

The National Psychologist Article

In a previous column in this Newsletter, I described the potential for deprivation of due process that exists in the way some Boards of psychology operate. Of course, not all Boards do so but the fact that any Boards tolerate this deprivation of due process is a procedural matter that demands reform. I was surprised and somewhat distressed that some highly respected colleagues e-mailed me following the publication of the last article indicating that, when one becomes licensed as a psychologist in a particular state, one accepts, for better or for worse, the rules and regulations of that Board and if those rules include limited due process, so be it.

One matter of concern is that Board investigators are usually not mental health professionals, nor do they have training in complex mental health issues. When a complaint against a psychologist is made, these investigators, at times, treat them as valid on their face and gather information that verifies the complaint, failing to gather any information that may exonerate the psychologist. This, unfortunately, leads to a situation in which a psychologist, who has done nothing wrong, is put in the position of having to prove that she/he did nothing wrong, rather than the Board having to prove wrongdoing. This results in a feeling of being guilty until proven innocent. Unintentional errors on the part of a psychologist, such as the failure to document a telephone call or the fact that a particular page of clinical notes did not get copied by one's secretary, may be treated as evidence of the psychologist's attempt to hide something and, consequently, of his or her guilt.

In a recent case, for instance, a psychologist had a complaint filed against her by the father of a child who contended that the psychologist performed a negligent evaluation which resulted in the termination of his parental rights. The father also contended that he had custody of the child. The

investigator proceeded on the assumption that the allegations were true. Had she conducted a complete investigation, she would have found out that the mother, in fact, had custody because there had been a finding in Court that the child had been sexually abused by the father. Had she interviewed the mother, which she never did, the investigator could have gotten a copy of these Court findings from the mother. She would also have found out that the mother had taken the son to the psychologist for emergency treatment following that finding in Court, due to suicidal ideation surrounding forced supervised visitation, rather than for a forensic evaluation.

The Board, proceeding on the basis of the investigator's report, hired an expert, who opined that the psychologist in question had deviated from the standard of care because she had not verified the truthfulness of the allegations of sexual abuse, nor had she sought a Court Order to perform the evaluation. These procedures could well have been appropriate in a forensic evaluation but not in an emergency clinical intervention. The expert, of course, based on the incomplete investigative report, had no way of knowing what the actual facts of the case were.

When the psychologist was formally charged by the Board, she demanded a full Hearing in front of an Administrative Law Judge. The Administrative Law Judge heard extensive testimony from both the Board's expert and from independent experts retained by the psychologist's legal team. The Administrative Law Judge concluded that the investigation was flawed and that the Board had not met its burden and recommended dismissal of all charges. The Board ultimately did dismiss the charges but only after the psychologist in question had paid \$150,000.00 in legal fees over and above what her malpractice insurance covered. The Board would not admit that the investigation was flawed, contending that, based on "newly discovered evidence" presented at the Hearing, they were dismissing

charges. Of course, that evidence was not "newly discovered", it had been there all along. The investigator had failed to include that material in her report.

Is this negligence atypical? Sadly, the answer is no. In consulting on many of these cases, I have found that flawed investigative procedures underlie a number of Board complaints. These complaints are ultimately found to be without merit but not without serious financial and emotional cost to the psychologist involved.

As noted in my previous article, there is a desperate need for Licensing Board procedures to be revised. We all realize that the work that Licensing Boards do is important and is designed to protect the consumer, but if the procedures move forward based on flawed investigative procedures, no one achieves anything.

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Biographical Sketch

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