

Before the  
Administrative Hearing Commission  
State of Missouri

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APR 12 1991

STATE COMMITTEE  
OF PSYCHOLOGISTS

DEPARTMENT OF ECONOMIC DEVELOPMENT, )  
STATE COMMITTEE OF PSYCHOLOGISTS, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
FRED NOLEN, )  
 )  
Respondent. )

No. 90-001125PS

ORDER OF DISPOSITION

On April 5, 1991, the parties filed with this Commission a "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and Department of Economic Development, State Committee of Psychologists, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law." Upon review of this document, the Commission finds that the parties have knowingly and voluntarily entered into a settlement in this matter and have freely waived their right to a hearing before this Commission and to a subsequent disciplinary hearing before the Department of Economic Development, State Committee of Psychologists. Further, upon review of the facts of the stipulation, agreed to by Respondent and therefore found to be true, it is the independent finding of this Commission that cause exists for Petitioner to take disciplinary action against Respondent's license under Sections 337.035.2 (13) and (15), RSMo 1986. Based upon this finding of cause for discipline, therefore, this Commission approves the agreement of the parties set forth in the attached stipulation.

Accordingly, this Commission, pursuant to 1 CSR 15-2.150(1), adopts the terms of the "Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and Department of Economic Development, State Committee of Psychologists, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law," filed by the parties. It is therefore ordered that this case be dismissed from this Commission's docket, effective this date.

DATED this 10 day of April, 1991.

  
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PAUL M. SPINDEN  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

FILED

APR 05 1991

ADMINISTRATIVE HEARING  
COMMISSION

DEPARTMENT OF ECONOMIC DEVELOPMENT )  
STATE COMMITTEE OF PSYCHOLOGISTS )  
3605 Missouri Boulevard )  
Jefferson City, Missouri 65101 )

Petitioner, )

v. )

No. 90-001125 PS

FRED NOLEN, )  
1005 Cherry - 211 )  
Columbia, Missouri 65201, )

Respondent. )

JOINT STIPULATION OF FACTS, WAIVER OF HEARINGS BEFORE  
THE ADMINISTRATIVE HEARING COMMISSION AND DEPARTMENT  
OF ECONOMIC DEVELOPMENT, 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 15-2.150(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 waive the right to a hearing and decision of the above-styled case by the Administrative Hearing Commission, and, additionally, the right to a disciplinary hearing before the Department of Economic Development, State Committee of Psychologists under § 621.110, RSMo 1986, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

1. Respondent, Fred Nolen, acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him; and subsequently, the right to a disciplinary hearing before the Department of Economic Development, State Committee of Psychologists at which time he may present evidence in mitigation of discipline. Being aware of these rights provided him by operation of law, the respondent 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 Department of Economic Development, 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 him.

2. Respondent acknowledges that he has received a copy of the Complaint filed with the Administrative Hearing Commission in this cause. For the purpose of settling this dispute, and not as an admission of guilt, Fred Nolen stipulates that certain of the factual allegations contained in the Complaint are true

and stipulates with petitioner that his license as a psychologist, numbered 776, is subject to disciplinary action by the Department of Economic Development, State Committee of Psychologists in accordance with the provisions of Chapter 621 and § 337.035, RSMo 1986.

3. For purposes of resolving this administrative matter, respondent does not contest or admit the validity or accuracy of certain of the allegations contained in the Complaint filed with the Administrative Hearing Commission in this cause, but for the purpose of resolving this administrative matter, respondent stipulates with petitioner that respondent's license as a psychologist, numbered 776, is subject to disciplinary action by the Department of Economic Development, State Committee of Psychologists in accordance with the provisions of Chapter 621 and § 337.035.2, RSMo 1986.

4. Based upon the foregoing, petitioner and respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt 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, Department of Economic Development-State Committee of Psychologists, is an agency of the state of Missouri created and established pursuant to Section 337.050, RSMo, for the purpose of administering and enforcing the provisions of

Chapter 337, RSMo, as it pertains to psychologists and the practice of psychology.

2. The respondent, Fred Nolen, is licensed by the State Committee of Psychologists. The respondent's Missouri license, numbered 776, was issued to the respondent on September 14, 1979, and has been current and active since that date.

3. The respondent was employed as a part-time instructor at Columbia College, Columbia, Missouri, during 1982 through 1984.

4. The respondent improperly engaged in a psychologist-client relationship with a woman who was a student in a class he taught at Columbia College. The psychologist-client relationship began during the time the client was still a student in the class taught by the respondent.

5. The psychologist-client relationship involved the diagnosis and treatment of the client by the respondent. The respondent treated this client from on or about March 7, 1984, through on or about July 3, 1984, and for part of this period the client was a student of respondent.

6. The Committee has duly promulgated 4 CSR 235-5.020 which is a regulation dealing with the ethical standards for psychologists.

7. 4 CSR 235-5.020(2) states: "Responsibility: In providing services, psychologists maintain the highest standards of their profession. They accept responsibility for the conse-

quences of their acts and make every effort to ensure that their services are used appropriately."

8. 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.

Emphasis added.

9. Section 337.035, RSMo 1986 (Supp. 1989), states, in pertinent part:

2. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 161, 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:

\* \* \*

(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.

10. The respondent's conduct, as set forth above, constitutes a violation of § 337.035.2, RSMo 1986 (Supp. 1989), as set forth in paragraph 9 above.

11. Cause therefore exists for the Committee and the Department to take disciplinary action against the respondent's license under § 337.035.2, RSMo 1986 (Supp. 1989).

Joint Proposed Conclusions of Law

1. This Commission has jurisdiction over this proceeding in that petitioner's Complaint presents a case wherein, under the law, a licensee by the Department of Economic Development, State Committee of Psychologists, may be revoked or suspended or wherein respondent, as licensee, may be placed on probation or censured. Sections 337.035, 621.045 and 621.110, RSMo.

2. Respondent's conduct, as established by the foregoing, violates the licensing laws and regulations pertaining to psychologists and the practice of psychology of this state, and falls within the intendments of Section 337.035.2(5), (6), (13) and (15), RSMo 1986 (Supp. 1989), which provides, in pertinent part, as follows:

2. The department may cause a complaint to be filed with the administration hearing commission as provided by chapter 161, 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:

(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.

Petitioner has, therefore, established cause to discipline the license of respondent.

Joint Agreed Disciplinary Order

1. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the petitioner in this matter under the authority of § 621.110, RSMo 1986:

A. Effective the date the Administrative Hearing Commission approves this order, Fred Nolen's psychology license, numbered 776, shall be placed on probation for a period of two (2) years.

B. During the two (2) years of probation, the respondent's practice of psychology shall be supervised by a licensed psychologist (hereinafter "supervising

psychologist") at the expense of the respondent and approved by the Committee, and further:

- (1) The respondent shall submit the names of two or more licensed psychologists to the Petitioner within 30 days of the effective date of this Agreement. The Petitioner shall determine which of the submitted names, if any, is acceptable. If none of the names are acceptable, the Petitioner shall appoint an acceptable licensed psychologist as the supervising psychologist.
- (2) The supervising psychologist shall assume full professional responsibility and control, and shall assume supervisory responsibilities of all cases on a weekly basis of not less than one hour of face to face contact.
- (3) The supervising psychologist shall submit a written report to the Petitioner no less than once every three months setting forth the nature of the supervision conducted by the supervising psychologist and the supervising psychologist's assessment of the respondent's practice as a psychologist.
- (4) It shall be the responsibility of the respondent to ensure that the supervising

psychologist submits all written reports to the Committee in a timely manner.

(5) 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 respondent shall:

(a) within three (3) 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 new supervising psychologist, advise the Petitioner in writing that he is needing to secure a new supervising psychologist and the reasons for such change; and

(b) within fourteen (14) 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 new supervising psychologist, initiate the

process of securing a supervising psychologist pursuant to and in accordance with the terms and conditions set forth in this stipulation.

C. Beginning six (6) months from the date the period of probation commences, the respondent shall have the right to petition and appear before the Petitioner to seek to have the terms of probation amended to a lesser degree.

D. During the period of probation, respondent shall pay all fees required for licensing and to maintain his license in a current and active state. During the period of probation, the respondent shall be entitled to engage in the practice of psychology, provided he adheres to all the terms of this Consent Order.

E. During the period of probation, respondent shall keep the State Committee of Psychologists apprised at all times in writing of his current home and work addresses and telephone numbers at each place of employment.

F. During the period of probation, respondent shall comply with all provisions of Chapters 337, RSMo, and all applicable federal and state laws, rules and regulations, and with all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

G. During the period of probation, respondent shall not serve in a supervisory capacity without prior approval of the State Committee of Psychologists.

H. During the period of probation, respondent shall undergo a psychological evaluation by a licensed psychologist specializing in the practice of clinical psychology (hereinafter referred to as the "evaluating psychologist") approved by the petitioner within ninety (90) days following the date this Consent Order becomes effective, and shall undergo a second psychological evaluation by a licensed psychologist specializing in the practice of clinical psychology (hereinafter "evaluating psychologist") approved by the petitioner within ninety (90) days but not less than thirty (30) days of the expiration of the period of probation. Prior to undergoing the psychological evaluations with the evaluating psychologist, respondent shall submit to the State Committee of Psychologists a list of not less than five (5) licensed psychologists specializing in the practice of clinical psychology for its approval. A written evaluation concerning respondent shall be submitted by the evaluating psychologist to the State Committee of Psychologists within thirty (30) days from the date of the psychological evaluation. It shall be the responsibility of the respondent to ensure that the evaluation is submitted by the evaluating psychologist to the State Committee of

Psychologists in a timely manner. The respondent shall bear the cost of the psychological evaluations. The "supervising psychologist" is not prohibited from serving as the "evaluating psychologist."

I. During the period of probation, respondent shall report to the State Committee of Psychologists in writing once every three (3) months, beginning three (3) months from the date this Consent Order becomes effective stating truthfully whether or not he has complied with all terms and conditions of this order.

J. During the period of probation, respondent shall make himself available for a personal interview to be conducted by a member of the State Committee of Psychologists or the Executive Director, State Committee of Psychologists to establish the respondent's progress during the period of probation. Respondent shall be given thirty (30) days notice before the date each and every personal interview is to be conducted.

K. If at any time during the disciplinary period the respondent removes himself from the state of Missouri, ceases to be currently licensed under the provisions of §§ 337.010 to 337.090, RSMo. or fails to keep the State Committee of Psychologists advised of his current place of employment and residence, the time of the absence or unlicensed status or unknown

whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

2. Upon the expiration of said two (2) years of probation, the respondent's license as a psychologist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Department of Economic Development, State Committee of Psychologists determines that the respondent has violated any term or condition of this Consent Order, the Department of Economic Development, State Committee of Psychologists may, in its discretion, vacate and set aside the discipline imposed herein, and may suspend, revoke or otherwise lawfully discipline the respondent.

3. No order shall be entered by the Department of Economic Development, State Committee of Psychologists pursuant to the preceding paragraph of this Consent Order without notice and an opportunity for hearing before the Department of Economic Development, State Committee of Psychologists in accordance with the provisions of Chapter 536, RSMo.

4. If the Department of Economic Development, State Committee of Psychologists determines that the respondent has violated a term or condition of this Consent Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Department of Economic Development, State Committee of Psychologists may elect to pursue any lawful remedies or

procedures afforded it and is not bound by this stipulation in its determination of appropriate legal actions concerning that violation.

5. 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 Department of Economic Development, State Committee of Psychologists, and Consent 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 the petitioner in this above-styled action.

RESPONDENT

Fred Nolen

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