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Barre woman fights conduct proposal

BARRE – A former psychologist who says the state's professional review process ruined her career is objecting to a House bill that she feels will make the process even more impartial.

Deborah Alicen of Barre had been a counselor and then a psychologist in central Vermont for 16 years when a client in 2000 filed a complaint of unprofessional conduct against her with the state's Office of Professional Review.

Four years later, Alicen and the Board of Psychological Examiners settled on a lone count of failure to provide records and Alicen faced a 15-day suspension of her psychologist's license, but by then, said Alicen, it was too late.

Her license had expired, Alicen couldn't afford the necessary educational hours to reinstate it and she was left too traumatized to listen to others' problems, she said.

"I will not sit with a client the way I am. I cannot do it. My clients would deserve better," said Alicen. "I am so chewed up from going through this OPR meat grinder that in order to sit with clients ... I would need twice weekly supervision. That kind of support would cost \$100 an hour at least, and right now I'm having enough trouble keeping the utilities connected."

Alicen, who holds a doctorate degree and says she has only avoided foreclosure on her home through the kindness of friends, feels she would need supervision to protect herself from the state's review process should she have another malpractice claim filed against her. She alleges the board review of her case was riddled with conflicts of interest and rules violations. It was in September of 2000 that a client Alicen had been seeing for four years filed a complaint against her with the state's Office of Professional Review, which is part of the Secretary of State's Office. The following April, following an investigation, the complaint was dismissed, and Alicen thought her troubles were over.

A few months later, in August 2001, the case was reopened without new information and without her knowledge, said Alicen. Nearly two years later, in July 2003, the Board of Psychological Examiners found Alicen guilty of record-keeping violations – primarily not taking notes – it labeled "gross malpractice," and ordered her license suspended for 60 days followed by two years of supervised practice.

Alicen, who argued she purposefully did not take notes for this particular client and did not have to by law, appealed the board's decision and an appellant officer, Alan Rome, a lawyer working for the Office of Professional Review by contract, upheld the

failure to provide records violation but reversed the note-keeping allegations. In September 2004, Alicen and the board finally agreed to the lone violation and the 15-day suspension, which was satisfied. The decision was conditional on neither side appealing further.

Now, said Alicen in an interview at her home last week, the state through a House bill, H.199, is seeking to remove the level of appeal – the appellant officer – that Alicen feels was most helpful to her case.

Currently, appeals of licensing board decisions are reviewed by an appellant officer but then remanded back to the board for a final decision. That decision can then be further appealed to Vermont Superior Court in Washington County and next to the Vermont Supreme Court.

Proposed in the large bill is removal of the appellant officer level. Appeals instead would go right to Superior Court.

"That's where I won. Why are they wanting to get rid of this level of administrative appeal right after they lost at that level?" asked Alicen.

But Jessica Porter, director of the Office Professional Regulation and an attorney, said H.199 has nothing to do with Alicen's case. The large bill, which has already passed the House, is a nearly annual request by the Office of Professional Regulation to make primarily industry-driven housekeeping changes to the statutes regulating professions, Porter said.

Such changes proposed this year would clarify language regarding board quorums and barber and cosmetology apprenticeships and require additional continuing education requirements for real estate agents, Porter said.

Two exceptions, or larger changes, are the proposed elimination of the appellant officer level of review and a change that would direct fines Office of Professional Review charges some professionals to the office rather than to the state's general fund, said Porter.

Alicen objects to both. She argues that "having appeals go immediately to Superior Court would inhibit some people from pursuing appeals because it's a more public venue." The more formal procedure might also be intimidating for some, she said.

"It's my unhappy experience and first-hand knowledge of OPR acting recklessly that leads me to urge caution on the part of legislation that gives OPR more powers without providing for accountability," said Alicen.

The Office of Professional Review has been assessing fines for three years. The first year \$3,000 was collected, then \$9,000 and most recently \$11,000 was collected for the general fund, Porter said. Assessed by an Office of Professional Review prosecutor, the fines are levied for rules violations, such as a company failing to register unarmed security guards with the state or a dentist failing to register its dental assistants with the state, Porter said.

The fines go to the state's general fund, but Porter said she can ask for them back. She's now proposing the office keep the funds to help pay for its one-day fall training for board members, who are professionals appointed by the governor. There are 23 boards and 14 group advisers overseeing the state's professionals through the Office of Professional Review. The annual budget for the board is \$2.5 million.

"We're not funding our system with fines at all," Porter said.

Porter said the removal of the appellant officer was proposed to make the review process "quicker and I think fairer." Because appellant officer decisions are remanded back to the various the boards for their approval, sometimes decisions can be bounced back and forth between the appellant officer and board several times, drawing out the process.

"The thinking then was that would make for a faster review," said Porter. "It could be more impartial. It's more separate. It's a whole separate piece of state government, and it's empowered to do more."

While Porter argued Alicen didn't really win her case because she settled on a 15-day suspension, Porter said Alicen would have likely prevailed at Superior Court as well. "It is true that the person who rescued her from a board she perceived as biased is the appellant officer," said Porter. "But she would have won at Superior Court, too."

Porter agreed, however, with Alicen's point that the more formal Superior Court process may be more intimidating for some and prevent appeals. The Office of Professional Regulation oversees 40 different professions and 40,000 licensees. It receives about 400 complaints a year and only about six board decisions annually are appealed.

Because of the small number of appeals, if the Legislature chooses to eliminate the appellant officer position, Porter said, "We can live with it the way it is."

Porter agreed that Alicen's case – which involved the firing of the first investigator that dismissed the case and a change from using the Attorney General's Office to prosecute complaints to now using one of three in-house attorneys – took far too long. "This case did take a long time and we've acknowledged that," Porter said.

She also encouraged Alicen to return to work.

It's Alicen's plan to now work as a life coach, particularly regarding workplace issues.

"I spent 20 years of my life helping people heal from the worst things people can do to other people I was very privileged to be able to do what I did. I would like to spend the rest of my working life dealing with people moving ahead," Alicen said.

Should she want to return to being a psychologist, said Porter, "I would hope that she would practice."

Porter noted that about half the Board of Psychological Examiners, including its chairperson, has turned over since Alicen's case was heard. "She's not going to be faced with any bias from this office. I don't think that board has any bias against her.

"There's just not an animosity here that she needs to worry about."

And Porter praised Alicen for speaking out.

"I'm glad she's raising her concerns. That's the whole legislative process. It should be discussed from all angles," Porter said.

H.199 was before the Senate Committee on Government Operations on March 16 for introduction and will be back before the Senate committee on Thursday for discussion, said committee Chairman Sen. James Condos, D-Chittenden.

Condos was unsure how long the bill would be before his committee.

"OPR is usually a bill we try to pass when it comes through," he said, noting the bill is not often controversial. "It's really updating the statutes in a lot of cases."

Alicen has addressed her concerns in writing to committee members, including Sen. Bill Doyle, R-Washington.

"Contrary to Ms. Porter's claims, I do not believe the elimination of the administrative appeal would serve to make the process more impartial. I think it would instead serve to reduce the number of appeals of bad decisions by boards and administrative hearing officers, further cementing the protection OPR currently has to violate statute and administrative rule and regulations without any mechanism for holding the boards and OPR accountable for those violations," Alicen wrote to Doyle. " ... All one can hope for is solid ethical behavior from OPR staff and board members. In my case there was a break down of such ethical behavior"

Doyle said that Alicen's case took the state too long to resolve. "No person should be hung up that long," he said.

Alicen is also proposing her own changes to the professional review process. Those include not reopening cases without new evidence, requiring board members to recuse themselves from investigations if they have a conflict of interest, requiring that all charges filed be supported by evidence and holding the office or board members accountable when state law, rule or regulation is violated.

Doyle said if the committee deems her suggestions appropriate they will be added to the bill for consideration by the full Senate.

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