

**NEW JERSEY STATE BOARD OF PSYCHOLOGICAL EXAMINERS
MONDAY, OCTOBER 22, 2012**

PUBLIC SESSION MINUTES

I. STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETING ACT

A meeting of the New Jersey State Board of Psychological Examiners was held on Monday October 22, 2012 at 124 Halsey Street, 6th floor, Hudson Conference Room, Newark, New Jersey for final hearing, open to the public. The meeting was convened in accordance with the provisions of the Open Public Meetings Act. The meeting was called to order by Nancy E. Friedman, Board Chair at 9:45 a.m.

In accordance with Chapter 231 of P.L. 1975, more commonly referred to as the Open Public Meetings Act, adequate notice of this meeting was provided by mail to the Office of the Secretary of the State of New Jersey, The Newark Star Ledger, The Trenton Times, The Bergen Record and the Courier Post.

II. ROLL CALL

Present:

Nancy E. Friedman, Ph.D, Chair
Loretto A. Brickfield, Ph.D, Vice-Chair
Robert Korwin, DMD, public member
Amie Wolf-Mehlman, Ph.D
Joanne Van Nest, Ph.D
Francesca Peckman. Psy.D

Absent:

Kenneth G. Roy, Ed.D

Also Present:

J. Michael Walker, Executive Director
Carmen A. Rodriguez, Deputy Attorney General, Counsel to Board
Sandra Dick, Senior Deputy Attorney General, Counsel to Board
Siobhan Krier, Deputy Attorney General
Carla Silva, Deputy Attorney General
Michela Ross, DCA Representative

III. HEARINGS, PLEAS AND APPEARANCES

I/M/O MARSHA KLEINMAN, Psy.D.
Daniel Giaquinto, Esquire for the Respondent
Siobhan Krier, DAG, Prosecuting
Carla Silva, DAG, Prosecuting
Carmen A. Rodriguez, DAG, Counseling
Sandra Dick, DAG, Counseling

The Initial Decision of Administrative Law Judge Edith Klinger was served on the parties on or about July 13, 2012. This matter was set down for final decision and consideration of the parties' motions and exceptions by the Board at 9:30 a.m. on Monday October 1, 2012 but the Matter was subsequently adjourned until this meeting.

The attorneys placed their appearances on the record.

Mr. Giaquinto made a motion objecting to DAG Rodriguez as legal counsel to the Board at the final hearing as she was present in her capacity as legal counsel to the Board at the investigative inquiry of D.R., the complainant in this matter, and the investigative inquiries of the Respondent held on two separate occasions. Mr. Giaquinto argued that the DAG Rodriguez' presence at the investigative inquiries created a conflict which prevents her from providing legal counsel to the Board at this hearing. The Chair as the presiding member ruled that DAG Rodriguez' presence was not a conflict of interest as this is an issue which has been adjudicated by the courts and the role of DAG as counsel to the Board has been upheld by the NJ Supreme Court. The Chair overruled the objection.

IV. PRELIMINARY MOTIONS

I: MOTION TO DISMISS FOR LACK OF SPEEDY RESOLUTION

In his opening, Mr. Giaquinto argued that the criminal principles applicable to speedy trial should apply to administrative matters. While he relied on the written brief submitted in this matter he highlighted the following reasons for granting this motion. The four factors to be considered by the Board are: amount of delay, the reason for delay, whether the defendant suffered any prejudice to his or her case, and whether the defendant demanded speedy trial. The two most important factors are "reason for delay and the length of the delay." Mr. Giaquinto noted that the burden is on the State to discipline his client. Due process is afforded when the privilege of a professional license is taken away. In this case it was three years from receipt of he consumer complaint to the filing of a legal complaint by the Attorney General. He argued that his client was prejudiced immediately by her dwindling practice and ultimate decimation of her practice as a result of the publicity that she encountered in this matter. She was subject to harassment by internet and anonymous phone calls. There was delay in the Office of Administrative Law where the case was tried. There was delay caused by the appointment of the Administrative Law Judge to the Superior Court and a substitute Judge appointed to the case, delay in the Attorney General's office, and a year delay for the ALJ to write the initial decision. His client should not be prejudiced because she filed motions in defense of this action. In closing, Mr. Giaquinto asked the Board to send a message that a revocation should not take 9 years.

In response, DAG Silva argued that no undue delay existed in this matter. There was a preliminary stage where the allegations made against the Respondent were investigated. Delays

in the investigatory stages were caused by the Respondent's reluctance to appear and numerous requests for additional time to respond as the board collected information and obtained experts in its investigation. Once the administrative complaint was filed that Respondent sought adjournments for obtaining new counsel, for additional time to file motions, for additional time to seek documents from other matters, for additional time as her experts were not available. The case encountered unforeseen delays as the elevation of the sitting Judge to Superior Court and the substituted Administrative Judge suffering medical issues which affected her writing arm. DAG Silva argued that delay alone will not result in dismissal of a matter. There must be a showing that the delay resulted in the inability to try the matter, such as where the delay results in the witness failure to recall the facts. DAG Silva stated that this result did not occur in this case as D.C. recalled the circumstances of her matter and the S.R. matter included video and audio tapes and written client record to preserve the facts. In conclusion, DAG Silva argued that the Respondent has not shown any prejudice to the case. DAG Silva noted that the Respondent sought out the TV coverage, created a website and put her case in the public arena. She asked the Board to deny Respondent's motion as no evidence was presented that the delay resulted in prejudice to the Respondent's case.

II: MOTION TO REMAND AND REOPEN THE MATTER PURSUANT TO N.J.S.A. 1:1-18.5 AND 1:1-18.7 BASED ON ISSUES OR ARGUMENTS NOT PREVIOUSLY RAISED OR INCOMPLETELY CONSIDERED

(Oral argument on both of the motions was heard from Counsel for both the Respondent and State back to back so that the room did not have to be cleared. There was a substantial amount of public present for this hearing.)

Mr. Giaquinto argued that he preferred the Board to rule on the first motion as opposed to the second motion. If the Board rejected the first motion then he urged the Board to consider remanding this matter to the Administrative court because the record was not complete. Mr. Giaquinto implored the Board to remand the case to include the records of the Divorce action between D.R. and P.R. (parents of S.R.) before the Honorable Judge Sivilli, as well as the DYFS case concerning S.R. which included reports from a Guardian ad Litem and Referrals to the Regional Diagnostic Center so that the full record could be explored. Mr. Giaquinto argued that information is needed from these other sources for the Board to have full record. He noted that Judge Klinger did not permit these sources of information to be considered during the hearings as the Judge found the purpose of the administrative proceeding was not to prosecute the father. Mr. Giaquinto argued that it was important for the Board to understand what happened in the case prior to his client's appointment by Judge Sivilli to properly judge her working hypothesis and her therapy. He also argued that the count regarding D.C. was not properly developed in the case in order to assess the credibility of D.C. A review of the underlying documents in the D.C. court matter would shed light on her credibility.

In response, DAG Krier argued the reasons that this matter should not be remanded to the administrative court. She noted primarily that the issues Respondent is raising and arguing in

this motion were raised and fully addressed in the hearing before Judge Klinger. DAG Krier asked the Board to deny this motion as there was no reason to remand. She also asked the Board not to consider the documents submitted with this motion as these documents were not part of the underlying record in this case and were not admitted into evidence by the Administrative Law Judge.

THE BOARD UPON MOTION AND SECOND, VOTED TO MOVE INTO EXECUTIVE SESSION FOR ADVICE OF COUNSEL, AND DELIBERATIONS.

Motion was made by Dr. Wolf-Mehlman, seconded by Dr. Peckman. The motion carried unanimously. All parties, except counseling and administrative staff, left the room.

Returning to open session, the Board announced its decision on the motion to dismiss for lack of speedy resolution.

THE BOARD, UPON MOTION AND SECOND, MOVED TO DENY THE MOTION TO REMAND THIS MATTER. THE RECORD WILL NOT BE EXPANDED TO INCLUDE THE MATERIALS SUBMITTED BY THE RESPONDENT WITH THIS MOTION, AND AN ORDER MORE FULLY DETAILING THE BOARD'S REASONING WILL FOLLOW.

The Motion was made by Dr. Brickfield and seconded by Dr. Wolf-Mehlman. The decision was unanimous.

V. ARGUMENTS ON EXCEPTIONS

Mr. Giaquinto opened by asking the Board to reject the decision of Judge Klinger because it was wrong and it a product of bias. The opinion was biased because the Administrative Law Judge (the "ALJ") made a comment during the proceeding that the DAG should consider temporarily suspending the Respondent's license in light of the delay. He argued that the Judge lacked the ability to "make a critical distinction between trying to convict the father as opposed to trying to set the context in which the therapy took place." Mr. Giaquinto objected to the Judge's reliance on Dr. Martindale's and the other State witnesses' testimony. He attacks the opinion Dr. Martindale issued in 2005 because he did not have a complete file. He alleged that Dr. Martindale testified outside his area of expertise and that Dr. Martindale's ethics were compromised because he modified his written report. Mr. Giaquinto disagrees with Dr. Martindale's definition of forensic psychology and alleged that he is a forensic psychologist and does not know about therapy.

Mr. Giaquinto questioned the credibility of Dr. Adler-Tapia's testimony concerning EMDR as being rigid and not acknowledging that the 8 step process could be modified when applied to children. Mr. Giaquinto asked the Board to rely on the arguments in his written exceptions. He questioned the taped telephone conversations between D.R. and the respondent. He alleged that the calls were not authenticated as D.R. never testified in the administrative proceeding.

Regarding the complaint of D.C., Mr. Giaquinto argued that it was not a fresh complaint. The ALJ ignored the issue that it was not a fresh complaint. He questioned the relationship between D.C. and Dr. Martindale and alleged that Dr. Martindale recruited D.C. to file a complaint against the Respondent.

Mr. Giaquinto alludes to the Judge's misunderstanding of the findings in the case of State v. Michaels. Mr. Giaquinto encouraged the Board to read his exceptions and then carefully review the record as well as view the videotapes in evidence.

Mr. Giaquinto pointed out that the credentials of the respondent's expert witnesses were far superior to the State's witnesses but the Respondent's expert witnesses were ignored by the judge. He reviewed the credentials of Lenore Walker, David Shapiro and Ricky Greenwald.

In closing, Mr. Giaquinto asked the Board to "disregard the opinion of the ALJ as it was flawed and wrong."

In response to the exceptions, DAG Krier told the Board that the ALJ correctly decided the case before it. There were over 20 days of hearing and Judge Klinger's initial decision was over 90 pages. A review of the initial decision evidences that the ALJ gave "due consideration to all of the experts and detailed consideration of all the competent evidence in the record." She urged the Board to adopt the findings of Fact and Conclusions of Law recommended by Judge Klinger.

DAG Krier informed the Board that the Attorney General met its burden in proving that Dr. Kleinman engaged in gross negligence, professional misconduct and violated the regulations of the Board as set forth in the Administrative Complaint in her treatment of SR and D.C. It was DAG Krier's position that in doing so the conduct of Dr. Kleinman created risk of harm to the patient and the family.

DAG Krier asserted that the ALJ relied on the testimony and the documentary evidence of D.C. She reminded the board that the ALJ found D.C. to be credible and had no reason to lie. DAG Krier explained that the documentation reviewed evidence that Respondent was unethical in referring her sister as an attorney to D.C. This referral created a conflict with the respondent in providing the services that she entered into with D.C., namely to produce a battered woman's evaluation.

Concerning the matter of the Respondent treatment of SR, DAG Krier noted that the Attorney General met its burden to prove Dr. Kleinman's negligence as evidenced by the videotapes,

patient chart and correspondence that the Respondent issued to the court. She reminded the Board that the ALJ relied not only upon the testimony of the witnesses presented but on the evidence presented. DAG Krier stated that this case was a battle of the experts as found by the Judge until the Judge reviewed the content of the videotapes. The videotapes showed and proved that the Respondent manipulated SR with “relentless and coercive questioning.” DAG Krier cited examples of the November 4th and 5th videotapes to the board. DAG Krier reviewed portions of the notes from the client record with the Board and noted discrepancies between the notes and the videotapes. DAG Krier reviewed correspondence prepared and issued by the Respondent to the Court and she highlighted information that was clearly omitted from the representations made to the Court. One example highlighted was that when Respondent talked about domestic violence she represented D.R. as the alleged perpetrator of the domestic violence but never recounted to the Court information related by SR that D.R. was the recipient of abuse, thus misleading the Court.

DAG Krier demonstrated by the Respondent’s testimony in court and during the Board’s investigation, her resume and the corroboration of Robert Tinker that she misled her credentials. She had no training in conducting EMDR on young children and her claim that she had a one year supervision with Dr. Tinker was false. Additionally, DAG Krier pointed out that Respondent’s testimony on cross examination revealed a lack of familiarity with Post Traumatic Stress Syndrome, EMDR, and dissociation. The videos, letters and Respondent’s testimony all supported that respondent assumed both the role of clinician and forensic evaluator. DAG Krier pointed out that the record is filled with examples where respondent constantly attempted to separate father and daughter.

In closing, DAG Krier noted that the ALJ weighed and assessed the testimony of each expert in the initial decision and carefully assessed the credibility of D.C. and detailed her rationale in the initial decision. DAG Krier strongly urged the Board to adopt the findings of fact and conclusions of law made by Judge Klinger.

Mr. Giaquinto was given an opportunity to rebut and DAG was given an opportunity to respond to rebuttal.

THE BOARD UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS.

The Motion was made by Dr. Wolf-Mehlman, seconded by Dr. Brickfield. The Motion carried unanimously. All parties and members of the public, except counseling and administrative staff, left the room.

Returning to open session, the Board announced its decision on liability.

THE BOARD UPON MOTION MADE AND SECONDED, ADOPTED

THE FINDINGS OF FACTS AND CONCLUSIONS OF LAW IN COUNTS 1 THROUGH 6 OF THE COMPLAINT AS INDICATED IN THE INITIAL DECISION, WITH THE FOLLOWING EXCEPTION: IN COUNT 4, THE FINDINGS ON PAGE 6 OF THE INITIAL DECISION, THAT SECOND PARAGRAPH, ARE MODIFIED TO READ AS FOLLOWS: “RESPONDENT HELD HERSELF OUT TO BE AN EXPERT IN THE AREA OF FORENSIC INVESTIGATIONS AND CHILD SEXUAL ABUSE. DESPITE HER TRAINING AND EXPERIENCE, HER CONDUCT IN THIS CASE DEMONSTRATES THAT SHE IS NOT AN EXPERT IN THE FIELDS RELEVANT TO THE CASE.”

The Motion was made by Dr. Watter, seconded by Dr. Peckman. The Motion carried unanimously.

VI. The Board then moved to the mitigation phase of the hearing.

Mr. Giaquinto presented the following character witnesses:

- A. **Linda Carson:** Ms. Carson testified that she is the Director of Training for the NJ Coalition for Battered Women. She has known Dr. Kleinman for over 25 years in a professional capacity. She worked on the domestic violence specialist board developing standards for the domestic violence certification in NJ. Ms. Carson has known the Respondent to be an advocate for women and children. She has not known the Respondent to have a bias towards men. Ms. Carson testified that even with the allegations against Dr. Kleinman, she has not changed her opinion of the Respondent.

- B. **Dr. Eli Newberger, M.D.:**
Dr. Newberger is a pediatrician. He received his education from Yale Medical School with an internship in internal medicine. After two years in the Peace Corps he returned to do training in pediatrics at the Children’s Hospital in Boston. He testified that he currently teaches at Harvard Medical School on child abuse and corollary issues. He has published books and articles on abused children. He has known Dr. Kleinman both personally and professionally for over twenty years. He has consulted on three cases with the Respondent. He has found Dr. Kleinman’s work to be technically capable and that she strove to be fair. He characterized her as respectful and systematic. He stated that he appreciates her honesty and dedication to children. Dr. Kleinman’s priority is the protection of children. Dr. Newberger testified that in his opinion it is appropriate to ask a child leading questions when evidence of abuse exists. On cross examination Dr. Newberger admitted he had not seen the videotaped sessions of SR.

- C. **Kathy Wisniewski:**
Ms Wisniewski testified that she is a retired school principal who has known Dr. Kleinman for 20 plus years. She took her three children to Dr. Kleinman for therapy after their father was killed on 9/11. She has since recommended Dr. Kleinman to Senator Menendez and to former Governor Corzine to work with other children affected by 9/11 at the New Jersey Recovery Center and she also recommended Dr. Kleinman to many 9/11 family groups. There was no cross examination of this witness.
- D. **Deborah Rebhuhn:**
Ms. Rebhuhn testified that she is a former engineer and current school teacher who has known Dr. Kleinman for many years. She is a former patient of Dr. Kleinman's father who sought therapeutic services from Dr. Kleinman when her father was too ill to continue with her therapy. She sought therapy for depression issues related to her transition to a new career. There was no cross-examination of this witness.
- E. **Nancy Kantor Coye:**
Ms. Coye testified that she is a friend and neighbor of Dr. Kleinman's for over 50 years. She has known Dr. Kleinman since she was ten years old. She testified that Dr. Kleinman was very child centered. They would often discuss raising their children as single moms. There was no cross-examination of this witness.
- F. **Gabrielle Strich:**
Ms. Strich is a matrimonial attorney and she testified that she has known Dr. Kleinman since 2004 in a professional capacity. She has repeatedly worked with Dr. Kleinman on DYFS cases. She also testified that she admired Dr. Kleinman's professionalism, creativity, and high energy which translates to passion. On cross examination she was asked whether she was aware that DYFS joined in a motion to have Dr. Kleinman removed from the SR case and whether this action changed her opinion of Dr. Kleinman. Ms. Strich responded that she was aware of the motion and it did not change her opinion of Dr. Kleinman.
- G. **Gary Borger:**
Mr. Borger is a family law attorney in Cherry Hill, NJ for over 35 years. He testified that he has known Dr. Kleinman professionally for 13 years. He employed her services to assess cases where abuse was alleged by one spouse and to perform Battered Woman's Syndrome evaluations. In his opinion, Dr. Kleinman was motivated by her professionalism. There was no cross-examination of this witness.
- H. **John McMahon:**
He is the chief trial attorney for Essex County Office of the Public Defender. He

has used Dr. Kleinman since 1995 to assess his clients who may have been sexually abused in the past and to assist him in a death penalty case. He felt Dr. Kleinman always gave a practical opinion. He could count on the fact that she would be objective. On cross-examination Mr. McMahon testified that he never dealt with a court appointed expert.

I. Dr. Jonathon Kleinman

He is Dr. Kleinman's older brother and a retired clinical psychologist. He was trained in EMDR by Dr. Shapiro. He testified to Dr. Kleinman's caring nature. He testified that he and his wife gave Dr. Kleinman money over the years to assist with her financial hardship of losing her practice. He testified that he gave her a total of approximately \$31,000. He assisted Dr. Kleinman in paying her daughter's tuition at the Princeton Day School. On cross-examination he confirmed that he knew that his sister's financial woes stemmed from her dwindling practice.

J. Dr. Marsha Kleinman, Psy.D.

Dr. Kleinman testified that she comes from a family of altruistic people. She is all about helping others. She informed the Board that as a psychologist she is the voice of the people. She is currently employed at Kean as an adjunct professor but has no private practice and has financial hardship because of it. She never intended to do harm to anyone and admits she should have sought consultation and guidance on the S.R. case. She testified that she believed that she conducted appropriate treatment. She admitted that her records were not sufficient. She accepts the Board's and the ALJ's findings at this time. She testified that she is willing to be re-trained. On cross examination Dr. Kleinman repeatedly "did not recall" any details of cases when asked. Dr. Wolf-Mehlman asked Dr. Kleinman "what would you have done differently?" Dr. Kleinman responded that she would have documented that she asked for reference materials. She would have been in contact with DYFS. She would have kept better EMDR notes and reached out for guidance. She admitted accepting too much information from the court and that her notes were not good enough to convey the fact that she did entertain different hypothesis besides the father's abuse of the child in the S.R. case. If she is able to keep her license she would seek retraining in EMDR and take classes in ethics and in forensic psychology. On cross-examination Dr. Kleinman was also questioned regarding her disability. She responded that she was not able to recall the date that she went on disability. She was asked whether her condition was carpal tunnel and she responded that it was not. The respondent rested after Dr. Kleinman completed her testimony.

The State made a motion that the Board permit the parents who were testifying as witnesses to be identified by initials to protect the identity of the children. The Respondent did not object to this request. Motion was granted.

Mr. Giaquinto moved into evidence the documents previously provided to the Board in mitigation. They were marked A-1 through A-28 (letter from colleagues); B-1 - B-16 (letter from patients) C-1 through C-39 (letters from family and friends). State did not object to these documents.

State Witnesses against Dr. Marsha Kleinman:

A. S.B. (Mr. B)

Mr. B testified that he was familiar with Dr. Kleinman through his divorce action. His wife hired Dr. Kleinman to evaluate his daughter who was approximately three or three and a half years old. He had custody of his daughter. His first contact with Dr. Kleinman was by telephone in 1997 when she requested that he come in to see her. He testified that he never saw her in person. He requested that the phone call be taped and she said no. Dr. Kleinman wrote a letter to his attorney and adversary's attorney misquoting him and recommending no visitation until he had a session with her. DYFS was involved. Sexual abuse was not found in his case. After a three-year ordeal, custody was granted to Mr. B and his wife was given visitation with supervision. The Hon. James P. Hurley had Dr. Kleinman removed from Mr. B's case. On cross-examination it was brought out that Dr. Kleinman was dismissed from this case in 1997. A complaint was filed with the Board and no action was taken against Dr. Kleinman.

B. R.O. (Mr. O)

Mr. O testified that Dr. Kleinman was hired to treat his daughter in September 2005. Dr. Kleinman treated Mr. O's daughter for approximately two months. There were approximately 30 billed visits with half being physically in person and half being over the phone totaling \$10,000 in fees. Mr O's daughter BR was friends with Dr. Kleinman's daughter. They attended the same school. Dr. Kleinman called Mr. O stating she had the miracle cure of EMDR for his daughter. Mr. O alleges Dr. Kleinman used EMDR at the first session instead of evaluating his daughter first. Dr. Kleinman accused BR's older brother of sexually abusing her and later Mr. O himself was accused of sexually abusing his daughter by Dr. Kleinman. Dr. Kleinman also accused Mr. O of being abusive towards his wife and daughter. The professional relationship was terminated when Dr. Kleinman told Mr. O's daughter that she could live with her. Mr. O was concerned that Dr. Kleinman blurred the relationship of patient and mother of a friend. She also had his daughter over for several stay overs. Mr. O testified that he asked Dr. Kleinman to inform his daughter that she could not live with her but Dr. Kleinman refused to do so. He alleged that Dr. Kleinman undermined his parental authority. Ultimately his daughter was sent out of state for one year to be treated.

VI. ADJOURNMENT

The meeting of the Board in the matter of Marsha Kleinman was adjourned at 8:15 p.m. until the November 5, 2012 meeting of the Board due to the failure of continued coverage by the court reporter.

Respectfully submitted,

Amie Wolf-Mehlman, Ph.D.
Secretary

APPROVED BY:

Date: Nancy E. Friedman, Ph.D.
Chair