SJC-13725

JOHN DOE, SEX OFFENDER REGISTRY BOARD NO. 528042 vs. SEX OFFENDER REGISTRY BOARD.

Bristol. April 7, 2025. - August 14, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Dewar, & Wolohojian, JJ.

Sex Offender. Sex Offender Registration and Community Notification Act. Evidence, Sex offender. Practice, Civil, Sex offender, Standard of proof, Judgment on the pleadings. Administrative Law, Substantial evidence, Standard of proof, Agency's interpretation of regulation, Decision. Words, "Victim," "Child," "Disseminate."

Civil action commenced in the Superior Court Department on August 26, 2022.

The case was heard by Elaine M. Buckley, J., on a motion for judgment on the pleadings.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Kate Frame for the plaintiff.
David L. Chenail for the defendant.
Rebecca Rose, for Committee for Public Counsel Services, amicus curiae, submitted a brief.

GAZIANO, J. The plaintiff, John Doe, Sex Offender Registry Board No. 528042 (Doe), drove to Rhode Island to rape two fifteen year old girls in exchange for the payment of money. Unbeknownst to him, the "girls" were an undercover police officer. Doe was convicted of indecent solicitation of a child in a Rhode Island court and subsequently classified as a level two sex offender by the Massachusetts Sex Offender Registry Board (SORB). After a de novo hearing, a SORB hearing examiner ordered Doe to register as a level two offender. On appeal, Doe challenges that classification, maintaining that the hearing examiner erred in applying factor 3 (adult offender with child victim), factor 7 (stranger victim), factor 9 (substance abuse), factor 10 (contact with criminal justice system), factor 15 (hostility towards women), and factor 22 (number of victims).

For the reasons herein given, we conclude that the hearing examiner did not abuse his discretion in his substantive application of or assignment of weight to these factors. However, because the hearing examiner's written decision failed to answer -- indeed, expressly equivocated on -- the crucial question whether Doe's information should be disseminated, the hearing examiner's written decision failed to issue an unambiguous conclusion with respect to Doe's level of classification. We remand so that the hearing examiner may issue a conclusion on both issues.

1. Background. a. Facts. We summarize the facts found by the hearing examiner after the evidentiary hearing, supplemented by additional undisputed facts from the record.

On January 24, 2020, a Rhode Island detective working undercover posted an advertisement on a website presenting himself as two twenty year old females offering "a safe/discrete memorable time" in Providence, Rhode Island. At approximately 11:30 P.M. that same day, Doe sent a text message to the undercover detective, asking about "the rates." Posing as the two females, the undercover detective told Doe that they were actually fifteen years old and sent him age-regressed images of female Rhode Island State police troopers by way of confirmation. Doe replied that he wanted "fs," which the detective understood, based on prior prostitution investigations and related experience, to refer to "full service" -- i.e., sexual intercourse. During the exchange, Doe expressed concern about the possibility that he was speaking to "cops" and that the girls were "young." In response, the detective assured Doe multiple times that Doe was in fact speaking to two fifteen year old girls who had "previously offered sexual services in exchange for money." Eventually, the detective sent Doe the address and room number of a hotel in Providence. Doe responded, "I'll be there."

Following the exchange, Doe drove from Massachusetts to the Providence hotel. At approximately 12:50 A.M. on January 25, 2020, Doe arrived at the hotel parking lot. After receiving a few more text messages from the "girls" in which they assured him that they were not undercover cops, Doe entered the designated meeting spot in the hotel and was immediately taken into custody by Rhode Island State police at approximately 1:15 A.M. The police found a plastic bag containing a "white rock like" substance on Doe, which subsequently tested positive for the presumptive presence of cocaine.

Doe was arraigned in the Rhode Island Superior Court and charged with one count of indecent solicitation of a child pursuant to R.I. Gen. Laws § 11-37-8.8 -- a "like offense"[1] to enticing a child under the age of sixteen pursuant to G. L. c. 265, § 26C -- and one count of possession of a controlled substance. In August 2021, Doe entered a plea of nolo contendere on the indecent solicitation charge, for which he received a three-year suspended sentence with three years of

[1] "Generally, any person who has been convicted of a sex offense in another State that is a 'like offense' to a sex offense that requires registration under Massachusetts law must register with SORB if the individual moves to [or resides in] the Commonwealth." Edwards v. Commonwealth, 488 Mass. 555, 557 (2021). See G. L. c. 6, § 178C.

probation. The controlled substance charge was dismissed in exchange for Doe's plea.

Prior to these events, Doe had a history of involvement with the criminal justice system in the Commonwealth. Of particular relevance, Doe was charged a total of four times between 1996 and 1997 for violating an abuse prevention order. Among the four charges, Doe was found guilty of one such violation in 1997, for which he received a suspended sentence. During this same time period, in 1996 and 1998, two different women took out abuse prevention orders against Doe. And in 2007, Doe received a continuance without a finding on a charge of possession of a class B substance, which was subsequently dismissed.[2]

b. Procedural history. In November 2021, SORB issued a preliminary determination classifying Doe as a level two sex offender. Doe requested a hearing to challenge SORB's classification. In July 2022, the hearing examiner found, by clear and convincing evidence, that Doe posed a moderate risk to reoffend and a moderate danger to the public. The hearing examiner accordingly ordered Doe to register as a level two sex offender.

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[2] Charges brought at the same time for possession of a class B substance with intent to distribute and conspiracy to violate the Controlled Substances Act were dismissed.

In his decision, the hearing examiner applied the following factors listed in 803 Code Mass. Regs. § 1.33 (2016)[3] as high-risk or risk-elevating: factor 3 (adult offender with child victim), factor 7 (stranger victim), factor 15 (hostility towards women), and factor 22 (number of victims). The hearing examiner also applied factor 9 (substance abuse) and factor 10 (contact with criminal justice system) with minimal weight. Conversely, the hearing examiner applied the following risk-mitigating factors: factor 28 (supervision by probation), factor 30 (advanced age), and factor 32 (sex offender treatment).[4]

Doe appealed from the hearing examiner's decision to the Superior Court and moved for judgment on the pleadings, arguing that the decision was arbitrary and capricious and not based on substantial evidence. In October 2023, the motion was denied, and the hearing examiner's decision was affirmed. Doe further appealed, and we transferred the case to this court on our own motion.

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[3] Title 803 Code Mass. Regs. §§ 1.00 was recently amended, effective April 25, 2025. We refer to the version of the regulations in effect at the time of the hearing examiner's decision.

[4] In his decision, the hearing examiner specified the weight he applied to certain factors as follows: factor 7 was given "increased" weight; factors 9, 10, and 30 were given "minimal" weight; and factor 28 was given "full" weight.

2. Discussion. We begin by briefly reviewing the structure of the Commonwealth's statutory and regulatory scheme for classifying sex offenders. Persons convicted of sex offenses, as defined by G. L. c. 6, § 178C, are required to register upon release from custody or notification of an obligation to register. See Noe, Sex Offender Registry Bd. No. 5340 v. Sex Offender Registry Bd., 480 Mass. 195, 196 (2018), citing G. L. c. 6, § 178E (a), (c).

Sex offenders with a duty to register are assigned to one of three levels of classification. Doe, Sex Offender Registry Bd. No. 339940 v. Sex Offender Registry Bd., 488 Mass. 15, 18 (2021), citing G. L. c. 6, § 178K (2). If the sex offender's "risk of reoffense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public availability [of registration information]," SORB assigns a level one designation to that offender. G. L. c. 6, § 178K (2) (a). If the sex offender's risk of reoffense is "moderate" and the degree of dangerousness is "such that a public safety interest is served by public availability of registration information," SORB assigns a level two designation. G. L. c. 6, § 178K (2) (b). A level two offender's registration information is transmitted to police departments where that offender lives and can be accessed online by members of the public. Id. Finally, if the sex offender's risk of reoffense

is "high" and the degree of dangerousness is such that a public safety interest is served by "active dissemination" of registration information, SORB assigns a level three designation. G. L. c. 6, § 178K (2) (c).

In determining what classification level to assign a given sex offender, SORB is guided by a set of duly promulgated regulations that enumerate thirty-eight risk-aggravating and risk-mitigating factors. See 803 Code Mass. Regs. § 1.33. Because of the potentially serious consequences attendant to any risk classification, SORB's classification decisions must be proved by "clear and convincing evidence" -- that is, evidence "sufficient to convey a high degree of probability that the contested proposition is true" (quotation and citation omitted). Doe, Sex Offender Registry Bd. No. 380316 v. Sex Offender Registry Bd., 473 Mass. 297, 309, 314 (2015).

Sex offenders are entitled to judicial review of SORB's final classification decision. See G. L. c. 6, § 178M; G. L. c. 30A, § 14. On review, the court shall affirm SORB's classification decision unless it concludes that the decision "is in excess of the board's statutory authority or jurisdiction, is based on an error of law, is not supported by substantial evidence, or is . . . arbitrary and capricious [or an] abuse of discretion." Doe, Sex Offender Registry Bd. No. 3177 v. Sex Offender Registry Bd., 486 Mass. 749, 754 (2021).

See G. L. c 30A, § 14 (7). Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1 (6).

"In reviewing SORB's decisions, we give due weight to the experience, technical competence, and specialized knowledge of the agency" (quotation and citation omitted). Doe, Sex Offender Registry Bd. No. 205614 v. Sex Offender Registry Bd., 466 Mass. 594, 602 (2013) (Doe No. 205614). To that end, "[a] hearing examiner has discretion . . . to consider which . . . factors are applicable and how much weight to ascribe to each factor." Doe, Sex Offender Registry Bd. No. 68549 v. Sex Offender Registry Bd., 470 Mass. 102, 109–110 (2014). "An abuse of discretion occurs where the hearing examiner makes 'a clear error of judgment in weighing the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives.'" Doe, Sex Offender Registry Bd. No. 356315 v. Sex Offender Registry Bd., 99 Mass. App. Ct. 292, 299 (2021), quoting L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

Turning to the case at bar, Doe challenges the hearing examiner's determination with respect to three sets of risk factors identified in 803 Code Mass. Regs. § 1.33. Specifically, Doe argues that the hearing examiner's application of and assignment of weight to factor 3 (adult offender with

child victim), factor 7 (stranger victim), and factor 22 (number of victims) was an abuse of discretion because no "child[ren]" or "victims" were in fact targeted by Doe. In addition, Doe challenges the hearing examiner's application of and assignment of weight to factor 10 (contact with criminal justice system) and factor 15 (hostility towards women) as an abuse of discretion on the grounds that the relevant arrests, charges, and convictions were decades old and did not involve sex crimes. Finally, Doe challenges the hearing examiner's application of, and assignment of weight to, factor 9 (substance abuse) as an abuse of discretion on the ground that there is no history of substance abuse by Doe. In light of these points, Doe asserts that the hearing examiner's over-all assessment of the factors was unsupported by substantial evidence. We address each challenge in turn.

a. Factors 3, 7, and 22. Doe's argument with respect to these factors can be stated simply. First, by its terms, factor 3 deems an "[a]dult [o]ffender with a [c]hild [v]ictim" a "high-risk" factor, explaining that "[a]dult offenders who target children pose a heightened risk to public safety because children normally lack the physical and mental strength to resist an offender . . . [and] can be lured into dangerous situations more easily than most adults." 803 Code Mass. Regs. § 1.33(3)(a). Here, however, no children were involved; as Doe

states, the "fifteen year old girls" "[did] not exist, except as a concept by the Rhode Island State [p]olice." Hence, he argues, Doe cannot be said to have "targeted" any children. Next, factor 7 defines a "[s]tranger [v]ictim" as "[a]ny person who has known the offender for less than [twenty-four] hours prior to the offense," which in the case of a child victim means that "the offender would have to transmit sexually explicit materials or make sexually explicit comments within [twenty-four] hours of first electronic contact." 803 Code Mass. Regs. § 1.33(7)(a)(3). Here, Doe argues, the fact that Doe was corresponding with an undercover police officer implies that there was no stranger "child victim" receiving sexual comments or materials. Finally, factor 22 assigns heightened risk to "[o]ffenders who have committed acts of sexual misconduct against two or more victims." 803 Code Mass. Regs. § 1.33(22). Because here there were no actual child victims of Doe's crime of indecent solicitation of a child, Doe maintains that there were not "two or more victims" such that factor 22 has no application.

Doe's arguments turn on the meaning of "victim" and "child" in 803 Code Mass. Regs. § 1.33(3), (7), and (22). When reviewing SORB's interpretation of its own regulations, we accord "considerable deference" to that interpretation "unless [it is] arbitrary, unreasonable, or inconsistent with the plain

terms of the regulations themselves" (citation omitted). Doe No. 205614, 466 Mass. at 602. Beginning with the "plain terms of the regulations themselves" (citation omitted), id., the regulations do not explicitly define the terms "victim" and "child." In particular, 803 Code Mass. Regs. § 1.33 does not explicitly state whether "victim" or "child" may encompass undercover police agents who represent themselves as minors. Nor are there any published decisions addressing that specific question of regulatory interpretation. Nevertheless, when read in context, the plain meanings of "victim" and "child" indicate that these terms apply to the characteristics of the offender's intended victims, at least when the actual "victims" were undercover police agents.

First, "we do not read the words of the regulation in isolation," as they "gain[] meaning from other[] [words] with which [they are] associated" (citation omitted). Freiner v. Secretary of the Executive Office of Health & Human Servs., 494 Mass. 198, 212 (2024). Here, we observe that 803 Code Mass. Regs. § 1.33(3) refers to "[a]dult offenders who target children" (emphasis added). To "target" is to "set as a goal." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/target [https://perma.cc/LUN8-P7AY]. Under that definition, if an individual "set[s] as a goal" a sexual encounter with persons whom he believes to be children,

he thereby "targets" children for a sexual encounter. Here, it is true that the defendant did not initially pursue the objective of having a sexual encounter with two children. But nor did he desist when his targets told him they were underage. And by the time Doe got into his car to drive to Providence, he had "set as a goal" a sexual encounter with two children. In short, "the plain terms of the regulations themselves" (citation omitted), Doe No. 205614, 466 Mass. at 602, imply that Doe is an "[a]dult offender[] who target[ed] children," 803 Code Mass. Regs. § 1.33(3).

Second, we interpret regulatory language "in connection with . . . the main object to be accomplished [by the regulation], to the end that the purpose of its framers may be effectuated" (citation omitted). Limoliner, Inc. v. Dattco, Inc., 475 Mass. 420, 423 (2016). The overarching objective of using the enumerated factors is "to determine each sex offender's level of risk of reoffense and degree of dangerousness posed to the public in reaching a final classification decision." 803 Code Mass. Regs. § 1.33. As our sister court in Vermont has stated, "[t]he fact that the purported victim turned out to be an undercover officer does not change defendant's intent or conduct, nor the risk to the community arising from his sex offense." State v. Charette, 2018 VT 48, ¶ 13. See Commonwealth v. Disler, 451 Mass. 216,

223 (2008) (where undercover officer pretended to be girl named "Sara," "it is of no consequence that Sara was not a real person, because factual impossibility is not a defense to a crime [of child enticement]" [quotation and citation omitted]); People v. DeDona, 102 A.D.3d 58, 65 (N.Y. 2012) (fact that "girl" was actually undercover police officer "does not lessen [the offender's] risk of reoffense, or make him any less of a risk to the community than he would be if he had succeeded in making contact with an actual child").

In light of these textual and purposive considerations, SORB's construction of the terms "victim" and "child" in 803 Code Mass. Regs. § 1.33(3), (7), and (22) cannot be said to be "arbitrary, unreasonable, or inconsistent with the plain terms of the regulations themselves" (citation omitted). Doe No. 205614, 466 Mass. at 602. So construed, these terms encompass characteristics of an offender's intended victims, at least when the actual "victims" were undercover police agents. Under that interpretation, the hearing examiner's application and weighing of factors 3, 7, and 22 with respect to Doe was not an abuse of discretion.

With respect to factor 3, Doe responded to an online advertisement for sexual services, which initially described the providers as adults. Again, when Doe was told that the involved parties were fifteen years old, he did not desist; on the

contrary, he persisted. While expressing intermittent hesitation and nervousness about the possibility of being caught, Doe nevertheless confirmed the rates for "full service," arranged to meet at a hotel in Providence, drove to the hotel, and approached the designated meeting spot. In short, apart from the very beginning of his interaction with the "girls" before they revealed their "age," Doe consistently acted on the intention of raping minors in exchange for the payment of money. This is sufficient for us to conclude that the hearing examiner was within his discretion in applying factor 3.

The same rationale supports the hearing examiner's application of factors 7 and 22. Factor 7 applies to offenders who victimize strangers; where the victim is a child, this means that the offender "ma[d]e sexually explicit comments [to the child] within [twenty-four] hours of first electronic contact." 803 Code Mass. Regs. § 1.33(7)(a)(3)(a), (c). Here, all of Doe's electronic communications with the undercover officer took place within a twenty-four hour period. During this time, in addition to requesting "fs" and inquiring about "rates," Doe wrote, "The only thing is that your young thats stopping me but I want fs." Given these facts, the hearing examiner was within his discretion in applying factor 7. Finally, factor 22 applies to offenders who victimize "two or more victims." 803 Code Mass. Regs. § 1.33(22). There is no dispute that at every stage

of the interaction, Doe believed that he was making plans to meet with two persons. This suffices to warrant application of factor 22.

b. Factors 10 and 15. Factor 10, which concerns an offender's criminal history, provides that "[l]awlessness and antisocial behavior correlate with risk of reoffense and degree of dangerousness." 803 Code Mass. Regs. § 1.33(10)(a). An analysis of this factor entails consideration of "the number and type of [an offender's] criminal charges, dispositions on the charges, dates of the criminal conduct, and number of abuse prevention or harassment prevention orders." Id. Doe maintains that the hearing examiner erred in assigning even "minimal" weight to this factor on the grounds that Doe's prior criminal history presented at the hearing was "decades old and contained no incidents of sexual crimes." Factor 15 provides that "[h]ostile attitudes and behavior towards women are predictive of sexual reoffense and increased dangerousness." 803 Code Mass. Regs. § 1.33(15)(a). Doe maintains that the hearing examiner erred in assigning weight to this factor on similar grounds, emphasizing that the only relevant offenses were over twenty years old.

As discussed supra, Doe has a long history of involvement with the criminal justice system. In addition to vandalism and shoplifting charges in 1993 and 1994 when Doe was a minor, Doe

was charged with the following: violations of the Abuse Prevention Act, G. L. c. 209A, in 1996 and 1997; disturbing the peace in 1997; operating to endanger in 1999; motor vehicle offenses in 2000, 2004, and 2009; and conspiracy to violate the Controlled Substances Act, G. L. c. 94C, possession of a class B controlled substance (cocaine), and possession with intent to distribute a class B controlled substance (cocaine) in 2007. These charges were disposed of via dismissal, continuance without a finding, committed sentence, and suspended sentence. In addition, two different women took out abuse prevention orders against Doe, in 1996 and 1998.

We first consider factor 10. As a threshold matter, "factor 10 is not limited to . . . a particular time frame . . . [and] does not confine the examiner to consider only convictions." Doe, Sex offender Registry Bd. No. 390261 v. Sex Offender Registry Bd., 98 Mass. App. Ct. 219, 226 (2020). Rather, factor 10 directs the hearing examiner to broadly "consider evidence of a persistent disregard for rules, laws, and the violation of the rights of others." 803 Code Mass. Regs. § 1.33(10)(a). Again, we are mindful that "[a] hearing examiner has discretion . . . to consider which statutory and regulatory factors are applicable and how much weight to ascribe to each factor." Doe, Sex Offender Registry Bd. No. 68549, 470 Mass. at 109–110. Given that grant of discretion, the broad

directive to consider evidence of antisocial behavior without explicit limit as to time or guilty disposition, and Doe's own lengthy history of involvement with the criminal justice system, we conclude that the hearing examiner's assignment of "minimal weight" to factor 10 was not an abuse of discretion.

With respect to factor 15, the plain text of the regulation forecloses Doe's argument. By its terms, "[f]actor 15 is applied when an offender . . . has multiple abuse prevention orders or harassment prevention orders taken out by different women at different times." 803 Code Mass. Regs. § 1.33(15)(a). As noted supra, two different women took out abuse prevention orders against Doe in two different years. This is sufficient to conclude that the hearing examiner's application of factor 15 was not an abuse of discretion.

c. Factor 9. Finally, Doe challenges the application of factor 9. "Factor 9 applies when the sex offender has a history of substance abuse, demonstrates active substance abuse, or when the offender's substance use was a contributing factor in the sexual misconduct." 803 Code Mass. Regs. § 1.33(9)(a). Doe maintains that his demonstrated history does not establish that any of these characterizations applies.

We conclude that it was within the hearing examiner's discretion to apply factor 9. On the one hand, Doe's criminal record indicates only two instances of drug use or possession:

one in 2007 and the other in 2020, stemming from the conduct underlying this case. Apart from these episodes, there is no further evidence of Doe's current or past possession or use of drugs. For that reason, applying significant weight to factor 9 would likely be unwarranted. However, the hearing examiner applied only "minimal weight" to factor 9. Even if the 2007 charges were ignored on the ground that they establish only possession, not substance abuse, the fact that the defendant brought cocaine to an anticipated sexual encounter with two minor children provides support for the conclusion that, at least to some extent, Doe's "substance use was a contributing factor in the sexual misconduct." 803 Code Mass. Regs. § 1.33(9)(a). Accordingly, we find no abuse of discretion in the hearing examiner's application of "minimal weight" to factor 9.

d. The combined assessment. Determining which risk factors are applicable to the offender and applying due weight to those factors is necessary but not sufficient to discharge the hearing examiner's statutory and regulatory obligations. Once the applicable factors have been duly weighed, the hearing examiner must synthesize those factors into written conclusions concerning the sex offender's risk of reoffense and level of dangerousness, as well as the efficacy of disseminating the offender's registry information over the Internet. See 803 Code

Mass. Regs. § 1.20(1) (2016). These conclusions serve as the basis for the hearing examiner's final registration determination and the offender's classification level. Id.

Here, after weighing the relevant factors, the hearing examiner concluded, by clear and convincing evidence, that Doe's risk of reoffense and his level of dangerousness were both "moderate." However, the hearing examiner's conclusion with respect to the need for disseminating Doe's information is ambiguous. Specifically, while the hearing examiner initially indicated in his decision that "a public safety interest is served by public access to [Doe's] sex offender registry information and Internet dissemination," he later appears to have reversed course: "I find that it is too soon to tell if [Doe's] risk of reoffense and dangerousness are lowered to a degree where his information does not need to be disseminated." Because the need for dissemination bears directly on an offender's classification level, the hearing examiner failed to issue an unambiguous conclusion with respect to Doe's classification level.

As a threshold matter, we note that the hearing examiner's references to "disseminated" and "dissemination" are not entirely clear. To be sure, "active dissemination" of registry information is only called for with respect to level three offenders. See G. L. c. 6, § 178K (2) (c); 803 Code Mass. Regs.

§ 1.03 (2016). See also Doe, Sex Offender Registry Bd. No. 6729 v. Sex Offender Registry Bd., 490 Mass. 759, 768 (2022) (in assigning level three classification, hearing examiner must make three explicit findings -- "a high risk of reoffense, a high degree of dangerousness, and a public safety interest is served by active dissemination of the offender's registry information"). At the same time, there are several places in 803 Code Mass. Regs. §§ 1.00 where "disseminate" and its grammatical variants appear to be used in a broader sense more akin to its plain meaning: that is, to "disperse throughout" or distribute. Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/disseminate [https://perma.cc/GPU4-536M]. For example, in the context of registry information "disseminated to law enforcement," a SORB regulation specifies that it must "transmit" such information to certain police departments. 803 Code Mass. Regs. § 1.05(9)(c) (2016). Similarly, concerning the "[d]issemination of [i]nformation to [v]ictims," another regulation provides that SORB "may inform that victim of the sex offender's final registration and classification determination" (emphasis added). 803 Code Mass. Regs. § 1.26(4) (2016).

Given the hearing examiner's explicit conclusion that Doe is a level two offender -- and the absence of either any suggestion that Doe might be a level three offender or any

reference to "active" dissemination -- we must assume that the examiner was using the term "dissemination" in the broader sense. In that broader sense, a sex offender's registration information is "disseminated" if it is made publicly available on the sex offender Internet database, which allows the public to search for finally classified level two sex offenders as of July 12, 2013, using certain search parameters. 803 Code Mass. Regs. § 1.03. See G. L. c. 6, § 178D (requiring SORB to make certain registry information "available for inspection by the general public in the form of a comprehensive database").

Even given that clarifying interpretation, however, the fact remains that the hearing examiner's decision equivocated in three substantive respects. First, it made two assertions that are facially at odds with each other. If it is "too soon to tell" whether Doe's "information does not need to be disseminated," then we cannot be confident that the hearing examiner found by clear and convincing evidence that "a public safety interest is served by . . . Internet dissemination." Second, the hearing examiner's statement that it is "too soon to tell if . . . [Doe's] information does not need to be disseminated" is itself inherently equivocal. Simply put, it is impossible to discern an unambiguous conclusion from the hearing examiner's decision as to whether Doe's information should or should not be "disseminated," and more broadly what degree of

public access to that information is called for. Third, this ambiguity casts doubt on the certitude of the level two designation itself.

The upshot is that by equivocating on the question of dissemination, the hearing examiner's decision ultimately equivocated with respect to Doe's "final registration determination and classification level." 803 Code Mass. Regs. § 1.20(1)(f). In particular, it was error for the hearing examiner to defer making a decision on the propriety of dissemination until "time . . . tell[s]." Time should already have told.

3. Conclusion. With respect to the substance of the hearing examiner's determinations on the applicable risk factors, we affirm. However, the hearing examiner's decision equivocated with respect to the question whether Doe's information should or should not be disseminated. In consequence, the hearing examiner's decision equivocated on the ultimate question of Doe's classification level. Therefore, the Superior Court judgment is vacated, and a new judgment shall enter remanding the matter to SORB so that the hearing examiner may issue a written conclusion with respect to both questions.

So ordered.