

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

DR. TRUDY BOND, et. al.

Relators/Plaintiffs,

vs.

OHIO STATE BOARD OF PSYCHOLOGY

Respondent/Defendant.

Case Number: 11CV-04-4711

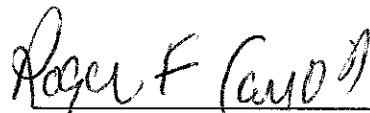
Judge L. Beatty

**RESPONDENT OHIO STATE BOARD OF PSYCHOLOGY'S
MOTION TO DISMISS COMPLAINT IN MANDAMUS**

Respondent, Ohio State Board of Psychology ("Psychology Board" or "Board") respectfully moves this Court for an order dismissing the Complaint in Mandamus filed by Relators, pursuant to Civ. R. 12(B) for lack of standing and failure to state a claim upon which relief can be granted. A memorandum in support follows.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE AND FACTS

Relators, four residents of Ohio, filed a Complaint seeking a Writ of Mandamus to compel Respondent, Psychology Board to either require the Board to proceed with formal disciplinary action against another Psychologist, Dr. Larry James, Dean of the Wright State School of Professional Psychology or to investigate Relators' allegations more fully and provide reasons for any subsequent decision it makes resulting from such investigation. In July 2010 Relators submitted a complaint to the Board against Dr. Larry James, alleging that when he served as a Senior Psychologist for the United States Army at the military prison at Guantanamo Bay he was responsible for the abuse and exploitation of detainees. (Complaint at ¶ 2)

Relators further allege that they provided the Board with information and documentation to support their claim. On September 30, 2010 relators and their counsel met with the Board's representatives to discuss their complaint. (Complaint at ¶ 53) On January 31, 2011 the Board's investigator issued a letter to Relators' counsel stating that the Board has completed its review and has determined that it is unable to proceed with a formal action. (Complaint at ¶ 55)

Interestingly, this is the third complaint Relator Trudy Bond has filed against Dr. James. In July 2008 Dr. Bond requested that the Board deny Dr. James request for a license in Ohio based upon the same allegations. The Board issued Dr. James a license. (Complaint ¶ 70) Also in 2008 based upon the same general allegations Dr. Bond filed a complaint against Dr. James in Louisiana where he had a license to practice psychology. When the Louisiana State Board of Examiners of Psychologists (LSBEP) declined to take disciplinary action against Dr. James, Dr. Bond filed a lawsuit against LSBEP asking the Court to order it to conduct an investigation against the psychologist. The Court of Appeals affirmed the decision of the lower court and

dismissed Dr. Bond's complaint (*Bond v. Louisiana State Board of Examiners of Psychologists* (Louisiana Court of Appeal, First Circuit 2011) 2009 CA 1735 (Attached as Exhibit 1)).

Relators complaint must be dismissed. First Relators do not have standing to pursue this action because they do not have a beneficial interest in this matter. Second there is no clear legal duty on the part of the Psychology Board to initiate disciplinary action against any psychologist since the determination to initiate disciplinary action is a discretionary one. Relators refer to various statutes within Chapter 4732 and rules under O.A.C. 4732, in support of their complaint. (Complaint at ¶ 19, 24) As shown below none of these statutes or rules relied upon by Relators demonstrate that the Board had a clear legal duty to perform the act requested that it take formal action against a psychologist or explain in more detail why it chose not to. The decision to take disciplinary action is a discretionary decision made by the Board based upon the evidence before it. Therefore Relators lack standing to pursue this claim and have failed to state a claim for which relief can be granted. Accordingly the Board respectfully requests the Court dismiss the complaint.

II. LAW AND ARGUMENT

A. THE COURT LACKS JURISDICTION OVER THIS COMPLAINT BECAUSE RELATORS LACK STANDING TO PURSUE THIS CLAIM.

Before an Ohio Court can consider the merits of a legal claim, the person seeking relief must establish standing to sue. *Ohio Contractors Assoc. v. Bicking*, 71 Ohio St. 3d 318, 1994-Ohio-183 at 320. The question of standing depends upon whether the party has alleged a personal stake in the outcome or controversy. *State ex. rel. Dallman v. Franklin County Court of Common Pleas* (1973) 35 Ohio St. 2d 176, 178-179. A private litigant must generally show that he has suffered or is threatened with direct and concrete injury in a manner or degree different

from that suffered by the public in general. *State ex. rel. Ohio Academy of Trial Lawyers v. Sheward* (1994), 86 Ohio St. 3d 451, 1999-Ohio-123 at 470.

This general rule applies to mandamus actions as well. *State ex. rel. Sinay v. Soddors* (1997) 80 Ohio St. 3d 224, 1997-Ohio-344 at 224. Moreover a complaint for a writ of mandamus must set forth facts showing that the relator is a party beneficially interested in the requested act before a proper claim is established. R.C. 2731.02. A real party in interest is one who is directly benefited or injured by the outcome of the case rather than one merely having an interest in the action itself. The *State ex. rel. Village of Botkins v. Laws*, 69 Ohio St.3d 383, 1994-Ohio-518 at 387.

In their complaint relators are unable to meet the standing requirements. Relators state that they are residents and taxpayers in Ohio. (Complaint ¶ 12) Subsequently relators claim that they will not be able to trust the Psychology Board if the decision not to pursue formal charges against Dr. James is allowed to stand. (Complaint ¶ 64 – 68) Such conclusory allegations do not demonstrate that relators have a personal stake in this matter or that they have suffered or will suffer a direct and concrete injury as a result of the Board's decision. Nor can they show they have a beneficial interest in this matter. At best relators simply have an interest in the action taken by the Psychology Board not to initiate disciplinary action.

In similar circumstances Courts have found that the relators lacked standing and have dismissed the cases for lack of jurisdiction. *State ex. rel. Dallman v. Court of Common Pleas, Franklin County* (1973) 35 Ohio St. 2d. 176 (The Superintendent of a state prison has no standing to challenge the order of a court turning over custody of a prisoner to the County Sheriff for reconsideration of sentence because he had no personal stake in the outcome.) *Bowers v. Ohio State Dental Board*, (10th Dist. 2001), 142 Ohio App 3d. 376 (without a personal or

beneficial interest two dentists did not have standing to compel the Dental Board through mandamus to adopt formal regulations regarding which regional dental examinations the Board would accept for licensure). *State ex. rel. Harris v. Silbert* (1959), 169 Ohio St. 261 (an attorney does not have such beneficial interest in the performance of the judicial function of the submission of an annual report by the Chief Judge solely by reason of being a member of the legal profession to maintain an act for writ of mandamus). *State ex rel. Skilton v. Miller* (1955), 164 Ohio St. 163 (A private citizen was not personally affected by the failure of the public official to issue an arrest warrant for an alleged violation of a Sunday closing law. Therefore he had no beneficial interest in the matter and the writ of mandamus he filed would not be issued.) In this case Relators have no legal right which will be affected by the Board's decision not to initiate a formal action against Dr. James. Without a beneficial interest they cannot maintain a mandamus action against the Board.

In essentially the exact same case, the Louisiana Court of Appeals found that Dr. Bond did not have standing to bring an action requiring the Louisiana State Board of Examiners of Psychologists (LSBEP) to take action against Dr. James.

While Dr. Bond contends that she had a duty to report the psychologist's unethical conduct, she must have a real and actual interest in the action in order to be entitled to a judicial review. Without a showing of some special interest in the performance sought of a public board, which is separate and distinct from the interest of the public at large, plaintiff will not be permitted to proceed. Without some peculiar, special, and individual interest, a citizen has no standing in court to champion a cause or subject matter that pertains to the whole people in common, nor has an individual citizen legal standing in court to enforce the performance of a duty owed to the general public. Here, Dr. Bond has shown no particular, special, or individual interest. (Citations omitted.) (*Bond v. Louisiana State Board of Examiners* at 3.)

Based on the legal precedents cited above, Relators have failed to establish that they have standing to bring this action against the Psychology Board. Accordingly their complaint should be dismissed for lack of subject matter jurisdiction.

B. RELATORS HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

In order to prevail upon a motion to dismiss for failure to state a claim, it affirmatively must appear from the allegations of the petition that there could be no set of facts established which would entitle the relator to the relief sought. *Conley v. Gibson* (1957), 355 U.S. 41; *State ex. rel. Seikbert v. Wilkinson*, 69 Ohio St. 3d 489, 1994-Ohio-39; *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St. 2d 242. A 12(B)(6) motion tests only the sufficiency of the petition and not the merits or the parties' respective positions. *Slife v. Kundtz Properties, Inc.* (1974), 40 Ohio App. 2d 179. The court, in considering such motion, must construe all material allegations in the petition and all reasonable inferences drawn from them in favor of the party against whom the motion is made. *Perez v. Cleveland* (1993), 66 Ohio St. 3d 397, reversed on other grounds, (1997) 78 Ohio St.3d 376; *Erie County School District Board of Education v. Rhodes* (1984), 17 Ohio App.3d 35. This deference does not extend however to unsupported conclusions which are not sufficient to withstand a motion to dismiss. *State ex. rel. Hickman v. Capots* (1989), 45 Ohio St.3d 324. Citing *Schulman v. City of Cleveland*, (1972), 30 Ohio St.2d 196, 198 and *Mitchell v. Lawson Milt Co.* (1988), 40 Ohio St.3d 190, 193 .

The Ohio Supreme Court has held that “[a] complaint in mandamus states a claim if it alleges the existence of the legal duty and the want of an adequate remedy law with sufficient particularity so that the respondent is given reasonable notice of the claim asserted.” *State ex rel. Alford v. Willoughby* (1970), 58 Ohio St.2d 221, 224. Thus, the court must grant a respondent’s

motion to dismiss under Civ.R. 12(B)(6) if the petition is without merit because of an absence of law to support the claim of facts sufficient to give rise to a claim.

In this case, relators are seeking a writ of mandamus that would order the Board to initiate disciplinary action against a psychologist, or to provide a more detailed explanation on why it chose not to. Relators cannot demonstrate that they are entitled to the writ of mandamus. The Ohio Supreme Court has repeatedly held that the petitioner who seeks a writ of mandamus must plead the existence of all necessary facts to support the claim. *State ex rel. Temke v. Outcalt* (1977), 49 Ohio St.3d 189, 190-191 (per curiam) (citations omitted). The entitlement to mandamus relief must, therefore, appear on the face of the petition. In this case it does not, so the Complaint must be dismissed.

1. RELATORS CANNOT MAINTAIN AN ACTION IN MANDAMUS

It is well-established that in order for a writ of mandamus to issue, the relator/plaintiff must show:

1. that they have a clear legal right to the relief prayed for;
2. that the respondent/defendant is under a clear legal duty to perform the act requested; and
3. that there is no plain and adequate remedy in the ordinary course of the law.

State ex rel. Stanley v. Cook (1946), 146 Ohio St. 348; *State ex rel. Broadwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St.3d 33; *State ex. rel. Sekemestrovich v. City of Akron*, 90 Ohio St.3d 536, 2001-Ohio-223.. A relator has the burden of proving that he has met all of these requirements. *State ex rel. Alben v. State Emp. Relations Bd.* (1996), 76 Ohio St.3d 133 (per curiam). Relators have failed to meet and cannot meet this burden.

It has long been held in Ohio that “the creation of a legal duty is a distinctive function of the legislative branch of government.” *Davis v. State ex rel Pecsok* (1936), 130 Ohio St. 411; *Stanley*, 146 Ohio St. 348; *State ex rel. Hodges v. Taft* (1992), 64 Ohio St.3d 1. A court cannot create a duty in mandamus. *Hodges*, 64 Ohio St.3d 1. Relators are requesting that this Court mandate the Board “to act in accordance with law and initiate disciplinary action” against a psychologist. However, the statutes relied upon by Relators do not mandate that the Board initiate disciplinary action against any psychologist or provide a detailed explanation of its decision.

For example, R.C. 4732.06 allows the Psychology Board to establish procedures to conduct investigations and hearings, if necessary. Further R.C. 4732.17(B) provides that before the Board may discipline a psychologist written charges must be filed and a hearing must be conducted in accordance with Chapter 119 of the Revised Code. No where in the statute or rules is there a mandatory requirement for the Board to initiate disciplinary charges against a psychologist. The decision to proceed with a disciplinary action against a psychologist is discretionary.

Further, R.C. 4732.10 simply sets forth the qualifications for admission such as age, educational requirements and supervised experience requirements. R.C. 4732.17(A)(1)-(12) and O.A.C. 4732-17 establish the standards of professional conduct and the grounds for taking disciplinary action against a psychologist. Of critical significance is the language contained in R.C. 4732.17(A) which provides

(A) The State Board of Psychology may refuse to issue a license to any applicant, may issue a reprimand, or suspend or revoke the license of any licensed psychologist and licensed school psychologist on any of the following grounds.
(Emphasis added)

Moreover there is no statutory requirement nor have relators cited one which requires the Board of Psychology to explain its rationale for not pursuing formal charges against a psychologist. Without this legal duty relators' action in mandamus must fail.

In a case directly on point the Supreme Court held that mandamus did not lie to compel the Medical Board to take disciplinary action against a physician *State ex. rel. Talwar v. State Med Bd of Ohio* 104 Ohio St.3d 290, 2004-Ohio-6410. Dr. Talwar filed a complaint with the Medical Board alleging that another doctor had fabricated data, altered medical records and made false charges against him regarding his treatment of patients. The court found that Dr. Talwar failed to establish a clear legal right to the initiation of disciplinary charges or a corresponding legal duty of the Board to initiate disciplinary action. The Court reasoned that it is within the Board's discretion on whether to proceed with disciplinary action because it had the discretion to allocate its resources in a manner that will best protect patients. **Id** ¶ 11.

Previously the Court of Appeals in the *Talwar* case had ruled that the Board had not abused its discretion because the determination of whether the facts found by the Board in the course of its investigation support a finding of probable cause is within the Board's discretion and cannot be controlled by mandamus. *Talwar v. State Medical Board of Ohio* (10th Dist.) 156 Ohio App.3d 485, 2004-Ohio-1301 ¶ 9. Similarly it is within the Psychology Board's discretion on whether to initiate formal charges against a licensee. After completing its review it determined that no charges were warranted. Like *Talwar*, the Court should not interfere with the Board's discretionary decision. Therefore Relators complaint in mandamus should be dismissed.

Also in *State ex rel. Westbrook v. Ohio Civil Rights Comm'n* (1985), 17 Ohio St.3d 215 the relevant statute provided that if a complaint was filed with the Commission, the Commission may initiate a preliminary investigation **Id** at 216. The Supreme Court relying on the word

“may” in the statute held that the Commission’s authority was discretionary, not mandatory. *Id.* Because the investigatory power was discretionary the court found no legal duty that would support a claim in mandamus. Similarly the Psychology Board’s statute provides that it may initiate disciplinary charges against a licensee. R.C. 4732.17. Relying upon the reasoning of the *Westbrook* court, this action also must be dismissed.

Through this mandamus action Relators are attempting to control the discretion of the Psychology Board by arguing that it must initiate formal charges. Such a request is impermissible under mandamus. In *Gosney v. Board of Elections* (March 30, 1989), Seventh App. Dist. No. 88-C-54, 1989 Ohio App. Lexis, the court held that where the performance of a duty is not mandatory but is discretionary, a writ of mandamus will not issue. The Court cited to 67 Ohio Jurisprudence 3d 218-219, Mandamus, Section 19. That section states:

* * * The duty to be enforced by a writ of mandamus must be specific and definite, and clear and unequivocal; must be specially enjoined by law; must be incident to the office, trust, or station which the respondent holds; and may not be one of a general character which leaves to the respondent any discretion in its performance. The duty to be enforced must be of such character that the courts can prescribe a definite act or series of acts which will constitute performance of the duty, so that the respondent may know what he is obliged to do and may do the act required, and the court may know that the act has been performed and may enforce its performance.

The relator in *Gosney* had filed a petition for mandamus to compel a prosecutor to submit evidence of his investigation into an election for county coroner to a grand jury. The prosecutor had investigated the allegations, determined that they were without merit, and refused to prosecute. The Court held that in doing so, the respondent was exercising a discretionary function and that a writ of mandamus would not lie.

The relator in *Gosney* had also sought a writ against the Secretary of State to compel him to investigate the same matter. The Court held that the same reasoning applied to both the

Secretary of State and the prosecutor. That is, that while the Secretary of State had a duty to investigate irregularities in elections, the extent and scope of the investigation is discretionary. The Court further held that it could not delve into the area of defining what was a proper investigation for the Secretary of State to conduct. Mandamus is limited to compelling the performance of a legal duty and cannot be used to control it.

See also *State ex rel. Village of Botkins v. Laws*, 69 Ohio St.3d 383, 1994-Ohio-518 at 389. (A writ cannot issue to control an officer's exercise of discretion, but it can be issued to compel him to exercise it when he has a clear legal duty to do so.) *State, ex rel. Snyder v. State Controlling Board* (10th Dist. 1983) 11 Ohio App. 34 270 (The exercise of the authority of the State Controlling Board with respect to transfers of capital appropriations from one purpose to another includes the exercise of its judgment and discretion which cannot be limited or controlled by a writ of mandamus.)

In another case a mandamus action was filed against the Attorney General to compel her to take action to identify members of a class of beneficiaries to a charitable trust and cause the trust to come into compliance with registration and reporting requirements under the Ohio Charitable Trust Act. The Court held “[a]bsent an abuse of discretion mandamus cannot compel a public official to act in a certain way on a discretionary matter”. *State ex rel. Lee v. Montgomery*, 88 Ohio St.3d 233, 2000-Ohio-316 at 235. Similarly in *State ex rel. Master v. City of Cleveland*, 75 Ohio St. 3d 23, 1996-Ohio-238, the Court would not compel a prosecuting attorney to prosecute a case. citing *State ex rel. Squire v. Taft* (1994), 69 Ohio St.3d 365, 368 and *State ex rel. Murr v. Meyer* (1987) 34 Ohio St.3d 46, 47. Relying upon the Myer decision, the Court in *Pierce v. Court of Common Pleas* (8th Dist. 1992), 1992 Ohio App. Lexis 2015 *6 found that the decision to prosecute is discretionary and by virtue of the discretion can not

impose a clear legal duty on the part of the county prosecutor to perform the requested act. Likewise by virtue of this discretion relator cannot be said to have a clear legal right to the relief prayed for.

In a case very similar to the one at bar, *State ex rel. MacDonald v. Cook* (1986), 15 Ohio St.2d. 85, a relator filed a petition for mandamus seeking to compel the Director of Liquor Control to prosecute a country club for the unlawful sale of beer, wine and other spirituous liquors without a permit. The Supreme Court held that mandamus does not lie for the purpose of compelling a public officer to enforce a police regulation in relation to a specific person. That is exactly what Relators are asking this Court to do, mandate the Board to enforce a police regulation against a specific psychologist.

In another case similar to the one at bar, the Tenth District, in *Robinson v. Office of Disciplinary Counsel* (Aug. 26, 1999), Franklin App. No. 98AP-1431, 1999 Ohio App. Lexis 3928, held that the decision of whether to dismiss a complaint filed with the Office of Disciplinary Counsel was discretionary. The Court stated:

In *Reynolds v. State* (full citation omitted), the Supreme Court of Ohio held that the “the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Id.* at paragraph one of the syllabus. It is clear in this case the basic function to be performed by the ODC falls within this category. The decision as to whether to dismiss a complaint based upon a review of such complaint is clearly a function involving a high degree of discretion.

Id. at 6-7. The same high degree of discretion granted to the Office of Disciplinary Counsel also applies to decisions made by the Psychology Board in determining whether or not to initiate disciplinary action against a psychologist. Even accepting as true Relators allegations, the decision to initiate formal discipline by the Psychology Board is within the Board’s discretion

and cannot be controlled by mandamus. Similarly the relators do not have a clear legal right to the relief sought.

Along with their complaint, relators filed a lengthy memorandum in support of their position. Yet they failed to cite any cases which support their contention that they have standing to force a regulatory board to initiate formal disciplinary proceedings against a licensee. The case law clearly demonstrates that they do not.

Equally problematic for relators is their inability to provide any legal authority to support their argument that based upon a complaint filed by a few individuals with the Board regarding the conduct of a psychologist a court can or should second guess the judgment of the Psychology Board and order the Board to convene a formal hearing. Contrary to relators' position, courts through mandamus will not micromanage a Board's investigatory process or control how a Board exercises its discretion. Such a course of action would only undermine the independence and judgment of a regulatory Board. Without providing any legal authority to support their position, their complaint should be dismissed.

III. CONCLUSION

Relators have failed to show that they have a personal stake in the Psychology Board's decision not to initiate formal proceedings against Dr. James. They are unable to show a beneficial interest in the action of the Board so they lack standing to challenge it. Moreover the initiation of disciplinary action is a discretionary act for which a writ of mandamus should not issue. Accordingly, relators failed to state a claim upon which relief can be granted. The Psychology Board respectfully requests that the Complaint in Mandamus be dismissed.

Respectfully submitted,

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Attorney General of Ohio

Handwritten signature of Roger F. Carroll in black ink, written over a horizontal line.

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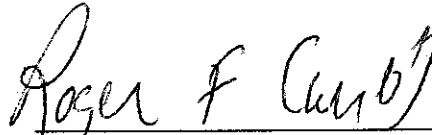
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing RESPONDENT OHIO STATE BOARD OF PSYCHOLOGY'S MOTION TO DISMISS AND MEMORANDUM IN OPPOSITION TO PETITIONERS MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS VERIFIED COMPLAINT was sent by regular U.S. mail on May 18, 2011 to the following:

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NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1735

DR. TRUDY BOND

VERSUS

LOUISIANA STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Judgment rendered: JUN 11 2010

On Appeal from the Nineteenth Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: 569,127; Division: I #24
The Honorable R. Michael Caldwell, Judge Presiding

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BEFORE: PARRO, DOWNING, AND GAIDRY, JJ.

*Parro, J. concurs
by Parro*



DOWNING, J.

The issue for our consideration is whether a complainant has a right of action to seek judicial review after a professional licensing board fails to pursue disciplinary proceedings against one of its members.

Dr. Trudy Bond, an Ohio psychologist, lodged a complaint with the Louisiana State Board of Examiners of Psychologists (LSBEP), alleging that a psychologist licensed in Louisiana, violated ethical standards of psychology by his mistreatment of foreign detainees while serving in the military at the U.S. military base at Guantanamo Bay, Cuba.¹ After investigating the complaint, LSBEP took no disciplinary action against the member and rendered no decision in the matter. Dr. Bond filed a petition for judicial review, requesting that the district court remand the matter to LSBEP and order LSBEP to conduct a complete investigation, and to hold a hearing.² LSBEP responded by filing an exception of no right of action. The district court, sustaining the exception, dismissed Dr. Bond's petition for judicial review; Dr. Bond appealed.³ For the following reasons, we affirm the district court judgment.

Louisiana Revised Statutes 37:2353C(5) gives LSBEP the authority to revoke or suspend the license of a psychologist and conduct hearings upon complaints concerning the disciplining of a psychologist. La. R.S. 37:2353E provides that "any person aggrieved by an action of the board may seek judicial review," in the 19th Judicial District Court in accordance with La. R.S. 49:950, *et seq.* the Administrative Procedure Act (APA). (Emphasis added). In the underlying administrative matter, no 'action' was taken, and there is no person 'aggrieved' within the legal meaning of that term.

¹ Dr. Bond has not alleged that she has treated any of the detainees whom she claims were mistreated.

² Dr. Bond also filed a petition for declaratory judgment action praying for the district court to declare that her complaint had been timely filed. The discussion on this assignment of error is pretermitted.

³ An amicus brief in support of Dr. Bond's position was filed on behalf of five non-profit organizations, by the Loyola University New Orleans College of Law. We recognize their arguments, and their positions are incorporated into our analysis.

For purposes of determining availability of judicial review under the APA, "adjudication" is a proceeding resulting in a decision or an order. *Jones v. Southern University and A & M College System*, 96-1430, p. 6 (La.App. 1 Cir. 5/9/97), 693 So.2d 1265, 1269. A decision or order, for purposes of the APA, is a disposition required by constitution or statute. *Id.* Therefore, unless there is some constitutional or statutory provision requiring LSBEP to render a decision or order, then there was nothing for the district court to review. The law sets forth no provision requiring LSBEP to act. Therefore, no right of action exists to make them do so.

Moreover, Dr. Bond and the amici brief argue that La. R.S. 37:2351 *et seq.*, requires LSBEP to take disciplinary action upon concluding that an enumerated offense has been committed. Here, however, we have no such conclusion that an enumerated offense has been committed. No authority has been cited, and we find none that forces LSBEP to discipline its member after the investigation of the alleged offense has been concluded.

The exception of no right of action calls into question whether the plaintiff has standing or interest required under the law to bring the action. *League of Women Voters of New Orleans v. The City of New Orleans*, 381 So.2d 441, 447 (La. 1980). Stated in the context of the present litigation, the exception of no right of action asks whether Dr. Bond has standing to obtain an order against LSBEP, requiring it to take action in this matter. While Dr. Bond contends that she had a duty to report the psychologist's unethical conduct, she must have a real and actual interest in the action in order to be entitled to a judicial review. *Id.* 381 So.2d at 447 (La. 1980), *citing* La.-C.C.P. art. 681. Without a showing of some special interest in the performance sought of a public board, which is separate and distinct from the interest of the public at large, plaintiff will not be permitted to proceed. *Id.* Without some peculiar, special, and individual interest, a citizen has

no standing in court to champion a cause or subject matter that pertains to the whole people in common, nor has an individual citizen legal standing in court to enforce the performance of a duty owed to the general public. *Id.* Here, Dr. Bond has shown no particular, special, or individual interest.⁴

Therefore, while Dr. Bond may have a professional or ethical duty as a psychologist to file a complaint with LSBEP about a fellow psychologist's interrogation techniques, she, however, has no justiciable right to maintain this action for judicial review. We therefore comply with our judicial duty and affirm the district court's judgment dismissing her claim on the exception of no right of action; the cost of this appeal is assessed to plaintiff-appellant, Dr. Trudy Bond.

AFFIRMED

⁴ *See also* *Wooley v. State Farm Fire & Cas. Ins. Co.*, 05-1490, pp. 4-8 (La.App. 1 Cir. 2/10/06), 928 So.2d 618, 621-23.