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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	: FINAL DECISION AND ORDER
	:	
ZE'EV BAR-AV, Ph.D.,	:	LS0303251PSY
RESPONDENT	:	

PARTIES

The parties to this action for purposes of §227.53, Wis. Stats., are:

Ze'ev Bar-Av, Ph.D.
P.O. Box 45276
Madison, WI 53744

Psychology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on July 28-August 1, 2003, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney John R. Zwieg. Dr. Bar-Av appeared *pro se*.

The ALJ filed a Proposed Decision on October 1, 2003. Dr. Bar-Av filed a written response on October 4. Mr. Zwieg filed objections on October 6. On October 9, Dr. Bar-Av filed a request for extension of the

October 16 deadline. On October 27, Attorney George B. Strother of Krekeler Strother, S.C., 15 N. Pinckney St., Suite 200, Madison, WI 53701-0828 filed a Notice of Retainer and Objections for Dr. Bar-Av. Mr. Zwieg filed objections on October 29.

Based on the entire record in this case, including the testimony and other evidence presented at the hearing, the Proposed Decision filed by the ALJ on October 1, 2003, and the objections filed by both parties, the Psychology Board issues this Final Decision and Order.

FINDINGS OF FACT

1. Ze'ev Bar-Av, Ph.D., (DOB 9/28/41) is a Wisconsin licensed psychologist. His license was granted on June 27, 1978. Dr. Bar-Av's current address is P. O. Box 45276 in Madison, Wisconsin.
2. In April of 1992, Mr. A and Ms. B had been married for twenty-one years. From April 2, 1992, through March 4, 1993, they saw Dr. Bar-Av for therapy at Psychiatric Associates in Beaver Dam, Wisconsin. During that time, Mr. A and Ms. B had forty-nine joint sessions with Dr. Bar-Av, most of which lasted for one hour.
3. Dr. Bar-Av also provided individual psychotherapy to Mr. A and Ms. B. Mr. A had twelve individual sessions with Dr. Bar-Av from April 2, 1992, through December 17, 1992. Ms. B had forty-six individual sessions with him from April 23, 1992, through March 2, 1993.
4. Between April 2, 1992, and March 2, 1993, Mr. A had sixty-one sessions with Dr. Bar-Av (12 individual and 49 joint), while Ms. B had ninety-five sessions with Dr. Bar-Av (46 individual and 49 joint).
5. During the course of therapy, Dr. Bar-Av obtained Mr. A's psychiatric treatment records. Those records indicated that in 1978, Mr. A had experienced sexual dysfunction and very significant jealousy and insecurity relating to Ms. B's first husband.
6. At the beginning of treatment, Dr. Bar-Av identified Mr. A as quite guarded and having significant trust issues. He also noted that Mr. A had feelings of insecurity and jealousy. Dr. Bar-Av's treatment goal was to have Mr. A open up emotionally.
7. During individual sessions, Mr. A revealed a history of having been abused as a child, resulting in doubts about his masculinity and power. Mr. A told Dr. Bar-Av that he was concerned his wife would end their relationship after he revealed the abuse to her.
8. Dr. Bar-Av provided therapy intended to break down Mr. A's rigid and emotionally distant defenses. As a result, Mr. A's insecurity and feelings of vulnerability increased, and he became dependent upon Dr. Bar-Av, who he saw as quite powerful and, at times, as quite threatening.
9. In March of 1993, Dr. Bar-Av left Psychiatric Associates and relocated his practice to Madison, Wisconsin. In their last joint therapy sessions prior to his departure, Dr. Bar-Av discussed with Mr. A and Ms. B issues relating to termination of therapy. Dr. Bar-Av noted that Mr. A had abandonment issues as a result of the termination of therapy caused by his move. He also noted that Mr. A had remarked that he had never been as close to another male as he had become with Dr. Bar-Av during that year. Dr. Bar-Av told Ms. B and Mr. A that, if the need arose, they were welcome to resume therapy with him in Madison.

10. Thereafter, Mr. A's and Ms. B's marital relationship quickly began to deteriorate and in May of 1993, Mr. A and Ms. B resumed joint relationship therapy with Dr. Bar-Av. Mr. A and Ms. B continued to live in Beaver Dam and traveled to Madison for joint and individual sessions. Dr. Bar-Av conducted the therapy sessions in the living room of his residence in Madison. In addition to the joint sessions, both Mr. A and Ms. B resumed individual psychotherapy with Dr. Bar-Av.
11. Dr. Bar-Av does not have any treatment or billing records relating to the professional services he provided to Mr. A or Ms. B in Madison. He contends that all the records were lost due to a computer malfunction.
12. Mr. A's and Ms. B's money market checkbook shows the following payments made to Dr. Bar-Av for psychotherapy before that account was closed:

06/17/93 \$188	07/02/93 \$150	07/15/93 \$150	07/23/93 \$150
07/29/93 \$150	08/05/93 \$150	08/12/93 \$280	08/20/93 \$150
08/24/93 \$150	09/02/93 \$150	09/09/93 \$150	09/16/93 \$150
09/23/93 \$150	09/30/93 \$150	10/07/93 \$180	10/22/93 \$787.50
11/18/93 \$825	12/23/93 \$630	01/21/94 \$600	02/18/94 \$900
03/24/93 \$750	04/23/94 \$600	05/19/94 \$675	06/23/94 \$750
07/21/94 \$750	08/17/94 \$900	09/??/94 \$675	10/26/94 \$750
11/22/94 \$750	12/07/94 \$750		

13. During therapy, Mr. A told Dr. Bar-Av that he had the following three fears: Ms. B would leave him; Ms. B would move to Madison; and Ms. B would move in with Dr. Bar-Av.
14. Mr. A last saw Dr. Bar-Av for joint therapy in September or October of 1994. At that last session, Dr. Bar-Av provided Mr. A with the following advice: that he should find a new therapist; he should get some antidepressant medication; and he should get an attorney.
15. In December of 1994, Ms. B moved her residence to a location on the same side of Madison as Dr. Bar-Av's apartment. Ms. B continued to work in Beaver Dam until 1996. Ms. B's individual psychotherapy with Dr. Bar-Av continued through 1995.
16. Ms. B filed for divorce from Mr. A on May 9, 1995.
17. Ms. B had two-hour individual psychotherapy sessions with Dr. Bar-Av on the following dates in 1995:

January (3, 12, 19, 26)
February (2, 3, 9, 16, 17, 23)
March (2, 7, 9, 14, 21, 28)
April (4, 6, 11, 20, 25, 27)
May (4, 9, 16, 23, 30)
June (6, 13, 20, 29)
July (6, 11, 20, 25, 27)
August (3, 10, 17, 22, 31)
September (7, 14, 21, 28)
October (5, 12, 19, 26)
November (2, 9, 16, 30)
December (7, 14, 21, 28)
18. Ms. B maintains that her therapy with Dr. Bar-Av ended on December 28, 1995. Dr. Bar-Av does not recall when therapy ended and has no records to assist his recall.

19. Shortly after concluding therapy with Dr. Bar-Av, Ms. B asked him for assistance in finding a support group for people going through divorce. Dr. Bar-Av and Ms. B met at a local coffee shop to discuss her options. Ms. B also met occasionally with Dr. Bar-Av to discuss computer technology and issues related to the businesses Ms. B still owned with Mr. A.
20. From June 28, 1996, until September 16, 1996, Dr. Bar-Av lost his driving privileges as a result of a seizure. During the time Dr. Bar-Av was unable to drive, Ms. B provided him with transportation by driving him in her car, and the two developed a personal relationship, which continues to this date.
21. Mr. A's and Ms. B's marriage ended with a judgment of divorce on July 18, 1996.
22. Ms. B estimates that she and Dr. Bar-Av first engaged in sexual contact in April of 1998.
23. In June 1998, Mr. A sought psychotherapy with Nina Bartell, Ph. D. She diagnosed Mr. A as having an adjustment disorder with mixed anxiety and depressed mood.
24. In July of 1998, Ms. B moved back to Beaver Dam.
25. Ms. B acknowledged that between April of 1997 and March of 1999, she gave Dr. Bar-Av the following: \$5000.00, a 1996 Volvo automobile for his use, and a computer and printer valued at approximately \$3700.00.
26. In September of 2000, Ms. B provided Dr. Bar-Av with \$1980.00, in the form of a check.

CONCLUSIONS OF LAW

1. The Psychology Examining Board has jurisdiction in this matter pursuant to §455.09, Wis. Stats.
2. By entering into a sexual relationship with Ms. B, which Dr. Bar-Av knew or should have known would have a harmful impact upon Mr. A, his former client, he engaged in unprofessional conduct in violation of §§ Psy 5.01 (2) and (4), Wis. Admin. Code.
3. By entering into a personal and sexual relationship with Ms. B, his former client, he engaged in unprofessional conduct in violation of §§ Psy 5.01 (14) and (17), Wis. Admin. Code.

ORDER

IT IS ORDERED that the license to practice as a psychologist in the State of Wisconsin issued to Ze'ev Bar-Av is revoked as of the date of this Order.

IT IS FURTHER ORDERED that Ze'ev Bar-Av pay the costs of the Department of Regulation and Licensing in this matter, to be determined and set in a separate cost order.

EXPLANATION OF VARIANCE

The Psychology Examining Board reviewed the record of this disciplinary proceeding, including the testimony and other evidence presented at the hearing, the ALJ's Proposed Decision, and the objections filed by both parties. The Board adopted the Findings of Fact and Conclusions of Law prepared by the ALJ but it varied from the proposed order.

The recommended order of a two-year suspension would be *ultra vires*. Section 457.09, Stats., grants the Psychology Examining Board the power to reprimand a licensee, to revoke a license, to limit a license, or to suspend a license "for a period not exceeding one year." Dr. Bar-Av's actions resulted in a serious dual relationship violation and an egregious crossing of professional boundaries. A suspension of one year or less would unduly depreciate the seriousness of Dr. Bar-Av's conduct, and revocation is fully justified. Faced with its available disciplinary alternatives, the Board varies from the ALJ's recommendation and revokes Dr. Bar-Av's license.

The Board also orders Dr. Bar-Av to pay the costs incurred by the Department of Regulation and Licensing in investigating, prosecuting and adjudicating this case. Although she did not include an order for costs in her recommendation, the ALJ clearly intended such an order, as can be seen from her opinion, and the Board adopts the ALJ's reasoning in issuing its order. Because it contains a useful analysis of the evidence, as well as a clear statement that the imposition of costs is appropriate and was contemplated, the Administrative Law Judge's Opinion is included as an Appendix to this Order.

Signed and Dated: November 18th, 2003.

FOR THE PSYCHOLOGY EXAMINING BOARD

Mariellen Fischer, Ph.D.

Chair

APPENDIX

Administrative Law Judge's Opinion

In 1992, Dr. Bar-Av was working as a psychologist at Psychiatric Associates in Beaver Dam, Wisconsin. Beginning in April of 1992, Mr. A and Ms. B began seeing Dr. Bar-Av for marriage counseling. They continued counseling with Dr. Bar-Av at his office in Beaver Dam until March of 1993. During that period of time, Dr. Bar-Av counseled Mr. A and Ms. B both individually and as a couple. At the outset of therapy, Dr. Bar-Av identified Mr. A as being quite guarded and having significant trust issues. That opinion was supported by Stephen F. Seaman, Ph.D., the Division of Enforcement's expert witness, who testified on direct examination as follows:

Q: Is Exhibit 4 also a portion of the records that you reviewed from Psychiatric Associates regarding [Ms. B and Mr. A]?

A: Yes, it is.

Q: Dr. Seaman, was there -- well, why don't you tell us a little of what -- how you perceived Mr. A based on these treatment records. What was there about him that's significant to this matter?

A: What was significant is that the treatment notes would indicate that he was a rather emotionally shut down and rigid individual who was very jealous and controlling in the relationship, was very uncomfortable, had difficulty trusting others, including his wife, and over time during the course of treatment became much more open emotionally. And while that appeared to be helpful to his functioning, by his statements, and to the marriage, he also felt quite vulnerable and exposed during that process and was frequently concerned, it appeared from the record, that in some sense he was being scapegoated or identified as the problem in the marriage. (Tr. at 202).

The treatment notes also indicate that Mr. A was abused as a child. By revealing that information, along with other personal details about his life, Mr. A came to trust and depend upon Dr. Bar-Av. That perception was also supported by Dr. Seaman's testimony on direct:

Q: What do you remember about the older brother?

A: What I remember is that the treatment notes indicated that [Mr. A] reported that his older brother was abusive, particularly sexually abusive, but also in other ways as well.

Q: There was testimony yesterday that [Mr. A] had never disclosed that, at least one act of sexual abuse by his brother, to anyone prior to talking about it during the treatment session. Will you consider that, please?

A: Okay.

Q: All right. The fact that he did reveal this during a treatment session with Dr. Bar-av and his wife [Ms. B] present, does that enter into your opinion in any manner?

A: Yes, it does.

Q: And how is that?

A: Well, it factors in in several ways, in that it would appear based on the record that this was an important step forward in therapy and was most likely helpful to him and to the marriage but it also, based partly upon the record but also based upon my own clinical experience, that when an individual reveals this type of information for the first time, they are typically very, and the records would indicate that that was the case for [Mr. A], that he felt extremely vulnerable and insecure and much more anxious as a result of having revealed that information.

Q: All right. But it's a good thing to have him do that in therapy, isn't it?

A: Yes, it is, generally.

Q: Is there any reason why it wasn't a good idea here?

A: I don't have enough information to say one way or the other. The records would certainly indicate that it most likely was a positive, helpful thing.

Q: Can you tell us whether or not there is any indication that [Mr. A] became dependent on Dr. Bar-av?

A: The record would indicate that there were very frequent and long sessions, that [Mr. A] sought reassurance from Dr. Bar-av, and in that sense certainly he came to rely or depend upon him. That is not uncommon to have that happen in therapy, although when an individual reveals as much emotional material, it's not uncommon to become fairly dependent upon the therapist. (Tr. at 204).

Mr. A and Ms. B remained in therapy with Dr. Bar-Av after he left his office in Beaver Dam and relocated to Madison. Dr. Bar-Av counseled them both jointly and individually at his private residence. In 1994, Ms. B moved to Madison, near Dr. Bar-Av's residence. Ms. B filed for divorce from Mr. A in May of 1995, and continued receiving individual psychotherapy with Dr. Bar-Av until the end of 1995.

Although their therapeutic relationship ended in December of 1995, Dr. Bar-Av and Ms. B occasionally met with one another to discuss a variety of things, including how Ms. B might find a support group for those going through a divorce and computer technology matters. Beginning in late June of 1996, Dr. Bar-Av lost his driving privileges as a result of a seizure. From June until September of 1996, Ms. B provided Dr. Bar-Av with transportation by driving him in her car. During that time the two developed a personal relationship which continues to today. Initially, their relationship began with meetings in places such as a coffee shop or a

bookstore where they would have friendly discussions. By April of 1998, their relationship had become sexually intimate.

While their post-therapy relationship was developing, Ms. B began giving Dr. Bar-Av various sums of money. For instance, in April of 1997, Ms. B gave Dr. Bar-Av \$5000.00 to assist him with problems he was apparently having with the federal government and the payment of child support. She again gave Dr. Bar-Av \$2000.00 in February of 1998 to invest in a psychotherapy business that would be conducted over the telephone. (Tr. at 474-477; 479).

In addition to the money that Ms. B gave to Dr. Bar-Av, she also bought Dr. Bar-Av a computer and printer in August of 1997, totaling approximately \$3700.00. (Tr. at 499-501). She also purchased a 1996 Volvo automobile for him to use. Ms. B purchased the vehicle in 1999, for \$23,000. Dr. Bar-Av has driven it ever since then. (Tr. at 491-496). Ms. B also deposited at least seven checks that Dr. Bar-Av received from his family in Israel into her account, and then wrote checks to him for those amounts. (Tr. at 503).

At issue in this case is the post-therapeutic relationship that developed between Dr. Bar-Av and Ms. B and whether such a relationship was in violation of the professional code of conduct imposed on licensed psychologists. There is no dispute that such a relationship developed and that it continues to the present day. However, the effect it had not only on Ms. B, but also on Mr. A, must be considered.

By his own admission, Mr. A was devastated upon learning that Ms. B and his former therapist, Dr. Bar-Av, had entered in to an intimate relationship. As a result, in early July of 1998, he sought treatment from Nina Bartell, a practicing psychologist, for his resulting anxiety and depression. Dr. Bartell's clinical notes as well as her testimony indicate that Mr. A's symptoms had become exacerbated as a direct result of discovering that Ms. B and Dr. Bar-Av were engaged in a sexual relationship. (Tr. at 436-438).

What makes Mr. A's discovery about his former wife and Dr. Bar-Av all the more disturbing is the fact that Dr. Bar-Av, having extensively treated Mr. A over a period of several years, had to have known that his involvement with Ms. B would negatively impact Mr. A. It is inconceivable to imagine any other effect that such a discovery would have had. Indeed, Dr. Seaman agreed with that conclusion. According to Dr. Seaman's written report, the process of therapy broke down Mr. A's rigid and emotionally distant defenses, which were most likely related to his history of physical and sexual abuse by his older brother. Through the therapeutic process, the report notes, Mr. A became dependent upon Dr. Bar-Av. In turn, Mr. A viewed Dr. Bar-Av as being quite powerful and threatening. In light of that, especially Mr. A's insecurity about "competitors" for his wife and his history of sexual dysfunction, Dr. Seaman concluded that "it is difficult to imagine a boundary violation which would have been more destructive than for Dr. Bar-Av to become involved with Ms. [B]." (Exhibit 11 at 5-6).

Because of the ensuing relationship that developed between Dr. Bar-Av and Ms. B, Dr. Seaman believed that Mr. A was harmed in several ways. First, it reinforced his inadequacy as a husband, both emotionally and sexually. Second, it replayed the abuse by his older brother, in a way that made him doubt his worth and masculinity. Third, when Mr. A raised concerns about a coalition existing between Ms. B and Dr. Bar-Av, it was treated as part of Mr. A's pathology. While ordinarily such an approach would be appropriate, their later involvement, that is, between Dr. Bar-Av and Ms. B, would make future therapy for Mr. A much more difficult as he would quite naturally doubt a future therapist's attempts to interpret his feelings as expressions of his own issues. Fourth, it impacted his ability to trust, which was already a difficult issue for him. Finally, it likely strengthened Mr. A's defensive style, which was part of an identified problem of his. (Exhibit 11 at 6).

As Dr. Seaman points out, if Dr. Bar-Av was aware of these potential problems and proceeded with his relationship with Ms. B anyway, he was acting quite unprofessionally by disregarding the welfare of his former patient, Mr. A. On the other hand, if he was unaware of the possible problems that such a relationship would be likely to cause, it would demonstrate a lack of the most basic understanding of the therapy process so as to make him quite dangerous.

Section Psy 5.01 (2), Wis. Admin. Code, states that it is unprofessional conduct to commit gross negligence in the practice of psychology. Gross negligence is defined in s. Psy 1.02 (6), Wis. Admin. Code, and means the “performance of professional services that do not comply with an accepted standard of practice that has a significant relationship to the protection of the health, safety or welfare of patient or public, and that are performed in a manner indicating that the licensee knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.” By engaging in a sexual relationship with Ms. B, after having treated not only her, but also Mr. A, her former husband, it is inconceivable that Dr. Bar-Av would not consider the possible consequences that such a relationship might have on Mr. A, not to mention on Ms. B. Moreover, the fact that he went ahead with the relationship anyway, in spite of all the problems that he knew Mr. A had, is unquestionably conduct that constitutes gross negligence.

Furthermore, s. Psy 5.01 (4), Wis. Admin. Code, states that it is unprofessional conduct to perform professional services inconsistent with training, education, or experience. Dr. Seaman indicated that engaging in a sexual relationship with a former patient’s wife, as Dr. Bar-Av did, would certainly be another violation of the professional code of conduct in that such behavior would be inconsistent with the training, education, or experience of a licensed psychologist. Psychologists are trained and educated to maintain boundaries between themselves and their patients. By entering into a relationship with Ms. B, Dr. Bar-Av essentially disregarded any effect that such a relationship might have on Mr. A. In doing so, he clearly failed to adhere to the boundaries that are inherent in the education and training one receives as a psychologist.

In addition to the adverse effect that Dr. Bar-Av’s and Ms. B’s relationship had on Mr. A, the effect it had on Ms. B must also be examined. Section Psy 5.01 (17), Wis. Admin. Code, states that it is unprofessional conduct to fail to avoid dual relationships or relationships that may impair one’s objectivity or create a conflict of interest. Section Psy 5.01 (14)[\[1\]](#) of the Psychology Examining Board’s administrative rules also prohibits sexual conduct with a former client, unless the psychologist can demonstrate that there has been no exploitation of the former client. The following factors must be considered in determining whether there was, in fact, exploitation:

- (1) The length of time which had passed between the termination of professional services and the conduct.
- (2) The nature and duration of the professional services.
- (3) The circumstances of the termination.
- (4) The client’s personal history.
- (5) The client’s mental status at the time the conduct took place.
- (6) The likelihood of the adverse impact on the client or others.
- (7) Statements or actions made by the licensee during the course of professional services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

Dr. Seaman’s report correctly notes that Dr. Bar-Av provided no information that would suggest that his relationship with Ms. B was one of those unusual circumstances in which the therapeutic relationship had truly ended, and, after several years, a separate and independent personal relationship had developed. On the contrary, the record indicates that there was no clear ending of the therapeutic relationship and the independent development of a separate one. To be sure, Dr. Bar-Av and Ms. B met for coffee within several weeks following the last reported date of therapy to discuss her psychological needs, more specifically, what type of support group might be good for her. Within several months, Ms. B was driving Dr. Bar-Av to various places he needed to

go. (Exhibit 11 at 3).

Later, Ms. B began giving significant sums of money to Dr. Bar-Av of which little, if any, he has ever repaid. While testifying about giving Dr. Bar-Av \$5000.00, Ms. B became visibly upset. The \$5000.00 that she gave to Dr. Bar-Av had come from Ms. B's mother. Dr. Bar-Av did not repay that money, and, in turn, Ms. B was not able to repay her mother prior to her death in March of 1999. It appeared that Ms. B had obvious misgivings about having loaned that particular sum of money to Dr. Bar-Av. The resulting rides, the purchase of an automobile, and the giving of money to Dr. Bar-Av were all a direct result of Dr. Bar-Av's needs, and not those of Ms. B's. As Dr. Seaman aptly summarized it, "This is typical of the development of their relationship, as an evolution of the therapy relationship into something more, with no clear boundaries, and the changes in the relationship often resulting from Dr. Bar-Av's needs, rather than Ms. B's." (Exhibit 11 at 3). Thus, Dr. Bar-Av very plainly failed to avoid a dual relationship that was obviously rife with the potential for financial, legal, and psychological conflicts.

Dr. Bar-Av's sexual involvement with Ms. B is also disconcerting. While the code of conduct contemplates the possibility of therapists becoming involved with former clients, the burden is on the psychologist to demonstrate that such a relationship is appropriate. According to Dr. Seaman, the situations in which developing a sexual relationship after two years would be appropriate is certainly the exception, rather than the rule. However, Dr. Bar-Av was unable to provide any information that would suggest that he and Ms. B had genuinely ended their therapeutic relationship before developing a separate and independent personal one, or that he had given any consideration whatsoever to the elements in s. Psy 5.01 (14), Wis. Admin. Code, before entering into a sexual relationship with Ms. B.

Dr. Bar-Av's primary defenses for becoming involved with Ms. B seem at odds with his professional obligations as a psychologist. His first defense to the allegation that he wrongly entered into a dual relationship with Ms. B is that he was in dire financial straits. Dr. Bar-Av was unequivocal in his position that if he was to again face the prospect of living on the street versus accepting the financial assistance of Ms. B in order to avoid such displacement, he would again choose her financial assistance. (Transcript at 808). His second defense is based upon the implication that Mr. A is a very troubled man and, because of that, the complaint he filed against Dr. Bar-Av should be discredited. Furthermore, instead of being viewed as a victimizer, Dr. Bar-Av implied that he (Dr. Bar-Av) should be viewed as a savior to Ms. B who lived with the abusive Mr. A for over twenty years. Dr. Bar-Av's defenses are not persuasive.

Knowing Mr. A as he did, it is incomprehensible that Dr. Bar-Av even contemplated becoming involved with Ms. B, let alone, actually becoming involved with her. His conduct is clearly a violation of s. Psy 5.01 (14), Wis. Admin. Code, particularly when one factors in his extensive therapeutic relationships with both Mr. A and Ms. B, the power balance that existed between him and Ms. B, and the overwhelming evidence that his needs were being met versus Ms. B's. What consistently emerges throughout the relationship between Dr. Bar-Av and Ms. B is that whenever Dr. Bar-Av needed something, be it transportation, a computer, or money, Ms. B was always at the ready to provide it to him. In taking this approach to his needs, Dr. Bar-Av either failed to consider its effects or simply disregarded them. Whichever the case may be, it demonstrates Dr. Bar-Av's indifference to his professional obligations as a psychologist.

The question remains, therefore, as to what the appropriate form of discipline is for Dr. Bar-Av. An indefinite suspension of Dr. Bar-Av's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

Dr. Bar-Av seems to have little recognition or apparent concern that his conduct was not in keeping with the standards of his profession. His lack of insight is especially troubling given how much experience he has as a practicing psychologist. It is for these reasons that a period of suspension is being recommended. Additionally, it is imperative that he be evaluated by a psychologist of the Board's choosing so that a determination can be made as to whether Dr. Bar-Av is in need of therapy, whether he needs further education, whether he needs a period of supervision if permitted to practice, and what an appropriate practice setting is for him. These measures are essential in order to rehabilitate Dr. Bar-Av, to ensure that the public is adequately

safeguarded, and to prevent other licenses from engaging in conduct of this nature.

In addition, the imposition of costs against Dr. Bar-Av is recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Psychology Examining Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

[\[1\]](#) Section Psy 5.01 (14), Wis. Admin. Code, provides: Engaging in sexual contact, sexual conduct, or any other behavior which could reasonably be construed as seductive, with:

- (a) A client.
- (b) A former client within 2 years of termination of professional services.
- (c) A former client beyond 2 years of termination of professional services, unless the licensee can demonstrate that there has been no exploitation of the former client, in light of all relevant factors, including:
 - 1. The length of time which had passed between the termination of professional services and the conduct.
 - 2. The nature and duration of the professional services.
 - 3. The circumstances of the termination.
 - 4. The client's personal history.
 - 5. The client's mental status at the time the conduct took place.
 - 6. The likelihood of the adverse impact on the client or others.
 - 7. Statements or actions made by the licensee during the course of professional services

suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.