

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gail R. Fiore, LCSW, :
Petitioner :
v. :
Bureau of Professional and :
Occupational Affairs, State :
Board of Social Workers, :
Marriage and Family Therapists :
and Professional Counselors, : No. 641 C.D. 2010
Respondent : Argued: December 6, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE KEITH QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: June 14, 2011

Gail R. Fiore (Fiore), LCSW (Licensed Clinical Social Worker), challenges the order of the Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) which revoked her license to practice clinical social work.

I. Background.

On May 13, 2008, the Commonwealth of Pennsylvania (Commonwealth) filed an eight count order to show cause and alleged that Fiore was subject to disciplinary action under Section 11(a)(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (Act)¹, 63 P.S.

¹ Act of July 9, 1987, P.L. 220, *as amended*.

§1911(a)(2). Count One alleged that Fiore was guilty of unprofessional conduct with respect to treatment of her patient, DP, including, but not limited to the fact, that Fiore developed a personal and social relationship with DP and Fiore shared extensive personal information with DP.

Count Two alleged that the Board was authorized to suspend or revoke Fiore's license because Fiore failed to clarify her role with DP as well as establish appropriate boundaries that should have existed between Fiore and DP.

Count Three alleged that Fiore failed to promote self-determination and work toward psychological independence and that Fiore through her actions and conduct promoted and/or encouraged DP's psychological dependence on Fiore.

Count Four alleged that Fiore failed to refer DP to another counselor or therapist despite the fact that Fiore had developed a personal and/or social relationship with DP.

Count Five alleged that Fiore's therapy records failed to reflect an appropriate history, or assessment to support a diagnosis or treatment plan and goals as well as progress of treatment.

Count Six alleged that Fiore's therapy records failed to reflect any improvement in DP's condition despite the fact that she treated DP beginning in or about 1997 until about September 2006.

Count Seven alleged that Fiore purged her records after three years and/or failed to record sessions such that she failed to maintain a clinical record that is accurate and reflects services rendered.

Count Eight alleged that Fiore failed to take reasonable steps with respect to the termination of her therapeutic relationship with DP in that Fiore failed to provide for continuity of care and or/referral to another therapist and instead permitted therapy to abruptly terminate.

Fiore answered the order to show cause on June 26, 2008. A prehearing conference was held by telephone on October 15, 2008. Each side filed a prehearing statement. The Board held hearings on December 9, 2008, December 10, 2008, December 22, 2008, and February 20, 2009.

II. Evidence.

A. Commonwealth Witnesses.

DP testified that she first met Fiore when she “was having problems in my marriage, and I went to her for marriage counseling.” Notes of Testimony, December 9, 2008, (N.T.) at 16; Reproduced Record (R.R.) at 367a. DP treated with Fiore from 1997 until 2006. N.T. at 17; R.R. at 368a. DP explained Fiore’s initial assessment of her:

Well, the first visit, I went in and told her I was having problems with my marriage and that I felt like I was going to go out and get some ice cream and never come back and that I was married to somebody that was just like a lump on a log. . . . I wanted more from the marriage. And then, once I went in, the very first session she told me . . . that the marriage would never work and

to go home and tell him I wanted a divorce, which I did. And then, after that . . . I did eventually get divorced in '98 – I stayed for myself.

N.T. at 17; R.R. at 368a.

Initially, DP treated with Fiore two or three times a week. DP stayed in treatment after the dissolution of her marriage because of “codependency issues, self-esteem issues, assertiveness – I wasn’t very assertive – and weight loss.” N.T. at 18; R.R. at 369a.

DP was given a diagnosis of codependency and assertiveness. The treatment plan was to “work through codependency issues. . . . I needed to lose weight. I’m not sure what the treatment was.” N.T. at 20; R.R. at 371a. DP testified, “Whenever I made progress, all of a sudden I’d have a new issue to be dealt with out of the blue.” N.T. at 21; R.R. at 372a.

DP related that she spent time with Fiore outside of therapy. In 2001, DP and Fiore first socialized:

Well, the very first time it was just like a social thing. Like there was an art opening for a child prodigy artist. And I was telling her about it because she loves art. And so do I. So I mentioned Beso was in town, and my brother-in-law was hosting this big opening. And she said she wanted to go with her daughter. . . . And that was just like, oh hey, there’s this big art opening, you should come kind of a thing. So I initiated that. . . . And she did come with her daughter.

N.T. at 21-22; R.R. at 372a-373a.

DP also explained:

I was kind of frumpy and overweight. And . . . I was in this family where I was protected as their oldest daughter, and I didn't know much about dating or men or self-esteem. So she wanted to take me to the Whiteman School of Dancing, which was like a swing place where you take dance lessons. . . . You stand on the side, and then guys come up and ask you to dance. . . . But there was a purpose to it. The purpose was to get me out and watch her, how she would attract men. And so that was for me to learn.

N.T. at 22-23; R.R. at 373a-374a.

In 2003, Fiore asked DP if she was interested in spending time with her outside of therapy. DP responded affirmatively. N.T. at 23-24; R.R. at 374a-375a. They would go shopping on Sundays, off and on, for a couple of years. N.T. at 24; R.R. at 375a. They also attended art openings together. Fiore would hug her in therapy and when they socialized. N.T. at 24-25; R.R. at 375a-376a. Fiore became her "diet buddy" to help DP lose weight. N.T. at 27; R.R. at 378a. They would talk on the telephone every night at 10:00 p.m. starting in 2003. N.T. at 28; R.R. at 379a. Fiore invited her to attend her church. DP was baptized there on April 4, 2004. N.T. at 29-32; R.R. at 380a-383a.

DP was asked whether Fiore ever discussed boundary issues or whether it was proper for them to socialize outside of therapy. DP replied:

That did come up. The word boundary was brought up, but it was ignored. And she and I would talk about – we cared a lot about. . . each other – and she couldn't hide her feelings from me and keep those feelings in. So yes, that was brought up on . . . several occasions.

N.T. at 32. They also would go to Sunday brunch together and spent some holidays together. N.T. at 33-36; R.R. At 384a-387a. DP explained that when they socialized:

I would listen to a lot of babble. I don't know what – about God, about her illness, that she was supposedly poisoned by medicine, a drug a doctor prescribed to her. And I would listen to a lot about God and spiritual talk. And I would listen to about a lot of [Fiore's] problems.

N.T. at 38.

DP met three men to whom Fiore was engaged, friends of Fiore, and also met various members of her family. N.T. at 39-48; R.R. at 390a-399a. Occasionally, DP spent Saturday nights with Fiore if Fiore “didn't have a date, she would be feeling lonely and said she couldn't be alone and would I come over.” N.T. at 51; R.R. at 402a.

Fiore wanted DP to start treating with a chiropractor, Dr. William Shine. DP explained his treatment:

You lay on the table, and you lay face down, and he would touch a certain part of your body where he would get like psychomatic waves. And your whole body – you would lay [sic] down and your whole body would start moving. And she wanted me to experience that. She went . . . DP, this will help you with everything that you're going through. Help you with all your issues and will help you – will release you, will make you free. So she wanted me to – because it was working for her. She wanted me to experience the same experience. And I think the first time we went – we drove – she drove me there to meet him.

N.T. at 53; R.R. at 404a.

DP described abuse she received from Fiore:

It was really odd. This was later on. She would accuse me of not loving her as much as she loved me. Women should be real warm and loving and wanting to spend time . . . our friendship was growing. And the next minute she would be really mean and rude and accusing me of not loving her as much as I loved her [sic]. And she would call me up at work and tell me no one's ever going to love you like I do. You're going to be alone forever. Like, I'm at work. And she'd hand [sic] up on me. And then the next minute she'd call me up and say, you know what? I miss you, DP. I need you in my life. . . . And I'm like what's going on here? What is going on? It's been going on for several months off and on.

N.T. at 60; R.R. at 411a.

DP identified Jeffrey Smith as a hairdresser who cut Fiore's hair. Fiore paid for a haircut and coloring session with Smith for DP. N.T. at 62-63; R.R. at 413a-414a. Fiore bought DP flowers when she could not attend a dinner party at DP's house, bought DP a purse, shoes, and a print of a Chinese man, outdoor furniture, though DP paid part of the furniture. N.T. at 67-70; R.R. at 418a-421a. DP identified a book, a martini maker, and a compact disc player that were given to her by Fiore. N.T. at 68-75; R.R. at 419a-426a. DP worked for Fiore designing flyers to promote various workshops and events Fiore conducted. She also designed business cards for her and a direct mail circular. N.T. at 78-84; R.R. at 429a-435a. Fiore didn't pay DP directly but took her out to dinner at nice restaurants. N.T. at 85; R.R. at 436a. DP also worked at a booth associated with Fiore's business at Murrysville Community Days and worked at a "Hot Dog Day" where Fiore gave away free hot dogs with counseling. N.T. at 87; R.R. at 438a.

During the time that DP was socializing with Fiore, she continued to see her for treatment at least weekly. DP considered her a good friend and her therapist. N.T. at 97; R.R. at 448a. In 2005 and 2006, DP had problems:

Well, it was crazy because one minute we'd be friends, the next minute . . . she would be calling me and harassing me, saying nobody will ever love you like I do. And she would have hallucinations and then try to diagnose me for them. And I thought I was going crazy. And she would call me in the middle of the night. And no one's ever going to love you like I do, like I said before. And she always hung this you're going to be alone forever over me. And then every time – I would confront her in her office. And one time she chased me out into the parking lot. . . .

N.T. at 98; R.R. at 449a.

DP explained that she told Fiore that she needed to get help and needed to see a doctor which led Fiore to chase her into the parking lot. N.T. at 100-101; R.R. at 451a-452a. When DP asked when her treatment would end, Fiore told her “when you're married – when you get married again. That could be forever.” N.T. at 103; R.R. at 454a. Toward the end of her treatment, Fiore told DP that they “were never friends because we can't because of boundaries.” N.T. at 106; R.R. at 457a. DP ended treatment after she told another therapist about her situation with Fiore and was told “run as fast as you can.” N.T. at 108; R.R. at 459a.

On cross-examination, DP admitted that Fiore and Dr. Pappas, a hypnotist, helped her to lose weight. N.T. at 146; R.R. at 497a. DP admitted that Fiore did not coerce her into calling her. N.T. at 160; R.R. at 511a. DP admitted

that through 2004, she considered Fiore to be loving, compassionate, and intelligent. N.T. at 168; R.R. at 519a. DP told her subsequent therapist that she thought Fiore was in love with her. Notes of Testimony, December 10, 2008, (N.T. 12/10/08) at 185; R.R. at 537a.

Annetia Lynn Ison (Ison), a friend of DP, testified that three times when she was with DP she met Fiore. Ison first met Fiore when DP was baptized. In 2005, Ison went to church with DP and then was invited to Fiore's house for brunch. She also saw Fiore in August 2005, at an art gallery where DP was displaying her artwork. Ison related that DP "became a completely different person" after a session with Fiore. N.T. 12/10/08 at 231; R.R. at 583a. Ison stated that Fiore told DP that DP was not going to be loved unless she lost weight and told DP "that in order to get a man she needed to dress sexier." N.T. 12/10/08 at 232; R.R. at 584a. When a man flew in from Chicago to meet DP, DP chose a "very provocative, sexy outfit." Ison asked if it were a good idea to wear it. DP responded "Gail thought it was a good idea, so I think it'll work." N.T. 12/10/08 at 232; R.R. at 584a. Ison believed that Fiore controlled and manipulated DP. N.T. 12/10/08 at 257; R.R. at 609a.

Horace Hubbard (Hubbard), a professional conduct investigator with the Pennsylvania Department of State who investigated the complaint against Fiore, testified that the first time he went to Fiore's office to obtain DP's records he received thirty-four pages. When he returned a few days later, Fiore provided him with seventy-four pages of medical records and seventy-five pages from UPMC and health-related agencies. N.T. 12/10/08 at 278; R.R. at 630a. The

earliest record provided was from 2002. DP began treating with Fiore in 1997 or 1998. Fiore told Hubbard that injury practice required that she keep the records for three years. N.T. 12/10/08 at 285; R.R. at 637a.²

Stuart Miller (Miller), a licensed clinical social worker, testified as an expert witness. Miller was asked by the Commonwealth to review documents related to the complaint against Fiore and express an opinion whether Fiore's conduct complied with accepted standards of care. Miller explained that a "consent for treatment" is important "[b]ecause the nature of clinical social work, medicine, of a lot of what we do these days is confidential. And it apprises the client and obtains permission of the client to release specific information so that information isn't divulged without the client's express permission." N.T. 12/10/08 at 352-353; R.R. at 707a-708a. Miller did not find a "consent for treatment" in Fiore's records of her treatment of DP. N.T. 12/10/08 at 353; R.R. at 708a. Miller also testified that the records should contain a description of a "presenting problem" and did not. N.T. 12/10/08 at 354; R.R. at 709a. Miller did not find a psychosocial evaluation or a diagnosis in the record. N.T. 12/10/08 at 357; R.R. at 712a. Miller found no treatment plan in the records. N.T. 12/10/08 at 359; R.R. at 714a. He found a list of issues "but there's no objective. There's no discussion of

² Kelly Craig (Craig), a friend of DP, had dinner once with DP and Fiore. Another time, Craig and DP were having dinner with some of Craig's friends when Fiore arrived. DP said goodbye and left with Fiore. N.T. 12/10/08 at 299; R.R. at 651a. She saw DP with Fiore two other times at art openings. N.T. 12/10/08 at 301-303; R.R. at 653a-655a.

Claire Hardy (Hardy), a friend of DP, testified that she met DP and Fiore at a coffee shop in the summer of 2004. Fiore was sitting at a table outside the coffee shop crying when Hardy approached. N.T. 12/10/08 at 324; R.R. at 677a. Hardy also saw Fiore at an art opening and thought that Fiore and DP were friends. N.T. 12/10/08 at 326; R.R. at 679a.

how these issues are going to be addressed and how you're going to know if you've accomplished them." N.T. 12/10/08 at 360; R.R. at 715a.

Miller explained "self-determination":

Self-determination is a social work term of helping the client achieve the maximum benefit. I guess. It's – you want – a client, a patient, comes with a problem. They're asking for assistance with that problem. And the goal of treatment ideally would be to help facilitate them feel better about themselves, make improvements in their life, in their mood, their affect and to put them in control of their life. Basically, to empower them.

N.T. 12/10/08 at 364; R.R. at 719a.

Miller did not view any notations regarding boundary issues or regarding DP socializing with Fiore in the records. Miller believed that socializing with a patient would not promote self-determination. N.T. 12/10/08 at 365; R.R. at 720a. Miller testified that a therapist should maintain records for as long as the case is open. N.T. 12/10/08 at 371; R.R. at 726a. When asked whether the records reflected any type of direction that treatment was heading, Miller replied, "No." N.T. 12/10/08 at 372; R.R. at 727a. Miller believed that there was a conflict of interest due to the problem with boundaries. N.T. 12/10/08 at 376-377; R.R. at 731a-732a. Miller opined that Fiore did not comply with accepted and prevailing standards of social work care with respect to her recordkeeping. He also opined that Fiore failed to comply with accepted and prevailing standards of social work care with respect to the termination of the therapeutic relationship and violated the accepted and prevailing standards of social work care with respect to promoting

self-determination and psychological independence. N.T. 12/10/08 at 379-380; R.R. at 734a-735a.

On cross-examination, Miller admitted that nothing in Section 3.04 of the National Association of Social Workers Code of Ethics (NASW Code of Ethics) provides how long records should be kept or that a social worker's records must contain relevant, historical, and demographic information, or treatment plans and goals, outcome of treatment, documentation of referrals and collaboration, reasons for closing the case, or signed consent for release of information when appropriate. N.T. at 394-395; R.R. at 749a, 751a. However, Miller testified that "according to the State versus Lindstrom, she did."³ N.T. 12/10/08 at 395; R.R. at 751a.

B. Fiore's Witnesses.

Colosimo, a clinical supervisor at Cambria County Mental Health, a consulting therapist at Westmont Family Ministries, and a counselor in private practice, began renting space from Fiore on Saturdays for about three hours at a time approximately nine years prior to his testimony. Colosimo was certified in EMDR⁴ therapy through EMDRIA, the professional association for EMDR therapists. Colosimo considered Fiore to be a "friendly colleague." N.T. 12/10/08 at 477; R.R. at 832a. At Fiore's suggestion, Colosimo worked with DP four or five

³ In Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Lindstrom, No. 0255-69-05 (Filed March 15, 2007), the Board revoked Betsy L. Lindstrom's license in part because she failed to comply with the NASW standards with respect to recordkeeping.

⁴ EMDR stands for Eye Movement Desensitization and Reprocessing.

times. Colosimo treated the issues of anger, weight control, and family difficulties. N.T. 12/10/08 at 478-479; R.R. at 833a-834a. Colosimo never witnessed any unprofessional behavior on the part of Fiore. N.T. 12/10/08 at 480; R.R. at 835a. Colosimo thought he might have had a brief discussion with Fiore about boundaries with patients. N.T. 12/10/08 at 481-482; R.R. at 836a-837a. Colosimo believed that Fiore was quite social and not in need of friends. N.T. 12/10/08 at 482-483; R.R. at 837a-838a. On cross-examination, Colosimo admitted to telling Hubbard that Fiore appeared to be a “Pied Piper” regarding the same group of female patients who were always in her office each Saturday. N.T. 12/10/08 at 488; R.R. at 843a.

Mark Wolynn (Wolynn), a Hellinger Family Systems Therapist who treated DP on Fiore’s recommendation, testified that he had never known Fiore to conduct herself in anything less than a professional manner in the approximately ten years that he knew her. N.T. 12/10/08 at 439; R.R. at 793a. Wolynn said that when he watched Fiore in a group setting with her clients, she behaved in a professional manner. N.T. 12/10/08 at 443; R.R. at 797a.

Pastor Dan Lawrence (Pastor Lawrence), senior pastor at Murrysville Alliance Church, estimated that five or six individuals came to his church because Fiore was a parishioner or because of Fiore’s recommendation. N.T. 12/10/08 at 463; R.R. at 818a. He did not know of Fiore acting in an unprofessional manner. N.T. 12/10/08 at 465; R.R. at 820a.

Linda Bernstein (Bernstein), a licensed clinical social worker, testified as an expert witness on behalf of Fiore. From her review of the records, Bernstein believed that DP sought treatment from Fiore for her “issues” and that Fiore did not initiate any “issues.” Bernstein testified that Fiore was engaged in relevant and clinically appropriate work with DP. Although Bernstein did not find formal treatment plans, she believed that DP and Fiore talked about goals together. Bernstein did not believe it was a boundary violation for DP and Fiore to go out dancing together. N.T. 12/10/08 at 507-510; R.R. at 862a-865a. Bernstein testified that “it’s common knowledge” that a therapist “kept records for seven years.” N.T. 12/10/08 at 513; R.R. at 868a. Bernstein found no evidence of boundary violations in Fiore’s records and believed Fiore was promoting DP’s self-determination. N.T. 12/10/08 at 514; R.R. at 869a. Bernstein opined that there was nothing exploitative in Fiore’s relationship with DP and “[i]t seemed to be in the client’s best interest.” N.T. 12/10/08 at 525; R.R. at 880a.

Fiore testified concerning her education and background. Fiore testified that in her recordkeeping she provided a minimal amount of information because her clients “value their privacy. . . . they feel uncomfortable knowing that there is a chart with very personal and intimate information in that chart.” Notes of Testimony, December 22, 2008, (N.T. 12/22/08) at 593-594; R.R. at 959a-960a. Fiore first began treating DP when she was a partner at East Suburban Psychological Associates in 1997. She testified that she could not take the records for DP from East Suburban Psychological Associates when she started her own practice. N.T. 12/22/08 at 608; R.R. at 974a.

When DP first came to her, she was depressed, angry, “over weight – very over weight – and that she was not very well kept.” N.T. 12/22/08 at 613-614; R.R. at 979a-980a. Fiore denied telling DP to leave her husband. N.T. 12/22/08 at 614; R.R. at 980a. Fiore stated that she ate at 6 p.m. DP’s appointments were scheduled for 6:30. DP stayed in therapy after her divorce because she was depressed and overweight. N.T. 12/22/08 at 619; R.R. at 985a. Fiore stated that “all of the men that she [DP] chose to pursue a dating relationship with had problems with addiction, and many of them had problems as well with the law.” N.T. 12/22/08 at 630; R.R. at 996a. Fiore stated that DP wanted to lose weight but would then say that she should not have to lose weight to get a man. She would then become angry. Fiore stated that DP “would maintain two polar cognitive opposites at the same time. And it’s very destructive and sabotaging to her.” N.T. 12/22/08 at 641; R.R. at 1007a.

Fiore denied destroying any records from 1997 and 1998. N.T. 12/22/08 at 644; R.R. at 1010a. Fiore denied going dancing with DP but admitted seeing her at the Wightman School of Dance on one occasion. N.T. 12/22/08 at 648; R.R. at 1014a. Fiore testified that after DP was divorced she began to dress “very provocatively. And she would wear very low cut blouses, and she would wear very short skirts simultaneously.” N.T. 12/22/08 at 658; R.R. at 1024a. Fiore denied telling her to wear tap pants when she met the gentleman from Chicago. In fact unless DP brought it up, Fiore did not comment on her appearance. N.T. 12/22/08 at 659; R.R. at 1025a. Fiore invited DP to her sister’s open house on Christmas Eve in 2002 or 2003 because DP’s holidays were “fraught with verbal attacks, anger, family blowups.” N.T. 12/22/08 at 666; R.R. at 1032a. Fiore

invited her to her home one July 4th to calm her. Fiore disputed Ison's testimony that she had people over on Easter Sunday. She did invite DP and Ison to her home after church one Sunday because DP realized that people were invited to Fiore's house, and because of DP's issues concerning rejection and abandonment. N.T. 12/22/08 at 667-668; R.R. at 1033a-1034a. Fiore denied that she ever told DP that she would never be happy or that she was going to go to Hell. N.T. 12/22/08 at 677; R.R. at 1043a. Fiore testified that she frequently had conversations with DP concerning dual relationships. N.T. 12/22/08 at 696; R.R. at 1062a. After Fiore recommended that DP attend the Shadyside Arts Festival, she saw her there but did not spend time with her. N.T. 12/22/08 at 697; R.R. at 1063a. Another time she saw DP and her friend Kelly in a restaurant after DP asked her to stop by and meet her friend. Fiore felt imposed upon both times. Fiore attended three art shows in which DP was exhibiting her artwork. N.T. 12/22/08 at 699-700; R.R. at 1065a-1066a.

Fiore has referred over one hundred people to Murrysville Missionary Alliance Church. Approximately five or six of them became members. N.T. 12/22/08 at 710; R.R. at 1076a. Fiore denied ever being in love with DP or ever indicating to her that she wanted a relationship with her outside the therapeutic relationship. N.T. 12/22/08 at 715; R.R. at 1081a. Fiore denied that she was crying when she met Hardy. In fact, DP was the one who was crying, according to Fiore. N.T. 12/22/08 at 725-726; R.R. at 1091a-1092a. Fiore stated that she allowed DP to make a poster for her because she realized how sensitive DP was to rejection and that her primary source of self-esteem was her artwork. DP also made a brochure for which Fiore paid DP. N.T. 12/22/08 at 737; R.R. at 1103a.

Fiore related a boundary crossing in 2005:

And she became very distraught, was very tearful, very obvious that she was very distraught. So when she did this, at that time I made a decision to make a boundary crossing. I felt that if I did not . . . meet her need, then she would have experienced being rejected, she would have experienced being abandoned, and it would have sabotaged the therapy that I was doing for. I realize I could not have gone, but it would have been for my own best interest. And when I did agree to go with her, I was very uncomfortable. And there's a place in Murrysville called Dick's Diner, which is a stone [sic] throw from the church. It is not a place that I like or frequent, okay. So I agreed to go to Dick's Diner with her, have a cup of coffee with her, attempt in some way to resolve whatever the crisis was, and then to move on.

N.T. 12/22/08 at 745; R.R. at 1111a.

She later went on Sundays with DP to have brunch and explained, "I cannot have a dual relationship with you. This is therapeutic This is therapy."

N.T. 12/22/08 at 747; R.R. at 1113a.

Fiore did not want a friendship with DP. She denied that she was a lesbian and never discussed whether DP was a lesbian. She never joked with DP about "going gay or being a lesbian with DP." N.T. 12/22/08 at 748-749; R.R. at 1114a-1115a. Fiore testified that DP followed her to a shoe store where Fiore purchased a \$24 purse for DP after DP said "Oh, I would really like this, but I don't have any money, and I would really like this. And so I felt very uncomfortable buying myself a purse. And so . . . I felt sorry for her, so I purchased her a purse." N.T. 12/22/08 at 751; R.R. at 1117a. Fiore loaned DP money to buy jeans and patio furniture. In both cases DP paid Fiore back. N.T.

12/22/08 at 757-758; R.R. at 1123a-1124a. Fiore did not recall ever hugging DP in public unless DP approached her for a hug. N.T. 12/22/08 at 766-767; R.R. at 1132a-1133a.

On cross-examination, Fiore acknowledged “boundary crossings” but believed if she had not done that, DP was “going to drop like a rock.” Notes of Testimony, February 20, 2009 at 913; R.R. at 1281a.

III. Adjudication

The Board made the following relevant findings of fact:

10. In 1997 and 1998, DP saw Respondent [Fiore] for therapy at least twice a week and understood she was there to work on issues of codependency, self-esteem, assertiveness and weight loss. . . .

11. In 1997 and 1998, DP invited Respondent [Fiore] to an art opening where DP was showing some of her art work. Respondent [Fiore] attended the art opening with her daughter. . . .

12. In 2001 or 2002, Respondent [Fiore] and DP attended dance lessons at Whiteman [sic] School of Dancing in Squirrel Hill in order for DP to work on issues of self esteem and in order for DP to learn how to attract men by observing Respondent [Fiore] attract men. . . .

13. In 2003, Respondent [Fiore] asked DP if she would be interested in spending time outside of the therapy setting and DP agreed. . . .

. . . .
18. In 2003, Respondent [Fiore] encouraged DP to attend Murrysville Alliance Church, the church where Respondent [Fiore] belonged. . . .
. . . .

21. On April 4, 2004, Respondent [Fiore] attended DP's baptism at Murrysville Alliance Church. . . .

22. In the summer of 2004, DP was exhibiting a painting in a gallery. Respondent [Fiore] arrived, gave DP a quick hug and the two walked around the exhibit together. . . .

23. In the summer of 2004, DP's friend Claire Hardy, was supposed to meet DP at the Carnegie Art Museum coffee shop. When Ms. Hardy arrived, she saw DP and Respondent [Fiore] sitting outside and saw Respondent [Fiore] crying. DP was trying to console Respondent [Fiore]. Ms. Hardy waited inside the coffee shop for a while, and then came out and was introduced to Respondent [Fiore]. Respondent [Fiore] then left. . . .

24. Beginning in 2005, DP and Respondent [Fiore] would attend church together, then go for brunch at either Pamela's Restaurant or at Respondent's [Fiore] house and then go shopping together. . . .

. . . .

30. Respondent [Fiore] offered to be DP's diet buddy. . . .

.

31. One Christmas Eve, Respondent [Fiore], Respondent's then-fiancée, DP, and DP's blind date who was also Respondent's [Fiore] patient, went to Respondent's sister's house and then to church. . . .

32. DP spent one New Year's Day with Respondent [Fiore] at her house along with Respondent's [Fiore] family. . . .

. . . .

34. On July 4, 2005, DP spent her birthday with Respondent [Fiore] at Respondent's [Fiore] brother's house. . . .

. . . .

36. DP met many of Respondent's [Fiore] fiancés and/or boyfriends including Stan, Jack, and Niles. . . .

. . . .

38. DP celebrated Respondent's [Fiore] Aunt's birthday at a restaurant along with Respondent [Fiore] and her family.

.....

41. Occasionally, if Respondent [Fiore] did not have a date on a Saturday night, she would tell DP she was feeling lonely. DP would spend those Saturday nights with Respondent [Fiore] at her house where they would turn on Respondent's [Fiore] computer and they would go on the dating service, E Harmony. . . .

.....

45. As a Christmas gift, Respondent [Fiore] took DP to get a haircut and paid for the haircut. . . .

46. On one occasion when Respondent [Fiore] was unable to attend DP's party, Respondent [Fiore] sent DP flowers. . . .

.....

50. In 2003, Respondent [Fiore] gave DP a birthday card signed 'Love Gail.' . . .

51. Respondent [Fiore] gave DP a book entitled 'The Prayer of Jabez.' Inscribed on the inside cover are the words 'To DP with love, Gail 2003. . . .

52. Respondent [Fiore] gave DP a martini maker set for her birthday. . . .

.....

54. During a shopping trip, Respondent [Fiore] gave DP her credit card to pay for outdoor furniture that DP wanted. DP partly repaid Respondent [Fiore] for the furniture. . . .

.....

57. DP designed a logo and poster for Respondent's [Fiore] business. . . .

58. During the course of therapy, DP provided artwork and/or graphic design work for Respondent's [Fiore] boyfriend, Jack. . . .

59. Respondent [Fiore] reimbursed DP for artwork she did for Respondent's [Fiore] business by paying for dinners at nice restaurants and buying DP gifts. . . .

60. During Murrysville Community Day, DP worked with Respondent [Fiore] on a booth to promote Respondent's therapy practice. . . .

. . . .

62. Respondent [Fiore] gave DP hugs both in therapy sessions and outside of therapy sessions. . . .

63. Respondent [Fiore] and DP telephoned each other every day. The phone calls usually took place at ten o'clock in the evening. . . .

64. Respondent [Fiore] gave DP her home telephone number and her cell phone number. . . .

65. During the course of the therapeutic relationship, Respondent [Fiore] would tell DP her problems. . . .

66. During the course of the therapeutic relationship, Respondent [Fiore] confided in DP about many personal matters including that Respondent's [Fiore] daughter was brainwashed and did not want to be around Respondent [Fiore] anymore, that Respondent [Fiore] had to go to Chicago to rescue her daughter and get her dehypnotized, that Respondent [Fiore] did not think that Respondent's [Fiore] sister was a good mother to her adopted daughter, that her Aunt Mary never got married and had a gambling problem, that Respondent's [Fiore] two brothers inherited the family business from her father, and that one of Respondent's [Fiore] brothers has a mentally retarded son. . . .

67. During the times when Respondent [Fiore] and DP saw each other outside of the therapy setting, DP was continuing to see Respondent [Fiore] in therapy at least once a week.

. . . .

70. In mid 2005 until September 2006, the relationship between Respondent [Fiore] and DP became 'crazy' where one minute they would be friends and the next minute Respondent [Fiore] would call DP and tell her that nobody would ever love her like Respondent [Fiore] does and that DP would be alone forever. . . .

71. There were times during the therapeutic relationship when the friendship between DP and Respondent [Fiore] would end because of boundary concerns. Later on, Respondent [Fiore] would call DP and tell her she missed her and wanted her back in Respondent's [Fiore] life. . . .

. . . .

74. DP felt that she had trusted Respondent [Fiore] and that Respondent [Fiore] had abused that trust. . . .

75. DP felt that Respondent [Fiore] had controlled and manipulated DP. . . .

. . . .

84. Clinical treatment records for DP do not exist between the date therapy commenced in 1997 until November 9, 1999. . . .

85. Respondent's [Fiore] therapy records for DP do not indicate the nature of DP's presenting problem. . . .

86. Respondent's [Fiore] therapy records for DP do not include a psychosocial history. . . .

87. Respondent's [Fiore] therapy records for DP do not include treatment plans. . . .

88. Respondent's [Fiore] therapy records for DP do not include a consent for treatment. . . .

89. Respondent's [Fiore] therapy records for DP do not reflect any improvement in DP's condition over the 9 years that Respondent [Fiore] provided therapy to DP.

90. Respondent's [Fiore] therapy records for DP do not reflect any improvement in DP's condition over the 9 years that Respondent [Fiore] provided therapy to DP. . . .
. (Citations omitted).

Final Adjudication and Order, March 22, 2010, (Final Adjudication), Findings of Fact Nos. 10-13, 18, 21-24, 30-32, 34, 36, 38, 41, 45-46, 50-52, 54, 57-60, 62-67, 70-71, 74-75, 84-90 at 4-14; R.R. at 1352a-1362a.

The Board concluded that Fiore engaged in unprofessional conduct by developing a personal and social relationship with DP and by sharing personal information with DP (Count One of Order to Show Cause), by failing to establish appropriate boundaries that should have existed (Count Two), failed to promote self determination and work toward psychological independence and encouraged DP's dependence on Fiore (Count Three), failed to refer DP to another counselor when they had a personal/social relationship (Count Four), failed to keep accurate records concerning a history (Count Five), failed to show in her records any improvement in DP's condition (Count Six), and failed to keep accurate records (Count Seven). The Board revoked her license. The Board used the National Association of Social Workers' 1996 Code of Ethics (NASW's Code of Ethics) for the prevailing standard of professional conduct. The Board found DP more credible than Fiore. The Board also concluded that DP's testimony was corroborated by the testimony of Craig, Hardy, Ison, and Pastor Lawrence.

With respect to the issue of boundary violations, the Board concluded:

It is clear from the record that Respondent [Fiore] maintained dual and multiple relationships with DP. In considering whether these relationships were exploitative or had the potential to exploit, the Board looks to a variety of factors including: (1) the power differential between the therapist and patient, and (2) the duration of the therapeutic relationship. Here, the power differential between Respondent [Fiore] and DP was great. DP was in a vulnerable state when she began counseling with Respondent [Fiore]. She was experiencing difficulty in her marriage and had emotional problems such as self-esteem and weight loss. In addition, the therapeutic relationship between Respondent [Fiore] and DP lasted nine years, a significant amount of time. . . . During that period of time, Respondent [Fiore] and DP had close,

continuous contact, either in person or by phone. This lengthy and personal relationship only enhanced the power differential between Respondent [Fiore] and DP rendering DP more dependent on Respondent [Fiore]. . . . Respondent [Fiore] knew or should have known that DP's vulnerable state of mind would be particularly susceptible to Respondent's [Fiore] influence. Respondent [Fiore] allowed the relationship to become a friendship. She also permitted DP to become involved in her business by having her create a business logo and poster promoting Respondent's [Fiore] practice and by participating in events to promote Respondent's [Fiore] practice. Accordingly, the Board finds that Respondent [Fiore] engaged in unprofessional conduct by engaging in multiple relationships with DP. . . . These multiple relationships were exploitative and harmful to DP's well being.

Final Adjudication at 29-30; R.R. at 1377a-1378a.

With respect to the issue of self-determination, the Board found Miller more credible than Bernstein. The Board also determined:

Rather than providing DP with the tools she needed to live a healthy, independent life, Respondent [Fiore] insinuated herself into many areas of DP's life, making DP more dependent on her. Instead of taking steps to promote self reliance and independence in DP, Respondent's [Fiore] relationship with DP became more enmeshed over time.

Final Adjudication at 34; R.R. at 1382a

The Board also found that because of the dual relationship between Fiore and DP, Fiore had a duty to refer DP to another therapist which she did not do. The Board dismissed Count Eight of the Rule to Show Cause which referred to

the abrupt termination of therapy because there was insufficient evidence to conclude that Fiore improperly terminated treatment.

IV. Issues Raised by Fiore

Fiore contends that she was denied due process because she did not have adequate notice of the specifics of DP's testimony. Fiore also contends that she was denied due process because there was a serious difference between the allegations in the Order to Show Cause regarding improper sexual misconduct and the evidence produced at the hearing. Fiore also contends that she was denied due process because there were no safeguards in the administrative hearing process such that the allegations of serious violations and misconduct did not have to be verified prior to the Commonwealth's prosecution. Fiore also contends that she was denied due process because the Board's Adjudication was, to a large extent, based on credibility determinations, which were made without the Board members being present for all of the testimony. Fiore also contends that she was denied due process because there was insufficient notice of the standards required of clinical social workers in recordkeeping and with respect to boundary violations and that she was denied due process because the Board was not an impartial adjudicator. Fiore also contends that the Board did not justify or explain its reasoning for imposing the harshest penalty available, revocation of Fiore's license, and the penalty was so severe under the facts of the case that the decision was capricious or arbitrary.⁵

⁵ This Court's review is limited to a determination of whether constitutional rights were violated, an error of law was committed or whether necessary findings of fact were not supported by substantial evidence. Barran v. State Board of Medicine, 670 A.2d 765, 767 n.3 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 544 Pa. 685, 679 A.2d 230 (1996).

V. Notice

Initially, Fiore contends that she was denied due process because she did not have adequate notice of important facts that DP was going to testify about, which deprived her of a full and fair opportunity to be heard. Fiore asserts that there was no allegation in the Rule to Show Cause that DP informed other health care providers or counselors of Fiore's allegedly improper relationship with DP and the alleged abuse. Until DP testified that she spoke with other professionals about Fiore's treatment, Fiore had no reason to believe that DP consulted with other professionals about her treatment. Had Fiore known that DP would testify concerning her conversations with these professionals, Fiore asserts she could have investigated further to aid her counsel on cross-examination.

Due process of law is provided when the accused is informed with reasonable certainty of the nature of the accusation lodged against him, he has timely notice and opportunity to answer the charges against him and to defend against the attempted proof of the accusation, and that the proceedings are conducted in a fair and impartial manner. Pittsburgh Press Company v. The Pittsburgh Commission on Human Relations, 287 A.2d 161 (Pa. Cmwlth. 1972), *affirmed*, 413 U.S. 376 (1973).

Here, Counts One, Two, and Three of the Order to Show Cause dealt with charges that Fiore engaged in unprofessional conduct by violating boundaries that should have been maintained between Fiore and DP. The Order to Show Cause went into great detail outlining the charges against Fiore. A review of the record reveals that Fiore presented a defense to the charges: that the contacts with

DP outside the office were boundary crossings and not boundary violations and were done in the best interests of DP. A review of the record also reveals that DP in her extensive testimony only briefly referred to the other professionals she contacted. Further, the Board made no findings with respect to DP's contacts with other professionals.

In Gombach v. Department of State, Bureau of Commissions, Elections & Legislation, 692 A.2d 1127 (Pa. Cmwlth. 1997), this Court explained the fundamental requirements of due process. Joseph Gombach (Gombach), a notary public, had reapplied for his commission. In the application Gombach included a copy of a conviction that reflected a conviction for federal income tax evasion and that he was sentenced to six days incarceration, six months home confinement, three years probation and a \$5,000.00 fine. The Department of State, Bureau of Professional and Occupational Affairs (State) informed Gombach that his conviction provided the Secretary of State with good cause to reject his notary application. Gombach did not withdraw his application. The State issued an Order to Show Cause. Gombach answered. A hearing was held in which Gombach's conviction was placed into evidence. The Secretary rejected Gombach's application. Gombach, 692 A.2d at 1129.

Gombach challenged the Secretary's decision in this Court. Gombach argued that Section Five of the Notary Public Law⁶ which requires a notary public to be of "good moral character" was unconstitutionally vague in violation of his right to due process contained in Article 1, Section 1 of the Pennsylvania

⁶ Act of August 21, 1953, P.L. 1323, *as amended*, 57 P.S. §151.

Constitution. Without a specific definition of “good moral character,” Gombach argued that he had no way of knowing what conduct was prohibited in his capacity as a notary public and was not given proper notice as required by due process. Gombach, 692 A.2d at 1129.

This Court determined:

The right to due process of the law is equally applicable to administrative proceedings as it is to judicial proceedings. The fundamental requirements of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. . . . Procedural due process requires that the individual be given adequate information with which to prepare a defense. . . . For notice to be adequate, it must at the very least contain a sufficient listing and explanation of any charges against the individual. . . .

The Order to Show Cause issued by the Department in this case specifically alleged that Gombach’s guilty plea to income tax evasion indicated that he did not possess sufficient good moral character to hold a notary commission. The Order also referred to Gombach’s conviction record and to Section 5 of NPL [Notary Public Law]. The record shows that Gombach was represented by counsel at the administrative hearing and that Gombach testified as to the events underlying his guilty plea. Gombach also presented a character witness who testified as to whether she believed Gombach was of good moral character. Further, Gombach offered letters of reference from five members of his community. Thus, the record shows that Gombach was able to prepare a defense to the allegation in the order.

This was not a situation where Gombach was simply told that he lacked good moral character. In such a situation, we believe notice would have been inadequate. Rather, Gombach was fully informed of the charges against him and the statutory section involved. Moreover, the

Secretary acted in conformity with the procedures required by the Administrative Agency Law. . . . Under the facts presented, we believe that Gombach received the minimum protection required under due process of law. (Citations omitted).

Gombach, 692 A.2d at 1129-1130.

Here, Fiore received the Order to Show Cause which listed the Counts lodged against her. As in Gombach, Fiore was fully informed of the charges against her. Fiore was represented by counsel who cross-examined DP and other witnesses who testified on behalf of the Commonwealth. Fiore herself testified concerning her treatment of DP and presented witnesses on her behalf. She was able to present a defense. As in Gombach, Fiore received the minimum protection required under due process of law.

VI. Sexual Misconduct

Fiore next contends that she was denied due process as there was a serious variance between the allegations in the Order to Show Cause regarding improper sexual misconduct and the evidence produced at the hearing, which deprived Fiore of a full and fair opportunity to be heard and to defend herself. The Order to Show Cause averred that there was a friendship between Fiore and DP. According to Fiore, the Order to Show Cause alleged that she may have engaged in a lesbian relationship with DP.

The Order to Show Cause provided:

20. During the course of the therapeutic relationship, Respondent [Fiore] would often criticize DP's current

boyfriends, and inquired as to whether DP was interested in a lesbian relationship.

21. During the course of the therapeutic relationship, Respondent [Fiore] would repeatedly advise DP that she loved her and would frequently give her hugs.

22. During the course of the therapeutic relationship, Respondent [Fiore] and DP would frequently argue and Respondent [Fiore] would often go into rages, become possessive of DP and accuse DP of rejecting Respondent [Fiore] and her love.

Order to Show Cause, May 18, 2008, Paragraph Nos. 20-22 at 4-5; R.R. at 41a-42a.

Fiore argues that the allegations averred that Fiore was either involved in a sexual relationship with DP or attempted to initiate one. Fiore concedes that if that were the case, it would have been a clear boundary violation which would have warranted a revocation of her license. Fiore and her counsel focused on preparing to face and defend against these “inflammatory and serious allegations at the hearing.” Fiore’s Brief at 18. However, at the hearing there was no evidence introduced to support the allegation that Fiore engaged in or attempted to engage in a sexual relationship with DP. Because of the difference between what was alleged in the Order to Show Cause and what was presented at the hearing, Fiore asserts that she was denied a fair hearing and due process because she was deprived of fair notice of the charges brought against her.

Fiore fails to cite any statute, Board regulation, or case law which states that in order to sustain a violation under a count in an order to show cause, the Commonwealth must prove every factual allegation contained in an order to

show cause. The first three Counts of the Order to Show Cause related to boundary violations. Although the Commonwealth did not prove the allegation contained in Paragraph No. 20, there was ample evidence concerning boundary violations by Fiore. Further, although Paragraph No. 20 referred to a lesbian relationship, Fiore was not charged with engaging in sexual misconduct. Also, the Board did not make any findings of fact concerning sexual misconduct. Fiore was charged with engaging in unprofessional conduct by engaging in boundary violations. This Court finds no deprivation of due process.

VII. Verification

Fiore next contends that she was denied due process because there were no safeguards in the administrative hearing process so that allegations of serious violations and misconduct must be verified prior to the Commonwealth proceeding with a prosecution. In other words, Fiore believes that the Commonwealth should obtain a verification from DP for the allegations made in the Order to Show Cause. Fiore admits that there is no requirement that the factual averments be verified but argues that they should be. Once again, Fiore fails to cite any case law, statute, or regulation in support of her theory. The Commonwealth is the party here, not DP. This Court will not enact such a change in the law.

VIII. Credibility

Fiore next contends that she was denied due process because the Board's adjudication was largely based on credibility determinations, which were

made without the Board members required to be present for all of the testimony, so that Fiore did not have a full and fair opportunity to defend herself.

Fiore concedes that this Court has already determined that it is not a violation of a party's due process rights if the board members of an administrative agency are authorized to determine the credibility of testimony from reading a transcript. Cavanaugh v. Fayette County Zoning Hearing Board, 700 A.2d 1353 (Pa. Cmwlth. 1997). However, Fiore argues that because the hearing was divided over four different days, some Board members apparently observed the testimony of some witnesses and not others and only observed either the direct or cross-examination of a particular witness. Fiore argues that this is different than permitting a Board member to review a transcript without viewing any of the proceedings. Again, Fiore cites no support for her proposed interpretation. There is no requirement that a Board member must either be present for all testimony or present for none but may not be present for only certain parts as Fiore suggests. This issue is without merit.

IX. Standards

Fiore next contends that she was denied due process because there was insufficient notice of the standards required of clinical social workers in record keeping and with respect to boundary violations. She argues that she did not have sufficient notice of the standards employed by the Board to determine that she failed to maintain sufficient records and engaged in boundary violations.

The Commonwealth asserts that Fiore waived this issue by not objecting to the use of the NASW Code of Ethics during the hearing especially when Fiore's counsel questioned Miller extensively concerning the NASW Code of Ethics. Failure to raise an issue before an administrative agency results in waiver of that issue before this Court. Wing v. Unemployment Compensation Board of Review, 496 Pa. 113, 436 A.2d 179 (1981). This Court agrees with the Commonwealth that Fiore waived this issue.

X. Bias.

Fiore next contends that she was denied due process because the Board was not an impartial adjudicator as evidenced by many of the questions and comments made by Board members during the hearing. She argues that the Board members' questioning and comments crossed the line of neutrality because follow up questions and comments were akin to cross-examination. For example, she states that a Board member prefaced a question to DP as to whether she engaged in a romantic relationship with Fiore by stating, "what you're communicating sounds romantic." Other questions led Fiore to believe that the Board was attempting to solicit from DP that she did have a romantic or sexual relationship with Fiore. Fiore also asserts that there were other questions and comments from the Board concerning how much Fiore was charging DP and what was covered by insurance. One Board member questioned DP as to whether her insurance would cover referrals made by Fiore to other providers and commented, "I got the sense that you were told that you had to go. You really needed this. And it seems to me then this would add up to a lot of money." N.T. 12/09/08 at 212; R.R. at 564a. The Commonwealth and the Board's attorney both advised the Board member not to

make such comments. Fiore asserts that this comment clearly implied that the Board member believed that Fiore received some sort of financial benefit from the referrals even though there were no such allegations in the Order to Show Cause. Additionally, Fiore asserts that questions about insurance coverage and billing were inappropriate. Her attorney lodged objections to many questions which were sustained when appropriate. However, Fiore asserts that these Board comments established that the Board was not impartial.

Fiore was entitled to a fair and impartial tribunal. The mere possibility of bias is sufficient to “raise the red flag of protection offered by the procedural guaranty of due process.” Lyness v. Commonwealth, 529 Pa. 535, 544, 605 A.2d 1205, 1208 (1992).

This Court discerns no bias. In her reply brief, Fiore points to a case decided by the Board, Commonwealth v. Lindstrom, No. 0255-69-05 (Filed March 2007), in which a social worker was found to have committed boundary violations in the nature of a social relationship with a patient, improper recordkeeping, and excessive billing based upon the number of sessions. Fiore asserts that the Board members asked questions regarding billing and the number of sessions because of Lindstrom. Even if that were so, there was nothing in the Order to Show Cause regarding billing and the number of sessions that factored into the Board’s decision. These questions did not indicate bias and, at most, were harmless error.

XI. Arbitrary and Capricious Penalty

Finally, Fiore contends that the Board did not justify or explain its reasoning for imposing the harshest penalty available, revocation of her license. While Fiore admits that the Board has the authority to take disciplinary action against licensed social workers, she asserts that this Court should reverse when the penalty or sanction imposed is so harsh under the facts that it will be deemed a manifest and flagrant abuse of discretion or an arbitrary execution of the agency's duties or functions. Ake v. Bureau of Professional and Occupational Affairs, 974 A.2d 514 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 604 Pa. 708, 987 A.2d 162 (2009).

In Slawek v. State Board of Medical Education and Licensure, 526 Pa. 316, 586 A.2d 362 (1991), an administrative complaint was lodged against Paul M. Slawek, M.D. (Dr. Slawek) for failure to secure medical malpractice insurance in a timely manner after he returned to his practice. The State Board of Medical Education and Licensure (State Board) revoked Dr. Slawek's license for three months and placed him on probation thereafter. Slawek, 526 Pa. at 319, 586 A.2d at 364.

Dr. Slawek appealed to this Court. This Court determined that the State Board did not abuse its discretion because its determination was based on Section 701(f) of the Health Care Services Malpractice Act⁷, 40 P.S. §1301.701, which provided that a physician's failure to carry medical malpractice insurance "shall result in the suspension or revocation of the health care provider's license by

⁷ Act of October 15, 1975, P.L. 390, *as amended*. This Act was repealed and replaced by the Act of March 20, 2002, P.L. 154, *as amended*, 40 P.S. §§1303.101 – 1303.1115.

the licensure board.” However, this Court reversed because it determined that the result was unduly harsh based on the facts of the case. Slawek, 526 Pa. at 319, 586 A.2d at 364.

The State Board appealed to our Pennsylvania Supreme Court which phrased the issue on appeal as whether this Court exceeded its scope of review when it reversed the order of the State Board. Our Pennsylvania Supreme Court reversed and reinstated the State Board’s order:

In the absence of bad faith, fraud, capricious action or abuse of power, reviewing courts will not inquire into the wisdom of the agency’s action or into the details or manner of executing agency action. It is conceivable, of course, that our requirement that the agency not act capriciously might, in a given case, be coterminous with Commonwealth Court’s requirement in its Hendrickson [v. State Board of Medicine, 529 A.2d 78 (Pa. Cmwlth. 1987)] cases that the penalty be reasonable in light of the violation. As a general rule, however, Commonwealth Court’s statement of its rule is overbroad in that it invites the court to substitute its view of what it [sic] reasonable for that of the agency. For that reason, we believe that the proper review of the agency’s action, assuming that it is not defective under the self-explanatory requirements of the Administrative Agency Law, is *not* whether its order was reasonable, but whether it was made in ‘accordance with law’ (i.e., whether it was fraudulent or capricious). . . . [A] reviewing court may interfere in an agency decision only when ‘there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agencies duties of functions.’ . . . Since there is no allegation of fraud or bad faith . . . our inquiry in this case resolves itself into whether the agency’s action was capricious or a flagrant abuse of discretion.

. . . .

Slawek practiced medicine for a nine month period without securing professional malpractice insurance in

blatant violation of law. . . . The board considered mitigating factors, viz., that Slawek was ‘thrust into a situation where he unexpectedly [sic] had to supply medical services,’ . . . and was mindful of its duty to deter others who might wish to engage in similar irresponsible conduct. It is self-evident that the board’s decision was not capricious or a flagrant abuse of discretion, and it is not for this court or any reviewing court to substitute its judgment of what is reasonable for that of the agency whose decision is being reviewed. (Emphasis in original. Footnotes and citation omitted).

Slawek, 526 Pa. at 322-324, 586 A.2d at 365-366.

Fiore argues that the Board failed to adequately explain its reasoning for imposing the harshest penalty possible. This Court does not agree. The Board stated in its adjudication:

Respondent [Fiore] completely disregarded appropriate boundaries in her professional relationship with DP. Clearly, Respondent [Fiore] breached her duty to avoid exploitative dual/multiple relationships with DP. Respondent’s [Fiore] treatment of DP fostered dependence rather than independence. Respondent’s [Fiore] record-keeping was seriously below standard.

In determining the appropriate sanction to impose in this case, the Board recognizes that a clinical social worker who provides therapy to a client is ‘the captain of the ship.’ The clinical social worker is in charge of setting the course of therapy and making changes in therapy where needed. In this case, Respondent [Fiore] became DP’s friend and allowed DP to participate in the promotion of her therapy practice. Rather than set appropriate boundaries in the relationship, Respondent [Fiore] allowed DP to join her church, met her on Sundays at church, went to brunch together after church and then went on shopping excursions together. Respondent [Fiore] gave DP her home phone number and cell phone number. The two talked regularly by night by

phone and spent time together at art exhibits, at restaurants, with Respondent's [Fiore] family and with DP's friends. Respondent [Fiore] gave DP gifts and lent her money to buy items she wanted. Respondent [Fiore] shared detailed personal information with DP. She allowed DP to create a logo and other artwork for the promotion of Respondent's [Fiore] therapy practice. Respondent [Fiore] allowed DP to participate in promotional events for her therapy practice. In some instances, Respondent [Fiore] allowed DP to dictate therapy. For example, when DP did not want Respondent [Fiore] to take notes of sessions, Respondent [Fiore] crossed out notes or failed to document sessions.

Although Respondent [Fiore] contends that she always put DP's interest ahead of her own and did not derive any benefit from their relationship, the Board believes otherwise. Respondent [Fiore] benefited by DP's work in promoting her therapy practice. Respondent's [Fiore] relationship with DP was exploitative. Allowing the relationship to move from therapist/patient to friend/business participant encouraged dependency in DP rather than self-determination.

The Board believes that Respondent's [Fiore] flagrant disregard for professional standards warrant [sic] the most severe sanction. Accordingly, the Board believes that the only appropriate sanction in this case is revocation.

Final Adjudication at 42-43; R.R. at 1390a-1391a.

Contrary to Fiore's contention, the Board clearly explained its reasoning for revoking the license. As in Slawek, the Board's decision was not capricious or a flagrant abuse of discretion.⁸

⁸ The cases cited by Fiore, Blake v. State Board of Funeral Directors, 770 A.2d 380 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 567 Pa. 729, 786 A.2d 990 (2001) and Ake are distinguishable. In Blake, this Court determined that certain key findings of fact were **(Footnote continued on next page...)**

Fiore also asserts that the Board's decision was capricious and arbitrary when compared to other boundary violation cases. However, seven of the eight adjudications by the Board cited by Fiore were consent agreements where the Board did not conduct a hearing or take testimony. In the one case cited that was adjudicated, the social worker's license was revoked.

Accordingly, this Court affirms.

BERNARD L. MCGINLEY, Judge

(continued...)

unsupported by substantial evidence which was not the case here. In Ake, this Court vacated the adjudication of the Bureau of Professional and Occupational Affairs, State Board of Accountancy which revoked Kevin Allen Ake's (Ake) certificate of certified public accountant and license to practice accounting because of a 2002 criminal harassment conviction in Illinois. This Court determined that the offending conduct occurred seven years prior to Ake's attempt to reinstate his Pennsylvania license which had lapsed when he moved to Illinois and that the harassment occurred in one brief two week period. Here, the conduct was ongoing over a period of years and not nearly so remote in time.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gail R. Fiore, LCSW, :
Petitioner :
 :
v. :
 :
Bureau of Professional and :
Occupational Affairs, State :
Board of Social Workers, :
Marriage and Family Therapists :
and Professional Counselors, : No. 641 C.D. 2010
Respondent :

ORDER

AND NOW, this 14th day of June, 2011, the order of the Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge