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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PSYCHOLOGY

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Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

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Docket No. 0387-63-98

v.

File No. 98-63-01044

Batsheva Ben-Amos, Ph.D., Psy.D.
Respondent

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

ORDER ADOPTING HEARING EXAMINER'S
PROPOSED ADJUDICATION AND ORDER

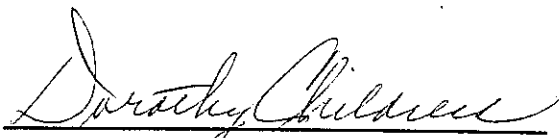
AND NOW, this 1st day of December, 1998, having reviewed the evidentiary record of this proceeding, together with the Hearing Examiner's Proposed Adjudication and Order, and noting that neither party filed Exceptions to the Hearing Examiner's proposal, it is hereby **ORDERED** that the Proposed Adjudication and Order of Hearing Examiner Frank C. Kahoe, Jr, be adopted as the Final Adjudication and Order of the State Board of Psychology in this disciplinary proceeding. A copy of the Hearing Examiner's Proposed Adjudication and Order is appended hereto as "Appendix A."

This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

STATE BOARD OF PSYCHOLOGY



Dorothy Childress,
Commissioner



Yvonne E. Kearins, Ph.D.
Chairperson

Respondent's Address:

Batsheva Ben Amos, Ph.D., Psy.D.
539 East Durham Street
Philadelphia, PA 19119

Prosecuting Attorney:

Anita P. Shekletski, Esquire

Board Counsel:

Judith Pachter Schulder, Esquire

Date of Mailing:

12-2-98

HISTORY

This matter comes before the hearing examiner for the Department of State on an order to show cause filed July 8, 1998, alleging that Batsheva Ben-Amos, Ph.D., Psy.D. (Respondent), is subject to disciplinary action under the Professional Psychologists Practice Act¹ (Act) at 63 P.S. § 1208(a) for failing to complete the continuing education requirements set by the State Board of Psychology (Board) and inaccurately certifying that she had done so. Respondent submitted a typewritten reply to the order to show cause July 29, 1998. On August 26, 1998, the Board issued an order delegating the matter to a hearing examiner in accordance with 1 Pa. Code §§ 35.202 and .205. A formal administrative hearing was held in Harrisburg October 15, 1998. Anita P. Shekletski, Esquire represented the Commonwealth as prosecuting attorney. Respondent attended the hearing without counsel. The parties waived the filing of posthearing briefs.

¹ Act of March 23, 1972, P.L. 136, No. 52, *as amended*, 63 P.S. § 1201 *et seq.*

FINDINGS OF FACT

1. Respondent is the holder of license no. PS-006347-L, issued by the Board December 2, 1992, authorizing her to practice psychology in the Commonwealth of Pennsylvania.

(Board record)

2. Approximately September 20, 1997, Respondent submitted an application to renew her license in which she certified that she had completed 30 hours of continuing education for the biennial period December 1, 1995 to November 30, 1997. (Exhibit C-1)

3. In February 1998, the Board's administrative assistant notified Respondent that she was required to submit proof of her continuing education credits for the biennial period December 1, 1995 to November 30, 1997, as part of a random audit conducted by the Board.

(N.T.)

4. After receiving the audit notice, Respondent called the Board office to report that she had inadvertently counted one 6-hour continuing education course twice in computing her completed hours, and that she had therefore completed only 27 hours of continuing education.

(Exhibit R-4; N.T.)

5. After submitting certificates of continuing education attendance in response to the audit, Respondent discovered that the course which she had inadvertently counted twice was five and one quarter credits rather than six, making Respondent's total continuing education credits

for the biennial period December 1, 1995 to November 30, 1997, 26.25 hours.² (Exhibits C-1, C-2, C-3; N.T.)

6. Respondent completed four hours of continuing education in April 1998. (N.T.)
7. Respondent was served with the order to show cause issued in this matter and attended the hearing held in Harrisburg October 15, 1998. (N.T.)

² The "Certificate of Attendance" for the program "Dual Diagnosis: Assessment and Treatment Dilemmas," given March 22, 1996, indicated that the program was six hours (Exhibits C-1, C-2). However, the "Certificate of Completion" for that program indicated that it was "offered for five and one quarter (5.25) CE credit hours" (Exhibit C-3).

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Finding of Fact no. 1)
2. Respondent has been afforded reasonable notice of a hearing on the order to show cause issued in this matter and an opportunity to be heard in this proceeding. (Finding of Fact no. 7)
3. Respondent is subject to disciplinary action under the Act at 63 P.S. § 1208(a)(9) by reason of her failure to complete 30 hours of continuing education as required in the Board's regulations at 49 Pa. Code § 41.59(b). (Findings of Fact nos. 4, 5)
4. Respondent is not subject to disciplinary action under the Act at 63 P.S. § 1208(a)(11). (Findings of Fact nos. 2, 3, 4, 5, 6)

DISCUSSION

This action is brought under section 8 of the Act, 63 P.S. § 1208, which provides in pertinent part as follows:

§ 1208. Refusal, suspension or revocation of license

(a) The board may refuse to issue a license or may suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following reasons:

* * *

(9) Violating a lawful regulation promulgated by the board, including but not limited to, ethical regulations, or violating a lawful order of the board previously entered in a disciplinary proceeding.

* * *

(11) Committing immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing psychological practice. Actual injury to a client need not be established.

The Commonwealth alleges specifically at Count One that Respondent is subject to disciplinary action for violating in the Board's regulations at 49 Pa. Code § 41.59(b), which provides in pertinent part as follows:

§ 41.59. Continuing education.

* * *

(b) *Continuing education requirement for biennial renewal.* As a condition of biennial license renewal, a psychologist shall have completed during the preceding biennium a minimum of 30 contact hours (3 CEUs) of continuing

education in acceptable courses, programs or activities which shall include at least 3 contact hours per biennium in ethical issues. Up to 10 contact hours in excess of 30 from the preceding biennium may be carried over from one biennium to the next.

At Count Two, the Commonwealth alleges that Respondent's certification that she had completed at least 30 hours of continuing education in her biennial renewal application constituted "unprofessional conduct in the practice of psychology."

The Commonwealth's case at hearing consisted of a copy of Respondent's most recent biennial license renewal application as well as the testimony Melissa Wilson, the Board's administrative assistant. Respondent testified on her own behalf and offered as exhibits copies of certificates from a particular CE course as well as her letter to the Board and her *curriculum vitae*.

Respondent does not dispute that she completed 26.25 credit hours of CE during the 1995-97 renewal period, and therefore failed to comply with the Board's 30-hour requirement. Her case is rather one of mitigation and the mitigation offered by Respondent is persuasive. Respondent's case centers on her testimony that she believed in good faith that she had completed 33 hours of CE when she submitted her renewal application in September 1997. That testimony is supported by duplicate copies of the "Certificate of Attendance" for the March 22, 1996 program which Respondent relied on in originally calculating her CE hours. The Commonwealth offered no evidence to dispute Respondent's claim of good faith mistake. In addition, Respondent promptly reported her mistake when she discovered it in February 1998, and she

promptly completed four additional hours of CE in April 1998. Respondent's demeanor in testifying was sincere and her testimony was credible.

Because Respondent believed in good faith that she had completed 33 hours of continuing education when she submitted her license renewal application in September 1997, her mistaken certification to that effect cannot be considered "unprofessional conduct." Count Two must therefore be dismissed.

At the conclusion of the hearing, the Commonwealth recommended a civil penalty of \$1,000.00 be imposed, suggesting that the Board's continuing education requirements be taken seriously. Respondent requested that the Board recognize the distinction between willful failure to comply with the CE requirement and a good faith mistake, which she said had occurred in her case. The hearing examiner is persuaded that the Board's CE mandate is valuable and should be taken seriously. The hearing examiner is also persuaded that Respondent's failure to comply in the last licensure period was a good faith mistake and not a willful flaunting of the law. Respondent testified that she has never shirked her responsibility to continually update and expand her education and her *curriculum vitae* appears to support that testimony. Fundamental fairness requires that the Board distinguish between willful and inadvertent violations of its regulations without diminishing the seriousness of the violation or value of the regulation. Respondent's undisputed testimony strongly argues against a sanction of the magnitude recommended by the Commonwealth. Therefore, the following proposed order shall issue.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF PSYCHOLOGY

REGISTRY

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DEPARTMENT OF STATE
OCCUPATIONAL AFFAIRS

Commonwealth of Pennsylvania,
Bureau of Professional and Occupational Affairs

v.

Batsheva Ben-Amos, Ph.D., Psy.D.,
Respondent

Docket no. 0387-63-98

BPOA File no. 98-63-01044

PROPOSED ORDER

AND NOW, this 15th day of October, 1998, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the hearing examiner for the Department of State hereby **FINDS** as follows:

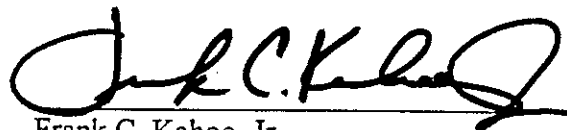
1. Respondent **Batsheva Ben-Amos, Ph.D., Psy.D.** is subject to disciplinary action under the Professional Psychologists Practice Act (Act) at 63 P.S. § 1208(a)(9) for failing to complete continuing education courses required under 49 Pa. Code § 41.59(b); and

2. Respondent is not subject to disciplinary action under the Act at 63 P.S. § 1208(a)(11).

It is hereby **ORDERED** that a civil penalty in the amount of \$200.00 be imposed.

This Proposed Order shall be effective as a Final Order in accordance with 1 Pa. Code § 35.226(a)(3) in forty (40) days unless a Brief on Exceptions is filed within thirty (30) days in accordance with 1 Pa. Code § 35.211 or the State Board of Psychology initiates a review in accordance with 1 Pa. Code § 35.226(a)(2).

BY ORDER



Frank C. Kahoe, Jr.
Hearing Examiner

DATE OF MAILING: 10-15-98

For the Commonwealth:

Anita P. Shekletski, Esquire

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

116 Pine Street, P.O. Box 2649

Harrisburg, PA 17105-2649

Respondent pro se:

Batsheva Ben Amos, Ph.D., Psy.D.

539 East Durham Street

Philadelphia, PA 19119

NOTICE

SERVICE OF PROPOSED REPORT:

A copy of the proposed report issued in this matter by a hearing examiner for the Bureau of Professional and Occupational Affairs is enclosed, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.207.

EXCEPTIONS TO PROPOSED REPORT:

Any party who wishes to appeal all or part of the hearing examiner's proposed report to the Board shall file exceptions in the form of a Brief on Exceptions with the Prothonotary of the Bureau of Professional and Occupational Affairs within 30 days after service of a copy of this proposed report, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-.214.

The Brief on Exceptions shall contain a short statement of the case, a summary of the appealing party's position, the grounds for filing exceptions to the proposed report, and the argument in support of the appealing party's position, with citations to the record and legal authority. The appealing party may also include proposed findings of fact and conclusions of law.

In the event any party files an application for review by the Board of the hearing examiner's decision, the Board may substitute the Board's findings for those of the hearing examiner, and/or may impose a greater or lesser sanction than that imposed by the hearing examiner, without regard to the relief requested or the position argued by any party, and without hearing additional argument or taking additional evidence.

Failure to file a Brief on Exceptions within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-.214 shall constitute a waiver of all objections to the proposed report.

FILING AND SERVICE:

An original and four copies of the Brief on Exceptions shall be filed with:

Deanna S. Walton, Prothonotary
Bureau of Professional and
Occupational Affairs
124 Pine Street, Suite 200
Harrisburg, Pennsylvania 17101.

Copies of the Brief on Exceptions shall also be served on all parties to the proceeding.

Briefs on Exceptions must be received for filing by the Prothonotary within the time limits specified herein. Date of receipt by the Office of Prothonotary, and not date of deposit in the mail, is determinative.