[68] After that message, M.R. and W.R. exchanged regular text messages for several days. The messages discussed M.R.'s missing book, M.R.'s refusal to participate in any "games" W.R. wanted to play with Company A, and a variety of personal issues. W.R. told M.R. that people at Company A were "gaslighting" and manipulating her to feel more powerful.[69]

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62 *Id.*
63 *Id.*
64 *Id.*
65 AR 09695. Western Kentucky is in the Central Time Zone where this would be 11:53 p.m. Eastern Kentucky is in the Eastern Time Zone where this would be 12:53 a.m.
66 *Id.*
67 AR 000632-715.
68 AR 000637.
69 AR 000636-639.

None of the communications from June through July were placed in M.R.'s clinical records at Company A.

M.R. testified that she and W.R. spoke two or three times a week on their personal cell phones in addition to her sessions, the emails, and the texts. She felt they were friends[70].

E. *W.R.'s License Renewal Applications and Defense*

a. The 2016 Renewal Application

W.R. submitted a renewal application for her social work license in 2016 while working.[71] Her renewal application was submitted approximately six months after she diagnosed with Major Depressive Episode and PTSD. She had been hospitalized for suicidal ideation and a suicide attempt related to those mental health issues. She received additional assistance from Dr. A.B. and Dr. B.R..[72]

Question 4 of the renewal applications asks, "Since the date of your last application have you experienced or been treated for bipolar disorder, schizophrenia, paranoia, a psychotic disorder, substance abuse, or any other mental or emotional illness which may impair or interfere with your ability to practice as a Social Worker?" W.R. answered, "No" to this question.[73]

On the final page of the renewal application there is a signature line with a "Certification" that asserts the person who signs it acknowledges all the information contained in the application is true and correct. W.R. signed the Certification. [74]

W.R.'s social work license was renewed based on the information she provided on the renewal form.

b. The 2018 Renewal Application

W.R. was not re-hospitalized for mental health treatment from February 2, 2016 to June 30, 2018.[75] She did not continue treatment with Dr. B.R. or Dr. A.B. after March 14, 2016.[76] There was no indication in the record that W.R. received treatment for any mental health disorder during from the time she completed treatment for her major depressive disorder on March 14, 2016, until in some time in 2018 after she moved to Iowa.[77]

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70 MR testimony.
71 AR 00615-618.
72 AR 108-306.
73 AR 000615-618.
74 *Id*.
75 W.R. Testimony.
76 *Id.*
77 W.R. testimony; Ex. C.

W.R. submitted a renewal application on May 30, 2018.[78] Question 4 of the renewal applications asks, "*since the date of your last application* have you experienced or been treated for bipolar disorder, schizophrenia, paranoia, a psychotic disorder, substance abuse, or any other mental or emotional illness which may impair or interfere with your ability to practice as a Social Worker?"[79] W.R. again answered, "No" to this question. She signed the Certification.[80]

W.R.'s social work license was renewed based on the information she provided on May 30, 2018.

c. Testimony Regarding the Renewal Applications

Before she filled out her 2016 and 2018 renewal applications, W.R. was diagnosed with Major Depressive Episode and PTSD. She received treatment including hospitalization in 2015 and 2016. W.R. spent 10 days in voluntary hospitalization in December 2015 due to suicidal ideation and another week following a suicide attempt in January 2016. She received out-patient mental health counseling as well.[81] Her answer to Question 4 in the 2016 renewal application failed to reveal the existence of her recent diagnosis, hospitalization, and counseling.

At the hearing, W.R. explained the reasons she answered Question 4 in the negative. First, she had not been diagnosed with any of the mental health diagnoses specified in Question 4. Second, she did not consider disclosure of the diagnosis she did have to be contemplated in the question because it was not a recurring event impacting her ability to provide appropriate care.[82]

Third, W.R. pointed out that Question 4 was a poorly drafted question. According to W.R., Question 4 was a compound question subject to various interpretations. The initial part of the question involves the existence of a mental health or emotional issue. That part of the question is subject to ready answer. However, the latter part of the question asking whether the mental health or emotional issue "may" impact job performance is not subject to such ready response. Specifically, "may impact performance" could refer to performance at the time the application was filed or to performance at some future date. In addition, the question was vague as to what type of impact would trigger disclosure.[83]

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78 AR 000108-306.
79 AR 000618-25. Emphasis added
80 *Id.*
81 AR 000108-316.
82 W.R. testimony.
83 W.R. testimony.

W.R. testified that in 2016 she was confused by the latter part of the compound question. She knew she had been medically cleared to return to work. It did not appear her mental health and emotional issues would impact or impair her current ability to practice as a social worker. Nor did she have reason to believe it would impact her future ability to practice as a social worker so long as she complied with her mental health regimen. Her regimen included a plan for coverage of her patients if a crisis arose. She, therefore, consulted both of her prior mental health care treatment providers as to how to appropriately answer the question.[84]

Dr. B.R. was not available for the hearing. However, Dr. A.B. testified extensively about his advice to W.R. and the reasons for it. He confirmed that she consulted him about how to properly answer the question in 2016, and that he informed her she could properly answer "no." Dr. A.B. testified that Question 4 has been the subject of extensive discussion among health care licensees. He and the colleagues with whom he has discussed the matter do not consider the phrase "may impair or impact the applicant's ability" to provide adequate notice as to what types of mental health issues or degrees of risk are intended to be covered. Almost anything "may" under the wrong circumstances impact a health care licensee's ability to practice.[85]

However, as a general rule, the existence of mental health diagnosis does not automatically impair or interfere with a licensee's ability to practice as a social worker, according to Dr. A.B. The exception is schizophrenia because that disorder would impact the care provider's ability to accurately perceive events which is fundamental to providing adequate therapy. Dr. A.B. considers that other disorders, particularly depression "may" impair or interfere with the ability to practice as a social worker only in two circumstances. First, if the individual is in crisis and fails to arrangement for their clients to receive other care. Second, the social worker fails to take appropriate steps to address their own mental health in general. Dr. A.B testified that because W.R. properly took a leave of absence during the acute phase of her major depressive episode, her clients had not been at risk in December 2015 or January 2016. In addition, because W.R. was stabilized, her mental health status allowed her to answer no to Question 4 in 2016. [86]

Dr. A.B discussed the historical difficulty professional practitioners in Alaska have had with Question 4. He testified that use of the word "may" fails to provide guidance on the

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84 *Id.*
85 *Id.*
86 *Id.*

foreseeability of impact, the type of risk or potential harm addressed, or the time period anticipated. In addition, there is no information on the type or degree of impact or impairment on the applicant's life that should trigger an affirmative answer. Common mental health issues such as anxiety, depression and PTSD have effects that range from very minor to quite disastrous and whether or how any individual's job performance will be affected is not readily quantified. Dr. A.B persuasively identified a difficulty for practitioners acting in good faith to answer Question 4 and provide reliable answers for the Board. He explicitly confirmed that W.R. sought his advice on the proper way to answer the question, and he guided her to answer "no" based on the reasons he set out during the hearing.[87]

W.R. did not consult Dr. A.B before she submitted her 2018 renewal application. However, she had not experienced a recurrence of a major depressive episode or any new mental health issue that impaired or impacted her ability to practice as a social worker since her last application. W.R. testified that she no reason to believe Dr. A.B's advice would be different or that her current mental health status might impact her ability to practice as a social worker in the foreseeable future.[88]

W.R.'s treatment records from Hospital A and Hospital B were submitted to the record.[89]

F. *The Accusation*

The Division opened an investigation regarding W.R. on July 26, 2017, after receiving the complaint from Company A Behavioral Health Specialist B.D. The complaint alleged that W.R. had committed several ethics violations while working with a particular client.[90] B.D.'s complaint was supplemented with an affidavit from the client, M.R., on July 28, 2017.[91]

The Division initiated this proceeding with a formal Accusation on July 16, 2020. W.R. immediately filed a Notice of Defense July 21, 2020, requesting the hearing to which she is entitled under the Administrative Procedure Act. The Accusation was subsequently amended October 15, 2020.

W.R. filed a Motion for Summary Adjudication which was denied on November 20, 2020. The Matter went to hearing via ZOOM on December 6-10, 2020. The record remained open until December 21, 2020.

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87 *Id.*
88 W.R. testimony.
89 AR 000108-316.
90 AR 000025.
91 AR 00028-33.

Assistant Attorney General Harriet Milks represented the Division. Sworn testimony was taken from B.N. (regarding the Division investigation); Company A Executive Director D.T. (regarding M.R.'s background and W.R.'s employment at Company A); U.H. (regarding Company A policies and procedures) and M.R. (regarding her therapy and contact with W.R.). The agency record and exhibits were introduced.

W.R. was represented by attorney Jim Davis. Sworn testimony was taken from W.R. (regarding her personal and professional background as well as her treatment of M.R.); B.E. (regarding BDT treatment, social work ethics, and professional standards of care); and Dr. A.B. (regarding his treatment and advice to W.R.).

II. DISCUSSION

A. Burden of Proof

Disciplinary actions before the Board are governed by the Administrative Procedure Act.[92] Alaska Statute 44.62.460(e)(1) provides that "unless a different standard is stated in applicable law, the petitioner has the burden of proof by a preponderance of the evidence[.]"

The Final Accusation contained three counts. Count I alleged that W.R. renewed her license to practice clinical social work in the state of Alaska through deceit, fraud, or intentional misrepresentation in 2016 and 2018, thereby violating AS 08.95.050(a). Count II alleged she violated AS 08.95.050(a)(8) by failing to meet minimum standards of professional care during the provision of social work services to M.R. Count III alleged she violated AS 08.95.050(a)(10) by forming an inappropriate personal relationship with M.R.

B. Grounds for Revocation

a. Did W.R. Violate the Social Worker Code of Ethical Conduct*?*

i. Overview of the Ethical Standard

Count II of the Accusation alleged W.R. engaged in unethical conduct in connection with the delivery of professional services to a client. This Count is discussed first because it was the parties' focus at the hearing. Alaska law require that clinical social workers adhere to ethical standards.[93] The C*ode of Ethics of the National Association of Social Workers* 2008 edition has

[92] AS 08.01.090.
[93] AS 08.95.050(a)(10.)

been adopted by reference.[94] Section 1.06, Conflicts of Interest, prohibits dual relationships with clients.[95]

Social workers have an ethical mandate to act in the best interest of their clients, which means being alert to and avoiding potential conflicts of interest that may arise when working with clients. A conflict of interest is a situation in which the interests the social worker and the client, are incompatible.[96] According to the National Association of Social Workers (NASW) Code of Ethics, "Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment"[97]

Dual relationships are a conflict of interest according to the Code.[98] A dual or multiple relationship occurs when a social worker relates to a particular client in more than one way, such as a business relationship or a social relationship. Dual relationships are also often described as a relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client.[99]

ii. Overview of the DBT Therapeutic Mode

It is prohibited, unethical conduct for licensed clinical social workers to create or fail to make efforts to avoid dual or simultaneous personal and professional, relationships with clients and/or relationships which might impair independent professional judgment or increase the risk of client exploitation.[100] Determining whether W.R. breached ethical standards, or the standard of care requires her actions be placed within the therapeutic context. W.R. argued she ethically and competently provided therapeutic services to M.R. based on the BDT therapeutic treatment model. Perceived failures were only that- perceptions that were incorrect due to a misunderstanding of the DBT approach, according to W.R.

The Division was unable to call B.D., W.R.'s supervisor to testify regarding her perception of the facts in 2017 or whether M.R. W.R.'s actions met the standards of care for a clinical social worker. D.T. is not a clinical social worker and could not express an opinion on the standard of care. Nor could the Division investigator B.N. Thus, the Division did not present expert testimony on the standard of care.

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94 12 AAC 18.150.
95 The Division did not allege that W.R. violated other sections of the Code of Conduct.
96 B.E. testimony; W.R. testimony.
97 Code of Ethics Canon 1.06 (NASW 2008)
98 *Id.*
99 B.E. testimony.
100 *Id.*

As will be seen, an understanding of the protocols and standards for DBT is very important for this case because W.R.'s actions must be judged in part by whether she was acting in conformance with established treatment protocols. Neither party, however, submitted expert opinion or provided learned treatises regarding DBT in advance of the hearing.

At the hearing, however, W.R. submitted the testimony of a former supervisor, B.E. B.E. is the Clinical Supervisor for Center C. She has held that position for nine years. She has an advanced clinical social work license that permits her to supervise and train other clinical social workers. She teaches *Ethics and Avoiding Boundaries* to clinical social workers throughout Iowa. She is a trauma expert, specializing in repairing "attachment trauma." As such, B.E. deals extensively with BPD patients. She is trained to use DBT; her clinic uses that approach. Her supervisory duties include supervision of therapists providing DBT. In addition, she worked with W.R. for several months and had the opportunity to review a portion of the records related to W.R.'s treatment of M.R.[101] Her testimony was extensive, detailed, and thoughtful. The Division did not meaningfully challenge B.E.'s description of DBT protocols.

B.E. was accepted as an expert in clinical social work. For purposes of analysis, the decision will accept B.E.'s description of DBT, and will set it out in summary form below. No doubt other knowledgeable practitioners will find this description somewhat inaccurate or incomplete. The purpose of this description, however, is not to establish the authoritative legal contours of the therapy. The purpose of this description is to establish a framework for decision-making in *this* case. As will be seen, even if the description is not authoritative, applying B.E.'s description to the facts of this case does not prejudice the Division. And, because B.E. was W.R.'s witness, it does not prejudice W.R.

DBT is an extremely rigid and labor-intensive protocol. Fidelity to the DBT model requires: 1) a primary counselor who is trained in the DBT method; 2) a written consent agreement; 3) weekly personal therapy; 4) group therapy once a week; 5) wrap-around ancillary services such as 12-step or other recovery programs or supported living services; and 6) weekly joint staffing meetings with care providers who are committed to the DBT approach.[102]

Each portion of the DBT protocol is important. Proper DBT training is essential for the therapist to deal with the manipulation and "splitting" a BPD client may exhibit. A written consent agreement is crucial for accountability. Written agreements identify whether therapeutic

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101 Dougherty testimony.
102 *Id.*

goals are met and when they should be amended, prevent misunderstandings regarding the therapist-client relationship, and ground the client to articulated behavior.[103]

Personal therapy is key to alliance building and achievement of progress. It must be re-enforced, however, with group therapy so the BPD client learns not to rely solely on her therapist for feedback and can practice mindfulness and interactive listening within a broader environment. Ancillary services are key to ensuring the client does not regress due to lack of sobriety or safe living.[104]

Finally, weekly staffing helps the primary therapist maintain structure and proper objectivity. BPD clients are manipulative and demanding. They attempt to ingratiate themselves with their therapist, but they also thrive on creating wedges within the global care system. Joint staffing quickly identifies those problems and prevents them from escalating. Joint staffing also forces the therapist to focus on why she is pursuing a certain approach and how the approach helps the client. [105]

Successful implementation of DBT will proceed through four stages. The first stage is orientation where the therapist and client agree on goals and objective. This phase cannot be rushed. It takes time.[106]

The second phase is working on the alliance, so the client feels he or she is safe with the therapist. The third phase is the relationship stage where attachment and trust have been established and together the client and therapist can actively work toward goals and objectives. The final stage is the working phase where active collaboration occurs with goals and objectives modifying as progress is made. In this stage the therapist and client may go through phases of rupture and repair, particularly with client who has been diagnosed with BPD.[107]

Because the BDT approach is so labor intense, it is not uncommon for fidelity to the protocol to be less than perfect. However, the more a therapist departs from established standards, the greater the risk problems will occur, especially boundary crossings and actual conflicts of interest.[108]

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103 *Id.*
104 *Id.*
105 *Id.*
106 *Id.*
107 *Id.*
108 *Id.*

W.R. trained in DBT at the University of Alaska.[109] She was aware that the alliance building stage is both crucial and dangerous when working with individuals with BPD. DBT encourages the therapist to "meet the client where they are" unlike more traditional forms of therapy. Thus, there may be an exchange of disclosures with the client. Mirroring behavior can occur. The sessions may be quite informal.[110]

The techniques used to create an "alliance" that leads to more effective therapy are the same techniques used to establish intimacy and friendship outside the therapeutic setting: disclosure of personal information; unconditional support; expressions of affection; and access to the therapist outside traditional hours or by personal telephone or email. From an outside perspective this alliance building appears akin to typical friendship.[111] According to B.E., since the therapist is creating this alliance with a person who by the nature of their diagnosis starts with attachment problems, this building an alliance can be readily misunderstood by BPD clients, and the client more deeply wounded if the approach does not work.[112]

In addition, if alliance building is successful, the DBT therapist must be very careful when disengaging from the client not to re-wound clients with attachment and abandonment issues. People with BPD have clusters of symptoms and personal styles that present challenged to the formation and maintenance of the therapeutic relationship. Typically, they engage in patterns of relationship instability, alternating between idolization and devaluation of the therapist. The client may express one or both of those patterns at the end of therapy.[113]

iii. Application

B.E. testified she was provided a portion, but not all, of the records related to W.R.'s treatment of M.R. Based on that review, B.E. concluded that W.R. engaged in one or more "boundary crossings" with M.R. B.E. pointed to the use of nicknames which raised the potential for enmeshment. W.R. giving the nickname to the client was very different from the client asking to be called by a name that made them feel comfortable. By its nature, the nickname, Mini-Me, encouraged a dual relationship. A dual relationship is one "which might impair

109 W.R. testimony.
110 W.R. testimony; B.E. testimony
111 B.E. testimony.
112 *Id.*
113 *Id.*

independent professional judgment or increase the risk of client exploitation." This was very risky behavior from an ethical standpoint.[114]

The regular expressions of "love ya" and "miss your face" were also troubling. B.E. recognized that "Generation Z therapist" are much more informal in their communications, but if she saw this communication at her clinic, she would counsel the therapist to stop. Such language is appropriate for texts between friends or comments on Instagram. It is not appropriate in the therapeutic setting without careful consideration and staffing with a team before use.[115]

B.E. was also concerned about the "was it fun?" response to M.R.'s email revealing a sexual encounter with her ex-boyfriend on July 2, 2017. But because BPD clients have such complicated relationships with sex, B.E. could not determine whether the response was a legitimate therapeutic response without speaking to W.R.[116]

B.E. testified that not all boundary crossings are considered dual relationships or conflicts of interest that equal ethical violations. To determine whether an ethical violation exists, the reasons for the actions must be evaluated. If legitimate reasons benefiting the client exist and the therapist is not "personally gaining" from the conduct, it is less likely an ethical violation occurred. Personal gain for the therapist can include emotional or psychological reinforcement. Therefore, in B.E.'s opinion, whether an ethical violation existed depended on whether W.R. could articulate valid reasons or intentions for her conduct. Because B.E. did not speak to W.R. on those issues, she declined to speculate as to whether an ethical violation involving M.R. occurred.[117]

There is no dispute that M.R. perceived her relationship with W.R. was more than that of simple social worker-client. M.R.'s electronic communications clearly demonstrate that she perceived W.R. to be her friend. The language used, the times of day and night the communication occurred, and the subject matters discussed from the mundane to the intimate all establish M.R.'s belief. Nor is there legitimate dispute that M.R. was harmed by the conduct. Her emails and text messages to W.R. after July 11, 2017, contain expressions of dismay and pain.[118] W.R. as a trained therapist was or should have been aware that the social worker-client

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114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.*

118 Through counsel W.R. argued that some or all of that dismay was exaggeration and manipulation by M.R. While M.R. did on occasion shade her testimony to the light most favorable to herself, her overall testimony regarding the impact on her was credible.

relationship was being distorted or misunderstood by M.R., but she either took no action to correct it or she was participating in a personal relationship with M.R.. Either circumstance weighs in favor of a finding an ethical violation occurred.

W.R. significantly departed from the DBT protocol. She did not obtain written consent from the client. She did not do regular DBT staffing with other Company A practitioners or M.R.'s ancillary support providers. She did not place her electronic communications with M.R. in her clinical file. She did not include notes in M.R.'s file as to why she engaged in such informal communication with M.R., why she did so outside of work hours, or why she did not redirect M.R. to the Company A crisis line after hours. There was no evidence W.R. ever told M.R. that their personal communications were "alliance building" rather than friendship. Nor did M.R. participate in weekly group therapy with other DBT clients. B.E. testified these failures were "red flags. W.R.'s departures from a protocol she was specially trained in is evidence she intentionally, knowingly, recklessly, or negligently ignored appropriate professional boundaries. As will be discussed further below, this conduct was a violation of the governing ethical standard.

This Decision concludes that W.R.'s use of her personal email and cell phone when communicating with M.R. was not for the purpose of furthering DBT-based treatment. The reasons a clinical social worker adopts certain approaches are critical to the assessment of whether the situation progressed from boundary violation to ethical breach. W.R. testified she did not intentionally provide her personal email to M.R. She testified it must have been a mistake. Mistakes, however, are not valid treatment decisions. No effort was made to correct an error or avoid harm caused by the personal communication. Therefore, even if use of the personal email was at first due to a mistake, it is appropriate to hold W.R. accountable for the error.

W.R. also testified that she did not purposefully provide her personal telephone number to M.R. However, M.R. had a business card with W.R.'s personal telephone number written in W.R.'s handwriting that M.R. testified W.R. gave to her in April 2017.[119] W.R. acknowledged that Company A staff would not have provided the card to M.R. M.R. also had a screen shot of a text message W.R. sent to her providing W.R.'s new post-July 11 telephone number.[120] It is more likely than not that W.R. provided her personal telephone numbers to M.R. and that she

[119] AR 000727.
[120] AR 000728.

was not truthful when she denied doing so. This lack of transparency raises additional genuine ethical concerns.

Other aspects of W.R.'s testimony were less than credible. First, her claim she did not discuss Company A personnel with M.R. was belied by emails clearly showing that M.R. was aware of W.R.'s issues with a staffer and strongly suggesting that discussions regarding D.T. took place. Second, W.R. stated that she did not make personal disclosures to M.R. other than in the May session that lead to the Mini-me nickname. However, the contents of the emails and text messages demonstrate that M.R. was aware of W.R.'s mother's death, her flight destination, and other family information that could not have come from a source other than W.R.

Against this backdrop, W.R.'s explanation that the nicknames, private emails, after hours communications, and messages stating, "miss your face," "love ya," or cheerleading M.R. by calling her a warrior or a princess, were validly used to "to meet the client where she was" and shortcut the trust building process was not persuasive. By the time these messages occurred, W.R. had decided to leave Company A; she should not have been attempting to shortcut a therapeutic alliance in which she had no plans to participate. Importantly, W.R. did not document these contacts in M.R.'s record or comply with Company A policies and procedure regarding after hours contacts and use of cellphones.[121] W.R. acknowledged that communications, including the "was it fun?" response were "risky."[122] Given the totality of circumstances presented here, the risks she took resulted in the creation of a dual relationship in violation of the ethical code.

Professional boundaries are key components to creating a therapeutic framework. The fundamental concept of professional boundaries is that they serve to create an atmosphere of safety and predictability that facilitates the patient's ability to progress. Done thoughtfully and judiciously a therapist's self-disclosure or informal approach can facilitate empathy and strengthen the therapeutic alliance. However, all personal disclosure and out of office contact runs the risk of forming problematic or dual relationships. In this case, W.R.'s disclosures resulted in the latter rather than the former.

B Did W.R. Violate the Standard of Care?

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121 W.R. testified she was not informed of those policies.

122 W.R.'s decision to respond to a 2:00 a.m. text from a sexually abused and vulnerable client with an the flippant "was it fun?' response and no follow-up, dubious. W.R. provided a plausible explanation of why she did so. Thus, while the impact on M.R. appears to be confirmation of their friendship status, this Decision does not conclude the response in and of itself failed to meet W.R.'s ethical obligations or violated the standard of care.

a. Legal Framework

Count II of the Accusation alleged that W.R. violated AS 08.95.050(a)(8) by intentionally or negligently engaging in client care that did not conform to minimum professional standards or to the standards of practice adopted by the board. The Division specifically alleged her treatment and personal relationship with M.R. violated the Code of Conduct adopted by reference at 12 AAC 18.160. That regulation adopted the standards of practice contained in the Model Social Work Practice Act Model Law Task Force (Model Act)(1996), as amended, and the Model Regulatory Standards for Technology and Social Work Practice (Model Regulatory Standards) adopted by the ASWB International Technology Task Force.[123] Neither party provided citations to or addressed these standards.

According to the Model Act, Clinical Social Work as practiced by W.R. is a specialty within the practice of Master's Social Work and "requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions."[124]

The governing standards of practice established by the Model Act require clinical social worker to maintain "competence in the practice of social work."[125] The Model Act does not define "competency," so this Decision has applied the common law definition. Under the common law doctrine of standard of care, the tribunal must determine what "a typical, reasonable, and prudent (careful) practitioner with the same or similar education and training would have done under the same or similar conditions."[126] Failing to meet the standard of care, would be professional incompetence.

The governing standards of practice established in the Model Regulatory Standards address use of technology in the practice of social work. Importantly for this case, the Model

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123 The Model Act can be found online at https://www.aswb.org/wp-content/uploads/2013/10/Model_law.pdf; the Model Regulatory Standards may be found online at https://www.aswb.org/wp-content/uploads/2015/03/ASWB-Model-Regulatory-Standards-for-Technology-and-Social-Work-Practice.pdf. The 2018 amendments to the Model Act will not be applied here as the circumstances in 2017 predate their adoption.

124 MODEL ACT Licensing Sec. 1.06 (2015).

125 MODEL ACT Standards of Practice Sec. 3.1 (2015)

126 *See, e.g. Coombs v. Beede* 36 Atl. Rep. 104, 89 Me. 187 (1896); *See also, Priest v. Lindig*, 583 P.2d 173 (Alaska 1978)(medical standard of care is the degree of skill and care expected of a reasonably competent practitioner in the same class and similar community).

Regulatory Standards establish specific standards of practice for use of electronic communication with clients. First, the social worker shall obtain informed consent for use of electronic communication or services.[127] Second, the social worker shall inform the client that text message or other electronic communication may provide limited security for confidential information.[128] Third, the social worker shall take steps to ensure that confidential digital communications are protected.[129] Fourth, social workers who choose to use electronic communications and services "shall avoid developing inappropriate dual or multiple relationships with clients" which requires taking reasonable steps to prevent client access to social workers' personal social networking sites and maintaining separate professional and personal social media to establish clear boundaries and avoid inappropriate dual relationships.[130] The social worker must also develop policies to regarding use and storage of electronic communications and *shall* include digital and electronic communications in the clients records.[131]

b. Application

The Division alleged that W.R. failed to meet the standard of care. According to the Model Act, the standard of care required W.R. to competently provide social work services. In many instances, establishing the standard of care is easy. But in other instances, it is not easy to establish what constitutes ordinary, reasonable, and prudent practice. As B.E. testified, well-educated, skilled, thoughtful, and careful practitioners in every profession may disagree with colleagues about the best course of action in complex circumstances, perhaps because of their different schools of thought, training, and experience. Differences of opinion do not necessarily mean one or more of them is wrong; rather, in complex cases, ordinary, reasonable, and prudent minds may reach different conclusions.

Determining whether W.R. breached the standard of professional care in this case requires her actions be placed within the therapeutic context. W.R. argued she competently provided therapeutic services based on the BDT model. Perceived failures were only that-perceptions that were incorrect due to a misunderstanding of the DBT approach, according to W.R..

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127 MODEL REGULATORY STANDARDS Sec 2.01 (ASWB 2013).
128 *Id* at Sec 3.09.
129 *Id* at Sec 3.10.
130 *Id* at Sec 4.01-.05.
131 *Id* at Sec 5.01-.02. (Emphasis added.)

W.R. did not meet the standard of care established in the Model Act or as described by B.E. W.R. began seeing M.R. in April 2017. W.R. was aware that M.R. had been in therapy for most of her life. She was aware that M.R. was diagnosed with BPD and PTSD and that M.R. was among Company A's highest need clients. W.R. was aware that there had been significant turnover in M.R.'s therapy providers; M.R. had been assigned to and then lost three therapist in the two months before W.R.'s arrival.[132]

The primary goal assessed for M.R.'s treatment was to "move on from the past and focus on the present and future." The objective was for M.R. to "utilize CSP services to make progress in her personal recovery."[133]

M.R.'s therapeutic records indicate W.R. consciously chose to incorporate DBT therapy as the primary protocol in M.R.'s therapy on May 10, 2017, although W.R. had introduced M.R. to some DBT concepts prior to that date.[134] W.R. testified she made the decision to leave Company A by June 13, 2017.[135]

The electronic records between W.R. and M.R. demonstrate that until approximately June 12, 2017, their email correspondence was fairly minimal. Until that date, it also appears to have been almost exclusively through W.R.'s professional Company A email account. The first substantive email using W.R.'s personal lionruggles email address appears to have occurred on June 12, 2017. After that the two were in almost daily private communication. It was after June 13, 2017 that the "miss your face" and "love yas" and other terms of affection entered the correspondence. Thus, W.R. escalated the nature of intimacy after she decided to leave Company A. This escalated intimacy with her client corresponded with increasingly difficult emotional times for W.R. The risk W.R.'s professional judgement could be impaired by this engagement was extreme.

If W.R. made a deliberate decision to continue and expand use of BDT in mid-June after she decided to leave Company A, her decision to do so was contrary to basic BDT philosophy which assumes the therapist and client will be in a long term relationship.[136] The decision to pursue and expand a form of therapy that poses such risk to a vulnerable client with no possibility of success given W.R.'s imminent departure failed to meet the standard of care a

132 AR 002864-2905.
133 *Id.*
134 AR 001503.
135 W.R. testimony.
136 B.E. testimony.

typical, reasonable, and prudent (careful) practitioner with the same or similar education and training would have done under the same or similar conditions.

If, on the other hand, W.R. did not make a deliberate decision to continue and expand use of BDT in mid-June after she decided to leave Company A, her conduct still clearly failed to meet the standard of care. If sending emotion laden emails was not a deliberate therapeutic decision, then it must have been an emotional response based on W.R.'s attachment. M.R. would then be at risk from risk of exploitation from a dual relationship created by recklessness or negligence. There are many indications the personal communications were not part of planned therapeutic alliance. W.R. specifically testified that she did not intentionally provide her personal email to M.R. and she did not provide any of her personal telephone numbers. If W.R. did not consciously do so, her actions cannot be part of a legitimate therapeutic treatment model.[137]

Moreover, W.R. failed to meet the standard of care in other ways. She did not have sufficient fidelity to the BDT protocol. If a clinical social worker adopts a clinical approach the worker must satisfy the basic requirements of that method to meet a standard of competency. As discussed above W.R. failed to comply with the majority of the DBT protocol. She failed to perform fundamental activities such as obtaining written informed consent for use of BDT;[138] maintaining therapeutic notes containing details regarding what was discussed and agreed to; adding DBT to M.R.'s Plan of Care or Behavioral Assessment; conducting regular DBT staffing with other care providers; or placing M.R. in group therapy with a DBT-based facilitator. In addition, B.E. credibly testified it was imperative to communicate to the client that certain aspects of DBT such as personal disclosure, enhanced access, affection, and informality were part of the therapeutic approach not a personal relationship; no such record exists. B.E. did testify that complete fidelity to the DBT protocol is extremely difficult, but here there appears to have been little to no attempt to comply. Given W.R.'s training and prior use of DBT, her failure

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[137] W.R.'s stated use of the BDT technique to "meet the client where they are" was the reason for the text messages, emails, expressions of affection, and other aspects of her relationship with M.R. B.E. testified that a therapist using BDT must regularly reassess her motivation and how her actions benefit the client. However, W.R. testified she did not consciously disclose details of her personal or professional life with M.R., except for her teenage cutting and motive to become a social worker. W.R. testified she did not provide her personal telephone or email to M.R. and that M.R. must have obtained them by accident or other means. W.R. likewise testified that she did not discuss her problems with a co-worker with M.R.; she had no explanation of why M.R.'s messages to her appeared knowledgeable about those problems. This backdrop of denial and accident does not support a conclusion that W.R. met the prevailing standard of care for use of DBT with a BPD client.

[138] Notably, on July 11, 2017, W.R. obtained written consent regarding where to return M.R.'s belongings.

to more properly execute treatment failed to meet the standard of a typical, reasonable, and prudent (careful) practitioner with the same or similar education and training.

W.R. also failed to meet the standard of care when she failed to properly disengage from her treatment with M.R. and promptly return her items. To be clear, W.R. acted within the standard of care when she provided notice to Company A; her clients could promptly be provided continuing mental health care. It was also within the standard of care for W.R. to have taken the materials home to review, regardless of Company A preferences.[139] However, it was not within the standard of care to delay their return.

It was obvious at M.R.'s last session on July 11, 2017, that the book and records were critically important to her. W.R. admitted she had W.R.'s book and legal paperwork. Her later testimony for why she did not immediately return them made no sense. W.R.'s explanation that the delay was caused by her need to get to City B to her new job and she was financially unable to mail the package before she returned to on July 25, 2017, was also extremely difficult to believe. Those explanations were not persuasive.

July 11, 2017 was a Friday. W.R. was living in City A with another Company A staff member. Her rent was paid to the end of the month, and she could not have started work in City B before Monday July 14, 2017. W.R. could have told M.R. that the items would be left at Company A. If W.R. did not want to do so, she could simply have returned home on July 11, retrieved the property, and had M.R. return to Company A later in the day to pick it up. W.R. could have had her roommate deliver the property to M.R.. She could have mailed the package from City A before she left.[140] W.R. could have informed her supervisors of the problem and accepted guidance.

The competency standard of care prohibits harm to clients from negligent or reckless behavior. The client was harmed when W.R. left Company A without immediately returning the client's property to her. The contemporaneous communications by M.R. and evidence at the hearing demonstrated that M.R. was sincerely impacted by the fact that W.R. could or would not immediately return her book and papers. W.R. made negligent or reckless decisions to prioritize other matters related to her move over properly ending the social worker-client relationship. In addition, after W.R. left Company A, she sent M.R. communications sabotaging M.R.'s

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[139] Whether her conduct did or did not comply with Company A internal policies does not impact this assessment.

[140] The unexpected need to take financial responsibility for aspects of her mother's estate was undoubtedly a drain on W.R. However, her testimony that she could afford to mail the package was not credible. t

relationship with Company A; W.R. did so at a time she claimed to be providing therapeutic services to M.R. because she was concerned M.R. would not immediately return to Company A. W.R. violated the standard of care.

Finally, W.R. violated the standard of care established in the Model Regulatory Standards for use of electronic communications.[141] Those standards require the social worker include digital and electronic communications in the client's records.[142] They also require the social worker to take steps to ensure that confidential digital communications are protected.[143] They also mandate that social workers who choose to use electronic communications and services "shall avoid developing inappropriate dual or multiple relationships with clients."[144] W.R. did not meet these standards.

In summary, the Division proved by a preponderance of the evidence that W.R. failed to meet the standard of competency required from a clinical social worker of her experience and training. Therefore, Counts II and III of the Accusation are sustained.

C. Did W.R. Obtain Her License Renewal by Deceit, Fraud, or Intentional Misrepresentation?

a. The Legal Framework

Count I of the Accusation alleged that W.R. renewed her license to practice social work in 2016 and 2018 by deceit, fraud, or intentional misrepresentation thereby violating AS 08.95.050. The Board has the discretion to deny a license or renewal to an applicant who obtained or attempted to obtain a license by "deceit, fraud, or intentional misrepresentation."[145] There are no statutory or regulatory definitions of fraud, deceit, or intentional misrepresentation. Those terms have been defined by judicial decision, however.

The elements of deceit are as follows: a representation the speaker knows is false; made with the intent to induce the listener to refrain from acting; causing the listener to justifiably refrain from action; and damage to the listener.[146] In this context "knowingly" means " having or showing awareness or understanding; well-informed" or "deliberate; conscious."[147] Under

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141 *See, fn.* 126-130 herein.
142 *Id* at Sec 5.01-.02. (Emphasis added.)
143 *Id* at Sec 3.10.
144 *Id* at Sec 4.01-.05.
145 AS 08.95.050(a).
146 *Palmer v. Borg-Warner Corp.*,838 P.2d 1243, n. 16 (Alaska 1992). Because the social work occupational licensing statute does not impose potential criminal liability, the term "knowingly" will not be construed in accordance with criminal law. *See*, *ARTEC Services v Cummings*, 295 P.3d 916, 922-23 (Alaska 2013).
147 BLACK'S LAW DICTIONARY (1987 Ed.), p. 950.

Alaska law the word "knowingly" is used to describe witting, non-accidental conduct.[148] In the licensing context, a false misrepresentation is the functional equivalent of a lie or active dishonesty.[149]

Fraud requires a showing of false representation of fact; knowledge of the falsity of the representation; intention to induce reliance; justifiable reliance; and damages.[150]

Alaska follows the Restatement (Second) of Torts as to what constitutes an intentional misrepresentation.[151] The elements are: a misrepresentation of fact or intention; made fraudulently; for the purpose or expectation of inducing another to act in reliance on it; justifiable reliance by the recipient; and damages. The intentionality element refers to the individual's "knowledge of the untrue character of his representation." It is not necessary to prove the maker of the representation had the specific "'intent to deceive'; rather, it requires [proof] the maker [had] reason to expect that the other's conduct [would] be influenced."[152] Knowledge, like intent, is a question of fact that may be proven by inference through circumstantial evidence.[153]

In this case there is no dispute that W.R. intended the Division to rely on the information in her renewal applications or that the Division could justifiably do so. Nor is there dispute that if deceit, fraud, or intentional misrepresentation occurred, it would have caused damages. Damages are implicit in the misleading of public servants in the performance of their official duties. In the licensing context, the implicit damage "is significant—misleading a licensing official could mean that an unqualified applicant may be licensed or that a wayward applicant may escape discipline. This damages the profession and the public."[154] Moreover, a board cannot determine whether circumstances would affect an applicant's ability to practice the profession if it is not made aware of the information.[155]

Thus, the issues for resolution here are whether W.R.'s negative answer to Question 4 was a false representation of fact in 2016 and 2018 and whether she knowingly provided that false answer.

b. Application

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148 *E.g. Neitzel v. State,* 655 P.2d 325, 326-330 (Alaska App. 1982).
149 *In re Ivy,* 374 P.3d 374 (Alaska 2016).
150 *Shehata, v. Salvation Army*, 225 P.3d 1106, 114 (Alaska 2010) (citations omitted).
151 *Lightle v. State of Alaska, Real Estate Commission*, 146 P.3d 980, 983 (Alaska 2006).
152 *Id.* at 984.
153 *In Re Muir*, OAH No. 04-0286-MED (Alaska State Medical Board, January 12, 2006); *see also Crittell v. Bingo,* 36 P.3d 634, 654 at n.21 (Alaska 2001).
154 *In re Darwin Vanderesch*, OAH 14-1498-GUI (Big Game Commercial Services Board 2015)
155 *E.g.*, *In re Seanna E. Bryson*, OAH 12-009-POT (Board of Physical and Occupational Therapy 2012).

W.R. received her Clinical Social Work license in 2010. In June 2017 the Division received a complaint W.R. might have crossed therapeutic bounds with a client, M.R.. The substance of the complaint was W.R. had established an inappropriate personal relationship with M.R.. In doing so, W.R. was alleged to have violated both ethical and professional standards of care.

During the investigation of that complaint, the Division discovered that W.R. had a mental health diagnosis for which she received treatment and hospitalization in 2015 and 2016. W.R. spent 10 days in voluntary hospitalization in December 2015 due to suicidal ideation and another week following a suicide attempt in January 2016.[156]

As described above, W.R. filed renewals of her license in 2016 and 2018. Question 4 in the renewal applications asks, "Have you experienced or been treated for bipolar disorder, schizophrenia, paranoia, a psychotic disorder, substance abuse, or any other mental or emotional illness which may impair or interfere with your ability to practice as a Social Worker." She responded, "No." That answer failed to reveal the existence of her recent diagnosis, hospitalization, or counseling.

The Division argued W.R.'s answer was deceitful, fraudulent or an intentional misrepresentation because she knew she had a mental health disorder- depression and/or PTSD- and she failed to answer yes to Question 4 in 2016 or 2018. That argument only addresses one portion of Question 4, however. Question 4 is a compound question.

For an affirmative answer to be required, it is not enough that the person experienced or received treatment for a mental health disorder. The mental health disorder must be one that "may impair or interfere with the applicant's ability to practice as a Social Worker." In addition, the language of Question 4 appears to anticipate that the impairment or impact will occur in the next two years because applicants are only required to disclose experiences or treatment occurring since their last application.

W.R. testified that she carefully considered whether her circumstances met that definition. She did not have any of the specifically listed diagnosis. She testified that before submitting her 2016 renewal application, she contacted the doctors who treated her in 2015 and 2016 about how to properly answer the question. They both told her that given the current state

[156] AR 000107-306.

of her mental health disorder, she could validly answer "no" to the question. W.R. testified she relied in good faith on that advice. W.R. answered "no" to Question 4.

The answer was a misrepresentation. There was no legitimate dispute W.R.'s diagnosis involved the types of mental or emotional illnesses which can impair or interfere with the ability to practice social work. W.R.'s own witness agreed they could do so, although he demonstrated how better questions would lead to more accurate and reliable answers.[157] That W.R. was required to take a leave of absence from her job at the time demonstrates the potential for impairment or interference.

The truly disputed issue was whether the failure to disclose her mental health history was an *intentional* misrepresentation. W.R. argued that in 2016 she answered Question 4 honestly and to the best of her knowledge. She asserted if her answer to Question 4 was mistaken, she had acted in good faith which would negate the requisite *mens rea* and prevent a finding of intentional misrepresentation. Consequently, it logically follows in her argument, the Division had no evidence she violated AS 08.95.050(a) and a violation of Count I could not be established.

It is more likely than not that W.R. relied on Dr. A.B.'s advice when she completed her renewal applications. Dr. A.B. persuasively testified as to the problems the language in Question 4 presents. He provided valid reasons for the advice he provide to W.R. Her reliance on that advice was reasonable.

The fact that the advice corresponded with the answer that would cause less scrutiny to her application does not negate the validity of her reliance. Nor does the fact that W.R. sought the opinion of her treating physician indicate her answer was knowingly false as argued by the Division. To the contrary, where an applicant has doubt, reliable advice should be sought.

No evidence was presented that W.R. knew her answer to Question 4 was false. Her answer was wrong in 2016, but the fact that she answered in error does not necessarily establish an intentional misrepresentation.[158] The Division did not meet its burden.

C. Enforcement Action

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157 Bs.

158 W.R.'s negative answer in 2018 was not wrong. There was no evidence that W.R. had experienced a mental health disorder *since her last application* that required disclosure.

It is well established that a professional license is a valuable property right protected by the constitutional requirements of due process of law.[159] However, the United States Supreme Court has also "recognize[d] that the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions."[160] Courts in Alaska and elsewhere have recognized that "[f]itness to practice a regulated profession demands more than the professional's capacity to perfunctorily complete required activities."[161] Professional licensing boards, including this one, have adopted codes of ethics recognizing the profession's special position of trust within society, and acknowledging the heightened ethical obligations that accompany this trust.[162]

1. This Board's disciplinary authority

Alaska Statute 08.95.050 sets forth the bases upon which this Board may exercise its disciplinary powers under AS 08.01.075. The Board "may impose a disciplinary sanction if it finds, after a hearing, that the social worker intentionally or negligently did not conform to minimum standards of care or "engaged in lewd, immoral, or unethical conduct in connection with the delivery of professional services to clients."[163] In exercising its discretionary authority to impose sanctions the Board may consider the nature and circumstances of the conduct at issue, community reaction to conduct, the licensee's experience and professional record, any other relevant information, and its actions in comparable prior cases.[164]

2. Observations on Credibility

During her testimony, W.R. argued that D.T. and M.R. had provided false testimony to this tribunal. She correctly acknowledged that there was a stark conflict in the testimony that could not be reconciled by differing impressions of the same facts. W.R. testified the package she mailed to M.R. did not contain the letter to John and Linda, the pink voodoo keychain, or any of M.R.'s custody paperwork. She claimed D.T. and M.R. had fabricated that testimony in

159 *Dent v. State of West Virginia*, 219 U.S. 114, 121 (1889); Herscher v. State, 568 P.2d 996, 1002-1003 (Alaska 1977).
160 *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975).
161 *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1093 (Alaska 2003).
162 12 ACC 18.150.
163 AS 09.85.050(8) and (10).
164 *Wendt*e, 70 P.3d at fn. 33 (Alaska 2003); *See also, Matter of Gerlay*, OAH No. 05-0321-MED (Alaska State Medical Board 2008).

retaliation. W.R. explicitly requested the photographs taken on July 26, 2017 be closely examined.[165] She argued such examination would support her position, demonstrate lack of credibility in the Division's witnesses, and lead to the conclusion she did not violate the standard of care or her ethical obligations.

The ALJ has closely examined the photographs.

Several aspects of W.R.'s testimony are worthy of remark. First, W.R. acknowledged that M.R. gave her copies of M.R.'s court paperwork. W.R. stated that paperwork was in the secure file cabinet at her home on July11, 2017. W.R.'s texts and emails to M.R. between July 11, 2017, and July 23, 2017, "swear on her mother's grave" that she is going to return M.R.'s items to her.[166] It does not seem plausible that W.R. would then go to the post-office to mail only a portion of M.R.'s property even if W.R. believed that the book was the higher priority for M.R..

Second, a review of AR 000717-26, the portion of the record containing the photographs, shows that the envelope is stuffed. The envelope is plump and full in a way it would not have been if it only contained the slim paperback book.

Third, the price of the package is consistent with containing M.R.'s paperwork in addition to the book. W.R. testified that she was destitute in July 2017. She stated she could not afford to mail the package until she received a first paycheck from her City B job, and then she remained financially pinched. The package is a U.S. Postal Service item sold at site. This envelope comes in several sizes. It appears the envelope sent to M.R. is the largest size available in the colored peel and seal line. The larger the envelopes are, the more the envelopes cost. The envelope in the picture is much bigger than it would need to be to only hold the book. If W.R. were only going to mail the book it seems unlikely that she would have purchased the larger, unnecessary envelope.

It cost $13.90 to mail the package from the post office counter to a postal box in the same building. The package was sent certified mail receipt which adds approximately $3.00 to the price of postage. It is inconsistent with common experience to pay almost $11.00 to mail a single light-weight paperback within town.

Thus, this Decision concludes that W.R. was not candid in her testimony that she did not send the court paperwork, the John and Linda letter, or the keychain. Her failure to take

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165 AR 000716-726

166 AR 000646.

responsibility for her actions and lack of honesty in the hearing are circumstances that can be taken into consideration in fashioning the appropriate discipline.

3. Review of Precedent

The legislature has directed that licensing Boards apply disciplinary sanctions consistently, and explain significant departures from prior decisions in factually comparable cases.[167] However, as a threshold matter, there are no cases from this Board addressing social workers who have engaged in dual relationships with their clients or who violated the standard of care in while providing treatment.

Prior decisions by other Boards in Alaska supervising health care professionals have suggested that where the licensee has engaged in substandard or incompetent practice, but the errors or incompetence are correctible, it is appropriate to impose conditions intended to achieve that effect.[168] They have also often found that a minor violation of the standard of care caused by negligence or unintentional conduct can be addressed with a fine, especially where the violation of the standard of care is failure to submit appropriate licensing paperwork.[169] If the conduct is not inadvertent, at a minimum a fine and reprimand have been imposed.[170]

Because no Alaska cases are directly on point, this Decision will carefully review discipline imposed in five cases from outside Alaska involving health care providers who engaged in dual relationships that did not involve sexual misconduct. Although these cases are not binding, they may be informative and provide a framework for analysis of appropriate discipline here.

Robertson v. Tennessee Bd. of Social Worker Certification and Licensure[171]

In *Robertson* a thirty-six-year-old social worker with five-years clinical experience engaged in a dual relationship with an outpatient client, DW, at the clinic where Ms. Robertson worked. As a teenager Ms. Robertson had drug and alcohol problems. Empathy for the client's need to stay sober lead her to start attending AA meetings with DW which in turn lead to three

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167 AS 08.01.075(f) ("A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.")

168 *See In Re Kohler*, at 51, OAH No.10-0635-MED (Board of Medicine 2011) ("This board generally has not punished physicians in the traditional sense in incompetence cases, but rather has directed its efforts to imposing appropriate limits on their practice or seeking to upgrade their performance.

169 *In re Cooper*, 10-1148-MED (Board of Medicine 2011).

170 *In re Sykes*,)AH 08-0475-MED (Board of Medicine 2009).

171 227 S.W.3d 7 (Tenn. 2007)

months of camping trips, attending sporting events, and regular social walks. The relationship was maternal, not sexual.[172]

When Ms. Robertson's supervisor became aware that she was attending court proceedings with DW, he insisted she stop the relationship. Ms. Robertson did so. In response, DW threatened to kill the supervisor, lost her sobriety, and became depressed. Seeking to stem the harm to DW, Ms. Robertson reinitiated their friendship and attended counseling with DW. Ms. Robertson's employer reported her to the local licensing board when the counseling sessions were discovered.[173]

At the licensing board, Ms. Robertson acknowledged the impropriety of her actions and apologized for the harm she inadvertently caused DW. The Board was split on how to assess her discipline. One member, focusing on the harm to DW who lost access to her counseling facility and sobriety, urged permanent revocation of Ms. Robertson's social work license. Another, apparently focusing on Ms. Robertson's remorse and her own history of overcoming addiction, strongly advocated her conduct was an isolated incident worthy only of temporary suspension. Ultimately, the board imposed a two-year revocation with the opportunity to apply for reinstatement. That discipline was upheld by the Tennessee supreme court, after it concluded admission of irrelevant information regarding Ms. Robertson past had not impacted the decision.[174]

Norton v. Arizona State Bd. of Behavioral Health Examiners[175]

In *Norton* an adult social worker discovered one of her juvenile clients was sleeping in the park after his mother told him to leave the house. Ms. Norton brought the client to her home where he spent four days. Ms. Norton self-reported the inappropriate relationship and quit her job. Ms. Norton thereafter appointed herself as the client's advocate in criminal court. She created a treatment plan for him, then forcefully "berated" his probation officer when the plan was not implanted as quickly as she requested. The probation department reported her to the licensing board.

Ms. Norton denied any misconduct to the Board, despite having self-reported a dual relationship. She indicated she did not intend to return to social work. The Board suspended her

172 *Id.* at 6-10.
173 *Id.*at 11-13
174 *Id.* at 14-17.
175 Not Reported in P.3d 2011 WL 704891 (March 1, 2011).

for six months on the condition she obtain a psychological evaluation and attend graduate level ethics classes.

Clark v. Board of Registration of Social Workers[176]

In *Clark* the clinical social worker's license was suspended for five years for attempting to create a dual relationship. Ms. Clark provided private therapeutic services but also had contracts with employers to provide mental health services for their employees. An employee, Mr.. Morgan, was sent to her for anger management counseling in October 2008. Ms. Clark determined that Mr. Morgan's need for treatment cleared before his required number of sessions were complete. Thereafter, Ms. Clark and Mr. Morgan spent the remainder of his mandatory sessions socializing with each other. In January 2009, after Mr. Morgan's treatment was complete, Ms. Clark became very ill. She had delusions and sought psychiatric treatment. While delusional she began to contact Mr. Morgan, sending him letters and candy. That conduct continued after she recovered. At some point she moved her office next door to his, which Mr. Morgan interpreted as stalking; he reported her to the police who reported her to the licensing board. The state supreme court affirmed her five-year suspension.

Towbin v. Board of Examiners of Psychologists[177]

Towbin involved a clinical social worker who was in a social and sexual relationship with a woman. Their relationship was quite passionate, including regular sex in his office. After several months, the woman asked Mr. Towbin if he would provide assessments and counseling for her sons. Mr. Towbin agreed. His girlfriend's sons, thus, became his clients. The relationship between Mr. Towbin and his now-clients' mother continued for some period of time. There were ripple effects on his clients when the two adults broke up. The Board suspended Mr. Towbin's license for six months, finding that he was ethically obliged to avoid dual relationships that could impair his judgment or lead to a risk of exploitation by the client. His decision to take the sons as clients knowing the risk was unethical.

Sheri Lynn Colston, LPC v. Bureau of Professional and Occupational Affairs[178]

Ms. Colston had her license indefinitely suspended after the licensing board concluded she engaged in a flirtatious dual relationship with a client. The client informed Ms. Colston that he felt attracted to her, commonly referred to as transference by social workers. Ms. Colton did

176 980 N.E.2d 928 (Mass 2013).
177 801 A,2d 851 (Conn.2002).

178 Not Reported in Atl. Rptr.2019 WL 3210217 July 17, 2019).

not find him another therapist in the clinic. Instead, she continued his therapy and expanded his access to her as part of a "therapeutic approach." They exchanged text messages and photographs. The client had access to her personal Facebook and apparently obtained a racy photograph of her. Ms. Colton also attended the client's mother's funeral and provided bereavement counseling. After the relationship was reported to the Board by peers, she defended her actions as part of therapeutic plan. The Board, however, did not find sufficient documentation in her clinical files to support a finding Ms. Colton's actions were part of a therapeutic treatment plan. Her indefinite suspension was upheld.

4. The Parties' Recommendations

The Accusation requested W.R. be disciplined with a $1000.00 civil fine, 4-year license probation, a formal reprimand, and any other sanction the Board deemed just and proper.

W.R. requested she receive no sanction.

5. Discipline

Review of precedent from a wide array of jurisdictions demonstrates that where the evidence establishes a dual relationship existed for several weeks and the client was harmed, it is common for suspension to be imposed as disciplinary sanction. The length of the suspension appears to vary with whether other problems were identified within the licensee's practice and the extent to which the licensee accepted responsibility for their actions.

In this case the evidence proved that W.R. established a dual relationship with a client placing the client at risk for exploitation and impairing W.R.'s professional judgment. The relationship was of high intensity over several weeks and ended only because W.R. quit her job and ceased treatment of M.R.

M.R. was harmed by the relationship in multiple ways. First, she was harmed by the dual relationship by its very existence even if that harm cannot be quantified. Second, she was harmed by the betrayal of trust when her property was not immediately returned. Third, she was emotionally harmed by the nature of the disengagement of the social worker-client relationship as evidenced by her contemporaneous electronic communications and testimony at the hearing. Fourth, she was harmed by W.R.'s intentional attempt to poison her continuing relationship with Company A. The communications from W.R. included statements that the Company A counselors were attempting to "gaslight" M.R. and provoke her into unhealthy behavior to feed their own hero complexes. These communications were directly harmful to the client and could have caused rupture of M.R. relationship with the only counseling agency in the area and one

with which she shared a positive relationship for more than a decade.[179] This wrongful and unethical behavior warrants enhanced discipline.

W.R. could have easily avoided the conflict simply by not providing greater personal access and intimacy with a client she knew she would be leaving within a matter of weeks. Had W.R., knowing that her departure was imminent, utilized some caution in her dealings with M.R., the inappropriate relationship would not have occurred. W.R.'s failure to either recognize or respond to the risk makes her case similar to *Towbin.*

In *Towbin* the licensee failed to consider the risk to his (potential) clients because he was caught up in matters that were more important to him. As a result, he took on new clients and they were harmed. Similarly, W.R. failed to consider the danger to M.R. in amplifying use of BDT—or continuing with a lackadaisical approach to client boundaries—while she was caught up in her mother's death and her plans to depart Company A. M.R., like the teenage clients in *Towbin*, was bound to get hurt by W.R.'s behavior. W.R. was ethically obliged to avoid dual relationships that could impair her judgment or lead to a risk of exploitation by the client, but she made no attempt to do so.

Additional conduct in this case warrants more severe discipline than that imposed in *Towbin*, however. Miss W.R. giving M.R. the nickname "Mini-Me" was telling. W.R.'s appears to have identified with M.R. the same way Ms. Robertson identified with her client: she saw the client as a younger version of herself who could be protected from mistakes. This identification coupled with W.R.'s own emotional difficulties appears to be the motivation for the conflict just a Ms. Robertson's need to "mother" her client lead to Ms. Robertson's ethical lapse. The boundary breach here is arguably less significant than that in *Robertson* in that it did not involve participation in activities outside of session, but the level of emotional reliance by M.R. on W.R. appears similar. In addition, unlike *Robertson,* there is evidence W.R. emotionally used the client to fill her own needs because she was unhappy.

Further, unlike Mr. Towbin and Ms. Robertson, who attempted to minimize harm during the disengagement process, the manner in which W.R. disengaged from M.R. was traumatic and avoidably so. Also, unlike Mr. Towbin or Ms. Robertson, W.R. took no responsibility for her actions. Nor did she apologize for harm to the client during the hearing process. To the contrary W.R. claimed the client and other staff at the agency were lying.

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[179] AR 000632-34.

Lastly, Miss W.R. lacked candor. She actively lied on several matters. For example, W.R. was not honest when she claimed she did not give W.R. her personal telephone numbers. A text message directly contradicted that statement as to W.R.'s September 2017 telephone number.[180] The business card in M.R.'s possession made it more likely than not, that W.R. also gave M.R. the prior telephone number. W.R. was also not honest on the much more critical issue regarding the return of M.R.'s property to her on July 26, 2017.

This Decision concludes that W.R.'s conduct is more aggravated than the conduct reported in *Towbin* but less aggravated than the circumstances reported in *Robertson*.

W.R.'s license is suspended for eighteen months with the requirement that, within one year of the date this decision becomes final, she satisfactorily completes three hours of approved appropriate ethics training in addition to the training required for licensure. The $1,000.00 fine requested by the Division is imposed but stayed for the duration of the suspension and will be waived on the condition proof of the ethics training is submitted prior to the end of the first year of her suspension.

Three factors weighed in favor of suspension rather than revocation. First, there is no indication W.R. engaged in similar behavior in the three years since 2017 leading to the conclusion it is possible her conduct was isolated and a partial product of disruption in her private life. Second, B.E. testified that the services W.R. subsequently provided at the clinic in Iowa demonstrated improved record keeping and use of the DBT protocol. Third, M.R. testified that despite the errors in W.R.'s conduct, in hindsight M.R. felt she received some benefit from W.R.'s assistance.

[180] AR 000635.

III. Conclusion

W.R. violated AS 08.95.050 by engaging in a dual relationship with a vulnerable client. Her license is suspended for eighteen months. She is required to complete three hours of approved ethics training no later than twelve months after the date this decision becomes final. She is fined $1,000.00; however, the fine will not be imposed if the ethics training is timely completed.

Dated: July 13,2021

Signed
Carmen E. Clark
Administrative Law Judge

Non-Adoption Options

2. The ALASKA BOARD OF SOCIAL WORK EXAMINERS, in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

W.R.'s license is suspended for eighteen months to be followed by twenty-four months of supervised probation. She is required to complete six hours of approved ethics training: three hours focused on dual relationships and three hours focused on the NASW Code of Ethics. W.R. is to complete the ethic training within one year of the final order in this matter. She is fined $1,000.00; however, the fine will not be imposed if the ethics training is completed within one year of the final order in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 24th day of August, 2021.

By: *Signed*
Signature
Mindy Swisher
Name
Alaska Social Work Board Chair
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]