

9-7-93
order

BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
STATE OF MISSOURI

IN THE MATTER OF:)
)
MORDECAI MAGENCEY)
)
LICENSE NO. PY00955) Case No. PS-87-0258
)
)

ORDER
STATEMENT OF THE CASE

1. On September 16, 1987, Mordecai Magency and the State Committee of Psychologists filed a STIPULATION, WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND STATE COMMITTEE OF PSYCHOLOGISTS, AND CONSENT ORDER, with the Administrative Hearing Commission. On September 17, 1987, the Administrative Hearing Commission entered an Order consenting to the terms of the Stipulation. Pursuant to the Stipulation, the parties agreed that sufficient evidence existed to support a finding of cause for discipline against Magency's psychologist license. The Stipulation provided for revocation of Magency's license, but stayed the revocation pursuant to stated terms. Among the stated terms were the following:

[A.I.] Effective September 30, 1987, the Respondent's psychologist license shall be suspended for three years. The terms of this suspension are as follows:
.

[A.I.n.] Immediately prior to the expiration of the three-year suspension period, the Respondent may appear before the Petitioner and shall bear the burden of persuading the Petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the Respondent meets this burden, the Respondent's psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the Petitioner at that time.

[A.II.] If the Respondent fails to meet the burden of persuasion as set forth in paragraph A.I.n., above, the respondent shall continue to abide by the terms, as set forth in paragraphs A.I.a. through A.I.k., above, for another three year period commencing immediately upon the completion of the three-year period of suspension.

[A.III.] Immediately prior to the expiration of this three-year period set forth in paragraph II, above, the Respondent may appear before the Petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the respondent meets this burden, the Respondent's psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the Petitioner at that time.

[A.IV.] If the Respondent fails to meet the burden as set forth in paragraph III, above, the Respondent shall continue to abide by the terms as set forth in paragraph A.I.a. through A.I.k., above, for a one-year period commencing immediately upon the completion of the three-year period set forth in paragraph II, above.

2. Pursuant to paragraph A.I.n. of the September 16, 1987 Stipulation, the Committee held an evidentiary hearing on August 23, 1991, at the Division of Professional Registration, Jefferson City, Missouri.

3. On October 7, 1991, the Committee issued an Order concluded that Magencey had not carried his burden of proving that he was capable of functioning as an ethical, responsible and competent professional psychologist. Therefore, pursuant to paragraph A.2. of the 1987 stipulation, Magencey's suspension was ordered to be continued through September 17, 1993.

4. Pursuant to paragraph A.III of the 1987 stipulation, the Committee held an evidentiary hearing on May 22, 1993, at the Holiday Day Inn, 7730 Bonhomme Avenue, Clayton, Missouri, for the purpose of affording Magencey the opportunity to appear before the Committee and persuade the Committee that he is capable of functioning as an ethical, responsible, competent professional psychologist. Magencey was present and not represented by counsel.

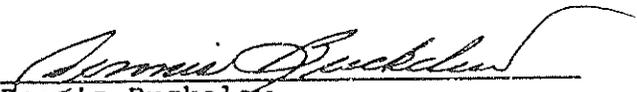
FINDINGS

Magencey presented evidence at the hearing consisting of his own testimony regarding his current ability to practice. In addition, the record was held open with Magencey's consent for the receipt of clinical evaluation conducted by Dr. Ellen Moran. The clinical evaluation does not support Magencey's current capability to function fully as an ethical, responsible and competent psychologist. The Committee, therefore, concludes that Magencey has not carried his burden proving he is capable of functioning as an ethical, responsible and competent professional psychologist. Therefore, pursuant to paragraph A.IV. of the 1987 stipulation, the Respondent shall continue to abide by the terms

as set forth in paragraphs A.I.a through A.I.k. through September 17, 1994 and shall otherwise remain bound by the terms of the 1987 stipulation.

So entered this 7th day of September, 1993.

Respectfully submitted,


Dennis Buckelew
Executive Director
State Committee of Psychologists
3605 Missouri Boulevard
P.O. Box 153
Jefferson City, MO 65102

BEFORE THE
STATE COMMITTEE OF PSYCHOLOGISTS
STATE OF MISSOURI

10-7-91
Order

IN THE MATTER OF:)
MORDECAI MAGENCEY) Case No. PS-87-0258
LICENSE NO. PY00955)

ORDER

STATEMENT OF THE CASE

1. On September 16, 1987 Mordecai Magencey and the State Committee of Psychologists filed a STIPULATION, WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND STATE COMMITTEE OF PSYCHOLOGISTS, AND CONSENT ORDER with the Administrative Hearing Commission. Pursuant to the Stipulation, the parties agreed that sufficient evidence existed to support a finding of cause for discipline against Magencey's psychologist license. The Stipulation provided for revocation of Magencey's license, but stayed the revocation pursuant to stated terms. Among the stated terms were the following:

[A.I.] Effective September 30, 1987, the Respondent's psychologist license shall be suspended for three years. The terms of this suspension are as follows:

[A.I.n.] Immediately prior to the expiration of the three-year suspension period, the Respondent may appear before the Petitioner and shall bear the burden of persuading the Petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the Respondent meets this burden, the Respondent's

psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the Petitioner at that time.

On September 17, 1987, the Administrative Hearing Commission entered an order consenting to the terms of the Stipulation.

2. Pursuant to Paragraph A.I.n. of the September 16, 1987 Stipulation, the Committee held an evidentiary hearing on August 23, 1991, at the Division of Professional Registration, Jefferson City, Missouri, for the purpose of affording Magency the opportunity to appear before the Committee and persuade the Committee that he is capable of functioning as an ethical, responsible, and competent professional psychologist. Magency was present and represented by counsel, Thomas Blumenthal.

FINDINGS

Magency presented evidence at a hearing consisting solely of his own testimony and a letter from Saul Hopper, Ph.D. to Magency's counsel. This Committee is not persuaded by such evidence. The Committee does not conclude that Magency is incapable of functioning as an ethical, responsible and competent psychologist, only that he has not made a sufficient showing of his capability.

SUMMARY

This Committee therefore concludes that Magency has not carried his burden proving that he is capable of functioning as an ethical, responsible and competent professional psychologist. Therefore, pursuant to paragraph A.II. of the 1987 stipulation, the Respondent shall continue to abide by the terms as set forth in paragraphs A.I.A. through A.I.K. through

September 17, 1993, and shall otherwise remain bound by the terms of the 1987 Stipulation.

So entered this 7th day of October, 1991.

DEPARTMENT OF ECONOMIC DEVELOPMENT
Carl M. Koupal, Jr., Director



Tom Duncan, Director
DIVISION OF PROFESSIONAL
REGISTRATION

9-30-87
Discipline

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

DEPARTMENT OF ECONOMIC DEVELOPMENT)
STATE COMMITTEE OF PSYCHOLOGISTS)
3523 North Ten Mile Drive)
P.O. Box 4)
Jefferson City, MO 65102)

Petitioner,)

v.)

No. PS-87-0258

MORDECAI MAGENCEY)
14377 Woodlake Drive)
Chesterfield, MO 63017)

Respondent.)

FILED

SEP 16 1987

ADMINISTRATIVE HEARING
COMMISSION

STIPULATION, WAIVER OF HEARINGS BEFORE THE
ADMINISTRATIVE HEARING COMMISSION AND
STATE COMMITTEE OF PSYCHOLOGISTS,
AND CONSENT ORDER

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-2.150(1)) and pursuant to the terms of § 536.060, RSMo 1986, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1986, the parties hereto waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the state of Missouri and by the State Committee of Psychologists and jointly stipulate and consent to a finding by this Commission that cause exists for disciplinary action against the respondent for violations of statutes and/or

administrative rules set forth herein and agree that a final disposition of this matter may be effectuated as described below.

In making this Stipulation, Waiver of Hearings Before the Administrative Hearing Commission Hearing and State Committee of Psychologists, and Consent Order, the respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right of a hearing of the charges against respondent; the right to appear and be represented by counsel; 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 charges 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, the respondent, Mordecai Magancey, knowingly and voluntarily waives each and every one of these rights and freely enters into this Stipulation, Waiver of Hearings Before the Administrative Hearing Commission Hearing and State Committee of Psychologists, and Consent Order and agrees to abide by an Order of this Administrative Hearing Commission based upon this Stipulation.

Respondent acknowledges that he has received a copy of the Complaint filed by the State Committee of Psychologists in this case.

The petitioner and the respondent jointly stipulate to the following factual allegations set forth in that Complaint:

1. Petitioner, Department of Economic Development, is an agency of the state of Missouri responsible for the proper administration, enforcement, and execution of the provisions of Chapter 337, RSMo, relating to psychology and psychologists.

2. The State Committee of Psychologists, an adjunct of the Missouri Board of Registration for the Healing Arts, is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo 1986, for the purpose of advising and making recommendations to the Department of Economic Development concerning the execution and enforcement of the provisions of Chapter 337, RSMo, the Psychology Practice Act.

3. The respondent, Mordecai Magency, is licensed by the State Committee of Psychologists. The respondent's Missouri license, numbered 00955, was until January 31, 1987, current and active.

4. On or about September 1980, the respondent, in his professional capacity as a licensed psychologist, entered into a psychologist/patient relationship with a female client. This client entered into therapy with respondent due to depression. ~~stemming from an incestuous relationship her father had had with her when she was a child.~~

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5. On or about April 1983, the respondent engaged in a sexual relationship with this client during his treatment of her in his professional capacity as a licensed psychologist. This sexual contact was engaged in by the respondent with his client during the time that the psychologist/client relationship existed between them.

6. 4 CSR 235-5.020(3)(F) states, in pertinent part:

(3) Competence: The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole.

...

.....

(F) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

7. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close

friends, or relatives. Sexual intimacies with clients are unethical.

8. 4 CSR 235-5.020(8)(D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

9. Respondent's conduct, as set forth in Paragraph 5, above, constitutes a violation of 4 CSR 235-5.020(3)(F), (7)(A), and (8)(D), as set forth in Paragraphs 6, 7, and 8, above.

10. The respondent's conduct, as set forth in Paragraph 5, above, constitutes a violation of § 337.035.2, RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychologists' as adopted by the department and filed with the secretary of state.

11. The respondent's conduct in engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

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12. On or about January and March 1986, the respondent engaged in kissing and hugging with another female client ~~in the course of his professional capacity as a licensed psychologist~~ and ^{after} during the time that the psychologist/client relationship existed between them. This client had, along with her husband, been a client of the respondent for approximately six years.

13. 4 CSR 235-5.020(3)(F) states, in pertinent part:

(3) Competence: The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole.

. . . .

(F) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate

performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

14. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

15. 4 CSR 235-5.020(8)(D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

16. Respondent's conduct, as set forth in Paragraph 12, above, constitutes a violation of 4 CSR 235-5.020(3)(F), (7)(A), and (8)(D), as set forth in Paragraphs 13, 14, and 15, above.

17. The respondent's conduct, as set forth in Paragraph 12, above, constitutes a violation of § 337.035.2, RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychologists' as adopted by the department and filed with the secretary of state.

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18. The respondent's conduct in engaging in a ~~sexual~~ relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

19. In the alternative, if the psychologist/client relationship had been officially terminated, respondent's

actions during the psychologist/client relationship prior to the termination induced and encouraged the client to pursue contact with the respondent that led to ~~sexual~~ contact.

20. The respondent's conduct, as set forth in Paragraph 19, above, constitutes a violation of 4 CSR 235-5.020(3)(F), (7)(A), and (8)(D) as set forth in Paragraphs 13, 14, and 15, above.

21. Engaging in sexual contact with an individual who was previously a client of the psychologist constitutes a violation of 4 CSR 235-5.020(4) which states:

Moral and Legal Standards:
Psychologists' moral and ethical standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities or reduce the public trust in psychology and psychologists. Regarding their own behavior, psychologists are sensitive to prevailing community standards and to the possible impact that conformity to or deviation from these standards may have upon the quality of their performance as psychologists. Psychologists are also aware of the possible impact of their public behavior upon the ability of colleagues to perform their professional duties.

22. Respondent's conduct, as set forth in Paragraphs 19 through 21, constitutes a violation of § 337.035.2(5), (6), (13), and (15), RSMo 1986, as set forth in Paragraph 17, above.

23. On or about June 1983 through August 1986, the respondent, in his professional capacity as a licensed psychologist, engaged in a psychologist/client relationship with another female client.

24. On or about January 1986, the respondent engaged in a sexual relationship with this client during his treatment of her in his professional capacity as a licensed psychologist. This sexual contact was engaged in by the respondent with his client during the time that the psychologist/client relationship existed between them.

25. 4 CSR 235-5.020(3)(F) states, in pertinent part:

(3) Competence: The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole.

. . .

. . . .

(F) Psychologists recognize that personal problems and conflicts may interfere with professional effectiveness. Accordingly, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional and/or scientific activities.

26. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close

friends, or relatives. Sexual intimacies with clients are unethical.

27. 4 CSR 235-5.020(8) (D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

28. Respondent's conduct, as set forth in Paragraph 24, above, constitutes a violation of 4 CSR 235-5.020(3) (F), (7) (A), and (8) (D), as set forth in Paragraphs 25, 26, and 27, above.

29. The respondent's conduct, as set forth in Paragraph 24, above, constitutes a violation of § 337.035.2(5), (6), (13), and (15), RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychologists' as adopted by the department and filed with the secretary of state.

m 30. The respondent's conduct in ~~initiating and~~ engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

31. On or about August 1985, the respondent, in his professional capacity as a licensed psychologist, entered into a psychologist/patient relationship with a female client.

m 32. ~~On or about April 1986, the respondent initiated a sexual relationship with this client during his treatment of her in his professional capacity as a licensed psychologist. This sexual contact was initiated and~~ engaged in by the respondent with this client during the time that the psychologist/patient relationship existed between them.

33. Respondent's conduct, as set forth in Paragraph 32, above, constitutes a violation of 4 CSR 235-5.020(3)(F), (7)(A), and (8)(D), as set forth in Paragraphs 25, 26, and 27, above.

34. Respondent's conduct constitutes a violation of 4 CSR 235-5.020(4), as set forth in Paragraph 21, above.

35. Respondent's conduct, as set forth in Paragraph 32, above, constitutes a violation of § 337.035.2(5), (6), (13), and (15), RSMo 1986, as set forth in Paragraph 29, above.

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36. The respondent's conduct in ~~initiating~~ and engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

37. Respondent's license as a professional psychologist was subject to renewal on January 31, 1987.

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38. ~~The respondent was notified by petitioner that his license was subject to renewal on this date. The respondent has not renewed this license.~~

39. Section 337.030, RSMo 1986, states, in pertinent part:

1. Each psychologist licensed under the provisions of this chapter, who has not filed with the department a verified statement that he has retired from or terminated his practice of psychology in this state, shall register with the department on or before the registration renewal date. The department shall require a registration fee which shall be submitted together with the information required for such registration. Upon receipt of the required information and of the registration fee, the department shall issue a certificate of registration. . . .

2. Failure to provide the department with the information required for registration, or to pay the registration fee, shall after notification effect a revocation of the license after a period of sixty days from the registration renewal date. The license shall be restored if, within two years of the registration renewal date, the applicant provides written application and the payment of the registration fee and a delinquency fee.

40. 4 CSR 235-1.050 states:

(1) Failure of a licensee to receive the notice and application to renew his license shall not excuse him from the requirement of section 337.030, RSMo to renew his license.

(2) Any licensee who fails to renew his license within the sixty (60)-day period set forth in section 337.030.2, RSMo shall not perform any act for which a license is required.

41. The respondent has continued to engage in the practice of psychology subsequent to the nonrenewal and expiration of his psychology license.

42. The respondent's conduct in continuing to engage in the practice of psychology without a valid and current psychology license constitutes a violation of 4 CSR 235-1.050, as set forth in Paragraph 40, above.

43. The respondent's conduct, as set forth in Paragraph 41, above, constitutes a violation of § 337.035.2(4), (5), (6), (12), and (13), RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], 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 his 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, 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;

. . . .

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

44. The respondent, in his professional capacity as a licensed psychologist, entered into a psychologist/patient relationship with another female client.

45. ~~The respondent initiated a sexual relationship with this client during his treatment of her in his professional capacity as a licensed psychologist.~~ This sexual contact was initiated and engaged in by the respondent with this client

during the time that the psychologist/patient relationship existed between them.

46. Respondent's conduct, as set forth in Paragraph 45 above, constitutes a violation of 4 CSR 235-5.020(3)(F), (7)(A), and (8)(D), as set forth in Paragraphs 25, 26 and 27, above.

47. Respondent's conduct, as set forth in Paragraph 45, above, constitutes a violation of 4 CSR 235-5.020(4), as set forth in Paragraph 21, above.

48. Respondent's conduct, as set forth in Paragraph 45, above, constitutes a violation of § 337.035.2(5), (6), (13), and (15), RSMo 1986, as set forth in Paragraph 29, above.

49. The respondent's conduct in engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

For the purposes of this Stipulation, respondent neither admits nor denies the allegations of petitioner's Complaint and the amendments thereto; however, for the purposes of resolution and amicable settlement and disposition of this matter respondent acknowledges that petitioner has sufficient evidence independent of any admissions of respondent to support a finding of cause for discipline in accordance with the provisions of Chapters 621 and 337, RSMo 1986. Moreover, respondent acknowledges that he has entered into this agreement for the limited purposes of settling all disputes herein and for no other purpose whatsoever and makes no admissions whatsoever as to any of the issues contained herein.

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Department of Economic Development and the State Committee of Psychologists under the authority of § 621.110, RSMo 1986.

A. The respondent's psychologist license, numbered 00955, is hereby revoked. The imposition of the order of revocation is stayed for seven years pursuant to the terms set forth below:

I. Effective September 30, 1987, the respondent's psychologist license shall be suspended for three years. The terms of this suspension are as follows:

a. The respondent shall submit his psychologist license to petitioner on or before September 30, 1987.

b. During the period of suspension, the respondent shall not engage in any counseling, guidance, psychotherapy, or act which falls within the definition of the term psychology as set forth in § 337.015.3 and .4, RSMo 1986, whether a license is required for such acts or not.

c. The respondent shall undergo a psychological evaluation by a licensed psychologist (hereinafter referred to as the "evaluating psychologist") approved by the petitioner within 30 days following the effective date of this Stipulation. A written evaluation concerning the respondent shall be

submitted by the evaluating psychologist to the petitioner within 60 days of the effective date of this Stipulation. It shall be the responsibility of the respondent to ensure that the evaluation is submitted by the evaluating psychologist to the petitioner in a timely manner.

d. The respondent shall abide by the recommendations of the evaluating psychologist set forth in the psychological evaluation and shall engage in all psychological testing, evaluation, supervision, therapy, or other treatment as deemed appropriate by the evaluating psychologist. The respondent shall bear the cost of all evaluations and all testing, evaluation, therapy, supervision, or other treatment.

e. The respondent shall continue in such supervision, therapy, or other treatment for the entire three-year period of suspension or for a shorter period as determined by petitioner.

f. The evaluating psychologist shall submit a written report to the petitioner no less than once every six months beginning on the effective date of this Stipulation setting forth the nature of any such treatment, therapy, or supervision conducted by the evaluating psychologist and setting forth any evaluation, diagnosis, and prognosis concerning the respondent.

g. The respondent shall not seek licensure in any state or foreign country as a psychologist, counselor, psychotherapist, or other similar profession during the seven-year period during which the revocation of his license is stayed.

h. The respondent shall keep the petitioner apprised at all times in writing of his current home and work addresses and telephone numbers.

i. The respondent shall pay to the petitioner in a timely fashion all requisite fees required by law to renew and keep current his psychology license in Missouri.

j. The respondent shall comply with all provisions of Chapter 337, RSMo, the rules and regulations duly promulgated thereunder, and state and federal criminal laws.

k. The respondent shall report to the petitioner in writing once every four months beginning on the effective date of this Stipulation, stating truthfully whether or not the respondent has complied fully with all terms and conditions, as set forth herein, and, if the respondent has not, further detailing in each respect how the respondent has failed to so comply.

l. Should the respondent violate any term or condition of suspension or any provision of Chapter

337, RSMo, the petitioner may vacate the order of suspension imposed herein and order the respondent's psychology license to be further disciplined as the petitioner deems necessary and appropriate, including revocation.

m. No order shall be entered by the petitioner pursuant to Paragraph A11 of this Stipulation without notice and an opportunity for hearing before the petitioner as a contested case in accordance with the provisions of Chapter 536, RSMo.

n. Immediately prior to the expiration of the three-year suspension period, the respondent may appear before the petitioner and shall bear the burden of persuading the petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the respondent meets this burden, the respondent's psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the petitioner at that time.

II. If the respondent fails to meet the burden of persuasion as set forth in Paragraph A1n, above, the respondent shall continue to abide by the terms, as set forth in Paragraphs A1a through A1k, above, for another three year period commencing immediately upon the completion of the three-year period of suspension.

III. Immediately prior to the expiration of this three-year period set forth in Paragraph II, above, the respondent may appear before the petitioner and shall bear the burden of persuading the petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the respondent meets this burden, the respondent's psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the petitioner at that time.

IV. If the respondent fails to meet the burden as set forth in Paragraph III, above, the respondent shall continue to abide by the terms as set forth in Paragraph A1a through A1k, above, for a one-year period commencing immediately upon the completion of the three-year period set forth in Paragraph II, above.

V. Immediately prior to the expiration of the one-year period set forth in Paragraph IV, above, the respondent may appear before the petitioner and shall bear the burden of persuading the petitioner that he is capable of functioning as an ethical, responsible, and competent professional psychologist. If the respondent meets this burden, the respondent's psychologist license shall be placed on probation for a period of time and under terms deemed appropriate by the petitioner at that time.

VI. If the respondent fails to meet this burden as set forth in Paragraph V, above, the respondent's license shall be revoked.

B. This Stipulation relates to the acts, as set forth in Paragraphs 1 through 49, above, and all such acts of like nature committed by the respondent prior to the effective date of this Stipulation. This Stipulation does not relate to and does not bind the petitioner or restrict the petitioner's remedies in any way concerning any violations of any criminal laws or Chapter 337, RSMo, occurring either before or after the effective date of this Stipulation, which violations are not of a similar nature as those set forth in Paragraphs 1 through 49, above, or which violations are similar in nature but involve either the use of force or the threat of force by the respondent.

C. If the petitioner determines that the respondent has violated a term or condition of his Stipulation, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or in the circuit court, the petitioner may elect to pursue any lawful remedies afforded it and is not bound by this Stipulation in its election of remedies concerning that violation.

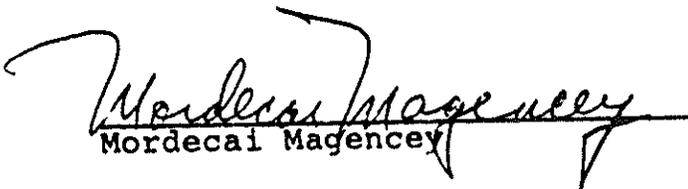
D. In consideration of the foregoing, the parties consent to the entry of record and approval of this Stipulation, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Consent Order and to the termination of any further proceedings before the Administrative

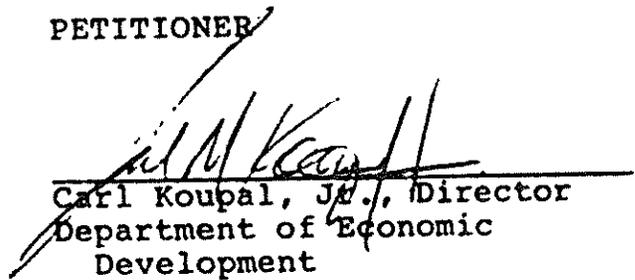
Hearing Commission based upon the Complaint filed by the petitioner in the above-styled case.

E. The respondent shall meet with the State Committee of Psychologists (hereinafter the "Committee") at a time and place established by the Committee, but no later than November 15, 1987, unless agreeable to the Committee. The Committee shall subsequent to that meeting review the disciplinary terms set forth in this Stipulation and make any modifications, or no modifications, to the disciplinary terms as deemed appropriate by the Committee, except that no modification shall extend the period of time during which the revocation of respondent's license is stayed.

RESPONDENT

PETITIONER


Mordecai Magency


Carl Koupal, Jr., Director
Department of Economic
Development

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

FEB 26 1987

ADMINISTRATIVE HEARING
COMMISSION

STATE COMMITTEE OF PSYCHOLOGISTS
3523 North Ten Mile Drive
P.O. Box 4
Jefferson City, MO 65102

Petitioner,

v.

MORDECAI MAGENCEY
14377 Woodlake Drive
Chesterfield, MO 63017

Respondent.

No. PS- 87-0258

COMPLAINT

Comes now petitioner, by and through its attorney, the Attorney General of Missouri, and for its cause of action states:

1. Petitioner, State Committee of Psychologists, an adjunct of the Missouri Board of Registration for the Healing Arts, is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo 1986, for the purpose of advising and making recommendations to the Department of Economic Development concerning the execution and enforcement of the provisions of Chapter 337, RSMo, the Psychology Practice Act.

2. The respondent, Mordecai Magency, is licensed by the State Committee of Psychologists. The respondent's Missouri

license, numbered 00955, is and at all times pertinent hereto was current and active.

3. On or about September 1980, the respondent, in his professional capacity as a licensed psychologist, entered into a psychologist/patient relationship with a female client. This client entered into therapy with respondent due to depression stemming from an incestuous relationship her father had had with her when she was a child.

4. On or about April 1983, the respondent initiated a sexual relationship with this client during his treatment of her in his professional capacity as a licensed psychologist. This sexual contact was initiated and engaged in by the respondent with his client during the time that the psychologist/client relationship existed between them.

5. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

6. 4 CSR 235-5.020(8)(D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or

otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

7. Respondent's conduct as set forth in Paragraph 4, above, constitutes a violation of 4 CSR 235-5.020(7)(A) and (8)(D), as set forth in Paragraphs 5 and 6, above.

8. The respondent's conduct, as set forth in Paragraph 4, above, constitutes a violation of § 337.035.2, RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychol-

ogists' as adopted by the department and filed with the secretary of state.

9. The respondent's conduct in initiating and engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

10. On or about January and March 1986, the respondent initiated and engaged in sexual contact with another female client in the course of his professional capacity as a licensed psychologist and during the time that the psychologist/client relationship existed between them. This client had, along with her husband, been a client of the respondent for approximately six years.

11. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

12. 4 CSR 235-5.020(8)(D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

13. Respondent's conduct, as set forth in Paragraph 10, above, constitutes a violation of 4 CSR 235-5.020(7)(A) and (8)(D), as set forth in Paragraphs 11 and 12, above.

14. The respondent's conduct, as set forth in Paragraph 10, above, constitutes a violation of § 337.035.2, RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychologists' as adopted by the department and filed with the secretary of state.

15. The respondent's conduct in initiating and engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

16. On or about June 1983 through August 1986, the respondent, in his professional capacity as a licensed psychologist, engaged in a psychologist/client relationship with another female client.

17. On or about January 1986, the respondent informed this female client that kissing and "light touching" between her and the respondent during their treatment sessions would help her overcome her problems related with intimacy. This contact initiated by the respondent included the respondent's kissing the client on her mouth and breasts and fondling her breasts and genitals. The respondent furthermore caused the client to have contact with his genitals.

18. 4 CSR 235-5.020(7)(A) states:

(A) Psychologists are continually cognizant of their own needs and of their potentially influential position vis-a-vis persons, such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid

dual relationships that could impair their professional judgement or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, research with and treatment of employees, students, supervisees, close friends, or relatives. Sexual intimacies with clients are unethical.

19. 4 CSR 235-5.020(8)(D) states:

(D) Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient.

20. Respondent's conduct, as set forth in Paragraph 1 above, constitutes a violation of 4 CSR 235-5.020(7)(and (8)(D), as set forth in Paragraphs 18 and 19, above.

21. The respondent's conduct, as set forth Paragraph 17, above, constitutes a violation of § 337.035. RSMo 1986, which states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161 [sic], RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter . . . 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 Standards for Psychologists' as adopted by the department and filed with the secretary of state.

22. The respondent's conduct in initiating and engaging in a sexual relationship with a client in his professional capacity as a licensed psychologist constitutes misconduct, unethical conduct and violates the professional trust and confidence that the client placed in him as a psychologist which professional trust and confidence is inherent in the psychologist/client relationship.

WHEREFORE, petitioner respectfully prays this Administrative Hearing Commission to conduct a hearing in this cause pursuant to §§ 621.015, et seq., RSMo 1986, and thereafter issue its findings of fact and conclusions of law that the psychologist license of respondent, Mordecai Magency, is subject to disciplinary action under § 337.035, RSMo 1986, by petitioner, State Committee of Psychologists, for violations of Chapter 337, RSMo.)

Respectfully submitted,

WILLIAM L. WEBSTER