

Before the
Administrative Hearing Commission
State of Missouri

00867



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

GARTH MATTHES,)

Respondent.)

No. 08-1443 PS

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On May 14, 2010, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary 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 § 337.035.2(13) and (15), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2009.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2009.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2009. We have no power to superintend 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 with such procedures.

SO ORDERED on May 18, 2010.


SREENIVASA RAO DANDAMUDI
Commissioner

Matthes acknowledges that he has received and reviewed a copy of the Complaint filed by the Committee in this case, and the parties submit to the jurisdiction of the AHC.

Matthes 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 Matthes by the AHC prior to the entering of its Order; the right to have all charges against Matthes proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Matthes; the right to present evidence on Matthes' own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial Commissioner concerning the complaint pending against Matthes; and the right to a ruling on questions of law by a Commissioner. Being aware of these rights provided Matthes by operation of law, Matthes knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law ("Joint Stipulation") and agrees to abide by the terms of this document as they pertain to Matthes.

Based upon the foregoing, the Committee and Matthes jointly stipulate to the following and request that the AHC adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the AHC's Findings of Fact and Conclusions of Law:

JOINT PROPOSED 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 executing and enforcing the provisions of Chapter 337, RSMo, as amended, pertaining to psychologists.

2. Matthes is licensed by the Committee as a psychologist, license number 00867 ("License"). Matthes' License was issued on or about February 4, 1980. Matthes' License has been inactive since December 5, 2007, but at all times relevant herein, Matthes' License was current and active.

3. Soulwork Associates ("Soulwork") was a clinical training program owned and operated by Matthes and his wife. Matthes was a trainer and facilitator for the group, holding weekly group sessions and other workshops, in which he presented information about selected psychology topics, and the group members, who are primarily clinical therapists, discuss related experiences. Group members paid Matthes to facilitate the group. Several group members were both trainees in the group and, at the same time, Matthes' individual therapy clients.

4. Matthes established a relationship of professional trust and confidence with both his individual therapy clients and his Soulwork group clinical training clients.

5. Matthes was aware of this relationship of professional trust and confidence with both his individual therapy clients and his Soulwork group clinical training clients.

6. In about July 1996, Matthes began a therapeutic relationship with a client, KVR, for the purpose of providing individual psychological therapy ("the Therapeutic

Relationship.”)

7. KVR primarily saw Matthes' wife in therapy sessions, but Matthes provided therapy sessions to KVR twice while Matthes' wife was unavailable.

8. During the Therapeutic Relationship with KVR, Matthes failed to keep complete professional records of therapy sessions, including failures to note (1) presenting problems, purposes and diagnoses; (2) assessments performed and evaluative results; (3) descriptions of services provided; (4) the nature, type and goals of psychological interventions; and (5) referrals or recommendations given. Instead, Matthes relayed information to his wife with the expectation that his wife would record such information in her notes.

9. KVR joined Soulwork as a member of the clinical training group (“the Training Relationship”) within a few months of the initiation of the Therapeutic Relationship. From 1996 to 2003 and from 2004 to 2005, KVR shared a dual relationship with Matthes, both as trainee and as therapy client. Matthes did not terminate the Therapeutic Relationship at any time during the Training Relationship.

10. During the course of the Therapeutic Relationship, Matthes arranged for KVR, as well as other clients and group members, to provide personal services, including personal shopping, at Matthes' home in exchange for either money or discounts on individual therapy or group training sessions. Matthes did not terminate either the Therapeutic Relationship or the Training Relationship at any time during these personal service relationships.

11. Matthes worked on a book during the course of the Therapeutic Relationship.

Matthes arranged for KVR to conduct research related thereto in exchange for office space in Matthes' home where KVR saw her own clients. Matthes did not terminate either the Therapeutic Relationship or the Training Relationship at any time during this professional relationship.

12. Matthes agreed, with his wife, to loan KVR \$1,000.00 to assist with moving expenses during the course of the Therapeutic Relationship. KVR subsequently repaid Matthes by check. Matthes did not terminate either the Therapeutic Relationship or the Training Relationship at any time during this financial relationship.

13. In about June 2005, KVR terminated her Training Relationship with Soulwork and her Therapeutic Relationship with Matthes and his wife.

14. On or about August 7, 2008, the Committee filed a complaint with the AHC in this matter.

15. Matthes retired from the practice of psychology in September, 2009, and his work with Soulwork has ceased.

16. Matthes' conduct, as described herein, constitutes a violation of any professional trust or confidence.

17. Matthes' failure to keep complete records of KVR's therapy sessions constitutes unethical conduct as defined in the "Ethical Rules of Conduct" as adopted by the Committee and filed with the Secretary of State and as set forth in Rule 20 C.S.R. 2235-

5.030(4)(A).²

18. Matthes' maintaining multiple relationships with KVR and other clients and group therapy members, as described herein, constitutes unethical conduct as defined in the "Ethical Rules of Conduct" as adopted by the Committee and filed with the Secretary of State and as set forth in Rule 20 C.S.R. 2235-5.030(6)(B)³ and (11).⁴

19. Matthes' conduct, as described above, constitutes a deviation from the standard of care, such that it demonstrates a conscious indifference to his professional duty, which would be expected of a reasonably competent psychologist under the same or similar circumstances.

JOINT PROPOSED CONCLUSIONS OF LAW

20. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045, RSMo (Cum. Supp. 2008) and 337.035.2, RSMo.

21. Matthes' conduct, as set forth in the Joint Proposed Findings of Fact, constitutes the violation of a professional trust or confidence, in violation of § 337.035.2(13),

² This Rule originally filed as 4 C.S.R. 235-5.030(3)(E)1, effective February 6, 1992, and moved to 20 C.S.R. 2235-5.030(3)(E)1, effective August 28, 2006. Rescinded and readopted as 20 C.S.R. 2235-5.030(4)(A) effective February 28, 2007, without substantive changes to the language of the Rule.

³ This Rule originally filed as 4 C.S.R. 235-5.030(4)(B), effective February 6, 1992, and moved to 20 C.S.R. 2235-5.030(4)(B), effective August 28, 2006. Rescinded and readopted as 20 C.S.R. 2235-5.030(6)(B) effective February 28, 2007, without substantive changes to the language of the Rule.

⁴ This Rule originally filed as 4 C.S.R. 235-5.030(9), effective February 6, 1992, and moved to 20 C.S.R. 2235-5.030(9), effective August 28, 2006. Rescinded and readopted as 20 C.S.R. 2235-5.030(11) effective February 28, 2007, without substantive changes to the language of the Rule.

RSMo.

22. Matthes' failure to keep complete records of his therapy sessions with KVR, as set forth in the Joint Proposed Findings of Fact, violates Rule 20 C.S.R. 2235-5.030(4)(A), Maintenance and Retention of Records, which states in pertinent part:

The psychologist rendering professional individual services to a client (or a dependent), or services to a third party payer, shall maintain professional records that include:

...

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

3. Any assessment including test results or other evaluative results obtained and any basic test data from which they were derived;

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

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

...

9. Notation of referrals given or recommended to the client;

10. Any releases executed by the client;

.....

23. Matthes' maintaining multiple relationships with KVR and other clients and group therapy members, as set forth in the Joint Proposed Findings of Fact, violates Rules 20

C.S.R. 2235-5.030(6), Multiple Relationships, and (11), Remuneration, which state in pertinent part:

(6)(B) Multiple Relationship Affecting Psychologist's Judgment. The psychologist shall not undertake or continue a professional relationship with a client when the objectivity or competency of the psychologist is, or could reasonably be expected to be impaired because of the psychologist's present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative or legal relationship with the client or a relevant person associated with or related to the client. If a dual relationship develops or is discovered after the professional relationship has been initiated, the psychologist shall terminate the professional relationship in an appropriate manner, shall notify the client in writing of this termination and shall assist the client in obtaining services from another professional.

...

(C) Prohibited Relationships. 1. The psychologist, in interacting with any current client . . . shall not enter into a financial or other potentially exploitative relationship with him/her/they. . . .

(11)(A) Financial Arrangements. . . . 3. The psychologist shall not exploit a client or responsible payor by charging a fee that is excessive for the services performed or by entering into a bartering arrangement in lieu of a fee.

...

(B) Improper arrangements. 1. The psychologist shall neither derive nor solicit any form of monetary profit or personal gain as a result of his/her professional relationship with clients or immediate ex-clients, beyond the payment of fees for psychological services rendered. However, unsolicited token gifts from a client are permissible.

....

24. Cause exists for the Committee to discipline Matthes' psychologist license pursuant to Rule 20 C.S.R. 2235-5.030(1)(D),⁵ Violations, which states in pertinent part: "[a] violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action"

25. Cause exists for the Committee to discipline Matthes' psychologist license pursuant to § 337.035, RSMo, which states in pertinent part:

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 . . . license required by this chapter or any person who has failed to renew or has surrendered the person's . . . license for any one or any combination of the following causes:

...

(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.

⁵ This Rule originally filed as 4 C.S.R. 235-5.030(1)(D), effective February 6, 1992, and moved to 20 C.S.R. 2235-5.030(1)(D), effective August 28, 2006. Rescinded and readopted as 20 C.S.R. 2235-5.030(1)(D) effective February 28, 2007, without changes to the language of the Rule.

JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the Disciplinary Order entered by the Committee in this matter under the authority of § 621.110, RSMo:

I. DISCIPLINE IMPOSED

- A. By agreement of the parties, Matthes' license as a licensed psychologist, license number 00867, is immediately CENSURED.

II. VOLUNTARY SURRENDER

- A. Matthes shall voluntarily surrender his Missouri license to practice psychology, license number 00867, to the Committee.
- B. To effect such voluntary surrender, Matthes shall, within fifteen (15) days of signing this Joint Stipulation, execute an Affidavit of Surrender and return that Affidavit of Surrender and all indicia of licensure, including wall hangings and pocket cards, to the Committee's Executive Director.
- C. Upon the Committee's receipt of this fully-executed Joint Stipulation, a fully-executed Affidavit of Surrender, and all Matthes' indicia of licensure, the Committee will file this Joint Stipulation at the Administrative Hearing Commission to resolve all issues in the litigation pending before the Administrative Hearing Commission.
- D. Matthes shall hereafter neither practice nor hold himself out as practicing psychology or any other mental health discipline, unless he re-applies for

licensure, complies with all requirements for licensure, and the Committee approves such an application for licensure.

III. GENERAL CONDITIONS

- A. Matthes hereby waives and releases the Committee, 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 attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under Title 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.
- B. The terms of this Joint Stipulation and Affidavit of Surrender are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation and Affidavit of Surrender 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.

- C. Each party to this Joint Stipulation agrees to pay their own fees and expenses incurred as a result of this case, its litigation, and its settlement.
- D. The parties to this Joint Stipulation understand that the State Committee of Psychologists will maintain this Joint Stipulation and Affidavit of Surrender as open records of the Committee as provided in Chapters 337, 610, and 620, RSMo, as amended. The Committee may disclose the fact of Matthes' voluntary surrender and the cause behind it, pursuant to Chapters 337, 610, and 620, RSMo, as amended.
- E. This Disciplinary Order will become effective immediately upon the issuance of the Consent Order of the AHC in this matter, without further action by either party.

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

LICENSEE

Garth Matthes MA

Garth Matthes, MA
License Number 00867

Date: 4-30-10

Complaint No. PY-07-04

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