



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. BDS 9970-07

**IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE
OF MARSHA J. KLEINMAN, PSY.D.,
LICENSE NO. 35S100231900,
TO PRACTICE PSYCHOLOGY IN THE
STATE OF NEW JERSEY.**

Siobhan B. Krier, Deputy Attorney General, and **Carla Silva**, Deputy Attorney General, for complainant (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney)

Daniel G. Giaquinto, Esq., and **Steven I. Kern**, Esq., for respondent Marsha Kleinman, Psy. D., (Kern Augustine Conroy & Schoppmann, attorneys)

Record Closed: July 27, 2011

Decided: July 13, 2012

BEFORE **EDITH KLINGER**, ALJ t/a:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 21, 2008, the complainant, the Attorney General of the State of New Jersey, filed an Amended Verified Petition with the Board of Psychological Examiners (Board) against respondent, Marsha Kleinman, Psy.D., seeking the suspension or

revocation of her license to practice psychology in the state of New Jersey, imposing civil penalties and the costs of the Board in this matter as provided for in the statutes of the state of New Jersey.

On October 4, 2007, the State Board of Psychological Examiners transmitted the matter to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, and the case was assigned to Joseph Paone, ALJ. Following the subsequent appointment of Judge Paone to the Superior Court, the matter was assigned to the undersigned on January 14, 2010.

The hearing was held on September 24, and 28, and October 7, 8, and 27, 2010. The matter was adjourned for several reasons, including the untimely death of Steven Kern, Esq. Following the appearance of Daniel Giaquinto, Esq., for respondent, the hearing was able to resume on March 2, 2011. It was further heard on March 2, 4, 7, 8, 14, 15, 16, 17, 29, and 30, 2011. It continued on April 7, May 11, 12, and 16, and June 3, 5, and 18, 2011. The record closed on July 27, 2011, after the final submissions were received from the parties.

THE AMENDED COMPLAINT

The Amended Complaint is based upon the following background fact pattern, which is, for the most part, undisputed by the parties.

In 2002, D.R. filed for divorce from his wife, P.R. His complaint for divorce and custody of their daughter, S.R., born in March 2000, was filed in the Superior Court of New Jersey, Family Part, and assigned to the Honorable Nancy Sivilli, J.S.C. Judge Sivilli decided several applications relating to D.R.'s physical custody of S.R. and his visitation with his daughter. Joint custody was granted pending an evaluation by Edwin A. Rosenberg, Ph.D., on issues raised in the applications.

At about this time, P.R. reported that S.R. complained when her diaper was being changed. She took her daughter to a pediatrician, who referred her to Newark Beth Israel Hospital based upon P.R.'s allegation that D.R. had sexually abused the

child. The hospital referred the matter to the New Jersey Division of Youth and Family Services (DYFS).

In September 2002, P.R. applied to Judge Sivilli to limit D.R.'s physical contact with S.R. because of the allegations of sexual abuse. Judge Sivilli granted D.R. supervised visitation with his daughter.

In about October 2002, DYFS filed an Order to Show Cause with Judge Sivilli seeking to suspend D.R.'s visitation based upon P.R.'s allegation that several male pubic hairs were found in S.R.'s diaper. After an expedited plenary hearing, the judge denied DYFS's application.

On about June 18, 2003, Judge Sivilli ordered that S.R. be treated by Kleinman with play therapy. The order provided that S.R. immediately commence counseling and play therapy with respondent. Respondent Marsha Kleinman, Psy. D., was given management authority over parenting time between D.R. and S.R. The parties were to share equally the costs of counseling. S.R. was three years old at the commencement of therapy.

The allegations of the Amended Complaint, as stated below, are directed to the professional conduct of respondent with respect to the services rendered to S.R. and to the court.

Count I

The complainant alleges that respondent did not conduct play therapy with S.R. as ordered by the court, but rather interacted with the child in a manner that manipulated the situation and/or suggested explanations and answers to the child based upon respondent's own interpretation of the play.

During her interaction with S.R., respondent conducted forensic questioning of the child to investigate alleged sexual abuse by D.R. A psychologist cannot act as a therapist and a forensic investigator at the same time with a client.

Following weekly sessions with S.R., respondent repeatedly attempted to terminate D.R.'s visitation with his daughter by providing false and misleading information to Judge Sivilli concerning responses allegedly provided by S.R. during therapy sessions. The accuracy of this information is not supported by videotaped sessions between respondent and S.R., and the child's actual uncoached responses were not recorded in respondent's office records nor provided to the court.

Respondent interceded between D.R. and S.R. by refusing to allow D.R. to speak to his daughter by telephone and falsely informing the child that her father did not wish to speak to her. Respondent told D.R. that he could not speak to S.R. or meet with her unless he first apologized to the child for his actions, even though D.R. strenuously denied sexually abusing S.R. Respondent also refused to allow communication between D.R. and S.R. until he paid all of respondent's outstanding fees.

Respondent greatly exaggerated to the court the risk to S.R. of D.R.'s continued contact with the child. At the same time, her questioning of S.R. was likely to implant false memories and/or emotions in the child.

This count alleges that respondent's conduct constituted gross professional malpractice in violation of N.J.S.A. 45:1-21(c), and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d), and/or professional misconduct in violation of N.J.S.A. 45:1-21(e), and/or violations of N.J.A.C. 13:42-10.8(g), which prohibits the misuse of influence in a manner that exploits a client's trust and dependency.

Count II

All of the allegations of Count I are incorporated by reference in this count. In addition, the following facts are also alleged.

Respondent failed to obtain all reasonably available, relevant information and documentation with respect to S.R. so that she could more accurately determine

whether any portion of S.R.'s distress could be attributed to sources other than sexual abuse, including conflict between her parents and her parents' psychological states and/or conditions. She further failed to obtain reasonably available information and documentation, including reports and test data from other professionals who evaluated S.R. and/or her parents.

In addition, it is alleged that respondent failed to assess the dynamics of S.R.'s family interactions before recommending limitations on or suspension of D.R.'s visitation.

This count alleges that respondent's conduct consisted of gross professional malpractice in violation of N.J.S.A. 45:1-21(c), and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d), and/or professional misconduct in violation of N.J.S.A. 45:1-21(e).

Count III

All of the allegations of the preceding counts are incorporated by reference in Count III. In addition, the following is also alleged.

In ten letters that respondent wrote to Judge Sivilli during the course of her treatment of S.R., she failed to advise the court, or any other party involved in the matter, of information that could be exculpatory to D.R. with respect to the allegations of sexual abuse. Respondent followed this course of action although it was foreseeable that her input and recommendations would be, and were, relied upon by Judge Sivilli to decide issues of custody and visitation.

This count alleges that respondent's conduct constitutes gross professional malpractice in violation of N.J.S.A. 45:1-21(c), and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d), and/or professional misconduct in violation of N.J.S.A. 45:1-21(e), and/or violations of N.J.A.C. 13:42-10.8(f), which prohibits the distortion, misuse and/or suppression of psychological findings.

Count IV

All of the allegations of the preceding counts are incorporated by reference in Count IV. In addition, the following is also alleged.

Respondent held herself out to be an expert in the area of forensic investigations and child sexual abuse. These are fields in which she was not qualified by virtue of her training and experience.

In addition, respondent's treatment of S.R. and recommendations to Judge Sivilli show that she was deficient in certain areas of her practice and professional expertise, including child behavior and cognitive development; child interviewing techniques; child sexual abuse accommodation syndrome; etiology and treatment of trauma; professional role differentiation; post-traumatic stress disorder; dissociative identity disorder; dissociative fugue; eye movement desensitization and reprocessing (EMDR); equifinality; integration of data; and psychological treatment and planning.

Respondent's misrepresentation of her expertise and her undertaking an investigation beyond her competence, education and training constitute gross professional malpractice in violation of N.J.S.A. 45:1-21(c), and/or repeated acts of professional malpractice in violation of N.J.S.A. 45:1-21(d), and/or professional misconduct in violation of N.J.S.A. 45:1-21(e), and/or violation of N.J.A.C. 13:42-9.4(a), N.J.A.C. 13:42-9.7(g), and/or N.J.A.C. 13:42-10.4(d), requiring licensees to have and/or maintain professional competences.

Count V

All of the allegations of the preceding counts are incorporated by reference in Count V. In addition, the following is also alleged.

Respondent failed to maintain accurate, contemporaneous records in violation of N.J.A.C. 13:42-8.1(a) and (b). Her records fail to include reports and records of other

professionals to be integrated into her client's treatment in violation of N.J.A.C. 13:42-8.1(d).

Respondent's conduct constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e) and/or violations of N.J.A.C. 13:42-9.4(a), N.J.A.C. 13:42-9.7(g), and/or N.J.A.C. 13:42-8.1(a), (b) and/or (d).

Count VI

In about 1997, as part of her divorce proceeding, D.C. was referred to respondent only for a consultation regarding battered woman syndrome. Under New Jersey law, in order for a divorcing spouse to support a claim that she suffers from battered woman syndrome, she is required to provide a report from a licensed psychologist.

D.C. met with respondent approximately six or seven times for a total of ten hours. During the course of these meetings, respondent learned that D.C. was the spouse of an attorney who was seeking custody of the couple's daughter.

After D.C. reported that her husband had certain sexual addictions, respondent suggested that D.C. allege that her husband was sexually abusing their child. Although D.C. repeatedly denied this was a possibility and did not believe it, she felt that respondent repeatedly urged her to fabricate allegations of child sexual abuse against her spouse.

Kleinman referred D.C. to respondent's sister, an attorney, for representation through an intermediary because, she told D.C., it would be unethical for her to make a direct referral.

D.C. paid respondent \$2,500, but respondent never prepared the requested battered-woman-syndrome report for her. She told D.C. that, since she would be represented by respondent's sister, the report could not be used for the court proceeding.

Respondent's conduct constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

COUNTS I, II, III, IV, AND V

Preliminary Matters

Prior to the commencement of the hearing in this matter, the undersigned issued an order limiting the subject matter of this appeal to whether respondent conducted her professional interaction with S.R. in accord with the standards of her profession. Consequently, all evidence solely intended to prove or disprove whether D.R. was guilty of sexually abusing S.R. was barred. This question was within the jurisdiction of the Superior Court, not within the jurisdiction of the Board of Psychological Examiners and, therefore, not within the jurisdiction of this forum.

In addition, the undersigned viewed several videotaped therapy sessions between respondent and S.R. and listened to a number of recorded telephone conversations between D.R. and respondent. Thus, the undersigned was able to personally observe events relied upon by the expert witnesses to form the bases of their opinions. The forum's use of these direct observations to find underlying facts in order to evaluate the testimony of the expert witnesses is in accord with existing case law.

In assessing expert psychiatric or psychological opinion testimony, the Court, as fact-finder, is enjoined to use its common sense and ordinary experience.

[In re Iaccarino, 117 N.J. 175, 196 (1989).]

Those items of evidence relevant to the charges concerning S.R., which consist of respondent's office records, videotapes and correspondence with the court and others are discussed below in great detail. The purpose of this is to demonstrate the actual content of her office records as they exist, particularly since they are sketchy and frequently illegible; to compare them with the full exposition of her actual examinations

of S.R. as videotaped; and, finally, to compare them to her correspondence with the court and others.

Review of Evidence

On June 18, 2003, Judge Sivilli issued an order which provided, among other things, that

13. S.R. shall immediately commence counseling and play therapy with Dr. Marcia Kleinman. . . . Dr. Kleinman shall have management authority over the parenting time between [D.R.] and S.R. The parties shall share equally the costs of said counseling.

14. [D.R.] may continue to have daily telephone contact with S.R. The parties shall cooperate in ensuring that [D.R.] has such contact with S.R.

From March 2003, D.R. was allowed supervised visitation with his daughter two times a week.

According to Kleinman's treatment records for three-year-old S.R., family contact with Kleinman began on June 18, 2003, when respondent documented an interview with P.R., the child's mother. The office record reflects that P.R. told respondent that, after a visit between S.R. and her father, S.R. complained of irritation between her legs and cried when her mother tried to bathe her or change her diaper. P.R. reported that S.R. said her father touched himself, touched her between her legs, rubbed his penis between her legs, licked her, tickled her, etc. P.R. called DYFS to report the alleged abuse.

It is noted that respondent received no input from the child's father, and henceforth proceeded with her treatment plan solely on the basis of statements made by S.R.'s mother. There were available reports from other sources of information concerning investigations, evaluations, etc., that respondent did not have and failed to consider in formulating the treatment plan. She testified that she never asked P.R. or D.R. for releases to obtain this documentation.

The following review of Kleinman's office records reports only what respondent entered, where discernible. The review represents no verification of the accuracy of her reporting, for reasons which will become clear below.

Respondent's first recorded visit with S.R. was held on July 3, 2003. She reported that S.R. said she was afraid of her father because he "kicks door down," and "was mean" because she fell down and got a "boo-boo" and her father did not respond in the way she wished. S.R. showed anger at her father and said, "Daddy kills babies." There is no mention of any sexual contact.

Respondent next saw S.R. on July 7, 2003. Kleinman wrote that S.R. was happy when she came in. When S.R. said that her father had not hurt her, Kleinman asked if her father had told her to say that. Respondent wrote that S.R. said her father had "tickled her vagina" because he liked to do that, and that he touched her "tushie" with his tongue "a lot of times." In between these statements, S.R. played with toy horses that Kleinman had in her office for the purpose of having the child disclose information through play. The office record shows that during this session, Kleinman repeatedly requested that S.R. provide specific information, by means of questions such as: "What does daddy wear?"; "What does daddy wear under his bathrobe?"; and "Where does daddy make pee-pee?"

On July 7, 2003, Kleinman wrote a letter to Judge Sivilli reporting what S.R. allegedly said in their session of that day. The letter states that S.R. showed signs of "psychological trauma" during this visit. She recommended that D.R. be prevented from having any further telephone contact or visitation with S.R. so that the child could disclose this and all further information in therapy without being subjected to pressure from her father. This was to continue until the process could be completed. Kleinman notified Judge Sivilli that she had already suspended a meeting between D.R. and S.R. scheduled for the following evening and informed D.R. that all subsequent meetings would be suspended until further notice. Nevertheless, it appears that the court still permitted supervised visits between S.R. and her father.

Respondent met with S.R. again on July 8, 2003. She noted that D.R. played with the toy animals. According to Kleinman, D.R. was represented by the angry tiger, who was biting the baby giraffe. The baby was saved by the good mother. S.R. stated that she did not wish to talk about her father, but respondent nevertheless asked, "Does mommy know daddy hurt your body?" (The notes contain no context for the question.) The child responded that her mother did not know.

The notes for this visit contain respondent's report of a telephone conversation she had with D.R. She stated that he was angry and raised his voice. He demanded to know what S.R. had told her about him. When she refused, he accused her of doing only what was in the interest of herself and the child's mother and respondent agreed. D.R. informed Kleinman that his attorney advised him not to meet with her until she provided him with information allegedly told to her by S.R.

S.R. met with respondent again on July 10, 2003, played with the toys, and announced that she refused to talk about her father. When Kleinman asked why, S.R. said it made her "feel bad." Kleinman apparently asked S.R. where it made her feel bad and wrote that the child pointed to her crotch.

The next session took place on July 17, 2003. Kleinman reported that S.R. showed regression, because she was talking baby talk and wanted a bottle. She said the child "shut down." S.R. told her that the male doll was a monster because he was [getting or hitting?] the baby giraffe. The actual note is almost illegible.

During the session of July 22, 2003, S.R. announced that her father was mean to her and the police should be called because he was bad. According to Kleinman, the child said her father had urinated on her knee. In fact, she said he did it a lot of times. In direct response to respondent's questioning, S.R. stated that she had seen her father's "pee-pee" many times, that it felt "hot" and "sticky" on her "tushie," that it felt "bad," and that he did this many times. The notes show that respondent provided the child with the words "hot" and "sticky" by means of her questions.

On July 23, 2003, the notes state that S.R. came in happy and played with the toys. She said that her father put his “pee-pee” by her “tushie,” and that talking about it made her stomach ache.

On July 24, 2003, D.R.’s attorney, Neal H. Flaster, served respondent with a subpoena to appear for a deposition and bring her records with her. By letter of the same date, Kleinman refused to disclose her interactions with S.R. and demanded to be paid for her time attending the deposition. Kleinman wrote to Judge Sivilli on July 29, 2003, asking that the subpoena be quashed and complaining that D.R. had not paid her fees for S.R.’s therapy. The judge ordered her to appear for depositions on September 5, 2003.

In a letter to Flaster dated July 31, 2003, respondent refused to provide him with her office records for S.R. and vehemently denied that she was conducting forensic psychology with the child. She attempted to persuade D.R. to contact her so that she could help him deal with his issues for the benefit of S.R.

According to the testimony of the experts, psychological therapy is performed for the benefit of the person receiving it and the interaction between therapist and client is confidential. On the other hand, forensic psychology is performed by specially trained psychologists in order to obtain information in a reliable manner. In that situation, the psychologist’s client is the court or other investigating entity and there is no expectation of privacy by the person who is the subject of the inquiry. This distinction will subsequently be discussed in depth when the experts’ testimony is reviewed.

On July 28, 2003, respondent noted that S.R. came in seeming anxious. She asked to play with the toy animals. The notes indicate that S.R. appeared calmer after playing with the animals “discharg[ed her] upset feeling.”

Respondent’s office record for August 2, 2003, reports a telephone call from P.R. with S.R. crying inconsolably in the background. Kleinman’s notes are disjointed, barely legible, and difficult to interpret. P.R. told respondent that she took S.R. to a meeting with D.R., who took the child from her with no transition. P.R. claimed that the child was

silent and appeared upset and withdrawn. It seems that Kleinman saw S.R. in her office later that day and noted that the child was: “detached, denies reality,” “seems dissociative—disconnected,” “very anxious,” “disorganized—psychotic break,” and “in and out of reality.” S.R. told Kleinman that her father broke her toy horse’s tail and never fixed it, but then the child said that didn’t really happen. Respondent referred to S.R. as “denying reality” because S.R. failed to respond to her questions. Under further questioning, S.R. said her father wanted her to live with him but she did not want to.

On August 6, 2003, on the basis of Kleinman’s representation that S.R. had a psychotic break after visitation with her father, Judge Sivilli issued an order suspending D.R.’s supervised visitation with his daughter until a plenary hearing could be held on September 3, 2003.

Kleinman wrote to Judge Sivilli again on August 10, 2003. It appears that the person supervising the visits between S.R. and D.R. reported to the court that the child wanted to be with her father. In respondent’s letter, written while she was away on vacation, Kleinman once more attempted to convince the court that this was a matter for grave concern about S.R.’s welfare. She wrote:

As such it is my professional opinion that if [S.R.] has even supervised contact with her father, she will shut down and we may never know the details of her sexual abuse by her father. In addition, it is my professional opinion to a high degree of psychological certainty that unless [S.R.] is protected from re-experiencing the trauma she is at serious risk of mental illness.

Kleinman’s letter continued. She told the court that it was expected and customary for a child who has been sexually abused to express loving feelings toward the abusive parent. For this reason, Kleinman advised the court to cut off all contact between S.R. and D.R. She diagnosed S.R. as suffering from post-traumatic stress disorder (PTSD) that only manifests itself after a person has suffered a trauma, and claimed that she had the training and expertise to diagnose and treat this condition in children. Therefore, she strenuously objected to the credentials of another

psychologist, Dr. Mathias Hagovsky, Ph.D., to conduct a proposed evaluation of S.R. at this time, stating that it would cause the child irreparable damage.

Respondent's letter was written in response to an Order by Judge Sivilli, dated August 11, 2003, resulting from a motion by D.R. The judge ordered that D.R. have supervised visitation with S.R., "in venues other than [D.R.'s] home," and the appointed supervisor was to render all assistance needed by S.R. with changing her clothes or using the bathroom. The judge had also appointed Dr. Hagovsky to conduct an evaluation of the child "commencing immediately." She further directed that respondent's report of July 7, 2003, be released to the parties. The judge noted that the report was provided to the parties on August 1, 2003.

On August 13, 2004, the Office of the Bergen County Prosecutor notified Kleinman that it was investigating the allegation that D.R. had sexually assaulted his daughter, and requested that respondent provide information relating to her treatment of the child. There is no information concerning the outcome of the investigation, but no charges were ever filed against D.R.

The next note in respondent's office record is dated August 27, 2003. She first reported that she asked S.R., "What does daddy do with his heiny?" The child became quiet and her voice changed. Kleinman noted that S.R. appeared calmer, exhibited less "psychotic behavior" and talked less "gibberish." S.R. said that her father told her Kleinman didn't like him. The report goes on to say that S.R. told respondent that her father touched her with his hands on her tushie and put his heiny near her rectum. S.R. drew a picture of her father and pointed to the penis, calling it his heiny. The word "heiny" is retained throughout this decision since it is not always clear from context whether the child uses it to refer to the buttocks or the genitals.

With respect to Kleinman's deposition scheduled for September 5, respondent wrote a series of letters to Judge Sivilli, dated September 2, 4, 5, 9, and 11, 2003. In these letters, she complained that Flaster had not offered to pay her hourly fees for attending the deposition, that D.R. had still not paid her for S.R.'s therapy, that the

deposition dates were not convenient for her, and that Flaster was verbally abusive to her.

On the office visit of September 23, 2003, S.R. stated that her father was mean sometimes and nice sometimes. The child said she didn't want to visit him because she didn't like him. She complained that her father put her toy "horsie in my heiny" and it made her angry. She said he licked her stomach, her hair, her heiny and her vagina. S.R. also said her father took off her underwear, licked her heiny, put her clothes back on, and then sat down and ate dinner. Kleinman apparently took this as a sign of progress, because she wrote that the child appeared calmer, articulated more clearly and showed less anxiety around the molestation.

On October 1, 2003, Kleinman wrote to Flaster and Karen Saminski, an attorney representing P.R., giving them her report on her treatment of S.R. in accord with their requests. In the report, respondent repeats the accusations of molestation, contained in her notes and repeated here, that the child allegedly made against her father. A review of the notes reveals that her report to the parents is inaccurate. Some of the notes themselves, incomplete as they are, show that many of these accusations were made by S.R. only as a result of directed questioning by Kleinman.

The next note in the office record is dated October 4, 2003. Kleinman wrote that, in response to her questioning, S.R. said her father wanted to marry her, but she did not want to marry him because he was mean. Then S.R. stated she did not want to talk about her father anymore. During play with toy police cars and helicopters and under questioning, the child said that the police were taking her father away in a helicopter because he hurt her.

The next office notes are misdated October 10, 200, but actually refer to the session of October 11, 2003. They state that the mother brought S.R. to the session and said that the child had nightmares two nights before. In the office, S.R. was crying and did not want to separate from her mother. She was talking baby talk, which caused Kleinman to call her "regressed." During the session, S.R. was very emotional and complained of a pain in her leg. Kleinman wrote that the mother gives her honey, but

the father “doesn’t eat honey or anything—doesn’t like food.” S.R. then said she didn’t want to talk about it.

Kleinman videotaped this session of October 11, 2003. In her testimony, Kleinman explained that she only videotaped counseling sessions held in emergent circumstances. Both the videotape and a transcript of the session are contained in the record. The videotape was played in its entirety during the hearing so that the undersigned had the ability to fully observe the interaction between respondent and S.R.

On the videotape, the child is seen playing with a dollhouse and arranging the furniture in it. S.R. demonstrated where the baby doll ate and said that the baby ate honey and the baby and mother dolls like honey. Kleinman began to question S.R. in depth about whether the father doll liked honey. S.R. said that the father did not like honey because he did not like any food, did not eat, and would not be hungry. It is unclear whether the child was referring to the father doll or to her own father. The tape reveals that Kleinman relentlessly pursued the child with questions throughout the session. When the questions led to a specific subject chosen by S.R., such as furnishing the dollhouse, Kleinman, not the child, turned the questioning to the subject of D.R. When the child talked about swimming, Kleinman ask if she swam in the pool with her father. When the answer was negative, Kleinman directed the questions to S.R.’s recent appointment with an evaluating doctor. The child directed the subject back to her play with the toys.

S.R. wanted to talk about the toy horses. Respondent directed the subject back to police and helicopters, referring to a prior session when S.R. said the police took her father away in a helicopter. When the child would not engage in the subject, respondent went directly to the point and asked, “How do you feel about seeing Daddy?” S.R. said she did not want to talk about her father. Nevertheless, Kleinman asked if she spoke to the other doctor about her father. The child said she liked talking to the doctor about him.

S.R. tried to turn the conversation back to the toys but Kleinman would not let her. She asked how talking about D.R. made S.R. feel. When the child said it made her feel mad, respondent pursued the subject. She asked what the child thought about when she thought of her father. The child responded, "Daddy." Kleinman asked S.R. if she felt mad when she thought about the things that her father did to her. S.R. tried to change the subject again, to no avail. Kleinman asked whether S.R. felt ready to visit D.R. if a supervisor were present. S.R. said she did not, and tried to change the subject again. Kleinman asked her whether her father took her swimming; she said he did not and asked to go home.

S.R. wanted to play with the horses a few minutes longer. Kleinman agreed to a short extension of the visit, but once again turned the topic to D.R. She asked S.R. whether a daddy horse was present among the toys. It was not. Respondent then asked whether the daddy horse made the baby horse angry. S.R. said he did not. Kleinman asked what the baby horse does when it gets angry. The child changed the subject and wanted to continue playing. Respondent told S.R. that it was time to go and went to get P.R.

S.R.'s response was a significant tantrum. She began screaming, crying and shouting, "No!" When the child calmed down, Kleinman probed to find out what made her so angry. She first asked if it was the visit to the doctor. S.R. said it was not. Kleinman pressed on, finally getting the child to say it was her father that made her angry. Respondent asked what D.R. did to make her angry and was told that her father put a "moo-moo," that is, a cow, in her heiny. Further questioning produced the information that her father put the cow in her heiny beneath her underwear a lot of times and she liked when he did that.

This interrogation took place during the course of an alleged therapeutic calming strategy in which the child tapped rhythmically on her own thighs. After Kleinman pronounced S.R. calm enough to leave, she told the child that she was sorry her father did that to her. When S.R. said it was okay, respondent stated firmly that it was not okay: fathers were not supposed to hurt their children that way. The child was finally allowed to leave.

On October 15, 2003, a hearing was held before Judge Sivilli on a motion to reinstate D.R.'s visitation rights and a cross-motion to prevent any further evaluation of S.R. by Dr. Rosenbaum. D.R. and P.R. were represented by their respective attorneys. Kleinman testified at this court hearing, as evidenced by the \$2,000 bill she submitted for her attendance. She testified at the present hearing that she told Judge Sivilli that she had been supervised and trained by Robert Tinker, Ph.D.

At the close of the hearing, Judge Sivilli ordered that Dr. Rosenbaum complete the evaluation of S.R. with a woman present so that the child would not feel uncomfortable being alone with a man. She also refused to order even telephone contact between D.R. and S.R. until she received reports from Kleinman and Rosenbaum.

Respondent explained away information from the person who had supervised the father/child visitation that S.R. appeared happy during visits with her father. She stated that the supervisor was not a trained observer and her opinion could not be trusted. Respondent also protested the scheduled evaluation by Rosenbaum, who was appointed at the request of D.R.

Kleinman told the court that maintaining contact with D.R. and being evaluated only stirred up the trauma, further injured the child, currently and developmentally, and served no therapeutic purpose. She diagnosed S.R.'s problem as PTSD because she believed that S.R. exhibited most of the symptoms of this disorder.

The next office record is dated October 21, 2003. Respondent wrote that S.R. appeared confused and upset. She told Kleinman that she saw a "lady and man" the other day and told the lady that her father put a moo-moo in her heiny. The lady said that her father did not do that to her. S.R. wanted to see her mother but they would not let her. Kleinman's description appears to refer to the scheduled evaluation with Rosenbaum, but this is not explained in her notes.

On October 22, 2003, Kleinman met with S.R. The child drew pictures. She said her favorite colors were purple and light green. According to the notes, S.R. drew two pictures and identified both as a forest. Both are done in pink and light green with black scribbles over them. By the end of the session, S.R. identified black as her favorite color.

On October 31, 2003, respondent noted that S.R. appeared calmer two weeks after the evaluation. The child drew a picture with brightly colored markers. She identified it as a hand pointing to the right, possibly to a "sad person." She told respondent that the person was sad because she wanted to see her mother. At the end of the notes, Kleinman wrote that the child twice said she missed her father.

On November 4, 2003, P.R. brought S.R. to the emergency room at Saint Barnabas Medical Center, claiming that the child was exhibiting "mild self-destructive behavior." S.R. had allegedly fondled herself during her bath. She later took pink and black markers and drew all over her mouth, thighs and the inside and outside of her genital area. The doctor wrote that S.R. said her father put the markers on her, but D.R. was not permitted to see S.R. at this time, and the markers were applied when she was in her mother's home. Kleinman told the doctor that S.R. had a "court-ordered" medical examination (most likely the evaluation) two weeks previously, and hinted that her father may have been present at the time. The doctor noted that the occurrence of sexual assault was "unclear." He found S.R. appropriate, her speech "productive, spontaneous," her thought process "logical, connected, reality-based," and her anger "self-directed." She refused to answer any questions about her father. He diagnosed PTSD and listed a number of indications for this diagnosis, all of which came from P.R. and Kleinman and none of which he observed for himself. In fact, he found S.R. to be calm, playful, attentive, friendly to the emergency-room staff and exhibiting minimal signs of anxiety and fear.

Following this visit, Kleinman reported the matter to DYFS. There is no evidence in the Saint Barnabas record of such a report by the medical doctor or hospital: the only mention of DYFS's involvement is that its presence in the matter was "unknown."

Kleinman met with S.R. after the emergency-room visit. Her office notes, dated that day, are unclear as to who made a detailed report to DYFS, and it is assumed that she did. When in Kleinman's office, S.R. expressed anxiety and said she was angry at the toy horses and cows. This session was also videotaped. There is a transcript of the visit in the record which was played during the present hearing, and the undersigned had the opportunity to see and hear it in its entirety.

The November 4 session, as appears on the videotape but not as recorded in the office notes, began with Kleinman reminding the child of what she said on the prior day with respect to drawing with the markers on her body. S.R. changed the subject. Kleinman initiated the topic of the child's feelings and began the questioning with, "When you drew that stuff all over you, how did you feel?" S.R. avoided the question. Part of Kleinman's therapy involved having the child tap bilaterally on her legs in order to calm the child. Kleinman initiated tapping, seeking information on the child's experience in the hospital. S.R. answered monosyllabically, then changed the subject to candy. Kleinman took her back to the subject of the markers and asked why she chose the colors she used to write on her body. S.R. again answered each question with one word, so Kleinman began the therapeutic tapping again. The child accompanied the tapping with "la, la, la, la, la." Respondent resumed questioning S.R. about her feelings. S.R. took a piece of candy, even though respondent said she could not have any until later.

Kleinman told S.R. that she wanted to finish tapping so that they could make the child's angry feelings go away. While tapping, she asked S.R. to say what was bothering her. S.R. said, "No." Respondent asked if she didn't want to discuss things that bothered her. S.R.'s response was inaudible. Kleinman pursued. She asked the child why the doctor checked the markers on her body. She asked the child why the doctor told her that S.R. said "something happened with daddy with the markers." The child denied this and refused to talk about it any further. Now Kleinman began to inquire why she did not want to talk about it. S.R. tuned her out. They played with a game for a while.

Kleinman pressed on. She asked S.R. if she knew what to do when she had angry feelings and what she did do if she remembered something that made her angry. The child said that whatever she did was not helpful. They went back to play with the game. Next Kleinman asked whether the markers kept S.R.'s body warm. She followed up by asking what color marker daddy put in the child's heiny. S.R. said it was red. Respondent asked what he did with the marker in her heiny. S.R. said he did not do anything. Kleinman tried to resume tapping but S.R. wanted to play. As soon as the tapping began again, respondent asked S.R. to think about her father putting the marker wherever he put it. She promised S.R. to reward her with M & M's if she answered the question. The record does not show that Kleinman got an answer, but she gave S.R. the candy anyway. The questioning resumed. Did S.R. not want to talk about the feelings because it bothers her? There is more playing, then, "When was the last time you saw your father?" S.R. said it was on Monday and that the visit supervisor was with them. Now, "When was the last time you talked to your father?" When the child said she did not know, Kleinman asked if this was a secret. Respondent then assumed it was a secret and insisted on knowing who told the child to keep it secret. In spite of S.R.'s denials, respondent persisted. S.R. began to play with the toys.

Kleinman took the toy elephant and had it push its tusks against the other animals. She told S.R. that the elephant was angry at the cow because the cow did things the elephant didn't like. She invited S.R. to be angry at the cow and asked her to express her angry feelings. The child did not answer. Kleinman asked if S.R. had a lot of angry feelings when her father hurt her. There was no response, but S.R. requested that Kleinman shoot the toy baby with the toy gun because the baby was mean. Kleinman returned to the subject of the markers and got no response.

When P.R. came to take S.R. home, Kleinman promised S.R. a heart sticker if she repeated whatever she told respondent the prior day concerning her father and the markers. The child fixed on the heart stickers and Kleinman pursued the prior conversation relentlessly. S.R. made up a story to placate her and denied saying anything about her father and markers the prior day. Although the child repeatedly denied having seen her father when she met with "the man," respondent repeated the question over and over until S.R. gave in and said that her father called her during the

meeting. Kleinman then pushed the child to say that her father told her the call was a secret. S.R. tried to end the inquisition but respondent would not let her. The questions came thick and fast. Even though the child said she did not know the answers, Kleinman kept going. After grilling the child on the subject of telling the truth, respondent returned to the markers. S.R. denied that her father drew on her, but respondent would not accept that answer. She said that was not what S.R. told her before. The child finally got her stickers and was allowed to leave.

S.R. saw respondent again on November 5. This session was also videotaped. At the outset, S.R. did not want to enter Kleinman's office until she was persuaded to see that respondent had gotten new markers. S.R. was singing and appeared to be happy and played with Kleinman's kitten. Respondent asked the child to draw a picture showing how she feels when she is home with her mother and siblings. She then changed the subject to ask S.R. to tell what she remembered about her visit to the emergency room the day before. The child was more interested in getting markers on herself. Kleinman moved on to ask what toys her father had at his house and whether his toys included colored markers. S.R. continued playing with respondent's markers and did not answer the question.

Kleinman requested that S.R. draw one picture with happy feelings and one picture with angry feelings. The child began to pound on the table with the markers, which respondent took as an expression of angry feelings and recorded this in her office record. S.R. told Kleinman that she did not want to talk about angry feelings. Kleinman asked what "the man" she met with the other day did to her. (This probably refers to the evaluation with Dr. Rosenbaum, because a woman was present.) S.R. said he, the man, put a horsey by her private parts. Kleinman pressed on until the child said that her father did it. Then S.R. added that her father was not there, but called on the telephone while she was with the man. She refused to tell respondent whether she spoke to her father when he called. When Kleinman insisted on a response, S.R. said she did not speak to D.R. Respondent persevered. She asked S.R. if her father spoke to her by telephone. When the child said, "Maybe," this led to a follow-up inquiry as to who told her not to tell anyone. S.R. replied that sometimes she tells the truth and sometimes

she doesn't. The next question came immediately: who told her not to tell the truth? The child did not answer, and turned her attention to the markers.

Kleinman would not be denied. She took a large stuffed elephant and pretended it was a "special friend" that S.R. could freely share her secrets with. She encouraged the child to whisper her secrets in the animal's ear and said no one would ever know. She failed to tell S.R. that she was reporting every conversation to the court.

Respondent asked, through the elephant, what happens when she has a good day with her father. S.R. replied that, whenever she says she had a good day with her father, they take her to the hospital. In fact, "someone just did that to me." Kleinman resumed her attempt to have the child say that her father put a marker in her. No matter how many times S.R. denied that her father did anything improper to her, that she was angry with him, that he was secretly seeing her, with or without "the man," or making her keep secrets, respondent persisted until S.R. acquiesced and finally gave the answers respondent was looking for. It was also apparent that Kleinman was trying to make S.R. say that "the man" was allowing D.R. to have contact with S.R. in violation of the court order. Parenthetically, this is consistent with respondent's documented attempts to prevent S.R. from being seen and evaluated independently.

Kleinman asked S.R. to draw a picture of her father hiding in a closet in "the man's" office. The child said they played hide and seek and watched television. Respondent pressed S.R. to finish what was almost certainly a highly improbable imaginary story provoked by the psychologist's questions. She even got S.R.'s mother involved in the quest. Kleinman finally gave up and ended the session with the story left unfinished.

Kleinman met with S.R. again on the very same day. After respondent went to lunch with P.R. and S.R., they went back to Kleinman's office because respondent said that S.R. wanted more tapping. The child agreed and tapping began. Respondent resumed questioning S.R. about her visit to "the man" and the child avoided the questions. She also refused to continue tapping. S.R. appeared more interested in

Kleinman's cat and toys than in pursuing more therapy. Respondent tried to initiate a dialogue concerning the child swimming with her father. S.R. paid no attention.

Kleinman referred to S.R.'s prior brief reference to her father having a magic wand. When the child did not follow up on the question, respondent began to ask S.R. to identify her body parts, starting from her head and moving down to her heiny. Kleinman asked S.R. to tell something about her heiny, and the child left to use the bathroom. When she returned, the subject of her heiny was reintroduced and S.R. changed the subject. Respondent tried to initiate the tapping again, but S.R. continued to play with a toy and sing. Kleinman suggested bringing the toy into S.R.'s play so that further inquiry could be made into whether the child was telling the truth with respect to her father. When this also failed to work, an attempt was made to initiate tapping again. S.R. refused to participate. Kleinman convinced her to tap for one minute, "So you have to tell me what you told me that bothers you so that you want to tap." This was said after the child indicated that there wasn't anything bothering her that made her want to tap.

During the tapping, Kleinman said that D.R.'s magic wand was his penis because S.R. had previously told her this. S.R. acquiesced. Next respondent reminded the child that she had said something bothered her about her mouth, then asked what D.R. did with his penis. S.R. said her father put a car in her. Respondent indicated that this was the wrong answer, and again asked the child to show where D.R. put his penis. S.R. pointed to her heiny and her leg. Now the tapping resumed, with Kleinman telling the child to keep thinking about the way her father put his penis on her and praising her for doing a good job. Next, during the tapping, Kleinman asked S.R. if her father put his penis in her mouth. (Nowhere on the tape does it appear that the child raised this subject spontaneously.) After receiving no response, respondent persisted until S.R. said that D.R. punished her mouth by pushing on one of her (loose) teeth with his finger. In spite of repeated denials from the child, Kleinman insisted that D.R. had actually put his penis in her mouth. She asked S.R. whether her father's penis got bigger and smaller. There was no relevant response.

The following exchange illustrates the quality of respondent's investigation of the abuse allegations: She asked S.R. the color of her father's penis, to which the child replied without hesitation that it was green. Respondent asked if it looked like the color of skin. The child said it didn't and Kleinman indicated disapproval. S.R. recognized that she gave the wrong answer and now agreed that his penis was skin-colored. Kleinman then asked what comes out of D.R.'s penis. Again S.R. knew the answer. She said, "a tablecloth." Kleinman now attempted to discover whether D.R. used a tablecloth in connection with some improper act. S.R. said she wished her father was there. This set off the tapping again. Respondent urged S.R. to think about tablecloths when they tap, and the thought of tablecloths caused her distress.

During the tapping, the questioning went on. Was her father's penis wet or dry? S.R. said it was dry. Did his penis ever get wet? The answer was "no." Respondent tried to change this response but the child's answer remained firm. She resumed playing with the toys. Kleinman wanted to start tapping again but S.R. refused. She would not even participate in "happy tapping."

S.R. left with her mother, but quickly returned to respondent's office. Kleinman attempted to begin tapping so the child could disclose what was bothering her. S.R. wanted to leave but respondent detained her for more tapping and further investigation into where her father put his penis. She urged the child to think about her father putting his penis into her mouth and how she felt about it. S.R. tried to tell respondent that her mother wanted her to say D.R. did this to her but it was not the truth. Kleinman convinced the child that it was the truth and asked again if her father did that to her. S.R. said "no." This was clearly not the right answer, so the child changed it to "yes." Kleinman followed this exchange by telling S.R. that people who hurt children will be put in jail by the police and the judge, but children are not responsible for this when they are telling the truth. The conversation ended with Kleinman pushing S.R. until the child said that her father told her not to tell the truth. The day's session finally ended.

Kleinman's office note for the November 5 sessions, described in detail above, is, in its entirety, as follows:

Came in singing – happy Bangs crayons
Always chooses black – bangs – Angry, sadness
Daddy has magic wand – “What is it?” “His pee-pee”
“Where does daddy put his pee-pee?” Opens mouth – “puts it in
here”

The next office visit took place on November 11, 2003. Kleinman wrote that S.R. wanted her father to be dead because he was mean to her. She asked S.R. how her father’s penis turned green. The child said she colored it green with a marker. Respondent returned to the subject of S.R.’s visit to Rosenbaum. Kleinman reported that S.R. managed to be alone with her father and she did not tell Rosenbaum because her father was having a good day and she was having one too. Her father told her to keep this a secret or he would go to jail. Kleinman wrote that S.R. said her father put his penis in her mouth and in her heiny. She also wrote that the child said she saw a movie with her father while they were with Rosenbaum.

The November 19, 2003, session between Kleinman and S.R. was also videotaped. The child entered without enthusiasm. Respondent had great difficulty engaging her in conversation. S.R. finally began to interact with Kleinman. She did not want to play with the toys. Respondent attributed S.R.’s manner to her having “seriously regressed” due to something, probably involving her father, that occurred elsewhere.

Respondent asked S.R. if she wanted to see her father. When the child said that she did not feel good about seeing him, Kleinman responded that she would have to see him sometime. The child said she did not want to see him in Kleinman’s office, but did want to see him very much because he had a toy of hers. She said she wanted the toy at her house, but the dialogue suggests that her actual request was to have her father come home because he would be “nicer” there. Kleinman turned the conversation to the markers. She asked S.R. who put the markers all over her: the child said it was the doctor. Respondent suggested tapping again. S.R. agreed to a “lot of tapping” because she would be rewarded for participating with a lot of presents. These rewards were frequently candy and/or stickers.

Kleinman next returned to her investigation of S.R.'s visit with Rosenbaum and whether D.R. was hiding in the doctor's office. The child said P.R. was there also and she played with her mother. S.R. said her mother put the markers on her, then denied it happened. Kleinman's pet cat came into the room and S.R. focused her attention on it. Respondent wanted her to tap about her bad memories but S.R. said she was not through watching the cat.

Kleinman reported that S.R. seemed better on this visit because they did tapping during the prior session. She suggested that the child would feel even better if she told respondent more secrets. S.R. said she didn't have any more. Kleinman kept urging S.R. to tap about things that bothered her, even though the child said nothing was bothering her. Respondent promised her a reward for tapping while they thought about S.R.'s father putting marker on her and inside her. She said this even though the child specifically denied that this bothered her. The questions that followed were: "Did he do that one time or a lot of times?" "How do you feel when you think about it?" When S.R. refused to answer the questions, Kleinman told her that this made her think it still bothered her and continued the pursuit. S.R. answered in the affirmative when respondent asked her if she felt "mad."

They began to tap. Kleinman asked S.R. whether her father put his penis in her mouth. Before the child could respond, Kleinman asked if that bothered her. S.R. went on to say that D.R. did this two times at her house, and her mother was there and knew about it. It supposedly happened while her parents were still living together.

Now the tapping began in earnest, while respondent urged S.R. to think hard about her mouth and her father putting his penis in it. She promised the child a reward for thinking about it. Kleinman next asked where S.R. felt it in her body. The child said she felt it in her stomach, but respondent reminded her to think about her mouth too. Kleinman asked S.R. what his penis felt like. She said she didn't know. Kleinman asked if the penis was big or small. S.R. said it was big. Now Kleinman wanted to know if the penis was hard or soft. S.R. said it was hard. Intense tapping followed. S.R. said she was thinking about a witch who took her away last year and lives in an ice

cave. Respondent confirmed that the witch had nothing to do with D.R. before returning to the penis in the mouth.

S.R. said that she was not angry with her father and refused to continue tapping. She was persuaded to tap again while respondent told her to think about her father and the place on her body she felt when she thought about him. This time S.R. seemed to point to her “tushie.” Kleinman pursued: “Did daddy do something to your tushie to make you feel it in your tushie?” S.R. said “No.” Kleinman reminded the child that she had said in the past that her father put his penis there. S.R. denied it. The tapping continued while S.R. was urged to think about her tushie. S.R. kept trying to change the subject. Kleinman urged her to think about her leg, because at some time the child told her that her father urinated on her leg.

As the session ended and S.R. got ready to leave with her mother, Kleinman returned to the subject of her father’s appearance at her visit with Rosenbaum. The child’s responses were confused, alternating between agreeing, denying and trying to change the subject. S.R. finally said she wanted respondent to stop and they left.

Kleinman’s office notes for this visit are short and almost illegible. She says that S.R. did not want to see her father, that her father put the marker on her, and that he put his penis in her mouth when he lived with her mother.

The next office note is dated December 3, 2003. S.R. denied seeing her father “lately.” The note ends with the child’s alleged statement that her father’s penis “tasted so yummy” because he put “pink sauce” on it.

The next office note is for the session of December 10, 2003. The notes are very difficult to read. Kleinman stated that S.R. did not want to see her father and did not miss him because she was afraid of him. The child may have said that it made her father happy to “do these things.” (The context for this statement is absent from the notes.) S.R. said that sometimes she let him and sometimes she did not. Kleinman wrote that S.R. expressed anger with her father verbally and through play.

S.R.'s next session was held on January 3, 2004. Respondent called D.R., allegedly over S.R.'s objections, and left a message asking him to return her call in the next two minutes because his daughter was there. He returned the call and the full substance of their conversation is reported below as he recorded it. This and other calls were recorded by D.R. over the objection of respondent and without her knowledge. In New Jersey, there is no need for both parties to a telephone conversation to consent to recording.

It must be stated here that, at all times, D.R. was adamant that he did nothing to harm his daughter, much less did he molest her. It is further stated here that, based upon the recording, at no time did D.R. act in an abusive manner to Kleinman either verbally or in tone of voice. His words were conciliatory even as he firmly stated his questions and concerns to her. He did indicate that he could not take her word on information she provided to him as allegedly coming from his daughter.

During this call, Kleinman urged D.R. to come to her office so she could manage his contact with S.R. This strategy was supposedly designed to prepare S.R. to resume interacting with her father. D.R. said that he was "more than happy" to work with respondent to rebuild the relationship. He expressed his love for his daughter and her love for him. He told respondent that, although there was no written order, Judge Sivilli had stated from the bench that she expected a period of no more than four to six weeks to implement the reunion. Kleinman denied knowing anything about this because, she said, the court had not contacted her.

Respondent then informed D.R. that the first cooperation she required of him was full payment for his share of the cost of her services before he could meet with his child. He offered to pay for respondent's services during the reunification period and go before the judge for back payments. Kleinman refused to negotiate. She stated that his first contacts with S.R. could be damaging to the child. Consequently, if he and S.R. could not establish a relationship, it could be inferred that she would not receive payment for these sessions. She later offered to prepare a payment schedule for him.

She told D.R. that, from the first time she saw S.R., she knew the child had been seriously damaged. She followed this by alluding to the police and the judge and inferred that she was not trying to get him into trouble. Although she set the condition that he pay her for all past services, she avoided telling him how many sessions she had conducted with the child on the grounds that she didn't have her charts available. She avoided answering his questions concerning her videotaped sessions with the child when he asked to see them.

The next condition Kleinman imposed on D.R. was that he apologize to S.R. for hurting her. Allegedly, this was at S.R.'s request. Respondent denied trying to get D.R. to implicate himself in the molestation. D.R. pointed out that Kleinman had apparently not listened to recorded conversations between his daughter and himself in which they expressed their love for each other. The remainder of the conversation between the two consisted of Kleinman insisting that, if he denied molesting S.R. and failed to apologize, he would be denying the child's reality to her detriment. The call ended with D.R. protesting respondent's bills when he said he didn't even know what she was billing him for. Her response was, "you'll have to figure that out."

Her notes for this date confirm that she made rules that D.R. must pay her bills and apologize to his daughter for hurting her before he would be allowed to speak to her. Speaking for S.R., Kleinman wrote that the child did not want to talk to D.R. if he did not apologize. He did not apologize and the call was terminated. Kleinman wrote that S.R. was extremely agitated after the call ended. During this and subsequent recorded telephone calls, S.R. was led to believe that her father did not want to talk to her because he balked at the conditions set by Kleinman.

On January 4, 2004, Kleinman wrote to Judge Sivilli seeking to be relieved of the appointment to treat S.R. because she had not been paid for the costs of her court time and depositions and had received only half of her fees for her sessions with S.R. The request was refused.

The next office record is for the session of January 12, 2004. Kleinman wrote that S.R. built a jail out of blocks and said she would put her father in it. She allegedly stated that she did not want to visit her father.

On February 1, 2004, Kleinman's office record states that S.R. did not want to visit her father because she did not feel safe with him. At about 11:00 a.m., Kleinman called D.R. and left the message that his daughter wanted to say hello to him. D.R. recorded the voicemail. In the February 2, 2004, note for the next visit, respondent wrote that S.R. said she wanted to put her father in jail. The child said she was angry with him and did not want to speak to him that day.

The next office visit took place on February 18, 2004. The February date originally written was crossed out and the change entered but not initialed. S.R. played with the toy animals. Kleinman asked what should be done if animals hurt other animals. S.R. said they should be put in jail. This led to the subject of whether the child was angry with her father. S.R. said she was, and told Kleinman to write that down in her notes.

On March 3, 2004, Judge Sivilli issued an order reinstating supervised parenting time between D.R. and S.R. beginning March 22. The resumed visitation was conditioned upon respondent meeting with S.R. weekly for three weeks to prepare the child for the reunion, effective March 1. During the week of March 15, Kleinman was supposed to meet with D.R., either in person or by telephone, to set the parameters for the coming visitation.

The order goes on to specify the conditions under which the first meeting is to take place. It should be held in a mutually agreed-upon neutral location where it could be videotaped unobtrusively. After the meeting, S.R. was to have a therapy session with respondent, and D.R. was to pay her for both the meeting and the subsequent therapy session. A second visitation was to be scheduled during the week of March 29 under the same conditions.

If the two meetings proved successful, supervised visitation was to be reinstated for two hours weekly for four weeks. If these visits were successful, four-hour weekly visits were to be scheduled starting the week of May 3 and continuing for the next four weeks.

D.R. dated his next recording March 17, 2004. He called Kleinman in accord with the March 3, 2004, court order to set up a schedule for visitation with S.R. beginning on March 15, 2004. Respondent's recorded announcement stated that she would be away from March 16 and would return on March 22. D.R. left a message on both respondent's office and cell-phone voicemails. His message stated that he was calling pursuant to an order from the court that they discuss a visitation schedule for the following week.

D.R. called Kleinman again on March 22 to schedule the visitation. She refused to set up a visitation schedule with him until he paid her up front for sessions required to get S.R. ready for the visits. D.R. accurately stated that the schedule was part of the court's order with no requirement for prepayment. Even though D.R. read the actual conditions of the order to Kleinman, she still insisted on prepayment and told him he would have to go back to the court if he disagreed. He pointed out that he had sent a check for the session to his attorney, who faxed this information in a letter to her. She said she had not read the letter. Even though the order stated that they could set up the schedule either in person or by telephone, she insisted that it had to be done in person. She further insisted that she needed more time to make all of the arrangements for the visitation. D.R. said he was trying to follow the date in the order. Kleinman demurred. She said she could not get things done at the last minute and told him to return to the court to clarify the order.

Respondent justified her refusal to follow the written order of the court by claiming that she had an ex parte communication with the court on the subject of the order and was told it meant something other than what it actually said. Kleinman wanted to delay visitation and require more preparatory sessions with S.R. for which D.R. would have to pay in advance. (When the preparatory sessions did not

materialize, D.R. stopped payment on the check and it was never forwarded to respondent.)

On March 23, 2004, respondent wrote a letter to Judge Sivilli complaining that, in February 2004, she made a previously scheduled telephone call to D.R. during a session with S.R. Kleinman told the court that she put the phone on speaker so that S.R. was able to hear what transpired. She said that during the call, D.R. became loud and abusive to her and insisted upon talking to his daughter. Kleinman claimed that S.R. became re-traumatized by D.R.'s conduct, which caused respondent to inform the judge that S.R. was not ready to resume contact with her father. The information provided to the court as to D.R.'s conduct on the telephone is inconsistent with the recorded telephone conversations.

There is no further note in the respondent's office record until March 25, 2004. This note is typed. According to Kleinman, S.R. said that "Daddy hurt my feelings and he hurt me on my heiny and then he put something in my heiny and it was a horsey." When respondent received a fax, S.R. asked if it was from her father. After she learned it was not, she said her father was "stupid" and she had bad feelings that she wanted to make go away. Then S.R. changed the subject to her new school, which was just completed. The notes skip to the child drawing a picture of Noah's ark.

On March 25, 2004, Judge Sivilli wrote to Kleinman and the attorneys for the parties. She suspended the visitation order of March 3 resuming parenting time between D.R. and S.R. based upon Kleinman's allegations that S.R. was traumatized by telephone contact with her father and further contact would cause her harm. She directed D.R. to meet with Kleinman to prepare for subsequent visitation and receive respondent's instructions on what he could and could not say. He was now told that he had to pay Kleinman in advance for each session, and his visitation would be suspended until he complied with the terms of this letter.

D.R. recorded an undated telephone call during a session between Kleinman and S.R. Kleinman announced that S.R. did not want to talk to D.R. She told him S.R. wanted him to say he was sorry and she would transmit his answer to his daughter.

When D.R. insisted on talking directly to his daughter, Kleinman refused and threatened to terminate the call. She told S.R. that her father did not want to apologize, thus telling the child that he did not want to talk to her, and respondent hung up. This call probably occurred before the session of April 7, 2004, because he apologized to his daughter on that date.

The next office note is dated April 7, 2004. S.R. was silent when she entered. When urged to speak, she told respondent that she did not want to talk about her father because it was "too upsetting." Kleinman asked what happens when she talks about him. S.R. said she had bad feelings. She added that, the night before, she thought about her father hurting her. Kleinman commiserated and asked if the child wanted to stop thinking about him. S.R. responded that she wanted to play with the giraffe and Kleinman took the toy animals out for her. During the play, respondent asked the child if she wanted to see her father. S.R. said she did not because he would hurt her, then she talked about policemen shooting bad guys. She wanted to shoot her father because he refused to apologize to her. She pretends to shoot the animals even if they apologize. S.R. drew a picture that showed her father hurt her on her head and her knee.

During this or a subsequent session, D.R. recorded an undated telephone call in which Kleinman threatened to hang up when D.R. said he wanted to talk to his daughter. Respondent insisted that he apologize to S.R. She put the telephone on speaker so that S.R. could say something to her father without getting on the phone with him. The child's voice is inaudible. After D.R. made several unsuccessful attempts to hear her, Kleinman, speaking for S.R., said his daughter wanted him to apologize. Even though he did not hear S.R. ask, D.R. finally gave in and generally apologized to his child for anything he did to hurt her or hurt her feelings. D.R. then asked to speak to her. Kleinman refused, saying he could talk to S.R. at a later time. S.R. audibly said "Bye-bye, Daddy." D.R. said, "Bye-bye [S.], baby girl. We'll talk again soon."

Kleinman held a long session with S.R. on April 8, 2004. S.R. stated that she was still angry at her father, but ran quickly over to the telephone when respondent's nephew, who has the same first name as D.R., called Kleinman and she mentioned his

name during the conversation. When S.R. found out that it was not her father on the phone, she began to talk baby talk and said she thought about her father hurting her. When Kleinman asked where he hurt her, the child pointed to her crotch. She said she dreamed that her father hurt her and a policeman came and took him to jail. S.R. allegedly reported that her father hit her on her hand three times because she wanted to leave with her mother. Then she said he hit her on the head with a toy tiger and “pooped” on her head. Under Kleinman’s questioning, S.R. declared that this was the truth and it happened when she was wearing her father’s clothes. She did not respond when Kleinman asked what her father was wearing. S.R. next said that her father hit her on her “butt.” Then he “put a doll in my heiny and poopie came out.” Next he put poopie on her eye and her face and her mother came to clean her off. These things made the child feel “bad.”

On April 9, 2004, Kleinman wrote to Judge Sivilli stating that S.R. had suffered overwhelming trauma and perceived herself to be unsafe with her father. In the letter, respondent discoursed on the possibility that contact with D.R. might cause the child to develop serious mental disorders in the future, which she described in detail to the court. She urged the judge to allow S.R. an indeterminate amount of time to recover from the trauma and, in the meantime, prevent her from having any contact with her father until Kleinman pronounced it appropriate. Kleinman told the court that the child was improving until she had a telephone contact with her father that caused her to dissociate because of overwhelming feelings of terror. She explained to the judge that dissociation is a numbing response to traumatic feelings. The letter goes on to explain away, in detail, any positive statements that S.R. made about her father as being a typical reaction from a child who has been sexually abused.

The content of this letter is curious since Kleinman actually prevented S.R. from having telephone contact with her father except to say “Bye-bye, Daddy” by speakerphone, to which she received a warm response in return. Nothing in the record suggests any other source of telephone contact between them. In fact, it was Kleinman who conveyed to S.R. the feeling that her father did not want to talk to her because he would not meet respondent’s imposed conditions.

The next office record is dated April 14, 2004. S.R. played with the toys to represent a boy and a girl and stated that they needed to be rescued from a man who was doing something bad to them. Respondent wrote that S.R. said her father pooped on her head at his house and then read her a bad book about snakes biting a little girl. She said the poopie was still on her head and it fell off when she lay down on the bed. Kleinman asked what her father was wearing. S.R. said that he had on a shirt and pants with snakes on them. The child used a black crayon to draw her father. In the picture her father looked angry and tried to take her toy horse away. When respondent reminded her that D.R. had apologized, S.R. said that he was now angry again.

On April 16, 2004, Kleinman wrote to Judge Sivilli complaining that D.R. had stopped payment on the check he sent through his lawyer in anticipation of preparing S.R. for the March visitation schedule.

During the session of April 21, 2004, S.R. said that her father hit her and scratched her face. She still did not want to see him even if he had apologized. Again, it should be recalled that S.R. had no contact with her father at least since the beginning of April.

On April 30, 2004, Judge Sivilli ordered D.R. to pay respondent for his share of the cost of the two days of testimony, for the \$10.00 bank charge for the stopped check, and for the costs of reproducing notes and videotapes for purposes of trial. The payments were to be made by May 7, 2004, prior to the continuation on May 13, 2004, of the trial so that Flaster could finish his cross-examination of respondent. When Flaster said that D.R. was unable to make these payments, Judge Sivilli issued an order, dated May 11, 2004, requiring the payments. This order was supplemented by a letter order of the same date relieving Kleinman from her duties as the court-appointed therapist for S.R. P.R.'s lawyer was also relieved as her counsel and P.R. was directed to get new counsel. D.R.'s contact with his daughter was to remain suspended until a new therapist could be appointed for the child.

Even though Kleinman was relieved of her court-appointed position, she continued to treat S.R. Her office note for June 17, 2004, states that S.R. still did not

want to see her father because she didn't like him. She told Kleinman that when she saw Rosenbaum her father was in the other room. On June 29, S.R. told Kleinman again that she didn't want to see D.R. because he was mean. On July 14, S.R. said that she had a scary dream but could not remember what it was. As of July 28, S.R. continued to tell respondent that she did not want to see her father.

In her office notes of August 31, 2004, Kleinman wrote that S.R. said her father hurt her when he put a horsey in her vagina, and she became upset talking about it.

On September 14, S.R. allegedly told Kleinman again that her father put the horsey in her vagina and also put his penis somewhere. The entry is illegible. Respondent wrote that the child said his penis was big and white stuff came out of it and went on him. Finally, she wrote that S.R. said her father licked "right here" and she pointed somewhere. The end of this sentence is also illegible.

An office record dated September 21, 2004, is completely blank.

S.R. was scheduled to begin visitation with her father under the supervision of Dr. Barry Katz. She saw Kleinman on October 4, 2004, prior to the scheduled visitation that afternoon. S.R. allegedly told respondent that she did not want to go to this meeting because she was afraid her father would hurt her. Respondent's office record goes on to state that the child said D.R. tried to cut her leg off when she was at his house.

The next office record is dated October 6, 2004. Kleinman wrote that S.R. complained of not sleeping. She explained that she was unhappy because her father brought her a bad present when they had their visitation. S.R. said she only wanted to see her father when Katz was present. She claimed she didn't want to see him at all, but she didn't tell that to Katz even though Katz asked while she was alone with him.

Kleinman followed up on this conversation by writing to Katz on October 7, 2004. In her letter, respondent attempted to convince Katz that the visits were having a detrimental effect on S.R. and should be terminated at the earliest possible time. She

wrote that S.R. said she did not want to see her father even with supervision, but claimed that S.R. explained she did not want to tell this to Katz because she had already agreed to the visitation. Respondent told Katz that she was receiving input from the child's mother as to the negative effect that visitation was having on S.R., but denied that she found any evidence that P.R. was coaching her daughter to make negative statements about her father. Kleinman closed her letter by notifying Katz that she would contact the child's teachers and let him know what they reported concerning S.R.'s demeanor in school.

The next office record is dated October 8. The record is short and almost illegible. It says, in its entirety:

Pretend this is a nice daddy. Looks tired. Quiet. Avoids talking about father. No contact.

The office record dated October 12 is entirely blank. On October 19, Kleinman noted that S.R. told Katz that she didn't want to see her father. There is also a sentence fragment that says only, "knife to leg."

Kleinman wrote to Katz again on October 20, 2004. She reported to him that she spoke to S.R.'s counselor from that summer's day camp. The counselor reported that the child did very well at camp and seemed happy. Kleinman told Katz that S.R. was also doing well in therapy because she had no contact with her father during this period. Respondent then contrasted this period with the time when contact between D.R. and S.R. was reestablished. Respondent then repeated all of the things that S.R. had allegedly told her in confidence during therapy sessions. It appears that Kleinman also spoke to S.R.'s pediatrician, her teacher, the director of the child's preschool and anyone else willing to provide information. For Katz's benefit, Kleinman carefully correlated all negative comments received with the dates of S.R.'s visitation with her father. The letter ended with respondent strongly urging Katz to terminate visitation. Then she explained to him any and all irreparable psychological harm that might result to the child if the visits continued.

The next note in the office record is dated November 4, 2004. Kleinman wrote that S.R. seemed happy and said she did not want to talk about her father anymore because she already told respondent enough.

The office record for November 20, 2004, is blank. The final record is dated January 21, 2005. It states that S.R. seemed anxious about her father and she put the toy father bear in jail.

The incoming Assignment Judge of the Family Court, Thomas Zampino, replaced Judge Sivilli in the matter and issued an order that Kleinman was to have no further contact with S.R. Respondent never saw S.R. after the last visit noted in her records.

D.R. filed a complaint with the Board alleging, among other things, that Kleinman was implanting false memories in his daughter's mind. In response, on May 2, 2005, respondent wrote a letter to Elaine DeMars, managing executive director of the Board, stating that she based her diagnosis of trauma upon the symptoms evinced by S.R. and the child's statements. She further complained that during her telephone conversations with D.R. he screamed at her, causing his daughter, who was present, to show evidence of trauma. This statement is inconsistent with the recorded telephone conversations between D.R. and Kleinman in evidence. D.R. evidenced frustration but remained firm and in control.

On July 15, 2005, the Board began its investigation of Kleinman's practice. A committee of the Board conducted a series of investigatory hearings to determine whether charges should be filed against her. During the hearing of June 12, 2006, she told the Board that she applied the eye movement desensitization and reprocessing (EMDR) therapy protocols to S.R., as she was trained to do by Robert Tinker, Ph.D. This therapy included bilateral stimulation of the child by tapping or snapping. The same misinformation is also contained in the curriculum vitae she provided. EMDR therapy will be discussed below during the testimony of the appropriate expert witnesses.

Respondent testified at another hearing before the Board on July 18, 2005, as to her qualifications and experience. She told the Board that she was “skilled in EMDR with children, trained by the leading person in the country.” When asked specifically about her training in the use of EMDR therapy, she stated that after completing Level One and Level Two training in EMDR, she worked twenty to forty hours under the supervision of Robert Tinker, Ph.D., a leading authority in the use of EMDR, and also used him as a consultant.

Testimony of Robert Tinker, Ph.D.

Dr. Tinker testified at the present hearing that he never supervised or consulted with Kleinman as part of her EMDR training. He defined supervision as taking some actual responsibility for a case, while consultation refers to simply responding to a request for information concerning a case. He did say that he had a short professional relationship with respondent, but would not disclose the content for reasons of her confidentiality.

Testimony of David A. Martindale, Ph.D.

David A. Martindale, Ph.D., ABPP, testified as an expert witness expert in psychology and forensic psychology on behalf of complainant. He is licensed to practice psychology in New York (1972), New Jersey (2000) and Florida (2007). Among his qualifications are the following. He was certified as a health service provider in psychology (1978) by the National Register of Health Service Providers in Psychology. He is board certified in forensic psychology by the American Board of Professional Psychology from 1996. From 2008 through the date of hearing he has been a member of the Trial Advocacy Institute Faculty of the American Bar Association, Section of Family Law. From 1989 to 2008, Martindale was adjunct clinical professor of psychology in the Department of Psychology of the State University of New York at Stony Brook. He has also held other instructional positions. In addition, Martindale has published extensively in the areas of child custody, evaluation of evaluators in child-custody disputes, and forensic examination in custody matters, including alleged child

sexual abuse, etc. I **FIND** him eminently qualified to provide expert opinion testimony in the present appeal.

Although respondent raised objections to the expert report provided by Dr. Martindale because the witness modified his report as additional material was provided to him by complainant, I **FIND** that the modifications were appropriate and do not impeach his credibility as an expert witness.

The witness defined forensic psychology as “any component of the profession of psychology that involves the interaction between psychology and the legal system.” Martindale has treated children who were victims of sexual abuse, but claimed no special expertise in this area or in EMDR therapy.

He reviewed, among other things, respondent’s office records for her treatment of S.R., the videotaped sessions between respondent and S.R., the Saint Barnabas hospital report, and the recorded telephone conversations between Kleinman and D.R. As the videotaped sessions were played in the hearing room, Martindale made observations as to Kleinman’s interactions with S.R. His observations are included in the summary of his testimony below.

He knew that Judge Sivilli had appointed Kleinman to conduct play therapy with S.R. and attempt to learn what occurred between the child and her father. It is recalled at this time that respondent is charged with performing the court assignment as both a treating psychologist and a forensic psychologist in violation of the standards of her profession. This issue will be addressed by Martindale and all other expert witnesses in this matter.

The witness initially drew the distinction between the professional standards for interviewing the child for purposes of treatment and the standard of care for interviewing the child to assist a court to determine whether or not a child was sexually molested. In his opinion, in order to treat a child for trauma, it must first be determined that the child experienced a trauma, and this must be done in the appropriate manner.

Martindale testified that Kleinman's interview technique was flawed because she frequently asked S.R. leading questions and corrected her when the answer did not meet the questioner's expectations. He described respondent's manner as "coercive," that is, inappropriately forceful and insistent. Martindale explained that young children should be made to understand at the outset that the adult asking them questions does not have the information sought. Otherwise the child will assume that the adult has knowledge of the correct answers and wants to see if the child knows them. As a result, children will attempt to guess at the correct response. Martindale found repeated evidence of this in Kleinman's interviews of S.R. As one example, he cited the interview concerning the color of her father's penis (green) and what comes out of it (a tablecloth). He described S.R.'s responses as "wild stabs at getting the right answer." (Respondent corrected S.R. to have the child say her father's penis was skin-colored rather than green.) He referred to Kleinman's obviously negative reactions to S.R.'s answers and the child's obvious attempts to please what she believed to be a friendly adult.

Martindale testified that Kleinman never informed the court that the child made statements inconsistent with what respondent was reporting. As examples, Kleinman never told the court that S.R. spontaneously stated that D.R.'s penis was green nor that S.R. said that her mother coached her to make certain responses to Kleinman. Respondent never informed the court that the child reported an altercation between her parents in which her father ended up bleeding. This left the court with the assumption that her father was the aggressor. She never reported to Judge Sivilli that S.R. said her father put a horsey in her heiny, but also said that Rosenbaum put a horsey in her heiny.

Martindale stated that respondent acted on her unsupported presumption that trauma existed based upon her improper questioning and began to treat S.R. for trauma. The witness explained that a three-year-old child only experiences events visually, aurally or tactilely. Consequently, if an event is not painful, the only question is the manner in which the child experiences it emotionally. A child will not necessarily process an event as abusive unless this is explained to the child at the time of the event. Consequently, the child should not be treated as a victim of trauma unless it is

first ascertained that trauma has occurred. The danger is that a child who is treated as a victim will develop the sense of being a victim and emerge from therapy seeing himself as a victim.

As evidence of Kleinman's presumption of abuse, Martindale referred to one of the recorded telephone conversations with D.R. in which she told him that S.R. suffered from intense feelings that his sexual molestation of her engendered and he could not deny that it happened without denying his daughter's reality. However, with no evidence of molestation coming spontaneously from S.R., it was clear that the molestation was actually Kleinman's reality that he was not entitled to deny. Her statements to D.R. concerning preservation of his child's reality are inconsistent with her statements before the Board that it was important to address the child's misperceptions. In Martindale's opinion, nothing in respondent's records supports an identification of what the child's reality actually was.

He stated that the record of S.R.'s emergency visit to Saint Barnabas is not evidence of PTSD since the only trace of this diagnosis is found in the listing of intake information provided by her mother and a telephone conversation with respondent. The hospital examination report contains no supportive diagnostic findings.

Martindale testified that, regardless of the treatment modality, in interviewing a child one must rely upon the child to obtain the necessary information, "particularly if it is assumed that part of what may be upsetting the child is something that only the child has knowledge of." If the purpose of the interview is to obtain information to be reported to a court, the interviewer must carefully avoid planting information in the child's mind that bears upon the matters in issue.

He stated that Kleinman repeatedly told S.R. what happened to her without any support in the record to show that the statement was factually accurate. He testified that when S.R. described something her father did, Kleinman repeatedly followed up with questions as to where else he did it and what else he did to her. As an example, he described an exchange where S.R. said her father put a horse by her heiny and Kleinman asked where else her father put the horse. This suggested to S.R. that

respondent knew D.R. also put it somewhere else. He also referred to Kleinman repeatedly directing the child to imagine her father's penis in her mouth. According to Martindale, the risk in Kleinman's method is that the child will be left with these memories whether or not the actual events occurred. This is known as "source misattribution." We have childhood memories but no idea where they came from. The source of the memory could be something told to the child rather than something that actually occurred. If S.R. became older and recognized the implanted memory as abuse, it could permanently harm what should have been a normal father/child relationship.

Martindale was asked what risk of harm could occur if inaccurate information were provided to the court. He explained that the court relied upon respondent for advice in formulating a plan for D.R. to have access to his daughter. If abuse occurred, this plan would be very different than if there had been no abuse. The court had to decide whether visitation should take place with or without supervision. Kleinman repeatedly urged that all contact between S.R. and D.R. be terminated. According to Martindale, supervised visitation would make it impossible for a normal parent/child relationship to develop between S.R. and her father unless it could be established that unsupervised contact would be risky.

Martindale next commented that Kleinman had prepared no treatment plan for her therapy with S.R. A treatment plan should also include a description of the behaviors to be targeted by the therapy. The regulation governing a psychologist's preparation and maintenance of client's records requires that the records contain "9. Current functional impairments and rating levels thereof." N.J.A.C. 13:42-8.1(c)(9).

He explained that this means the psychologist is supposed to identify the ways in which the child's functioning is impaired and develop a plan for changing the "behaviors that constitute impaired functioning."

Martindale further opined that, in order to develop a treatment plan, it is necessary for the therapist to identify what is happening in a child's life, as examples, the situation with the child's parents and the support systems that exist for the child.

The standard of care requires the therapist to consult the reliable sources available. This includes other mental health professionals who have had contact with the family and are familiar with its functioning. He pointed out that Kleinman did not obtain any of these records before embarking on her treatment. He opined that no appropriate treatment plan could be constructed without this information. The risk is that an inappropriate treatment plan would at best be ineffective and at worst make a bad situation even worse.

He stressed that since Judge Sivilli directed respondent to oversee S.R.'s visitation with D.R., Kleinman should have first ascertained the child's existing contact with her father and the nature of that contact before undertaking her treatment plan. Although it appeared that intake information in Kleinman's office record actually contained information concerning the visitation schedule in place, Martindale stated that respondent accepted without question the nature of S.R.'s contact with D.R. as presented by P.R.

He referred to Kleinman's testimony during her first hearing before the Board in which she states that in formulating a treatment plan, assessment of the child's progress is ongoing, yet her records show no initial or ongoing assessment of S.R. As an example, Kleinman never indicated the manner in which she fit conflicting information given by the child into her treatment plan. He also commented on her testimony that her treatment included correcting the child's misperceptions. Martindale observed that respondent was unable to correct S.R.'s misperceptions since she evidenced no real knowledge of what the child actually perceived. The videotaped sessions show that respondent asked S.R. series of leading questions on subjects chosen by herself rather than the child. The witness also took issue with Kleinman's testimony that false memories cannot be implanted in a child.

He stated that, in addition to developing a plan, the treating psychologist should identify the ways in which she will ascertain whether or not the client is making progress. She should also identify the ultimate goal of treatment so that she will know when that goal has been reached. Neither of these are evident in respondent's treatment record for S.R. Respondent also failed to make an effort to resolve

discrepant data that did not support the hypotheses upon which she based her treatment plan.

Martindale opined that Kleinman's failure to develop a treatment plan, failure to provide for continuing assessment of the effectiveness of the plan, and failure to identify goals for treatment and a method for ascertaining when the treatment goals are reached constitute extreme deviations from the required standard of care.

Martindale then described the distinction between a treating psychologist and a forensic psychologist. A treating psychologist's concern is the well-being of a client, in this case, a child. The practitioner is responsible to the parents, but the goal is the assistance of the child. A forensic psychologist is responsible for assisting the trier of fact, whatever the context of the forensic investigation. In the present case, providing reliable forensic assistance to the court does assist the child because the trier of fact is then able to decide what is in the child's best interest. Passing flawed information or incomplete information to the court serves neither the trier of fact nor the child well.

He opined that the standard of care does not permit a treating psychologist to serve as a forensic psychologist at the same time. There is an inherent conflict in assuming both roles. Therapy requires that a trusting relationship be developed between the psychologist and the client. The psychologist must accept the client's statements at face value and keep them confidential. Martindale pointed out that respondent assured S.R. that she was keeping the secrets the child was telling her. At the same time, she encouraged S.R. to tell things to an elephant puppet that she did not want anyone to know, even though respondent was fully aware that none of S.R.'s disclosures would be kept confidential.

On the other hand, a forensic psychologist conducts a forensic evaluation using direct questioning to gather information for the court. The forensic psychologist must also gather all available collateral source information rather than accepting the client's statements at face value. For example, in the present case, Kleinman would have been required to evaluate D.R. and obtain complete information from him.

As an example of respondent assuming this dual role, Martindale referred to her letter of August 10, 2003, to Judge Sivilli. In this letter, she states that S.R. should not be forensically evaluated by Rosenberg because Kleinman is in the process of conducting this evaluation herself. In other words, she admits to acting as both treating and forensic psychologist.

Martindale testified that Kleinman did not have the expertise that she represented to the court and the Board. He referred to her testimony before the Board wherein she demonstrated no understanding of the conditions known as “dissociative disorders” and “fugue,” one of the dissociative disorders. He explained that the [Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition](#), (DSM-IV) definition of dissociative fugue requires physical removal, “significant geographic displacement” to a strange place with no recognition of how one got there. He could not imagine how a small child would manage to do this. From his observation of the videotaped sessions, he determined that what Kleinman referred to as dissociation or fugue was, in all likelihood, S.R. withdrawing emotionally from respondent and avoiding her questioning. He found no evidence of dissociation, fugue or any suggestion of a psychosis. Consequently, there was no basis for Kleinman to conclude that S.R. had suffered a psychotic break, nor does the term “psychotic break” appear in the DSM-IV. There is no general agreement as to its meaning.

When a child has a tantrum or gives irrelevant answers to questions, it is the child’s way of removing himself or herself from the situation because the child does not want to deal with it. It is not a symptom of dissociation. Furthermore, a child’s refusal to answer questions does not mean the child is denying reality. It may be that the child is confused by the questions or simply choosing not to relate to the questioner.

He testified that Kleinman also misstated the criteria for PTSD found in the DSM-IV. Kleinman stated that the main diagnostic criterion is avoidance, whereas the first criterion for the condition listed in the diagnostic manual is the existence of a significant traumatic event. Avoidance is only one possible symptom of the disorder. Martindale found no evidence that S.R. had suffered a traumatic event and, consequently, no evidence of PTSD. Nevertheless, Kleinman used “avoidance” in her diagnosis of S.R.

In fact, S.R. at times indicated that she wanted to be with her father, and at other times wanted to avoid contact with him. The child's statements are inconsistent, and Kleinman made no effort to resolve this discrepant data before diagnosing PTSD.

In formulating her diagnoses and treatment plan, Kleinman showed no neutrality. She entered into her professional relationship with S.R. with the assumption that the child had been sexually abused and suffered trauma, whereas there is no evidence from the record that the child had been either abused or traumatized. For example, there is no record that S.R. spontaneously stated that her father put his penis in her mouth. During the session of November 4, 2003, S.R. said, in response to Kleinman's questioning, that something unspecified bothered her about her mouth. This led Kleinman to question the child about her father's penis in her mouth. Martindale testified that the standard of care required that, if the child actually said it spontaneously, Kleinman should have explored whether someone who had contact with S.R. might have influenced the production of that statement. Respondent never made this determination. He defined a spontaneous statement as one not in response to a direct inquiry.

Martindale pointed out that Kleinman herself, in a letter to Judge Sivilli, objected to S.R. meeting with Hagovsky because, when children discuss the issues with a number of people, the subject becomes contaminated. He stated that no utterance by a three-year-old should automatically be taken as factually accurate.

He stressed that Kleinman's representations to the court were incomplete and, on occasion, inaccurate. For example, she failed to disclose to Judge Sivilli that S.R. said her mother, P.R., told her to provide a certain answer, while she reassured the court that there was no evidence of maternal coaching. She never revealed to the court that S.R. said her father's penis was green and a tablecloth came out of it, and other spontaneous answers by the child that did not fit with Kleinman's preconceived ideas. Her conduct was potentially harmful to the child because Judge Sivilli relied upon Kleinman in formulating a plan for S.R.'s contact with her father. She also potentially harmed the child by falsely telling S.R. that her father did not want to speak to her.

Martindale gave other examples of Kleinman's lack of neutrality, in that she failed to be an objective observer. As one example, he referred to the videotaped session in which S.R. is seen sitting at a table in front of a piece of paper. She is holding markers in each hand and happily banging them on the table in time with the song she is singing. Kleinman immediately told the child that the banging showed she was having angry feelings they had to address, but that having angry feelings was a good thing. That is, S.R. was happy, but was told she was angry and that this was good. Martindale stated that this conduct causes children confusion.

Martindale testified that Kleinman repeatedly reminded S.R. of things allegedly said in a prior conversation, none of which appear in respondent's treatment records. He said this is in violation of the protocols of the American Professional Society on the Abuse of Children (APSAC) for interviewing children, an authority cited by respondent herself. The interviewer should not refer to something the child said previously, whether or not it is factually accurate that the statement was made. This creates a false impression of consistency to the child's reports.

The witness also opined that Kleinman violated the standard of care by using S.R. to inform on D.R. and the other therapists who examined her. As examples, she wanted S.R. to tell whether her father gave her presents, whether he coached her on what to say in therapy and told her to keep secrets, whether Rosenbaum allowed D.R. to hide in the closet and have contact with S.R. while the evaluation was going on, and so forth. Martindale stated that Kleinman's reaction to S.R.'s responses communicated disappointment to the child when these responses did not fit in with respondent's preconceived opinions.

He opined that, no matter how much respondent protested that she was only providing therapy, the recorded sessions show clearly that she was actually acting as a forensic psychologist and performing her own investigation.

Kleinman repeatedly told S.R. that she would feel better if she told respondent the truth about what her father did to her before she went home. According to Martindale, this occurred even when there was no indication in the videotapes that the

child needed to feel better. Martindale had no objection to a psychologist rewarding a child for simply participating in therapy. He did object to Kleinman providing the child with rewards when the context showed that rewards were provided for S.R.'s participation in subjects of Kleinman's, not S.R.'s, choosing. This shows that respondent repeatedly suggested to the child what should be bothering her instead of allowing the child free rein to discuss her actual feelings.

Martindale testified that in her letter to Judge Sivilli dated August 10, 2003, Kleinman reported that it was in S.R.'s best interest to have no contact with D.R. for the foreseeable future because the contact was having a detrimental effect on the child. She neglected to tell the court of the possible disadvantages of this separation. Martindale opined that a short separation from a parent may be appropriate if a child understands that the parent may be a source of damage and that is why the contact is interrupted. However, in the present case it had not been established that molestation had taken place, which implied that D.R.'s mere presence created a threat. This, he stated, could cause a permanent disruption of the relationship between D.R. and his daughter.

In addition to providing false and/or incomplete information to the court, respondent also provided misinformation to the attorneys and the parties. As an example, he noted that in her letter to the parties and their counsel dated October 1, 2003, respondent stated that S.R. said D.R. put a horsey in her heiny without informing them that the child also said another person also put a horsey in her heiny. Martindale also criticized the fact that Kleinman's statements to the recipients were inconsistent with her own method of treating S.R. She wrote that the child was too young to manage the intense feelings generated through contact with her father, yet in the videotapes of her sessions with S.R. respondent deliberately stirs up the very intense feelings, such as fear and anger, that she asserts the child is too young to handle.

In Martindale's expert opinion, Kleinman's treatment of S.R., generally and specifically, constituted gross deviations from the standard of care as described in his testimony above.

On cross-examination, Martindale recognized that S.R. expressed through play the wish that her father would die. He testified that this did not mean that she wanted her father to die. He explained that three-year-olds do not have a concept of death and the most that could be ascertained is that she wished her father were not there with her because she did not want to deal with him at that time. His opinion is supported by Kleinman's notes of October 31, 2003, wherein the child stated twice that she missed her father. While Martindale acknowledged that this particular quotation does not indicate therapeutic bias against D.R., Kleinman's own statements and writings demonstrate that the opposite is the case. For example, Kleinman clearly expressed this position in her letter to Katz dated October 7, 2004, in which she tried to convince him to suspend his supervision of the father's visitation with D.R. Whenever the child expressed affection for her father, Kleinman interpreted it as further evidence of abuse.

Testimony of Robbie Adler-Tapia

Robbie Adler-Tapia, Ph.D., testified as an expert witness for complainant. She is a licensed to practice psychology in the state of Arizona. Adler-Tapia is also certified in EMDR therapy and specializes in using this therapy with children. She is an approved EMDR consultant, an EMDR institute facilitator and an EMDR Humanitarian Assistance Program trainer. She testified that she has conducted EMDR therapy with children thousands of times in the last ten years. Adler-Tapia has testified as an expert witness in the juvenile and family courts in Arizona. Her expertise includes cases involving sexual abuse of minors, for which she has received extensive training. The witness has been a contracted psychologist with the Arizona Child Protective Services since 1994. Her testimony was based upon her review of respondent's office records and Kleinman's videotaped sessions with the child. I **FIND** Adler-Tapia eminently qualified to provide expert opinion testimony in the present appeal.

Adler-Tapia described EMDR as a specialized treatment for trauma-related disorders such as PTSD. It is based upon adaptive information processing theory, that is, how individuals process information and how information is traumatically stored and encoded. The therapy is designed to access and reprocess these repressed memories in order to develop more adaptive coping mechanisms. Treatment follows an eight-

phase protocol used in the psychotherapy. For purposes of this initial decision, most of the witness's testimony is discussed as it relates to the application of the therapy to trauma in a child.

The eight phases are as follows: the first is client history and treatment planning; the second is a preparation phase; the third is an assessment phase; the fourth is entitled desensitization; the fifth is entitled installation; the sixth is body scan; the seventh is closure; and the eighth is reevaluation. According to the witness, the phases are typically conducted in order. After the seventh phase, the psychologist can cycle back to address the client's need for additional skills or resources to address the manifestations of the client's trauma.

The therapist knows when each phase is completed when specific goals and objectives have been reached. Adler-Tapia testified that she uses an EMDR Fidelity Questionnaire to help her follow through the phases, noting what she would expect to see in each of them. A copy of this questionnaire is in evidence.

The witness elaborated on the various phases. She stated what she would expect to see during the first phase. With a child, the client history must include the child's history, functioning, symptoms, family, etc. After taking the history, the therapist should form a treatment plan. According to Adler-Tapia, this plan is required in psychotherapy and consists of the goals and objectives of treatment. It is formulated in conjunction with the client or with the client and his or her caregivers, including interviews with both parents.

In EMDR, part of the treatment planning is identifying the potential targets for trauma processing. When interviewing a minor, the therapist will ask the child what is bothering him, what things make him happy or sad. The child may express this through art or in any way the child is able to express himself. If there are allegations of abuse, they usually do not come from the child initially. The child will report symptoms and feelings, for example: stomachaches, fears of monsters, worries, etc. Although these may not appear to be directly related to the alleged abuse or molestation, they will

become the targets of therapy. She stressed that the therapist should not have an agenda; therapy should only be about what bothers the child.

Adler-Tapia stated that she saw no evidence in Kleinman's records or the videotapes that she was eliciting targets from the child. In fact, the manner in which respondent was questioning S.R. was inconsistent with EMDR therapy. There would be no legitimate reason to ask the child if she knew whether something was true. The truth in EMDR is the child's truth. Children present their truth in the way they encode information and store it in their memories.

The witness opined that the manner in which Kleinman questioned S.R. to probe the existence and details of events, such as the number of times an event took place or the color of a marker, was also inconsistent with EMDR therapy. Specific questions to gather information are part of a forensic investigation and they are inappropriate in EMDR therapy. Consequently, the information gathered thereby was irrelevant to treatment.

Adler-Tapia was asked the appropriate response if a child spontaneously discloses that he has been subject to abuse. She testified that the appropriate reaction is to document the statement and file a report with the proper authorities. If there is the prospect of a forensic interview, the EMDR therapy must stop immediately and not resume until the forensic interview has taken place and the police and/or attorneys release the child for further trauma processing. The danger with continued therapy is that, if the child's statement indicates criminal behavior, the therapist would be accused of contaminating the child's statements and the child's testimony would become problematic for law enforcement. If Kleinman had genuinely believed that the child was sexually abused, she should have discontinued all therapy until a forensic interview could be obtained.

The witness also testified that Kleinman's patient records for S.R. do not meet the standard of care for maintenance of records in EMDR therapy. They are disorganized and do not contain the required information. They do not identify the targets of treatment, the child's negative and positive beliefs (negative and positive

cognition), or the Subjective Units of Disturbance (SUDs). These last are estimates that the client makes of the current extent of distress related to the targets of therapy. A young child could demonstrate this by showing the distance between his outstretched hands.

As the therapist gains information, he or she develops a working hypothesis. This is subject to change as new information is gathered.

Adler-Tapia reviewed the client records and videotapes of respondent's interactions with S.R. She testified that she did not see sufficient evidence of a history. It was minimal, and most of it was provided only by the child's mother. There was nothing in Kleinman's records to show that she assessed S.R.'s developmental level. The witness failed to find evidence that Kleinman identified any specific symptoms, particularly ones that would lead to a diagnosis of PTSD.

She addressed respondent's identification of dissociative disorder in S.R.'s conduct. According to Adler-Tapia, in a three-year-old child, when dissociative symptoms are suspected, the therapist would look for "possibly spacing out, trance-like behavior," a change in affect. This would be difficult to identify without knowing the child. A therapist doing EMDR with the child must be cautious before proceeding further. If the child is found to be dissociative, continuing trauma processing could lead to additional trauma "secondary to dissociation" as protected memories are released. In fact, according to Adler-Tapia, from about 2002 or 2003 to about 2006 or 2007, dissociation was considered a contraindication to EMDR. This includes the period during which respondent was providing therapy to S.R.

The attention of the witness was directed to Kleinman's letter to Judge Sivilli of August 2, 2003, stating that S.R. was experiencing a "psychotic-like break with reality" after a supervised visitation with her father. Adler-Tapia testified that, upon observing this conduct, the child should have been evaluated. At this point, Kleinman should have reached out to other sources of information, that is, she should have interviewed the child's parents, reviewed any documentation, sent standardized forms to the school, teachers, etc., to see if the child behaved differently in other situations. The purpose of

this inquiry is to see if the present conduct is consistent across time with behaviors in different situations. There is no evidence in Kleinman's records that any of this was done.

The second phase of the EMDR protocol is preparation. In this phase, the therapist assesses the resources the child has and what resources are needed. These resources are the relationships the child has, the safe people, the safe things and the child's ability to calm himself. For this purpose, the therapist will teach self-soothing techniques such as bilateral stimulation like tapping back and forth. There are different forms of self-soothing techniques and the child may express a preference.

The therapist also teaches the child a "safe place." This involves a "stop word" or signal from the child or therapist if the child becomes too upset to continue trauma processing. Processing stops and the child is reminded of his resources, such as self-soothing, that have been developed with the therapist. This allows the child to "titrate" in and out of the trauma as he is processing it. The object is to reprocess the traumatic memory to adaptive resolution.

The third phase of the EMDR protocol is assessment. This phase is actively practiced in a practicum during the basic training for EMDR. The therapist tries to identify a target and distill the child's negative and positive cognitions, that is, the child's negative and positive beliefs about himself. The therapist asks the child to name a negative belief about himself and then asks the child what he would rather believe. This would be the positive cognition. The goal is to get from the negative to the positive, for example, from "not safe" to "safe." This can be measured by having the child validate on an appropriate scale how right the positive cognition seems to the child. The child is then asked to measure how much the negative feelings bother him. This allows the therapist to form a treatment plan to reach the target.

The therapist asks the child where in his body he feels these negative cognitions, and then has the child join the therapist in tapping or other bilateral stimulation. This ends the assessment phase. In Adler-Tapia's expert opinion, respondent did not complete this phase before moving on to the desensitization phase. None of this is

documented in Kleinman's notes; there is no evidence of a target for which respondent was using bilateral stimulation.

Adler-Tapia testified that the desensitization phase starts as the therapist begins bilateral stimulation. The child is asked to imagine and focus upon the worst image connected to the negative belief as bilateral stimulation continues. During this phase, the therapist stays with the desensitization and does not stop to explore anything the child says. The stimulation is conducted in units called saccades. A saccade is a fast movement, such as the bilateral tapping, of the eye, head or other part of the body. It is recommended that the process start with twenty-four saccades, stop for a rest, then continue with the bilateral stimulation routine even if the child seems to detach and/or moves about. The therapist knows when the desensitization of the negative image is complete when the target is reevaluated, that is, the child is asked to imagine the worst image again to see what the child says. Ultimately, the child is asked again to measure how much this image bothers him now. If the response is zero, the desensitization for this target is over. The image no longer creates a disturbance.

Adler-Tapia testified that she saw nothing in Kleinman's records indicating that respondent had noted S.R.'s progress in removing the images that disturbed her or reducing their impact. In the witness's opinion, Kleinman did not complete the desensitization phase of treatment either.

The next phase of EMDR is installation. This phase occurs when the child reaches a point where the disturbance connected with the negative image no longer exists. The therapist then has the child measure the validity of his progress from the negative cognition (e.g., unsafe) to the desired positive cognition (e.g., safety or present safety). This measurement must be recorded. Then, the therapist can determine if the old target has been met and a new target can be found to work on, or if there is still work to do on the old target. In Adler-Tapia's opinion, Kleinman failed to note in her records or in the videotaped sessions that she found any evidence of a positive cognition, installation of a positive cognition, or the child's measure of the validity of the positive cognition.

The next phase is the body scan. The child scans his body parts from head to toe and notices if negative or disturbing feelings are located in any part. These might be things like an upset stomach or leg pains. If the child finds something, he notifies the therapist of the location of the feelings, and sets of bilateral stimulation begin. This process continues until the child reports a clean body scan. There is no trace of a body-scan assessment in any of Kleinman's notes or videotapes.

The next EMDR phase is closure. Some form of closure should occur at the end of each therapy session. It could be complete, that is, the measure of disturbance caused by the target is zero: the child reports maximum validity of the installation of the positive cognition and the body scan is clear. If processing of a target is incomplete, the therapist warns the parent that, as feelings are stirred up during trauma processing, the child may exhibit an increase in existing symptoms and/or the possible creation of new ones between sessions. The parents would be informed of what they should do between sessions to facilitate therapy.

According to Adler-Tapia, Kleinman's records and videotapes show that, at the close of each session, respondent used tapping only for the purpose of trying to calm S.R. down before releasing the child, but there is no evidence of the complete or incomplete closure of any target. Respondent failed to complete the closure phase of EMDR.

The final phase of EMDR is reevaluation. At the end of EMDR therapy, the therapist returns to the treatment plan to look back at the goals of therapy and assess whether or not the goals were met. In Adler-Tapia's opinion, Kleinman could not plan for S.R. to graduate from treatment because no treatment plan had been formulated to begin with, and so there was no way to know if treatment goals had been met.

Adler-Tapia next described EMDR training. She stated that there were two parts to training in the basics. During Part One, conducted over a two-and-one-half-day period, there were several lectures, followed by a practicum conducted in groups of three: the therapist, a client and an observer. During the practicum, the participants practiced going through the eight phases of the protocol. Part Two consisted of a

repetition of Part One. When both parts were completed the trainee was not a certified practitioner of the method. Certification was not granted until the trainee completed twenty more hours of consultation with an approved consultant. She defined “consultation” as meeting with someone with expertise in this field to learn more about a specific type of therapy.

After certification, the therapist could go on to more specialized training in areas such as dissociation, using EMDR with children, etc. Then there are further resources: study groups, on-line sources, literature, books, articles and published research.

The witness explained that EMDR supervision is very different from consultation. A supervisor is legally responsible for the client’s EMDR care, while a consultant simply acts as a resource.

When Adler-Tapia was asked whether Kleinman had been appropriately trained to conduct EMDR therapy, she responded that she saw no evidence of any continuing EMDR education beyond the basic training consisting of only two sessions. The witness stated she was concerned that Kleinman failed to do any continuing education and was using EMDR in a forensic environment with a three-year-old child identified as being dissociative. In her expert opinion, Kleinman failed to meet the appropriate standard of care because she was not properly trained to use EMDR with this specific type of case.

Based on her review of the videotaped sessions, Adler-Tapia opined that it was contrary to the principles of EMDR therapy to offer information to the child; to ask closed-ended questions; or to lead the child to believe that the therapeutic tapping would magically make her bad feelings go away. She explained that therapists should not promise a child that tapping or anything in EMDR will make something change or happen. According to Adler-Tapia, Kleinman’s misinterpretation of EMDR therapy ran the risk of further traumatizing the child.

Testimony of Ricky Greenwald

Called on behalf of respondent, Ricky Greenwald, Psy.D., is a clinical psychologist who earned his doctorate from the Forest Institute of Professional Psychology in Honolulu, Hawaii. He is director of The Child Trauma Institute, a training and research facility which he founded in 2002, and he is in private practice in Massachusetts. He is also an affiliate full professor at the State University of New York, University at Buffalo School of Social Work. Greenwald has written numerous books and papers, including several articles in the field of EMDR. His specialty is trauma-informed treatment, and he is experienced in the treatment of child victims and sex abuse. The witness is qualified to provide consultation to others trained in EMDR who are working toward becoming certified. I **FIND** him eminently qualified to provide expert opinion testimony on the subject of EMDR.

In preparation for his testimony, he reviewed Kleinman's client records for S.R. and the videotapes of her therapy sessions. He testified that EMDR therapists all use the eight-step protocol, but, when working with very young children, can't always perform it in the way it is taught. Instead, the therapist must make creative adaptations to address the child's needs. Most therapists won't do EMDR with a three- or four-year-old child because they don't know how. Since young children have such a short attention span, they lose interest before much can be accomplished. Therapists must be careful that facing a repressed memory won't damage or overwhelm the child.

While Greenwald regarded Kleinman as qualified to perform EMDR, he reached this conclusion based primarily on her general credentials as a mental health professional and her expertise in "therapeutic approaches," rather than on any advanced training in EMDR beyond the basic minimum. In particular, the record is devoid of any showing that Kleinman had specific training in using EMDR with young children.

Greenwald further opined that Kleinman was not negligent and that her work did not deviate from the appropriate standard of care. He based his opinion upon his review of her clinical notes, which he claimed showed that "she proceeded using the type of steps or the sequence of activities that one would hope therapists would do." Independent review of Kleinman's notes by the trier of fact does not support the

conclusion that she followed any discernable steps or sequence of activities. The notes merely record a series of interchanges with S.R. and observations of the child's emotional reactions. In addition, the notes are, more often than not, illegible.

Moreover, Greenwald testified that his observations of the videotaped sessions indicated that Kleinman delivered a high standard of care, based on his view that the child appeared comfortable with the therapist. To the contrary, an impartial viewing of the videotapes shows that S.R. appeared decidedly discomforted by Kleinman's onslaught of questions and repeatedly sought to avoid interacting with her. Unconcerned with Kleinman's apparent lack of neutrality, Greenwald sought to justify the leading nature of her questioning by saying that otherwise the information sought "might not get talked about." By doing so, Greenwald accepted Kleinman's underlying assumption that the child must have been molested and traumatized, regardless of what the child herself might say. Thus, Greenwald placed an undue importance on the efficiency of the interviewing process as opposed to the efficacy of the therapy. Asked whether Kleinman's directed questioning had any therapeutic value, Greenwald opined that it did, notwithstanding the lack of any basis in the record for his opinion.

The only indication of harm that Greenwald observed from Kleinman's application of EMDR therapy was her possible interest in re-exposing the child prematurely to her father. He qualified this opinion by saying that his information in this regard was limited. The record reflects his error, namely, that Kleinman engaged in strenuous attempts to prevent reunification between father and child. Greenwald praises Kleinman for working on targets spontaneously elicited from the child; however, the videotapes demonstrate that the targets on which Kleinman focused came from the therapist herself and not from the child. While Greenwald criticizes Adler-Tapia for disregarding data and coming to false conclusions, an objective review of the record shows that she had a far better grasp of the underlying facts than he did. Contrary to Greenwald's assertion that Kleinman explored alternative possibilities in formulating a treatment plan, Kleinman immediately fastened upon a theory of abuse and trauma to the exclusion of all else. He applauded Kleinman for checking whether coaching may have occurred, whereas the record reflects that Kleinman accepted the mother's accusations at face value and refused to acknowledge any contravening reports.

On cross-examination, Greenwald was asked whether fidelity to the phases of EMDR is a key factor in determining the outcome of the therapy. He agreed that it is important to keep the standard EMDR protocol as an internal model when treating children. He admitted that the therapist should avoid praising the child for any given response to a question because it is important to avoid making the child feel frustrated or inadequate for not giving the expected answer. In addition, he acknowledged that the therapist should avoid putting words into the client's mouth, except where the therapist's restatement of a response is neutral. He also agreed that a leading question can feel coercive to the client and yield limited information of dubious value. He conceded that memory details invoked by EMDR may not always be entirely accurate. Like Martindale, Greenwald testified that the existence of trauma must depend upon the manner in which events are perceived by the child.

Testimony of Lenore Walker

Testifying for Kleinman, Lenore Walker, Ed.D., is a licensed psychologist who is presently the coordinator of the forensic psychology concentration in the doctoral program at Nova Southeastern University. Walker is board certified in couples and family psychology and has a clinical practice in psychology. She has expertise in trauma related to domestic violence and sexual abuse. She has worked in a clinical setting with children suspected of being victims of sexual abuse. I **FIND** that she has been qualified as an expert in clinical and forensic psychology and I accept her opinion testimony.

When asked what symptoms would be expected in a young child who has experienced trauma, Walker cited a noticeable change in the normal routine of sleeping and eating, aggressive or reactive sexualization toward themselves or others, inconsolable distress, self-mutilation, aggressive behavior or total withdrawal. Using a methodology known as "trauma-informed therapy," Walker seeks to move the emotional trauma memory to the cognitive area of memory in the brain.

According to Walker, forensic psychology is the attempt to assist the court in using psychology to understand legal issues. The methodology includes attempting to gather as much data as possible and placing the data within the theories of psychology. Collection of data is done through interviews, assessment, and the other modalities in order to gather all of the information needed to test the possible hypotheses of causation.

Walker testified that in a clinical setting the most important thing is to learn how your patient thinks, feels and behaves and how these three domains interact with each other. In dealing with a child, the therapist needs to gather information from a parent, from school authorities, and from previous evaluations. Walker further stated that this is not always necessary at the beginning of treatment, but should be developed as treatment progresses because the goal is to understand the patient.

Contrary to Walker's recommended approach, Kleinman failed to develop the background information required to form a working hypothesis grounded in the data. Instead, Kleinman made her own assumptions without obtaining adequate information from the child and others. Under the guise of providing therapy, Kleinman acted as a forensic investigator without following the principles of forensic psychology as enunciated by her own expert. Even acting in her role as a therapist, she failed to accumulate sufficient information to test her initial hypothesis.

It was asked on cross-examination whether Kleinman had an appropriate conceptualization of this case, that is, why the child was brought for therapy and the salient issues to be addressed. Walker believed that Kleinman's conceptualization was that the child was spontaneously revealing that her father sexually abused her and that her mother had reported behavior by the child consistent with the symptoms of sexual abuse. Videotapes clearly show the lack of spontaneity in the child's responses and the inquisitorial nature of Kleinman's questioning. Moreover, Kleinman accepted the mother's version at face value without getting the father's side of the story. In fact, she obstructed any communication with the father by insisting that he admit to sexual abuse before she would even talk to him.

Doubts about the underpinnings of Walker's testimony arise from her apparent lack of familiarity with the record. Walker maintained that the combination of play-therapy and directed questioning used by Kleinman was "perfectly appropriate behavioral technique." She based this opinion on what Walker described as completeness of Kleinman's notes of her sessions with S.R. As previously noted, Kleinman's actual notes are sketchy at best and, in many cases, illegible.

Walker's testimony was colored by her passionate view that psychologists are targeted by child molesters who would gain by having psychologists removed from a case. She implied that Dr. Martindale was aligned with fathers' rights groups, and criticized the Board for selecting him as an expert witness. The vehemence of her position betrayed an underlying bias on her part and, among other things, undermined her appearance of impartiality. Consequently, her lack of objectivity must be considered in deciding the weight to be given her testimony.

Testimony of David Shapiro

Kleinman's next witness, David Shapiro, Ph.D., is a professor of psychology at the Center for Psychological Studies at Nova Southeastern University. He earned his bachelor's degree at Harvard University and his doctorate at the University of Michigan. He is licensed as a psychologist in several states, including New Jersey, New York and Florida. In addition to his teaching duties at Nova, he maintains a part-time private practice. During voir dire, he claimed no expertise in play therapy, EMDR, child sexual abuse, or child assessment and treatment. I **FIND** him eminently qualified as an expert in forensic psychology.

Referring to the *Specialty Guidelines for Forensic Psychologists* (APA 1990), Shapiro distinguished between forensic psychology and psychological therapy. Basically, his testimony coincided with Martindale's that "the client" of a forensic psychologist is a court, prosecutor's office, probation department, attorney or some third person other than the person being examined. Consequently, there is no confidential relationship between the psychologist and the person being examined. Shapiro testified that, although some insist that a clinician who finds herself in a court-related situation is

a forensic psychologist, that is not and never was the intent of the *Guidelines*. He added that a recent draft of the *Guidelines* makes it explicit that someone who receives a court-ordered referral for treatment is not a forensic psychologist if she is not answering a psycho-legal question. Shapiro's definition of a psycho-legal issue includes issues like competency to stand trial, mental state at the time of an offense, child custody, etc.

A forensic psychologist is expected to give a balanced assessment to the court or whoever is seeking the evaluation. The *Guidelines* require that the forensic psychologist must approach the situation with an open mind and test plausible rival hypotheses before reaching a conclusion. Shapiro considers this to be "an absolute requirement" in a forensic assessment. On the other hand, a clinical assessment does not require the same balanced approach. The source of information is the person in front of you. Shapiro explained that a therapeutic relationship is one based on trust, whereas a forensic relationship is a much more objective, impartial and neutral one.

The record shows that Kleinman betrayed the child's trust by acting in the dual capacity. In one particularly glaring example, Kleinman assured S.R. that what the child whispered to a stuffed elephant would be kept confidential, knowing full well that Kleinman was going to convey this information to the court.

At times, Shapiro directly contradicted himself. At one point, he maintained that Kleinman acted solely in a clinical capacity. At another point, he recognized that she was making recommendations to the court about visitation and custody, matters falling clearly within his own definition of psycho-legal issues.

Shapiro acknowledged that if a psychologist is confronted with a possibly harmful or improper relationship, she has a responsibility to clarify her conflicting roles and obligations. He agreed that if a psychologist is instructed by a court to perform both roles, clinical and forensic, it is incumbent upon the psychologist to inform the court that the assignment is inappropriate. Furthermore, Shapiro agreed that if the therapist does become involved in litigation, the therapist should scrupulously avoid rendering opinions relevant to the legal matters at hand. The therapist should simply describe the course

of therapy and how the patient may have changed. In her testimony before the Board, Kleinman stated that Judge Sivilli had instructed her to perform play therapy and also to find out what had happened to the child. Based upon Shapiro's testimony, it was an assignment that respondent should have declined to accept.

Testimony of Marsha Kleinman

Marsha Kleinman, Psy.D., is a graduate of the Graduate School of Applied and Professional Psychology at Rutgers University and has an undergraduate degree in psychology from Fairleigh Dickinson University. She serves as an adjunct professor in the Department of Psychology at Kean University and has served in the same position at Rutgers and at Montclair State University. She is licensed as a psychologist in the state of New Jersey and has been in private practice in both clinical and forensic psychology since 1985. Her practice consisted primarily of behavioral psychology, and she has completed the two basic courses in EMDR therapy. She considers herself an expert in domestic and family violence, including child sexual abuse and battered woman syndrome.

Kleinman spoke to P.R., S.R.'s mother, and received her information about the social background and family dynamics. Most of respondent's information was filtered through the mother and not derived from the original sources. Respondent did not ask S.R.'s parents for releases to obtain the reports from other sources. She claimed that she reached out to D.R., the father, but that he failed to cooperate and she was never able to interview him. From her interviews with the child, Kleinman believed that S.R. was in distress related to her interactions with her father and that S.R. perceived herself to be in harm's way with him. According to Kleinman, her target in treatment was to reduce the child's stress.

Kleinman explained that she asked S.R. directed questions to attempt to ascertain the cause of the distress. Kleinman believed that if S.R. were able to verbalize the occurrence of abuse, she would be able to heal and move on with her life. In contrast to what was evident from the videotapes, Kleinman insisted that her questions were neutral and that the responses were an expression of the child's

concerns. The tapes show that Kleinman was actually directing the child's answers and that Kleinman would correct her if the child gave an answer that did not fit in with Kleinman's preconceived hypothesis. Despite the father's repeated efforts to regain contact with his daughter, Kleinman decided that the father had no real regard for his daughter at all. She sought to prevent any visitation with the father, allegedly for the welfare of the child.

Kleinman testified that her working hypothesis in this case was that S.R. was a victim of child sex abuse by her father and that he was attempting to interfere with the child's therapeutic relationship by telling the child not to talk with her. She further stated that she believed the father was coaching S.R. Apparently the child would say she was coached by her father when prompted by respondent's repeated directed questioning. However, Kleinman chose to ignore S.R.'s occasional statement that she had been coached by her mother. Kleinman commented that the father's coaching indicated that he was trying to supplant S.R.'s perception of reality with his and this was very confusing to a child. It follows that it would also be confusing to the child when Kleinman attempted to supplant S.R.'s reality with her own.

Several weeks after the meeting with Rosenbaum on October 31, 2003, S.R. used a lot of blue in her drawings. According to Kleinman, the blue indicates that a part of the child's body has been damaged. To Kleinman, this was another indication of sexual abuse. Blue symbolizing sadness, Kleinman explained, is often a way of someone drawing a part of her body that has been damaged. When the child used a black marker, Kleinman interpreted it as expressing anger. It appears that whatever the child did was viewed by Kleinman as additional evidence of molestation.

Kleinman testified that she described in detail the alleged spontaneous statements made by S.R. concerning the purported sexual abuse. Respondent explained that she felt that it was important that the court have this information before rendering a decision on custody and visitation. The rationale behind Kleinman's recommendation to discontinue visitation with the father was that contact with the abuser would continually reinforce the child's need for secrecy and threaten her sense of safety.

She strongly protested Judge Sivilli's decision to allow S.R. to resume contact with her father on the ground that it would hamper respondent's ability to uncover the details of S.R.'s sexual abuse by her father. Nonetheless, Kleinman denied having formed an opinion at that time that the father had actually molested S.R. In fact, she said she stopped contact to relieve S.R. of "overwhelming stress and to try to assess what the cause of stress was."

In her testimony, Kleinman harped on her goal to reunite the child with her father, while the record is replete with her vigorous endeavors to keep the two apart indefinitely. This is clearly demonstrated by her refusal to allow the child to speak with her father on the phone, even though he had offered an apology. By her letter of October 20, 2004, to Katz, the court-appointed supervisor, Kleinman sought to dissuade him from supervising any further visits. She testified that she wrote this letter in spite of the fact that Katz had never solicited her opinion.

Although Kleinman repeatedly indicated that S.R. displayed "PTSD-like symptoms," she noted only the child's avoidance behaviors as the basis for her diagnosis. On cross-examination, she was unable to identify any of the other five criteria of PTSD in support of her impression. During the investigative inquiry before the Board on July 18, 2005, she was asked whether S.R. demonstrated any symptoms of PTSD during her sessions. She replied that S.R. "had milder symptoms of PTSD if we would talk about it in the office, but I could bring it down with EMDR." When asked to describe these mild symptoms, she responded that none had been recorded. This is in marked contrast to the intensity that she attributed to S.R.'s responses in her reports to Judge Sivilli.

On cross-examination, Kleinman admitted that she understood that the court would rely on her communications in order to determine matters of custody and visitation. Consequently, the information provided had to be accurate and complete. If one compares the videotapes with her letters to Judge Sivilli, it is clear that she failed to include any exculpatory information provided by the child. For example, while she could not recall whether she informed Judge Sivilli that S.R. had described her father's penis

as green, the record indicates that she did not. She admitted, however, that she never told the judge that the child had said that a tablecloth had come out of her father's penis.

Although Kleinman testified that she had expertise in EMDR therapy, had used it with adults, and had adapted it for use with children, she was unable to give a clear description of the therapy in her testimony. Unable to recall the eight phases of EMDR, she offered a rambling discourse on her inaccurate view of the methodology. She failed to indicate any measurement of the success of her version of EMDR therapy.

Even after Judge Sivilli released Kleinman from her assignment to provide therapy to S.R., Kleinman continued to treat the child. Ultimately, she was removed from the case at the direction of Assignment Judge Thomas Zampino.

Findings of Fact as to Counts I, II, III, IV and V

Based on the proofs and the expert testimony, I **FIND** the following facts:

In order to evaluate the experts' testimony, it is essential to compare their testimony to the facts contained in the record. Based upon the testimony of the expert witnesses, the opinion of Martindale most closely tracks the documentary and the videotape exhibits contained in the record. It is clear that Martindale had carefully reviewed the record and had a thorough command of the evidence. Consequently, great weight should be attached to his expert opinion. Similarly, Adler-Tapia demonstrated her clear expertise in EMDR therapy and showed phase-by-phase Kleinman's lack of conformity in applying the therapy in which she professed expertise. Accordingly, Adler-Tapia's expert opinion is also entitled to great weight.

In contrast, Greenwald uncritically accepted Kleinman's underlying assumption of molestation and placed undue importance on the efficiency of the interviewing process as opposed to the efficacy of the therapy. He admitted having limited information on what was in the record. Thus, he opined that Kleinman was overly interested in re-exposing the child to her father, whereas the record itself fails to support this view.

While he agreed that the therapist should avoid praising the child for any given response to a question, he seemed unaware that was exactly what Kleinman was insisting upon and rewarding. For these reasons, little weight should be attached to his opinions about the quality of Kleinman's professional practice.

Walker was also unfamiliar with the record on which she based her opinion. For example, she complimented the completeness of Kleinman's notes, whereas the actual notes were inadequate and virtually unreadable. She seemed oblivious to the fact that Kleinman neglected to obtain the background information necessary to form a working hypothesis. Moreover, her objectivity was impaired by her strongly-held views regarding people who criticize psychologists. Consequently, little weight should be attached to her opinion on the quality of Kleinman's professional practice.

Shapiro demonstrated his expertise in the field of forensic psychology. He agreed with Martindale that if a psychologist is instructed by a court to perform both clinical and forensic roles, it is incumbent upon the psychologist to inform the court that the assignment is inappropriate. His opinions, however, did not comport with the factual record as to what Kleinman was doing. His conclusion that Kleinman was not engaged in acting as a forensic psychologist is contrary to the record and must be rejected.

In the guise of performing play therapy, Kleinman interacted with the child in a manner that manipulated the situation and suggested explanations and answers based upon respondent's own interpretation of the play. Martindale testified, and the record reveals, that Kleinman frequently asked S.R. leading questions and corrected her when the answers did not meet expectations. He correctly described respondent's manner as inappropriately forceful and insistent rather than eliciting spontaneous responses from the child, pointing out that the child frequently struggled to find answers that Kleinman was looking for. As acknowledged by Greenwald, the therapist should avoid putting words in a child's mouth. Greenwald conceded that leading questions can feel coercive to the child and yield limited information of dubious value. Adler-Tapia confirmed that the record repeatedly showed that the "targets" that Kleinman was allegedly treating through EMDR came from respondent and not from the child.

During her interaction with S.R., Kleinman conducted forensic questioning of the child to investigate alleged sexual abuse by D.R., thereby acting as a therapist and as a forensic investigator at the same time with the same client. Both Martindale and Shapiro described the role of a forensic psychologist and the role of a clinical psychologist as incompatible. Both stated that the therapeutic relationship required that a trusting relationship be developed between the psychologist and the client. Martindale said that the clinical psychologist must keep the client's statements confidential. Shapiro testified that the treating therapist should scrupulously avoid rendering opinions relevant to the legal matters at hand.

The record clearly reveals that Kleinman conducted a forensic evaluation, gathering information for the court on matters of visitation and custody, which Shapiro identified as psycho-legal issues. Kleinman herself protested additional evaluations of the child by a therapist, claiming that she was already performing the investigation. Kleinman's dual role as clinical therapist and forensic investigator was contrary to the appropriate standard of care for psychologists. Shapiro stated that if a psychologist is instructed to perform both roles, the psychologist should decline to accept the assignment. For this reason, Kleinman should not have accepted the assignment from Judge Sivilli.

Kleinman repeatedly attempted to terminate D.R.'s contact with S.R. by providing false and misleading information to the court. Based upon a comparison of the videotaped evidence with Kleinman's office records and the contents of her letters directed to the court, it is clear that she withheld all exculpatory information regarding D.R. She left out crucial data relevant to the court in evaluating the credibility of the child's accusations, including S.R.'s description of her father's penis as "green" and her comment that "a tablecloth came out of it." Kleinman also failed to mention to the court that the child had accused Rosenbaum of molesting her. Kleinman urged the child to say that her father had abused her, and ignored evidence of coaching by the mother. Moreover, she falsely represented the child's statements as spontaneous, whereas the record reveals that they were the product of her relentless inquisition. In actuality, the information provided to the court represents Kleinman's own hypothesis rather than genuine expressions of the child's thoughts and emotions.

Respondent asked S.R. through the stuffed elephant what happened when she had a good day with her father. Thinking that she was speaking confidentially through the elephant, the child replied that whenever she says she had a good day with her father, someone takes her to the hospital. She added, "someone just did that to me." Whenever the child said anything positive about her father, Kleinman would either discourage her or explain it away as further evidence of molestation.

She interceded between the child and her father by not letting the father talk to his daughter and by falsely telling the child that her father didn't want to speak to her. This is supported by the recorded telephone conversations between Kleinman and the father. She refused to allow any contact with the child until the father had admitted the alleged wrongdoing and paid all of Kleinman's outstanding bills. Kleinman overstated the risk of harm to the child through having contact with her father and she failed to provide the court with a balanced assessment of the facts. Martindale testified that by providing inaccurate information to the court, Kleinman attempted to induce the court to terminate contact. Martindale explained that Kleinman's misinformation created a risk of harm because it would prevent a normal parent/child relationship from developing. He opined that it could also cause severe damage to S.R. by implanting false memories about her father.

Respondent failed to obtain all reasonably available information to accurately determine whether any portion of S.R.'s emotional distress was attributable to sources other than alleged sexual abuse, including the conflict between her parents and her parents' psychological states. She obtained information on the child's condition mainly from the mother without seeking any input from the father. Kleinman acknowledged that she never asked for releases to get other available information, such as the pediatrician's report and the DYFS report. She showed a lack of neutrality by rushing to judgment without entertaining alternative hypotheses. Both Martindale and Adler-Tapia opined that these failures deviated from the standard of practice.

Other than the mother's statements and the alleged evidence created by Kleinman, there was no credible evidence in the record that the child had been abused

or traumatized. Nevertheless, Kleinman diagnosed S.R. as suffering from PTSD and treated her for trauma that may never have existed. Martindale said that Kleinman misstated the criteria for PTSD by using avoidance as the major diagnostic criterion, whereas the clusters listed in the diagnostic manual include a significant traumatic event, persistent memories, flashbacks and upsetting dreams.

There is no evidence in the record that Kleinman succeeded in implanting false memories in S.R. She, in fact, caused the child continued distress and confusion by positioning herself as a friendly adult and subjecting the child to a repeated pattern of harassment and reward.

Respondent held herself out to be an expert in forensics and child sexual abuse, fields in which she failed to perform in accordance with her alleged training and experience. According to Martindale, if Kleinman were interviewing S.R. to assist a court to determine whether or not a child was sexually molested, she failed to do this in the appropriate manner. He explained that her interview technique was flawed because she frequently asked S.R. leading questions and corrected her when the answers did not meet the questioner's expectations. Shapiro elaborated that a forensic psychologist is expected to give a balanced assessment to the court or whoever is asking for the evaluation. Guidelines require that a forensic psychologist must approach the evaluation with an open mind and test plausible rival hypotheses before reaching a conclusion. He considered this to be an absolute requirement in a forensic assessment.

Martindale testified that, if Kleinman were performing as a treating psychologist, she should have prepared a treatment plan for her therapy, including a description of the behaviors to be targeted. A review of Kleinman's records shows no trace of any treatment plan. Therapy requires that a trusting relationship be developed between the psychologist and the client. Kleinman breached her obligation to maintain confidentiality by reporting the child's statements to the court. Martindale also testified that Kleinman's diagnosis of dissociative disorder and fugue showed her lack of understanding of the nature of this condition. Her use of the term "psychotic break" to describe S.R.'s conduct has no real significance because there is no general agreement as to the meaning of that term.

With respect to Kleinman's professed expertise in EMDR, she falsely represented that she was an expert in performing this type of therapy with children. Adler-Tapia found no evidence of continued EMDR training beyond the basic minimum. She was concerned that, without advanced training, Kleinman was improperly using EMDR therapy in a forensic environment with a three-year-old child identified as being dissociative. Kleinman claimed that she had received supervision from Tinker, but during his testimony Tinker flatly denied that he had ever supervised her. She failed to develop a treatment plan or to ascertain from the child the targets of treatment. She failed to express the goals of treatment or use the bilateral stimulation, as designed, to extinguish negative beliefs and feelings. She used tapping only to calm the child down in preparation for ending the session. Adler-Tapia noted the lack of any evidence of the complete or incomplete closure of any target. None of Kleinman's records indicated that any of the goals of EMDR therapy had been met. In Adler-Tapia's expert opinion, Kleinman failed to meet the appropriate standard of care because she was not properly trained to use EMDR with this specific type of case. When Kleinman was asked on cross-examination to give a explanation of EMDR, she was unable to give a coherent description of the therapy.

Kleinman's notes of her sessions with S.R. were incomplete, inaccurate and illegible. Comparison of her notes to the videotapes establishes that Kleinman failed to accurately memorialize what occurred during her sessions. Her treatment records fail to include reports and records provided by other professionals. She left out any mention of exculpatory statements by the child. According to Martindale, Kleinman's notes do not show that she developed a treatment plan; provided for continuing assessment of the effectiveness of the plan; identified goals for treatment; or formulated a method for ascertaining when the treatment goals were reached. Martindale described these failures as extreme deviations from the required standard of record-keeping. Walker added that, in dealing with a child, the therapist needs to gather information from the parents, schools and previous evaluations.

Based upon the testimony of Martindale and Adler-Tapia, I **FIND** that Kleinman's treatment of S.R. generally and specifically constituted gross and repeated deviations from the standard of care.

Conclusions of Law as to Counts I, II, III, IV and V

A board . . . may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license: . . .

- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board.

[N.J.S.A. 45:1-21.]

Negligence or malpractice occurs when a licensee fails to exercise "the degree of care, knowledge and skill ordinarily possessed and exercised in similar situations by the average member of the profession practicing in his field." Schueler v. Strelinger, 43 N.J. 330, 344 (1964). Actual harm to the patient is not required. In re Zahl, 186 N.J. 341, 357 (2006). "[N]eglect' and 'malpractice,' standing alone, import a deviation from normal standards of conduct[, while] '[g]ross neglect' or 'gross malpractice' suggest conduct beyond such wrongful action -- how far beyond has been left to the judgment of the Board, subject, of course, to judicial review." In re Jasclevich, 182 N.J. Super. 455, 467 (App. Div. 1982) (quoting In re Kerlin, 151 N.J. Super. 179, 186 (App Div. 1977)). "Negligence differs from gross negligence only in degree, not in kind." Monaghan v. Holy Trinity Church, 275 N.J. Super. 594, 599 (App. Div. 1994).

When the Board of Psychological Examiners readopted its rules in 2004, the New Jersey Psychological Association commented that there was no definition of "professional misconduct," and the Board explained that it "has the authority to

determine professional misconduct . . . on a case-by-case basis pursuant to the Uniform Enforcement Act at N.J.S.A. 45:1-21(e).” 36 N.J.R. 1815(a) (April 5, 2004). The nature of professional misconduct is “malum in se,” and does not need to be enumerated because it is “conduct inherently wrong and obviously ‘unprofessional.’” In re Heller, 73 N.J. 292, 306 (1977). The New Jersey Supreme Court has explained that the statutory scheme “requires, in most instances, that a physician not be found guilty of professional misconduct unless his acts are so particularly egregious as to constitute misconduct in the magnitude of gross malpractice.” In re Polk, 90 N.J. 550, 565, 574 (1982).

The Board of Psychological Examiners has also enumerated numerous specific restrictions on psychologists’ conduct, several of which are relevant to Counts I, III, IV, and V. First, “[a] licensee shall not misuse his or her influence in a manner that exploits the client’s trust and dependency.” N.J.A.C. 13:42-10.8(g). Next, “[a] licensee, whether practicing privately or within an institution or agency utilizing psychological services, shall not distort, misuse or suppress the psychological findings by the licensee or others.” N.J.A.C. 13:42-10.8(f). “A licensee shall accurately and objectively represent his or her competence, education, training and experience in all advertisements and professional representations,” N.J.A.C. 13:42-9.4(a), and “shall not offer or promote a professional service which the licensee knows or should know is beyond the licensee’s ability to perform.” N.J.A.C. 13:42-9.7(g); see also N.J.A.C. 13:42-10.4(d) (a licensee shall maintain competence consistent with professional responsibilities).

A licensed psychologist is also required to “prepare and maintain separately for each client a permanent client record which accurately reflects the client contact with the licensee whether in an office, hospital or other treatment, evaluation or consultation setting.” N.J.A.C. 13:42-8.1(a). The psychologist must “make entries in the client record contemporaneously with the services provided[, but] may dictate an entry for later transcription, provided the transcription is dated and identified as ‘preliminary’ until the licensee reviews the transcription and finalizes the entry in the client record.” N.J.A.C. 13:42-8.1(b). Those records must include “material pertinent to the nature and extent of the professional interaction,” such as “7. [f]indings on appropriate examination; . . . 11. [c]ontemporaneous and dated progress or session notes including specific components of treatment, evaluation or consultation; . . . 12. [d]ates of all treatment,

evaluation or consultation sessions; . . . [and] 15. [t]he client identity on each page[.]” N.J.A.C. 13:42-8.1(c). Finally, “[t]he client record [must] contain information regarding referrals to other professionals together with reports and records provided by other professionals and integrated into the client’s treatment, evaluation or consultation report. N.J.A.C. 13:42-8.1(d).

Count I alleges that respondent’s method of questioning S.R. regarding the alleged sexual abuse and her acting as a forensic psychologist while engaged in play therapy with S.R. constituted gross professional malpractice, repeated acts of professional malpractice, and professional misconduct under N.J.S.A. 45:1-21, and the misuse of influence in a manner that exploits the client’s trust and dependency under N.J.A.C. 13:42-10.8(g). That conduct constituted not only repeated acts of malpractice, but also gross malpractice under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she questioned S.R. in a coercive manner by repeatedly asking leading questions, correcting S.R. when the answer did not meet expectations, and offering rewards while posing repeated questions. Similarly, the standard of care does not permit a treating psychologist to serve as a forensic psychologist at the same time, because the goals of these roles conflict; a treating psychologist seeks the well-being of the client, and a forensic psychologist is responsible for assisting the trier of fact in a forensic investigation.

The manner in which respondent questioned S.R. and acted as a forensic psychologist also constituted professional misconduct under N.J.S.A. 45:1-21(e), because that coercive and improper questioning was inherently wrong, was unprofessional, and tainted any possible investigation of sexual abuse against D.R. See State v. Michaels, 136 N.J. 299, 321 (1994) (explaining in a child-abuse case that “the absence of spontaneous recall, interviewer bias, repeated leading questions, multiple interviews, incessant questioning, vilification of defendant, ongoing contact with peers and references to their statements, and the use of threats, bribes and cajoling, as well as the failure to videotape or otherwise document the initial interview sessions -- constitute more than sufficient evidence to support a finding that the interrogations created a substantial risk that the statements and anticipated testimony are unreliable”).

Similarly, the method of questioning constituted a misuse of Kleinman's influence in a manner that exploited the client's trust under N.J.A.C. 13:42-10.8(g), because she repeatedly encouraged S.R. to share her secrets without telling her that she was reporting every conversation, while simultaneously providing the court with distorted reports of what S.R. actually said.

Count II alleges that respondent's failure to obtain all reasonably available, relevant information and documentation with respect to S.R. constituted gross professional malpractice, repeated acts of professional malpractice, and professional misconduct under N.J.S.A. 45:1-21. Kleinman's failure to obtain all reasonably available, relevant information constituted gross professional malpractice, repeated acts of professional malpractice, and professional misconduct under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she proceeded with her treatment plan for S.R. solely on the basis of statements made by S.R.'s mother, and failed to seek a release to obtain reports from S.R.'s pediatrician or DYFS. The record lacks any evidence indicating that Kleinman reached out to other sources of information, such as interviewing S.R.'s parents or contacting S.R.'s school and/or teachers to determine whether S.R. behaved differently in other situations, when Kleinman observed that S.R. experienced a "psychotic-like break with reality." Similarly, her failure to obtain all reasonably available, relevant information and documentation with respect to S.R. constituted professional misconduct under N.J.S.A. 45:1-21(e), because her failure to obtain a complete picture prior to treating S.R. or after observing her "psychotic-like break with reality" was inherently wrong and unprofessional.

Count III alleges that respondent's correspondences with Judge Sivilli regarding S.R. constituted gross professional malpractice, repeated acts of professional malpractice, and professional misconduct under N.J.S.A. 45:1-21, and the distortion, misuse, or suppression of psychological findings under N.J.A.C. 13:42-10.8(f). Kleinman's reporting to Judge Sivilli constituted not only repeated acts of malpractice, but also gross malpractice under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in

similar situations by the average psychologist when she reported to the court. Kleinman provided the court with, at best, a one-sided and biased depiction of the abuse allegation against S.R., and at times respondent actively misled the court in a manner that suggested that the abuse was substantiated, because she failed to inform the court that S.R. made statements inconsistent with a finding of abuse, including that D.R.'s penis was "green." Furthermore, respondent chose not to inform the court about statements by S.R. suggesting that her mother coached her to make certain responses suggesting abuse. Similarly, respondent's reporting to the court also constituted professional misconduct under N.J.S.A. 45:1-21(e), because the reporting was inherently wrong and unprofessional, in that it resulted in the court relying on biased and incomplete information when deciding D.R.'s visitation rights. Additionally, her reporting to the court violated N.J.A.C. 13:42-10.8(f), because her nondisclosures and omissions both distorted and suppressed her findings.

Count IV alleges that respondent's misrepresentation of her expertise and her undertaking of an investigation beyond her competence, education, and training constituted gross professional malpractice, repeated acts of professional malpractice, and professional misconduct under N.J.S.A. 45:1-21, and violations of N.J.A.C. 13:42-9.4(a), N.J.A.C. 13:42-9.7(g), and/or N.J.A.C. 13:42-10.4(d). Kleinman's claim that she was an expert in performing EMDR with children and her decision to treat S.R. in that manner constituted not only repeated acts of malpractice, but also gross malpractice under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she could not identify the criteria for PTSD, lacked a thorough understanding of dissociative disorders, and never received advanced training in EMDR from Tinker as she claimed. Instead, the record reflects that Kleinman had no real grasp of even basic EMDR. Similarly, the misrepresentation of her expertise and undertaking of S.R.'s investigation beyond her competence and training constituted professional misconduct under N.J.S.A. 45:1-21(e), because both were inherently wrong and unprofessional, and a danger to S.R.'s welfare, in that she risked implanting false memories and may have made S.R.'s situation worse.

Similarly, that conduct violated N.J.A.C. 13:42-9.4(a) and N.J.A.C. 13:42-9.7(g), because Kleinman failed to “accurately and objectively represent” her competence or training and offered professional service she should have known was beyond her ability during the representation of S.R. The conduct also violated N.J.A.C. 13:42-10.4(d), because Kleinman failed to “maintain competence consistent with professional responsibilities” regarding standards of practice, including the difference between a treating psychologist and a forensic psychologist and the proper method to question a child, and practiced beyond her area of competence.

Count V alleges that respondent’s failure to maintain accurate and contemporaneous records violated the requirements of N.J.A.C. 13:42-8.1. Kleinman’s recordkeeping practice violated N.J.A.C. 13:42-8.1(a), because she failed to maintain a record accurately reflecting contact with S.R. Video recordings demonstrate that Kleinman’s records provided an inaccurate depiction of her contact with S.R. Kleinman’s recordkeeping similarly violated N.J.A.C. 13:42-8.1(c), because those records failed to include “material pertinent to the nature and extent of the professional interaction,” such as “7. [f]indings on appropriate examination; . . . 11. [c]ontemporaneous and dated progress or session notes including specific components of treatment, evaluation or consultation; . . . [and] 15. [t]he client identity on each page”; N.J.A.C. 13:42-8.1(d), because the records lacked any reports from other professionals such as S.R.’s pediatrician or DYFS; and N.J.A.C. 13:42-8.1(b), because not all records were made contemporaneously.

Respondent asserts in her brief that because some sessions “contain both a video and audio component, notes could not better capture what transpired during these sessions than the actual videotapes.” (Respondent’s Post-Hearing Submission dated July 15, 2011, at 26.) However, that argument is not persuasive, because the rule provides that a psychologist must “make entries in the client record contemporaneously with the services provided[, but] may dictate an entry for later transcription, provided the transcription is dated and identified as ‘preliminary’ until the licensee reviews the transcription and finalizes the entry in the client record.” N.J.A.C. 13:42-8.1(b). Although the rule does not discuss video recordings, such material is analogous to dictations and transcriptions, and the prohibition on dictations and transcriptions in the

client record suggests that the record must be in written form. None of Kleinman's notes for which a corresponding video was recorded indicated that they were preliminary, and respondent was therefore required to "make entries into the client record" at the same time the services were provided. As such, at least Kleinman's entry on November 5, 2003, was not made contemporaneously with the services provided, and the existence of the video recording does not cure that defect.

COUNT VI

Testimony of D.C.

D.C. became involved with Kleinman during the course of her divorce from her husband, J.D. The couple had two children. At the time of the licensing hearing, her son was twenty-six and her daughter was about to turn fourteen. D.C. was referred to Kleinman in 1997 for respondent to certify her as a battered woman in connection with her application for pendente lite support. The purpose of D.C.'s application was her need for medical treatment based upon the grievous injuries inflicted by her husband. D.C. required the certification in order to get her husband to pay for her substantial medical care during the course of the divorce proceeding.

D.C. entered into a forensic-evaluation agreement with Kleinman on September 26, 1997. She testified that her husband not only had a history of violence against women, but he also had been treated several times for alcohol and cocaine addiction. He had further been treated for sexual addiction.

When Kleinman learned about the sexual addiction, she asked D.C. the age of her daughter, who at that time was less than one year old. In light of the information that D.C.'s husband had been treated for sexual addiction, Kleinman raised the possibility that he had sexually abused D.C.'s daughter. Respondent's explanation was that the husband's attorney was a custody attorney hired to take custody of the children away from D.C. Kleinman told D.C. that if she didn't accuse her husband of molestation, she had a good chance of losing custody.

D.C. further testified that Kleinman made this recommendation repeatedly, even though D.C. tried to explain to respondent that the husband was interested in adult prostitutes and that he had no sexual attraction to children. D.C. added that she looked and looked “every second of every day for a sign” that her husband was sexually abusing her daughter, but that she never found any indication that her daughter was sexually abused by her husband or anyone else. Although D.C. had gone to Kleinman for a forensic certification of battered woman syndrome, Kleinman kept raising the prospect of child abuse.

Nonetheless, D.C. continued seeing Kleinman because she needed the certificate in order to get money for her medical care. According to D.C., every session seemed to go back to the subject of sexual abuse. D.C. testified that Kleinman had told her that “she had used a similar tactic or the same on her own husband or the father of her daughter and that she had done it with such great success that she severed his parental rights.” For her part, Kleinman denied ever making this statement.

D.C. further testified that, in accordance with the forensic-evaluation agreement, she paid Kleinman \$2,500 as a retainer. She also agreed to pay a fee of \$200 per hour for evaluation and \$2,000 per day for court or deposition appearances. Once the retainer was exhausted, Kleinman convinced D.C. to seek the legal services of an attorney experienced in custody matters, and recommended her sister, Toby Kleinman, Esq. Following this recommendation, D.C. retained Kleinman’s sister to represent her in the divorce proceeding. The witness explained that she changed counsel because Kleinman made her anxious that her prior attorney was not as experienced in custody matters. She realized later that what Kleinman had told her did not make sense. While her husband had mentioned custody in the initial divorce complaint, during the actual proceedings he only sought visitation.

After collecting her fee, Kleinman told D.C. that she could not finish the battered-woman evaluation because of a conflict of interest since her sister was now representing D.C. D.C. had paid an additional \$2,000 to Kleinman in December 1997, which Kleinman refunded in October 1998. She had not provided the certification that

D.C. needed for medical treatment. Instead, D.C. obtained the certification from Lenore Walker, who never focused on the issue of child abuse.

Toby Kleinman represented D.C. “until her money ran out.” She was unrepresented for a period of time until her parents lent her money so that she could retain another attorney. In August 1999 D.C. returned to Marsha Kleinman for the battered-woman evaluation. Meanwhile, the divorce proceeding was ongoing. In order to determine whether the information previously provided to the court was outdated, D.C. had to return to Kleinman. At that time, Walker was unavailable. She signed a new retainer agreement with Kleinman on August 19, 1999. She paid a \$3,000 retainer on the same date. She only saw Kleinman for approximately two-and-a-half hours. Thereafter, on October 14, 1999, Kleinman refunded \$2,500. D.C. testified that she never told Kleinman that she was dissatisfied with her services, because Kleinman was “a very angry woman and nothing I said was going to make any difference.” D.C. added that “it was pointless to argue with her.”

In an unsuccessful effort to impeach the credibility of Martindale, respondent’s attorney questioned D.C. concerning a contact she had with Martindale prior to her filing of a complaint with the Board. She encountered Martindale in connection with an organization for which she worked as a volunteer. Her conversation with Martindale was interrupted when he received a telephone call in connection with the S.R. case. When she overheard the mention of Kleinman’s name, she asked him about the case and whether it involved allegations of child sexual abuse. She never consulted with Martindale and he never suggested that she file a complaint with the Board. Later she contacted the Attorney General on her own accord.

Testimony of Jacquelyn Marich

Jacquelyn Marich, executive director of Women Aware, Inc., an organization involved with assisting victims of domestic violence, testified that the organization sometimes refers women to attorneys in regard to family-law matters. However, Marich could not recall that the organization was consulted by D.C. for any reason. Specifically, she did not remember referring D.C. to Toby Kleinman, Esq., for legal work.

Marich knew Marsha Kleinman, who had in the past performed services for Women Aware. She also knew Toby Kleinman, who was a member of the organization's board of directors. Marich further testified that the organization had no practice, policy or protocol in place to refer persons in need of legal services to Toby Kleinman.

Testimony of Marsha Kleinman

Kleinman admitted during direct examination that she never completed the evaluation of D.C. as a battered woman. Nor did she ever testify on behalf of D.C. In October 1997 Kleinman had a series of meetings with D.C., reviewed discovery, and spoke by telephone with D.C.'s attorney. All of this was to gather information to go into her report, which was never written. On November 7, 1997, she administered the Minnesota Multiphasic Personality Inventory (MMPI), which she admitted was a poor instrument for assessing battered woman syndrome.

Kleinman claimed that D.C. never wanted her to finish the evaluation, and went to respondent's sister as an attorney. At that point, Kleinman could not continue as D.C.'s forensic evaluator because there would be a conflict. When D.C. returned in 1999, Kleinman did some testing, but again never completed an evaluation.

When Kleinman learned that D.C.'s husband had been diagnosed as a sex addict, she decided that it would be advisable to seek guidance from a professional before making any decisions regarding visitation. She did not attempt to be the person to give professional guidance and did not refer her to anyone for professional guidance. Respondent believed that she probably told D.C. to discuss the matter with her attorney.

Kleinman denied having referred D.C. to her sister for legal advice. She believed that she referred her to Jacquelyn Marich at Women Aware. Asked why she referred D.C. to Marich, she explained that Marich would be in the best position to know which attorneys were appropriate to represent battered women.

Findings of Fact as to Count VI

D.C. was referred by her lawyer to Kleinman in her capacity as a forensic psychologist in order to obtain a certification that she suffered from battered woman syndrome in connection with her application for pendente lite medical support. D.C. did not consult Kleinman about custody or visitation in her divorce proceedings. Nevertheless, Kleinman tried to convince her to allege that the father committed sexual abuse of his daughter. Even after D.C. insisted that she had extensively looked into the possibility and found no reason to support such a charge, Kleinman pursued the issue of wrongdoing by the father. Kleinman told her that bringing such an allegation would enhance her possibility of obtaining full custody.

Parenthetically, the record reveals that D.C. paid Kleinman \$2,500 as a retainer toward her fee of \$200 per hour for evaluation. Kleinman administered the MMPI, which she herself testified was not particularly useful in assessing battered woman syndrome. It appears that Kleinman used a significant portion of the retainer pursuing irrelevant topics and never produced the requested battered-woman certification.

Once the retainer was exhausted, Kleinman convinced D.C. that her current attorney was not an expert in custody matters and recommended that D.C. retain her sister, Toby Kleinman, Esq., to handle her divorce. Kleinman denied that she sent D.C. directly to her sister, and claimed that she instead referred her to Women Aware. Proofs show, however, that Women Aware had no record of such referral, so, more likely than not, Kleinman made the referral directly to her sister. As soon as D.C. engaged the sister as her attorney, Marsha Kleinman withdrew from the case due to the conflict of interest that she had herself created. She never furnished the certification that D.C. had paid her to provide.

Conclusions of Law as to Count VI

Count VI alleges that respondent's suggestion that D.C. should fabricate allegations of child molestation against her husband and failure to provide D.C. with certification as a battered woman constituted professional misconduct under N.J.S.A.

45:1-21(e). That conduct constituted professional misconduct under N.J.S.A. 45:1-21(e), because Kleinman's suggestion that D.C. instigate a fraud on the court by fabricating sexual abuse, and her failure to provide the certification that D.C. required for receipt of medical services because she chose to refer D.C. to her sister for legal services after D.C.'s retainer was exhausted, were both inherently wrong and unprofessional.

PENALTY

N.J.S.A. 45:1-21(b), (c) and (e) provide that the Board may suspend or revoke the license of any license holder who engaged in gross or repeated negligence, gross and repeated malpractice, or professional misconduct. Further, N.J.S.A. 45:1-21(h) subjects a license holder to discipline for violating or failing to comply with the provisions of an act or regulation administered by the Board.

As to Counts I to V: Kleinman has engaged in gross and repeated malpractice which damaged or endangered the welfare of S.R. and threatened S.R.'s relationship with her father. Kleinman misused her influence in a manner that exploited S.R.'s trust and dependency, resulting in the creation of great distress and confusion for the child. She recklessly ran the risk of creating a permanent disruption in the bond between S.R. and her father. She created a situation whereby law enforcement would have been unable to conduct a criminal investigation had such action been appropriate. She isolated the child from all outside help had it been warranted.

By the gross malpractice inherent in her methods, she created a danger to society by preventing law enforcement and child protective services from exercising their appropriate functions in this case. She must not be allowed to engage in this course of action with respect to any other child.

Kleinman deliberately misled the court by providing false and incomplete information relevant to the court's determination of custody and visitation. She committed gross and repeated malpractice by performing as both a treating psychologist and a forensic psychologist at the same time with the same patient. She

misrepresented the scope of her knowledge and training to perform the services for which she sought appointment by the court. She failed to keep records that were complete, truthful and legible.

As to Count VI: Kleinman attempted to instigate a fraud on the court by getting D.C. to allege nonexistent sexual abuse. Furthermore, she took D.C.'s money and failed to provide the certification that D.C. required in order to receive necessary medical services.

Given the egregious nature of Kleinman's gross and repeated malpractice and acts of professional misconduct, I **CONCLUDE** that the only appropriate penalty is the revocation of her license to practice psychology in New Jersey, together with a civil penalty of \$60,000 and costs incurred by the State.

ORDER

It is **ORDERED** that Kleinman's license to practice psychology in New Jersey is hereby revoked.

It is further **ORDERED** that, pursuant to N.J.S.A. 45:1-22 and -25, civil penalties of \$10,000 per count, totaling \$60,000, are hereby assessed against Kleinman.

And it is further **ORDERED** that, pursuant to N.J.S.A. 45:1-25, costs of the investigation, fees for expert witnesses, attorney's fees, and costs of hearing, including transcript costs, to be calculated by the Board, are imposed on Kleinman.

I hereby **FILE** my initial decision with the **BOARD OF PSYCHOLOGICAL EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PSYCHOLOGICAL EXAMINERS**, which by law is authorized to make a final decision in this matter. If the Board of Psychological Examiners does not adopt, modify or reject this decision within forty-five days and unless such time limit is

otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE SECRETARY, BOARD OF PSYCHOLOGICAL EXAMINERS, 124 Halsey Street, PO Box 45017, Newark, New Jersey 07101**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 13, 2012



DATE

EDITH KLINGER, ALJ, t/a

Date Received at Agency:

7/13/12

Date Mailed to Parties:

7/13/12

APPENDIX

Witnesses

For Complainant:

Dr. David A. Martindale
D.C.
Dr. Robert Tinker
Donna Lobiondo (testimony stricken)
Dr. Robbie Adler-Tapia

For Respondent:

Dr. Marsha Kleinman
Dr. Lenore Walker
Dr. Ricky Greenwald
Jacquelyn Marich
Dr. David Shapiro

Exhibits

Joint:

J-1 Kleinman, Office Records for S.R.
J-2 Sivilli, Order dated March 25, 2004

For Complainant:

C-1 Curriculum Vitae, David Martindale (current)
C-2 No Exhibit
C-3 List of Documents Reviewed by Martindale
C-4 Appendix B, Additional Documents Reviewed by Martindale
C-5 Supplementary Report of Martindale

- C-6 Letter, Kleinman to Sivilli, July 7, 2003
- C-7 Letter, Kleinman to Sivilli, August 10, 2003
- C-8 Letter, Kleinman to Saminski and Flaster, October 1, 2003
- C-9 Letter, Kleinman to Sivilli, March 23, 2004
- C-10 Letter, Kleinman to Katz, October 20, 2004 (unsigned)
- C-11 Letter, Bergen County Prosecutor to Kleinman, August 13, 2004
- C-12 Partial Transcript, Investigative Hearing Before the Board, July 18, 2005
- C-13 Partial Transcript, Investigative Hearing Before the Board, June 12, 2006
- C-14 Compact disc, recorded telephone conversations, Kleinman and D.R.
- C-15 Transcript, Kleinman videotape, two sessions with S.R., November 5, 2003 (C-24 and C-25)
- C-16 Transcript, Kleinman videotaped session with S.R., November 4, 2003 (C-23).
- C-17 Retainer Agreement between D.C. and Kleinman, September 26, 1997
- C-18 Letter, Toby Kleinman, Esq., to Judge Escala, December 11, 1997
- C-19 Retainer Agreement between D. C. and Kleinman, August 19, 1999
- C-20 Payment Record, Kleinman for D.C., September 1997 through October 1999
- C-21 Letter, Robert Ritter, Esq., to Kleinman, September 17, 1997
- C-22 Videotape, Kleinman Session with S.R., October 11, 2003
- C-23 Videotape, Kleinman Session with S.R., November 4, 2003
- C-24 Videotape, Kleinman Session with S.R., November 5, 2003, Part 1
- C-25 Videotape, Kleinman Session with S.R., November 5, 2003, Part 2
- C-26 Videotape, Kleinman Session with S.R., November 19, 2003
- C-27 Transcript of C-22
- C-28 Transcript of C-26
- C-29 No Exhibit
- C-30 Curriculum Vitae, Adler-Tapia
- C-31 List of Documents Reviewed by Adler-Tapia
- C-32 EMDR Fidelity Questionnaire
- C-33 Sivilli, Order dated August 6, 2003
- C-34 Letter, Kleinman to Sivilli, August 2, 2003
- C-35 No Exhibit

- C-36 No Exhibit
- C-37 Documents Redacted from Client Record
- C-38 Sivilli, Order dated June 18, 2003
- C-39 No Exhibit
- C-40 Letter, Kleinman to Flaster, July 24, 2003
- C-41 Letter, Kleinman to Flaster, September 29, 2003
- C-42 Letter, Kleinman to Sivilli, April 9, 2004
- C-43 Letter, Kleinman to Flaster, July 31, 2003
- C-44 Letter, Kleinman to Katz, October 7, 2004
- C-45 Letter, Kleinman to Elaine DeMars, Managing Director, Board, November 20, 2004
- C-46 Letter, Kleinman to DeMars, May 2, 2005
- C-47 Curriculum Vitae, Kleinman
- C-48 Transcript, Telephone Conversations, Kleinman and D.R. (C- 14)
- C-49 Sivilli, Order dated March 3, 2004
- C-50 No Exhibit
- C-51 No Exhibit
- C-52 No Exhibit
- C-53 Excerpt, EMDR in Child and Adolescent Psychotherapy, Ricky Greenwald
- C-54 Excerpt, EMDR Within a Phase Model of Trauma-Informed Treatment, Greenwald
- C-55 Excerpt, EMDR Desensitization and Reprocessing with Traumatized Youth, Greenwald
- C-56 No Exhibit
- C-57 Specialty Guidelines for Forensic Psychologists

For Respondent:

- R-1 Letter, Martindale to DeMars, April 21, 2005
- R-2 No Exhibit
- R-3 Saint Barnabas, Psychiatric Evaluation Record, dated November 4, 2003
- R-4 No Exhibit
- R-5 No Exhibit

- R-6 No Exhibit
- R-7 No Exhibit
- R-8 No Exhibit
- R-9 No Exhibit
- R-10 No Exhibit
- R-11 Updated Curriculum Vitae, Kleinman
- R-12 Letter, Kleinman to Sivilli, September 24, 2003
- R-13 Letter, Kleinman to Sivilli, November 19, 2003
- R-14 Letter, Kleinman to Sivilli, July 29, 2003
- R-15 Sivilli, Order dated August 11, 2003
- R-16 Letter, Kleinman to Sivilli, September 2, 2003
- R-17 Letter, Kleinman to Sivilli, September 4, 2003
- R-18 Letter, Kleinman to Sivilli, September 5, 2003
- R-19 Letter, Kleinman to Sivilli, September 5, 2003 (R-18 with notations)
- R-20 Letter, Kleinman to Sivilli, September 11, 2003
- R-21 Letter, Kleinman to Sivilli, October 18, 2003
- R-22 Sivilli, Order, dated October 28, 2003
- R-23 Letter, Kleinman to Sivilli, November 28, 2003
- R-24 Sivilli, Order, dated December 16, 2003
- R-25 Letter, Kleinman to Sivilli, December 17, 2003
- R-26 Letter, Kleinman to Sivilli, January 4, 2004
- R-27 No Exhibit
- R-28 No Exhibit
- R-29 Letter, Kleinman to Sivilli, April 16, 2004
- R-30 Sivilli, Order, dated April 30, 2004
- R-31 Sivilli, Order, dated May 11, 2004
- R-32 Sivilli, Letter Order, dated May 11, 2004
- R-33 Letter, DYFS to Kleinman, dated September 17, 2004
- R-34 Letter, Kleinman to DYFS, September 20, 2004
- R-35 Thank You note in envelope, D.C. to Kleinman
- R-36 Letter, D.C. to Kleinman, September 24, 1999
- R-37 Letter, Kleinman to D.C., October 14, 1999
- R-38 Letter re: D.C., Meredith Robbins to Kleinman, August 2, 1999

R-39 Packet: Documents in Support of Kleinman's Qualifications

- R-39A Letter from Carol York, EMDRIA, Inc., to Marsha Kleinman, December 29, 1997, one page
- R-39B Letter from Eli H. Newberger, M.D., to To Whom it May Concern, dated July 10, 2008, 2 pages, and Curriculum Vitae, 12 pages
- R-39C Letter from Borough of Highland Park, Stephen B. Nolan, Mayor, to Marsha Kleinman, dated June 2, 2010, one page
- R-39D Letter from Borough of Highland Park, Meryl Frank, Mayor, to Marsha Kleinman, dated February 2, 2009, one page
- R-39E Letter from Borough of Highland Park, Meryl Frank, Mayor, to Marsha Kleinman, dated April 28, 2009, one page
- R-39F Letter from Women Aware, Jacquelyn E. Marich, Executive Director, dated June 19, 1984, one page
- R-39G Letter from Superior Court of New Jersey, Elaine L. Davis, PJCP, to Marsha Kleinman, dated December 8, 1998, one page
- R-39H Letter from State of New Jersey, Department of Law & Public Safety, Division of Criminal Justice, DAG Chief Gail E. Faille and DAG Jessica S. Oppenheim to Marsha Kleinman, dated November 9, 1999, one page
- R-39I Letter from Administrative Office of the Courts, State of New Jersey, Mary M. DeLeo, to Marsha Kleinman, dated March 21, 2001, one page
- R-39J Letter from Administrative Office of the Courts, State of New Jersey, Harry T. Cassidy, to Marsha Kleinman, dated April 23, 2002
- R-39K Somerset County Prosecutor's Office, Deborah McGowan, to Marsha Kleinman, dated January 5, 1995, one page
- R-39L Somerset County Prosecutor's Office, Laurie Head-Melillo, to Marsha J. Kleinman, dated January 4, 1995, one page
- R-39M Letter from Rutgers, Penelope E. Lattimer, to Marsha J. Kleinman, dated November 7, 2010, one page
- R-39N Letter from Susan Cohen Esquilin, Ph.D., ABPP, to Marsha Kleinman, dated April 16, 2007, one page

- R-39O Letter from State of New Jersey, Commission on Sex Discrimination, Melanie Griffin and Riki Jacobs and Sharon Peters, to Marsha Kleinman, dated January 18, 1993
- R-39P Letter from Skoloff & Wolfe, PC, Carey B. Cheifetz, to Marsha J. Kleinman, dated May 28, 1997
- R-39Q Letter from Administrative Office of the Courts, State of New Jersey, Richard L. Saks, to Marsha Kleinman, dated December 11, 1998, one page
- R-39R Letter from Superior Court of New Jersey, Elaine L. Davis, PJCP, to Marsha J. Kleinman, December 8, 1998, one page
- R-39S Letter from Administrative Office of the Courts, State of New Jersey, Harry T. Cassidy, dated April 23, 2002, one page
- R-39T Letter from Administrative Office of the Courts, State of New Jersey, Mary M. DeLeo, to Marsha Kleinman, dated March 21, 2001, one page
- R-39U Certificate in Conference, Trauma and Memory, Clinical and Legal Dimensions, one page
- R-39V Letter from New Jersey State Bar Foundation, Florence Nathan, to Marsha Kleinman, dated October 21, 1994, one page
- R-39W Letter from Rutgers Preparatory School, David Mazsa, to Marsha Kleinman, dated November, 4, 2010, one page
- R-39X Letter from State of New Jersey, Governor's Task Force on Child Abuse and Neglect, Donna Pincavage, to Marsha Kleinman, dated October 14, 1994
- R-39Y Letter from New Jersey Coalition for Battered Women, Lynda M. Carson, to Marsha Kleinman, dated October 12, 1994
- R-39Z New Jersey Psychological Association, Carol R. Lewis, to Marsha Kleinman, dated May 27, 1998
- R-39AA Letter from New Jersey Psychological Association, Barry Helfmann, to Marsha Kleinman, dated September 6, 1990
- R-39BB Letter from National Organization for Women of New Jersey Foundation, Bear Atwood and Mariann Mann, to Marsha Kleinman, dated June 10, 1998
- R-39CC News Article, Drug Care Needs Stressed for Pregnant Women, by Donna Leusner

- R-39DD Certification to Marsha J. Kleinman, Expertise into the 90s, Making Treatment Work, dated October 23, 24 25 1990
- R-39EE Continuing Education Certificate dated October 23, 1988
- R-39FF Continuing Education Certificate, New Jersey Academy of Psychology, dated April 23, 1995
- R-39GG Certificate from New Jersey Association of Domestic Violence Professionals, dated June 22, 1993
- R-39HH AAB, Association for Advancement of Behavior Therapy, dated November 16, 1985
- R-39II Certificate of Participation, Trauma and Memory, Clinical and Legal Dimensions, held March 31 through April 2, 1993
- R-39JJ Certificate of Completion, Marsha J. Kleinman, EMDR, Level II Training
- R-39KK Certificate of Completion, Marsha J. Kleinman, EMDR, Level I, Basic, Two-Day Training
- R-39LL Continuing Education Program, Marsha J. Kleinman, Mass. Mental Health Center
- R-39MM Continuing Education Certificate, New Jersey Academy of Psychology, April 23 and May 1, 1994
- R-39NN Continuing Education Certificate, New Jersey Academy of Psychology, October 20, 1991
- R-39OO Continuing Education Certificate, New Jersey Academy of Psychology, June 7, 1987
- R-39PP Continuing Education Certificate, Division 35 APA, Child Custody, August 1990
- R-39QQ Continuing Education Certificate, Psychology of Women Institute, Division 35-APA, August 9, 1990
- R-39RR Letter from UMDNJ, Robert Moutrie, to Marsha Kleinman, Respondent: Continuing Education
- R39SS Continuing Education Program, Mass. Mental Health Center
- R-39TT Letter from New Jersey Psychological Association to Marsha J. Kleinman, Richard P. Klufft, April 12, 1997

- R-39UU Letter from Albert Einstein College of Medicine of Yeshiva University to Marsha J. Kleinman, Behavioral Family Therapy, November 7, 1985
- R-39VV New Jersey Academy of Psychology, Certificate of Attendance, Behavioral Treatment of Depression, May 18, 1983
- R-39WW Biofeedback in Clinical Practice, June 16, 1982
- R-39XX Clinical Practice of Behavior Therapy, May 18, 1981
- R-39YY NJPA, Certificate of Attendance, Assertive Training in Behavior Therapy, May 1, 1975
- R-39ZZ Continuing Education Certificate to Marsha J. Kleinman, preparing for the Diplomate Exam in Forensic Psychology, February 20, 1992
- R-39AAA Letter from Boston Neuropsychological Foundation, Meg Higby, Continuing Education, October 10, 1987
- R-39BBB Certificate of Appreciation to Marsha Kleinman, dated April 23, 1980
- R-39CCC The Luria-Nebraska Neuropsychological Battery, Psychological Seminars, Continuing Education Certificate to Marsha J. Kleinman, April 11, 12, 1981
- R-39DDD Rutgers Graduate School of Applied and Professional Psychology, to Marsha J. Kleinman, Physiological Basis of Behavior, 1981
- R-40 Letter, Kleinman to D.R., July 17, 2003
- R-41 Letter, Kleinman to Katz, October 20, 2004 (signed)
- R-42 Curriculum Vitae, Greenwald
- R-43 Curriculum Vitae, Greenwald, Appendix A
- R-44 Kleinman Listing, EMDR International Association
- R-45 No Exhibit
- R-46 No Exhibit
- R-47 Résumé, Walker
- R-48 Résumé, Walker, Appendix B
- R-49 Résumé, Walker, Appendix C
- R-50 Curriculum Vitae, Shapiro
- R-51 No Exhibit

R-52 Curriculum Vitae, Shapiro, Appendix A

R-53 No Exhibit

R-54 Saint Barnabas, Full Emergency Room Record, dated November 4, 2003