

**BEFORE THE  
STATE COMMITTEE OF PSYCHOLOGISTS  
STATE OF MISSOURI**

STATE COMMITTEE OF PSYCHOLOGISTS,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE No.: 09-1342 PS
	)	
T. NICK FENGER,	)	
	)	
Respondent.	)	

**ORDER OF THE MISSOURI  
STATE COMMITTEE OF PSYCHOLOGISTS  
REVOKING THE LICENSE OF  
T. NICK FENGER**

On or about December 18, 2012, the Administrative Hearing Commission entered its Decision (“AHC Decision”) in the case of *State Committee of Psychologists v. T. Nick Fenger*, Case No. 09-1342 PS. In that Decision, the Administrative Hearing Commission found cause for the State Committee of Psychologists (“Committee”) to discipline T. Nick Fenger (“Fenger”) under § 337.035.2(4), (5), (6), (13) and (15), RSMo.<sup>1</sup>

The Committee has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice, §§ 621.110 and §337.035, RSMo, the Committee held a hearing on March 21, 2012, at approximately 1:50 p.m., at the Adams Pointe Conference Center, 1400 NE

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Revised Statutes of Missouri 2000, as amended.

Coronado Drive, Blue Springs, Missouri for the purpose of determining the level of discipline, if any, to be imposed upon Fenger's license by the Committee. The Committee was represented by Assistant Attorney General Ryan Taylor. Respondent received proper notice and opportunity to appear but did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the Committee issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Committee hereby states:

I.

**FINDINGS OF FACT**

1. The Committee is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo, for the purpose of licensing all persons engaged in the practice of psychology in this state and executing and enforcing the provisions of §§ 337.010 – 337.093, RSMo.

2. T. Nick Fenger was licensed by the Committee as a psychologist, as defined in § 337.010, RSMo, under license number 00499. Fenger's address on file with the Committee is 3721 Montclair Drive, New Port Richey, Florida, 34655-2938.

3. The Committee hereby adopts and incorporates by reference the December 18, 2012 Findings of Fact as set forth in the Decision of the Administrative Hearing Commission in *State Committee of Psychologists v. T. Nick Fenger*, Case No. 09-1342 PS, in its entirety. The Committee hereby enters its Findings of Fact consistent therewith.

4. The Committee set this matter for a discipline hearing and served notice of the violation hearing upon Fenger in a proper and timely fashion.

II.

CONCLUSIONS OF LAW

5. This Board has jurisdiction over this proceeding pursuant to §§ 621.110 and 337.035, RSMo.

6. The Committee expressly adopts and incorporates by reference the December 18, 2012 Findings of Fact as set forth in the Decision of the Administrative Hearing Commission in *State Committee of Psychologists v. T. Nick Fenger*, Case No. 09-1342 PS, in its entirety. The Committee hereby enters its Conclusions of Law consistent therewith.

7. The Committee has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Committee, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Committee that T. Nick Fenger's license to practice psychology is hereby **REVOKED** as of the effective date of this Order. Licensee shall immediately return all indicia of licensure to the Committee.

The Committee will maintain this Order as an open, public record of the Committee as provided in Chapters 337, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 3<sup>rd</sup> DAY OF May, 2013.

STATE COMMITTEE OF PSYCHOLOGISTS

*Pamela Groose*

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Pamela Groose, Executive Director



Before the  
Administrative Hearing Commission  
State of Missouri



STATE COMMITTEE OF  
PSYCHOLOGISTS,

Petitioner,

vs.

T. NICK FENGER,

Respondent.

No. 09-1342 PS

**DECISION**

T. Nick Fenger is subject to discipline.

**Procedure**

On October 1, 2009, the State Committee of Psychologists ("the Committee") filed a complaint seeking to discipline Fenger's license as a psychologist. Fenger was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on October 13, 2009. Fenger did not respond. We held a hearing on March 1, 2010. Assistant Attorney General Michael R. Cherba represented the Committee. Neither Fenger, nor anyone representing him, appeared at the hearing. This case became ready for our decision on May 27, 2010, when written arguments were due.

## Findings of Fact

1. Fenger was licensed by the Committee as a psychologist on September 10, 1978, and it lapsed on January 31, 2008.
2. Kevin Otis was a certified substance abuse counselor.

### The Supervisory Period

3. Fenger supervised Otis off and on from 1992 to June or July of 2006 ("the Supervisory Period").
4. Otis operated Alternative Counseling & Associates from approximately 1999 to 2006.
5. As a supervising psychologist, Fenger established a relationship of professional trust and confidence with his supervisee, Otis, and the clients to whom Otis provided services.
6. Otis was not licensed or certified as a marital or family therapist, but provided marital and family therapy.
7. Otis was not licensed as a psychologist, but Fenger aided Otis in practicing psychology.
8. Otis was not working toward any degree in psychology, counseling, or social work.
9. Otis was not working toward licensure as a psychologist, counselor, social worker, or marital and family therapist.
10. Otis met with Fenger once a month for half an hour to discuss the clients that required Fenger's supervision. Fenger did not supervise Otis on all of his clients, but only the ones that were billed under Fenger's in order that Fenger could bill insurance companies for work Otis performed.

### Counseling of J.B and his wife

11. During the period from approximately February or March of 2006 and until August 2006, J.B. and J.B.'s wife sought and received counseling from Otis for therapy concerning marital and family problems and J.B.'s alcohol abuse ("the Therapeutic Relationship").

12. During the period from approximately March 2006 until August 2006, Fenger engaged in a supervisory relationship with Otis for the therapeutic services being provided by Otis to J.B. and J.B.'s wife for the sole purpose of seeking payment from the insurer, Blue Cross Blue Shield of Missouri ("Blue Cross"), for the services that were being rendered by Otis.

13. Fenger was aware that the Therapeutic Relationship Otis and J.B. during the Supervisory Period resulted in Otis practicing outside of his area of expertise as a certified substance abuse counselor because Otis was providing a combination of alcohol abuse and marital counseling.

14. Otis spent an inappropriate amount of time with J.B.'s wife at their home and made inappropriate comments about J.B.'s wife's physical attractiveness. Otis also went on a family vacation to Florida with J.B. and his wife.

15. During the course of the Therapeutic Relationship and the Florida vacation, Otis prepared and handed an alcoholic beverage to J.B. when Otis was aware that J.B. was a recovering alcoholic.

16. J.B. and his wife subsequently divorced.

### Improper Supervision

17. In the practice of psychology, in a typical supervisory relationship, the supervisee is working towards his or her licensure. The supervisor and supervisee meet on a weekly basis for about an hour to discuss cases and issues. The supervisor would supervise all of the clients of the supervisee, not just clients for billing purposes.

18. Fenger did not exercise appropriate supervision over Otis during the Therapeutic Relationship and the Supervisory Period: (a) Fenger did not meet with J.B. and J.B.'s wife; (b) Fenger failed to maintain records concerning his supervision of Otis' practice; and (c) Fenger did not document Otis' performance.

19. During the Therapeutic Relationship and the Supervisory Period, Fenger assisted Otis in obtaining insurance payments from Blue Cross under Fenger's name for counseling services that were rendered by Otis and not by Fenger: (a) Otis submitted insurance claims to Blue Cross using Fenger's name; (b) Fenger was aware that Otis was filing insurance claims using Fenger's name; (c) Fenger had provided Otis with a stamp of his signature for submitting such claims; and (d) Fenger was not aware of how much money Otis was charging J.B. for services provided and how much was being claimed on the insurance forms.

20. Otis was practicing psychology without a license.

Lack of Continuing Education

21. On October 11, 2006, the Committee directed Fenger to provide documentation of his continuing education hours for the reporting period of December 1, 2003 to November 30, 2005 ("2005 Renewal Period").

22. On November 20, 2006, the Committee received a letter from Fenger stating that he was unable to document his continuing education for the 2005 Renewal Period because his documentation was lost during a move.

23. Fenger never provided the Committee with documentation of his continuing education for the 2005 Renewal Period.

## Conclusions of Law

We have jurisdiction to hear the case.<sup>1</sup> The Committee has the burden of proving Fenger has committed an act for which the law allows discipline.<sup>2</sup> The Committee argues there is cause for discipline under § 337.035:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of . . . any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

### Obtaining Compensation -- Subdivision (4)

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>3</sup> Deception means an act designed to cheat someone by

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<sup>1</sup>Section 621.045, RSMo Supp. 2011. Unless otherwise indicated, statutory references are to RSMo 2000.

<sup>2</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>3</sup>*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

inducing their reliance on misrepresentation.<sup>4</sup> Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.<sup>5</sup> Fenger engaged in fraud, deception and misrepresentation when he allowed insurance forms to be submitted under his name for payment for services that Otis provided J.B. and his wife. The insurance forms were submitted so that Fenger may be paid for services that he did not perform and for services that he was not aware of billing. Therefore, he is subject to discipline under § 337.035.2(4).

#### Professional Standards – Subdivision (5)

The Committee alleges Fenger's conduct constituted incompetency, misconduct, gross negligence, fraud, misrepresentation, and dishonesty.

Incompetency is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.<sup>6</sup> We follow the analysis of incompetency in a disciplinary case from the Supreme Court, *Albanna v. State Bd. of Reg'n for the Healing Arts*.<sup>7</sup> Incompetency is a "state of being."<sup>8</sup> The disciplinary statute does not state that licensees may be subject to discipline for "incompetent" acts. Although a licensee may be guilty of repeated instances of gross negligence and other violations of the standards of practice, that is not necessarily sufficient to establish incompetency unless the acts flowed from the licensee's incompetence, that is, being unable or unwilling to function properly as a psychologist. An evaluation of incompetency necessitates a broader-scale analysis, one taking into account the licensee's capacities and successes.<sup>9</sup> Fenger did not properly supervise Otis for

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<sup>4</sup> *State ex rel. Nixon v. Telco Directory Publishing*, 836 S.W.2d 596, 600 (Mo. banc 1993).

<sup>5</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11<sup>th</sup> ed. 2004).

<sup>6</sup> *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

<sup>7</sup> 293 S.W.3d 423 (Mo. banc 2009).

<sup>8</sup> *Id.* at 435.

<sup>9</sup> *Albanna*, at 436.

several months during the Therapeutic Relationship.<sup>10</sup> This continued failure to maintain a proper supervisory relationship led to several extremely inappropriate acts by Otis, and more importantly, demonstrates a lack of professional ability by Fenger as a psychologist. He demonstrated incompetency as a psychologist.

Misconduct is the intentional commission of a wrongful act.<sup>11</sup> Fenger allowed insurance forms to be submitted under his name for services that he did not provide. He provided a signature stamp for Otis so that the forms could be submitted with Fenger's signature. He also assisted Otis in the unauthorized practice of psychology. Fenger's actions were intentional and wrong. His conduct constitutes misconduct as a psychologist.

Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.<sup>12</sup> During the Supervisory Period, Fenger was aware of the Therapeutic Relationship. Fenger was aware that Otis was practicing outside of his area of expertise as a certified substance abuse counselor because Otis was providing a combination of alcohol abuse and marital counseling. Fenger neglected to meet with J.B. and his wife and failed to properly supervise Otis. He also failed to realize how inappropriate the Therapeutic relationship became. As a substance abuse counselor, Otis offered J.B. an alcoholic beverage, made inappropriate comments about J.B.'s wife, and went on a family vacation with J.B. and his family. Fenger's inactions deviated from the professional standards to the level of gross negligence.

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<sup>10</sup> We note that while we conclude Fenger did not properly supervise Otis, there may not have actually been a supervisory relationship at all between Fenger and Otis because Otis was not working towards a professional license and hence, there was no need for him to have been supervised.

<sup>11</sup> *Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).

<sup>12</sup> *Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

Dishonesty is a lack of integrity or a disposition to defraud or deceive.<sup>13</sup> We'll use the same definitions for fraud and misrepresentation discussed above. Fenger was dishonest, and engaged in fraud and misrepresentation when he allowed insurance forms to be submitted under his name for payment for services that Otis provided J.B. and his wife:

We find cause for discipline under § 337.035.2(5).

Violation of Rule – Subdivision (6)

The Committee alleges Fenger's conduct violated the following regulations:

20 CSR 2235-5.030(1) states:

(1) General Principles.

(A) Purpose. The ethical rules of conduct constitute the standards against which the required professional conduct of a psychologist is measured.

\* \* \*

(D) Violations. A violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action or denial of either original licensure, reinstatement or renewal of licensure....

20 CSR 2235-5.030(11)(B) states:

\* \* \*

3. The psychologist shall neither give nor receive any commission, rebate or other form of remuneration for referral of a client for professional services.

4. The psychologist shall not bill for services that are not rendered....

\* \* \*

20 CSR 2235-5.030(13) states:

(A) Violations of Applicable Statutes. The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.

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<sup>13</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception in:

\* \* \*

4. Billing clients or third-party payors;

20 CSR 2235-5.030(14)(D) states:

(D) Providing Supervision. The psychologist shall exercise appropriate supervision over supervisees, as set forth in the regulations of the committee.

20 CRS 2235-7.020 states:

(1) Every psychologist shall maintain for a period of four (4) years from the completion of each reporting cycle full and complete records of all accredited continuing education (CE) programs attended or accredited continuing education credit hours earned during the immediately preceding two (2)-year reporting cycle.

(2) Such records shall be made available, upon reasonable request during regular business hours, to the committee or to such authorized representative as the committee may hereafter appoint from time-to-time for inspection, photocopying, or audit....

20 CRS 2235-7.040 states:

\* \* \*

(2) The licensee need not submit the specific verification of each continuing education experience claimed, but the individual licensee shall maintain records of continuing education credits as would substantiate meeting these regulations for five (5) years following the submission of the reporting form.

(3) The committee may require the licensee to submit documents for proof of compliance. Upon receipt of the notification requesting said documents the licensee shall forward documents to the committee's office within thirty (30) days.

(4) Failure to provide the committee with proof of compliance with the continuing education credit requirement when requested will be considered a violation of the practice act and shall be cause for discipline pursuant to section 337.035, RSMo.

During the Supervisory Period and the Therapeutic Relationship, Fenger assisted Otis in billing for services under Fenger's name, services that were not rendered by Fenger. Fenger

violated statutes and administrative rules regarding the practice of psychology as discussed above. Fenger also used fraud, misrepresentation and deception in billing clients, as discussed above as well.

Otis was not working towards any professional licensure during the Supervisory Period. Therefore, there was no need for the supervisory relationship to have even existed. However, to the extent that there was a supervisory relationship, Fenger failed to provide proper supervision over Otis. Otis was a certified substance abuse counselor, but he performed marital, family, and alcohol abuse therapy. Fenger failed to maintain records regarding his supervision of Otis' practice and failed to document Otis' performance. Fenger also failed to provide the Committee with his continuing education hours for the 2005 Renewal Period. We find that Fenger violated 20 CSR 2235-5.030(11)(B)(4), 20 CSR 2235-5.030(13)(A) and (B)(4), 20 CSR 2235-5.030(14)(D), 20 CRS 2235-7.020(1) and (2), and 20 CRS 2235-7.040(2) and (3). We do not find Fenger violated 20 CSR 2235-5.030(1) and 20 CRS 2235-7.040(4), as those sections do not discuss required acts, but instead say violation of the regulations is cause for discipline. We also do not find Fenger violated 20 CSR 2235-5.030(11)(B)(3) because there was no referral mentioned in the facts. Therefore, we find cause for discipline under § 337.035.2(6).<sup>14</sup>

#### Professional Trust – Subdivision (13)

Professional trust is reliance on the special knowledge and skills that professional licensure evidences.<sup>15</sup> It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.<sup>16</sup> As a supervising psychologist, Fenger established a relationship of professional trust and confidence with his supervisee, Otis,

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<sup>14</sup>Pursuant to 20 CSR 2235-5.030(1)(D), a violation of the ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action.

<sup>15</sup> *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

<sup>16</sup> *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

and the clients to whom Otis provided services. Fenger violated the trust between him and Otis because Fenger failed to properly supervise Otis. Fenger violated the trust between him and J.B. and his wife during the Therapeutic Relationship because Fenger allowed for them to receive, and pay for, services from someone who was not trained to render such services. Therefore, Fenger violated a profession trust, and we find cause for discipline under § 337.035.2(13).

Unethical Conduct – Subdivision (15)

The Committee argues Fenger's violation of the above discussed conduct constituted "unethical conduct." Regulation 20 CSR 2235-5.030(1)(D) provides:

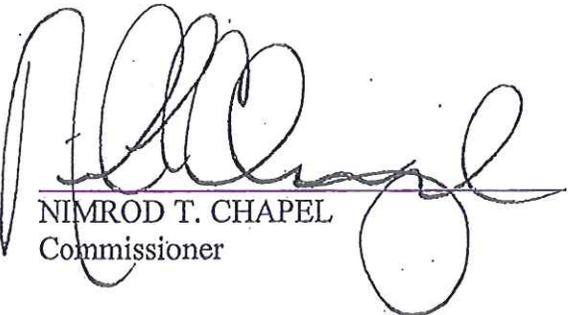
(1)(D) Violations. A violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action. . . .

Because Fenger's conduct violated 20.CSR 2235-5.030(11)(B)(4), 20 CSR 2235-5.030(13)(A) and (B)(4), 20 CSR 2235-5.030(14)(D), 20 CRS 2235-7.020(1) and (2), and 20 CRS 2235-7.040(2) and (3) of the Ethical Rules of Conduct, we also find his conduct constituted unprofessional conduct under 20 CSR 2235-5.030(1)(D). There is cause for discipline under § 337.035.2(15).

**Summary**

There is cause to discipline Fenger's license under § 337.035.2(4), (5), (6), (13) and (15).

SO ORDERED on December 18, 2012.

  
NIMROD T. CHAPEL  
Commissioner

Before the  
Administrative Hearing Commission  
State of Missouri



STATE COMMITTEE OF PSYCHOLOGISTS, )  
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Petitioner, )  
)  
vs. )  
)  
T. NICK FENGER, )  
)  
Respondent. )

No. 02-0806 PS

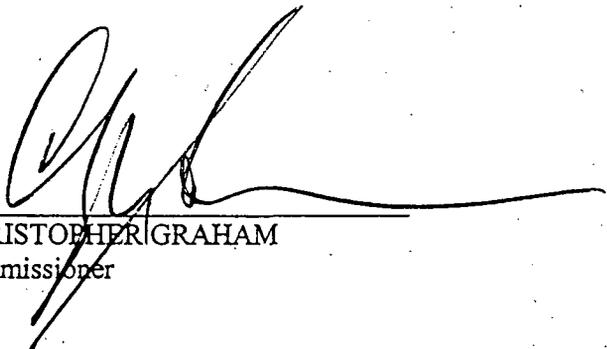
CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On January 27, 2003, the parties filed a "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Consent Order With Joint Proposed Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under section 337.035.2(5), (6) and (13), RSMo 2000. We conclude that these facts would not be cause for discipline under section 337.035.2(15), RSMo 2000. We incorporate the parties' proposed findings of fact and our revised conclusions of law into this Consent Order under Regulation 1 CSR 15-3.440(3)(C). We certify the record to the licensing agency under section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. This is consistent with the holding that we have no role in superintending agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.

SO ORDERED on January 28, 2003.

  
CHRISTOPHER GRAHAM  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

JAN 27 2003

ADMINISTRATIVE HEARING  
COMMISSION

STATE COMMITTEE OF PSYCHOLOGISTS, )  
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Petitioner, )  
)  
v. )  
)  
T. NICK FENGER, )  
)  
Respondent. )

02-0806 PS

JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE  
THE ADMINISTRATIVE HEARING COMMISSION AND STATE  
COMMITTEE OF PSYCHOLOGISTS, AND CONSENT  
ORDER WITH JOINT PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-3.440(3)(C)) and pursuant to the terms of § 536.060, RSMo 2000, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 2000, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the state of Missouri and, additionally, the right to a disciplinary hearing before the State Committee of Psychologists under § 621.110, RSMo 2000, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychologist license of Respondent for violations of the statutes set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the State Committee of Psychologists in this case and the parties submit to the jurisdiction of the Administrative Hearing Commission.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law; including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, Respondent, T. Nick Fenger, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.

Based upon the foregoing, Petitioner and Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

1. Petitioner, the State Committee of Psychologists ("Committee"), is an agency of the state of Missouri created and established by § 337.050, RSMo 2000, for the purpose of administering and enforcing the provisions of Chapter 337, RSMo, relating to psychologists.
2. Respondent, T. Nick Fenger ("Licensee"), is licensed by the Committee as a psychologist, license No. PY00499. Licensee's license is, and was at all times relevant herein, current and active.
3. On or about November 15, 1999, Licensee conducted a psychological evaluation of patient Z.S.
4. Z.S. was a minor at the time of the evaluation.
5. Licensee's evaluation of Z.S. consisted of a brief patient history, the Thematic Apperception Test, the Wechsler Intelligence Scale for Children - Third Edition ("WISC-III"), the Developmental Test of Visual-Motor Integration, and the T.O.V.A. Visual Continuous Performance Test.

6. On or about November 15, 1999, Licensee consulted by phone with T.S., parent of Z.S., regarding the results of the evaluation.

7. On or about November 18, 1999, Licensee consulted by phone with Diane Grempp of Piny Ridge, the school attended by Z.S., regarding the results of the evaluation.

8. Sometime subsequent to January 7, 2000, Licensee sent results of the evaluation to Mid-State Special Education in Taylorville, Illinois.

9. Licensee failed to include in his records a presenting problem, purpose, or diagnosis for the evaluation of Z.S.

10. Licensee failed to include in his records the date and description of each contact with Z.S.

11. Licensee failed to include in his records the nature, type, and goals of any psychological interventions with Z.S.

12. Licensee failed to include in his records the fee arrangement regarding Z.S.'s treatment.

13. Licensee failed to include in his records notations and results of his consultations with other providers.

14. Licensee's conduct, as alleged herein, violates 4 CSR 235-5.030(3) which states

— in-relevant parts: —

(3) Competence.

(E) Maintenance and Retention of Records.

1. The psychologist rendering professional individual services to a client shall maintain professional records that include:

A. The presenting problem(s) or purpose or diagnosis;

....

C. The date and description of each contact or service provided or pertaining to the client;

D. The nature, type and goals of any psychological interventions;

E. The fee arrangement;

....

G. Notation and results of formal consults with other providers; and

....

15. Licensee failed to make clear to Z.S. or T.S. the financial arrangements in advance of billing, including, but not limited to, the services contracted for with the third-party payor.

16. Licensee's conduct, as alleged herein, violates 4 CSR 235-5.030(9) which states in relevant parts:

(9) Remuneration.

(A) Financial Arrangements.

1. All financial arrangements shall be made clear to each client in advance of billing.

17. Licensee failed to utilize adequate interpretive aids or explanations in communicating the results of the assessment procedures to the client, parents, and other agents of the client.

18. Licensee failed to include in his report of the results of the assessment any deficiencies of the assessment norms for the individual assessed and any relevant reservations or qualifications which affect the validity, reliability, or other interpretation of the results.

19. Licensee's conduct, as alleged herein, violates 4 CSR 235-5.030(10) which states in relevant parts:

(10) Assessment Procedures.

....

(C) Communication of Results. The psychologist shall accompany communication of results of assessment procedures to the client, parents, legal guardians or other agents of the client by adequate interpretive aids. . . .

(D) Reservations Concerning Results. The psychologist shall include in his/her report of the results of an assessment procedure any deficiencies of the assessment norms for the individual assessed and any relevant reservations or qualifications which affect the validity, reliability or other interpretation of results.

....

20. Licensee's conduct, as alleged herein, demonstrates a general lack of present ability or a lack of disposition to use his otherwise sufficient present ability to perform his duties as a psychologist.

21. Licensee's conduct, as alleged herein, constitutes incompetence.

22. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with Z.S. in that Z.S. relied on Licensee to comply with all applicable state laws and regulations and standards of practice regarding the practice of psychology in performing the evaluation, maintaining the records, and reporting the results of the evaluation of Z.S.

23. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with T.S. in that T.S. relied on Licensee to comply with all applicable state laws and regulations and standards of practice regarding the practice of psychology in performing the evaluation, maintaining the records, and reporting the results of the evaluation of Z.S.

24. Licensee's conduct, as alleged herein, violates Z.S.'s professional trust and confidence.

25. Licensee's conduct, as alleged herein, violates T.S.'s professional trust and confidence.

JOINT PROPOSED CONCLUSIONS OF LAW

26. Cause exists to discipline Licensee's license pursuant to § 337.035, RSMo

2000, which states in relevant parts:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

.....  
(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

.....  
(13) Violation of any professional trust or confidence;

.....  
(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

II

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Committee of Psychologists in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

1. Licensee's psychologist license, No. PY00499, is hereby placed on PROBATION for a period of 18 months. The period of probation shall constitute the disciplinary period. During the disciplinary period, Licensee must adhere to the following terms and conditions:

I. REQUIREMENTS REGARDING LICENSEE'S PRACTICE AND SUPERVISION

A. During the period of probation, Licensee must inform Licensee's employers, and all hospitals, institutions, and managed health care organizations with which Licensee is affiliated, that Licensee's work as a professional psychologist is under probation by the State Committee of Psychologists.

B. During the period of probation, Licensee must inform each patient/client that Licensee treats, evaluates, or consults that Licensee's work as a professional psychologist is under probation by the State Committee of Psychologists. Licensee must obtain written verification that each patient/client that Licensee treats, evaluates, or consults has been so informed.

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C. During the period of probation, Licensee's practice as a professional psychologist in the areas of assessment and evaluation shall be supervised on a monthly basis by a psychologist approved by the State Committee of Psychologists. If Licensee has failed to secure a supervisor within 20 business days from the start of probation, the Licensee shall cease practicing psychology until a supervisor is secured. Licensee shall be responsible for any payment associated with the supervision. Supervision includes, but is not limited to, one-hour on-site, face-to-face review of cases and review, approval, and co-signing of written reports such as case notes, intake assessments, test reports, treatment plans, and progress reports.

D. In the event the supervising psychologist becomes unable or decides not to continue serving in his/her capacity as a supervising psychologist or otherwise ceases to serve as a supervising psychologist during the period of probation, then the Licensee shall:

- (1) within three business days of being notified of the supervising psychologist's inability or decision not to continue serving as the supervising psychologist, or otherwise learning of the need to secure a supervising psychologist, advise the State Committee of Psychologists in writing that he is needing to secure a supervising psychologist and the reasons for such change; and

(2) within 20 business days of being notified of the supervising psychologist's inability or decision not to continue serving as the supervising psychologist, or otherwise learning of the need to secure a supervising psychologist, secure a supervising psychologist pursuant to and in accordance with the terms and conditions set forth in this Joint Stipulation. After 20 business days, the Licensee shall not practice if he has not secured a supervisor.

E. The supervising psychologist shall be vested with administrative authority over all matters affecting the provision of psychological health services provided by Licensee in the areas of assessment and evaluation, so that the ultimate responsibility for the welfare of every client assessed and/or evaluated is maintained by the supervising psychologist.

F. Licensee's supervisor must report at least once every six months on Licensee's compliance with this Joint Stipulation. Reports must be received before March 1 and September 1 of each year. It is Licensee's responsibility to ensure that these reports are provided in a timely manner.

## II. GENERAL REQUIREMENTS

A. Licensee may not serve as a supervisor for any psychological trainee, psychological intern, psychological resident, psychological assistant, or any person

undergoing supervision during the course of obtaining licensure as a psychologist, professional counselor, or social worker.

B. Licensee must keep the State Committee of Psychologists apprised at all times, in writing, of Licensee's current home and work addresses and telephone numbers.

C. Licensee is required to pay to the State Committee of Psychologists, in a timely fashion, all requisite fees required by law to renew and keep current Licensee's psychology license in Missouri.

D. Licensee is required to comply with all provisions of Chapter 337, RSMo; the rules and regulations duly promulgated by the State Committee of Psychologists; and state and federal criminal laws.

E. Licensee must provide periodic reports of Licensee's compliance with this Joint Stipulation every six months. Reports must be received before March 1 and September 1 of each year.

F. At Licensee's expense, Licensee must agree to meet with the State Committee of Psychologists at reasonable intervals designated by the Committee.

2. The parties to this Joint Stipulation understand that the State Committee of Psychologists will maintain this Joint Stipulation as an open and public record of the Committee as provided in Chapters 337, 610, and 620, RSMo.

3. Upon the determination of the State Committee of Psychologists that the Licensee has failed to comply with the terms of this Joint Stipulation, the Committee may revoke Licensee's license or may take such other or additional disciplinary action against Licensee or Licensee's license as the Committee deems appropriate. No order shall be entered by the State Committee of Psychologists pursuant to this paragraph of this consent order without notice and an opportunity for hearing before the Committee in accordance with the provisions of Chapter 536, RSMo.

4. Upon the expiration and successful completion of the period of suspension followed by probation, Licensee's license as a psychologist in Missouri shall be fully restored if all other requirements of law have been satisfied.

5. If the State Committee of Psychologists determines that the Licensee has violated a term or condition of this Joint Stipulation, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the State Committee of Psychologists may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Joint Stipulation in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the State Committee of Psychologists may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so,

it may impose further discipline. The State Committee of Psychologists retains jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

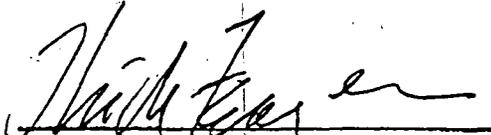
6. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Consent Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by the Petitioner in the above-styled action.

7. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

8. Licensee hereby waives and releases the State Committee of Psychologists, its members and any of its employees, agents, or attorneys, including any former committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining

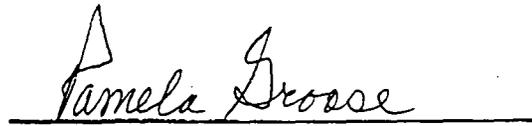
portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

RESPONDENT

  
T. Nick Fenger

Date 1-18-07

PETITIONER

  
Pamela Groose  
Executive Director  
State Committee of Psychologists

Date 1.27.03



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