

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the matter of the Complaint of  
STEVEN REISNER,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

Index No. 10115400

-against-

VERIFIED PETITION

LOUIS CATONE, Director of the  
New York Office of Professional Discipline,  
New York State Department of Education,

THE OFFICE OF PROFESSIONAL DISCIPLINE  
of the New York State Department of Education, and

THE NEW YORK STATE DEPARTMENT OF EDUCATION,

Respondents.  
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**Preliminary Statement**

1. In this Article 78 proceeding, Petitioner seeks an order to compel Respondents to open an investigation into the professional misconduct of Dr. John Francis Leso, a psychologist licensed by the State of New York.
2. Respondents failed to investigate Dr. Leso's misconduct, despite being presented by the Petitioner with numerous documented allegations of Dr. Leso's violations of professional standards, which include:
  - a. designing, implementing, and participating in a system of abusive interrogations at the United States Naval Station at Guantánamo Bay, Cuba;

- b. recommending the use of psychological stressors such as sleep deprivation, withholding food, isolation, and distortion of the perception of time;
  - c. recommending the use of psychological methods of abuse on detainees, including sleep deprivation “non-injurious physical consequences,” removal of clothing, exposure to cold, threats, prolonged isolation, and sensory deprivation; and
  - d. personally supervising the implementation of these and other psychological techniques and, on at least one occasion, directing their application to a detainee.
3. In refusing to undertake an investigation of Dr. Leso, and in asserting a lack of legal authority to initiate an investigation, Respondents have failed to perform duties required by law, have reached a judgment that was affected by an error of law, and have acted in an arbitrary and capricious manner.

#### **The Parties**

4. Petitioner, DR. STEVEN REISNER, is a citizen, resident, and taxpayer in the State of New York. He is also a psychologist in good standing licensed in the State of New York, License # 010068, issued February 2, 1990.
5. Respondent NEW YORK OFFICE OF PROFESSIONAL DISCIPLINE is the agency within the Respondent NEW YORK STATE DEPARTMENT OF EDUCATION charged with investigating complaints of misconduct against psychologists licensed by the State of New York pursuant to Article 130 of the New York Education Law. The New York Office of Professional Discipline is a body within the meaning of Article 78 of the CPLR.

6. Respondent LOUIS CATONE is the Director of the New York Office of Professional Discipline and is, in such capacity, charged as the designated Professional Conduct Officer with the responsibility for the operation of the office by its agents and employees. He is an officer within the meaning of Article 78 of the CPLR. Respondent Cantone maintains an office at the Office of Professional Discipline, located at 475 Park Avenue South, New York, New York 10016.

### **Statutory and Regulatory Schemes**

7. Article 130 of New York Education Law grants the New York Department of Education the power to regulate certain professions, including the profession of psychology, to license the practice of those professions, and to discipline licensees. *See* Education Law § 6500 *et seq.*
8. Pursuant to Education Law § 6509(2), professional misconduct is defined as “[p]racticing the profession fraudulently, beyond its authorized scope, with gross incompetence, with gross negligence on a particular occasion or negligence or incompetence on more than one occasion.”
9. In addition, Education Law § 6509(9) defines misconduct as “committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents.”
10. Pursuant to its statutory authority, the New York State Board of Regents has promulgated certain rules, including 8 NYCRR 29.1(b)(5) prohibiting “conduct in the practice of the profession which evidences moral unfitness to practice the profession”; 8 NYCRR 29.2(a)(2) prohibiting abuse and harassment; and 8 NYCRR 29.1(b)(11) and 29.2(a)(7) prohibiting unauthorized and unwarranted treatment.

11. Any person may file a complaint with the New York Education Department alleging that a psychologist licensed in the State of New York has committed misconduct. *See* Education Law §6510(1)(a).
12. The New York Education Department has a mandatory obligation to investigate complaints of misconduct against its licensees. As directed by Education Law § 6510(1)(b), the “department *shall* investigate each complaint which alleges conduct constituting professional misconduct” (emphasis added).
13. Pursuant to its authority under Education Law § 6506(8), the New York Education Department has designated its Office of Professional Discipline (“OPD”) to receive and investigate such complaints.<sup>1</sup>

#### **Venue**

14. Venue is proper in the Supreme Court of New York County because New York County is the county in which Respondents “made the determination complained of or refused to perform the duty specifically enjoined ... by law.” CPLR 506.

#### **Standing**

15. Petitioner has standing to bring this action as a citizen, resident, and taxpayer of the State of New York because the case at bar is a matter of public interest.

#### **Facts**

16. On July 7, 2010, New York psychologist Dr. Steven Reisner filed a complaint alleging professional misconduct had been committed by New York psychologist Dr. John Francis Leso in designing, implementing, and participating in a system of abusive interrogations at the United States Naval Station at Guantánamo Bay, Cuba (“Guantánamo” or “GTMO”).  
*See* Licensing Complaint Against Dr. John Francis Leso State of New York, License number

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<sup>1</sup> *See* “New York's Professional Misconduct Enforcement System” available at <http://www.op.nysed.gov/opd/>.

013492 (hereinafter “Complaint”) (Attached as Exhibit 1 to the Affirmation of Taylor Pendergrass in support of this Petition) (hereinafter “Pendergrass Aff.”). The allegations of the Complaint were supported in detail by numerous documents made public by the United States Senate Armed Services Committee (“SASC”), the Central Intelligence Agency (“CIA”), and the Department of Defense (“DOD”), among others. Twenty-five such exhibits were appended to the Complaint (Attached as Exhibit 1 to Pendergrass Aff.).

17. Dr. Reisner’s complaint alleges and documents that Dr. Leso was employed by the DOD as the ranking psychologist on the Behavioral Science Consultation Team (“BCST”), a team of mental health professionals, at the U.S. detention facility at Guantánamo from approximately June 2002 to January 2003. *See* Complaint Ex. 9, SASC Report at 38; Complaint Ex. 4, Fixing Hell at 24-28; Complaint Ex. 11, BSCT Standard Operating Procedure (“SOP”) 2002; and Complaint Ex. 12, BSCT SOP 2005. The Complaint also documents Dr. Leso’s title as “Clinical Psychologist” and that his mission was to “[p]rovide behavioral science consultation in support of [] GTMO interrogation mission.” *See e.g.* Complaint Ex. 11, BSCT SOP 2002. The Complaint alleges and documents how Dr. Leso relied upon his New York psychologist licensure in order to hold this position. *See* License Detail for license number 013492, Exhibit 1 to Complaint.

18. The Complaint alleges and documents that the U.S. military required all psychologists in its employ to maintain valid state licenses, relied on the states to establish and enforce professional and ethical standards for their own licensees, and that the DOD recognizes state licensing authorities as the entities responsible for investigating and disciplining cases of unethical conduct, regardless of the location where the misconduct occurs. *See* Complaint § II (“Jurisdiction”).

19. The Complaint alleges and documents numerous instances of serious misconduct and abuse committed by Dr. Leso in his professional capacity as a psychologist, including the following:

- a. Dr. Leso in October 2002 prepared and presented a memorandum to Guantánamo commanders and advisors proposing three categories of interrogation techniques to be employed sequentially or in combination, each category representing a different level of severity in cruelty. *See* Complaint § VI.B. (“To Support Interrogations at Guantánamo, Dr. Leso Turned to Psychologically Abusive Techniques.”)
- b. In his professional capacity, Dr. Leso also stated that “psychological stressors such as sleep deprivation, withholding food, isolation, and loss of time were ‘extremely effective’” and recommended employing fear-based approaches and other “psychological stressors.” *See* Complaint § VI.B. (“To Support Interrogations at Guantánamo, Dr. Leso Turned to Psychologically Abusive Techniques,” citing Complaint Ex. 9, SASC Report at 54 and Complaint Ex.10, Counter Resistance Strategy Meeting Minutes at 3).
- c. Dr. Leso recommended applying psychological methods of abuse to detainees, including sleep deprivation “non-injurious physical consequences,” removal of clothing, exposure to cold, threats, prolonged isolation, and sensory deprivation. *See* Complaint § VI. C. (“Dr. Leso’s Program of Cruelty was Implemented at Guantánamo.”)
- d. Dr. Leso not only recommended using harmful and abusive psychological techniques to modify detainee behavior, but he also actively supervised the

implementation of these techniques and, on at least one occasion, personally participated in their application to a detainee. *See* Complaint §VI.D (“Dr. Leso Personally Supervised and Participated in the Psychological Abuse of Mohammed al Qahtani in violation of New York professional standards.”)

- e. For example, Dr. Leso was present for Mr. al Qahtani’s interrogation, including occasions when dogs were used to torment him, when he was forcibly injected with fluid causing his limbs to swell, when he was sleep deprived, when he was denied prayer, and when, as a result, he was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reportedly hearing voices, crouching in a corner of the cell covered with a sheet for hours on end). In this context, Dr. Leso advised interrogators on how to keep Mr. al Qahtani awake, disoriented, and vulnerable. *See* Complaint §VI.D (“Dr. Leso Personally Supervised and Participated in the Psychological Abuse of Mohammed al Qahtani in violation of New York professional standards.”); §VI.E (“Dr. Leso acted with Insufficient Care.”)

20. The Complaint also alleges and documents Dr. Leso’s professional role pursuant to Standard Operating Procedure for the BCST, of which he was the ranking psychologist. That SOP provided that a BSCT may “observe a detainee to provide input on the appropriateness of a mental health referral for that individual.” Ex. 11 to Complaint, BSCT SOP 2002 at 2. In addition, the SOP provided that the BSCT must support good stress management and morale within the interrogation group at Guantánamo. *Id.* at 1.

21. The Complaint alleges and documents that Dr. Leso established a provider-patient relationship with those detainees on whom he applied treatments in order to modify their behavior. Dr. Leso's patients included the population of detainees who were subjected to his treatments, those detainees whose interrogations Dr. Leso personally supervised while his techniques were applied, and those detainees for whom Dr. Leso prescribed specific interventions in the course of interrogation, including Mohammed al Qahtani. *See generally* Complaint.
22. On July 28, 2010, the Respondent Louis Catone, Director of the New York Office of Professional Discipline, responded to Petitioner's complaint on behalf of Respondents OPD and DOE (collectively the "Agency") claiming that he could "find no legal basis for instituting an investigation . . . because it does not appear that the conduct complained of constitutes the practice of psychology as understood in the State of New York." *See* Catone Letter (July 28, 2010) (Attached as Exhibit 2 to Pendergrass Aff.).
23. In refusing to investigate Dr. Reisner's complaint, Respondent Catone applied the definition of the profession of psychology found in Education Law § 7601-a. That section defines psychology, in relevant part, as follows:
- The practice of the profession of psychology is "the observation, description, evaluation, interpretation, and modification of behavior for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health.
24. Respondent Catone maintained that Dr. Leso was not practicing psychology because the people he tormented did not meet Respondent Catone's definition of a "patient." Thus, Respondent Catone concluded, the conduct complained of was not subject to investigation and discipline by the Agency. According to Respondent Catone, "[i]f Dr. Leso's conduct did



not constitute the practice of psychology, then he cannot be guilty of practicing the profession of psychology with gross negligence, with gross incompetence, etc., and he cannot be guilty of engaging in conduct ‘in the practice of the profession’ evidencing moral unfitness to practice.” *See* Catone Letter (July 28, 2010) (Attached as Exhibit 2 to Pendergrass Aff.). Respondent Catone never addressed, however, the question of whether Dr. Leso engaged in misconduct by practicing psychology beyond its authorized scope.

25. In refusing to investigate Petitioner’s complaint, Respondent Catone improperly rewrote the statutory definition to mandate a patient-provider relationship before his agency will accept jurisdiction to investigate allegations that a psychologist has engaged in professional abuse. In so doing, Respondent would grant all New York State psychologists total professional immunity for their misconduct, no matter how egregious, as long as those psychologists commit their abuses on unwilling persons or third-party clients who—under Respondent Catone’s cramped interpretation—form no technical patient-provider relationship with their abuser.

26. No such requirement can be found in the plain language of the statute. Nor does such a requirement reflect the range of practices that constitute the profession of psychology in New York and which the legislature undoubtedly intended to regulate for the health and safety of the public, including suspects in detention contexts. Respondent Catone’s interpretation is incorrect as a matter of law.

27. On August 26, 2010 Petitioner’s counsel sent a letter to OPD requesting reconsideration of this position. *See* Roberts Letter (August 26, 2010) (Attached as Exhibit 3 to Pendergrass Aff.).

28. Petitioner's August 26 letter to OPD amply demonstrated that Dr. Leso's tasks as a clinical psychologist at Guantánamo unequivocally involved the practice of psychology as defined by New York law and documented numerous professional abuses, including: designing interrogation approach techniques, conducting detainee file reviews to construct personality profiles and provide recommendations for interrogation strategies; observing interrogations and providing feedback to interrogators on detainee behavior and possible strategies for further interrogation; and directing interrogators to use techniques that were in the best interest of the U.S. military, rather than the detainees. *See Roberts Letter (August 26, 2010) (Attached as Exhibit 3, Pendergrass Aff.) (Quoting Complaint Ex. 9, the SASC Report at 39).*
29. Petitioner's letter pointed the OPD to additional evidence demonstrating that Dr. Leso was engaged in the practice of psychology, including assisting "in the development of detention facility behavior management plans," "the implications of medical diagnoses and treatment for the interrogation process," and supporting "good stress management, morale, cohesion and organizational functioning in the [Joint Interrogation Group]." *See Roberts Letter (July 28, 2010) (Attached as Exhibit 3, Pendergrass Aff.) (Quoting Complaint Ex. 11, BSCT SOP 2002 at 1).*
30. None of the Respondents have replied to Petitioner's August 26 letter.
31. Because Dr. Leso's misconduct at GTMO clearly constituted the practice of psychology as defined by New York law, Respondents failed to perform the duty required by law to investigate the Complaint and, in so doing, acted in an arbitrary and capricious manner.

### **Exhaustion of Administrative Remedies**

32. The Respondents' decision not to investigate Dr. Reisner's complaint is subject to Article 78 review because there are no further administrative remedies available. N.Y. Educ. Law § 6510(1)(b).

33. Petitioner's claims were never heard by a hearing panel, the Board of Psychology, or the Regents review committee. *See* N.Y. Educ. Law §§ 6510(3) – (4). As a result, the Agency's denial of jurisdiction constituted a final determination which foreclosed all avenues of appeal within the agency. Because the Agency's decision is a final determination and Petitioner has exhausted all administrative avenues for appeal, the decision is subject to Article 78 review.

#### **Cause of Action**

34. In finding no jurisdiction to investigate Petitioner's Complaint, Respondents failed to perform duties required by law, reached a decision that was affected by an error of law, and acted in an arbitrary and capricious manner.

#### **Prayer for Relief**

WHEREFORE, Petitioner respectfully requests that a judgment be entered herein as follows:

1. Annuling, vacating, and setting aside the rejection of Dr. Reisner's Complaint regarding the professional misconduct of Dr. Leso;
2. Mandating that Respondents initiate and complete an investigation of the allegations of professional misconduct alleged in the Complaint against Dr. Leso;
3. Granting such other and further relief as this Court may find just and proper.

Dated: November 24, 2010

By: \_\_\_\_\_ /s  
TAYLOR PENDERGRASS  
ARTHUR EISENBERG  
ANDREW KALLOCH

NEW YORK CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 19th Floor  
New York, NY 10004  
(212) 607-3300  
(212) 607-3329 (facsimile)

-and-

L. KATHLEEN ROBERTS\*  
NUSHIN SARKARATI\*  
ANDREA EVANS\*

THE CENTER FOR JUSTICE & ACCOUNTABILITY  
870 Market Street, Suite 680  
San Francisco, CA 94102  
(415) 544-0444

*Attorneys for Petitioner*

\*Seeking admission *pro hac vice*