FILED
JAN 26 1998
ADMINISTRATIVE HEARING COMMISSION

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

COMMITTEE FOR PROFESSIONAL COUNSELORS 3605 Missouri Boulevard Jefferson City, MO 65102 Petitioner,	)	
v.	)	Case No. 97-002002PC
DOUGLAS M. STRAUSS, Ph.D. 7040 Stanley St. Louis, MO 63143 Respondent.	)	

JOINT STIPULATION OF FACTS, WAIVER OF HEARING BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND COMMITTEE FOR PROFESSIONAL COUNSELORS 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 15-2.450(1)) and pursuant to the terms of § 536.060, RSMo 1994, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1994, 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 Committee for Professional Counselors under § 621.135, RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the professional counselor's license of Respondent for violations of statutes and regulations set forth below.

The 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 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, the Respondent, Douglas M. Strauss, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and Committee for Professional Counselors 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.

I

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. The Committee for Professional Counselors ("Committee") is an agency of the state of Missouri created and established pursuant to § 337.535, RSMo 1994, for the purpose of executing and enforcing the provisions of § 337.500 to 337.540 RSMo.

2. Douglas M. Strauss ("Respondent" or "Licensee") is licensed by the Committee as a professional counselor, License No. CS001477. Respondent's Missouri license is current and active.

3. Respondent was employed by University of Missouri-St. Louis until April, 1996. In that capacity, Respondent provided counseling services to individuals. Additionally, Respondent taught courses at the University, including Ethics.

4. From approximately February, 1995, to June, 1995, Respondent treated patient P.C.

5. From July, 1995, to April, 1996, Respondent and patient P.C. maintained a relationship in which they engaged in sexual intimacies.

6. From July, 1995, to April 1996, Respondent and patient P.C. maintained a social relationship.

7. Respondent mishandled the therapeutic boundary with patient P.C. and engaged in an unprofessional dual relationship with patient P.C.

8. Respondent's social relationship and sexual intimacies with P.C. constitute a violation of 4 CSR 95-3.060(2) and (3).

9. A licensed professional counselor has a professional trust or confidence towards his professional clients.

10. Respondent violated a professional trust or confidence by having a social and sexual relationship with P.C. within twenty-four months of the termination of the counseling relationship.

11. Respondent's social relationship and sexual intimacies with P.C. constitutes misconduct of Respondent in the performance of the functions or duties of a licensed professional counselor.

12. Respondent's social relationship and sexual intimacies with P.C. constitutes unethical conduct, as defined by 4 CSR 95-3.060(2) and (3).

JOINT PROPOSED CONCLUSIONS OF LAW

13. Cause exists for discipline against Respondent's professional counselor's license pursuant to § 337.525.2, RSMo 1994, which provides:

> 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 his certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> . . . .
>
> (5) . . . misconduct . . . 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 sections 337.500 to 337.540, or of any lawful rule or regulation adopted pursuant to this sections 337.500 to 337.540;

. . . .

(13) Violation of any professional trust or confidence;

. . . .

(15) Being guilty of unethical conduct as defined in the ethics standards for counselors as adopted by the committee and filed with the secretary of state.

14. 4 CSR 95-3.060 Canon 2 of the "Ethical Standards for Counselors" provides in pertinent part:

(2) A licensed professional counselor shall not enter into a social, business or financial relationship with a current client or with a person to whom the licensed professional counselor has rendered at any time within the previous twenty-four (24) months psychotherapeutic or other professional counseling services for the treatment or amelioration of emotional distress or behavioral inadequacy.

(3) A licensed professional counselor shall not engage in sexual intimacies with a current client or with a person to whom the licensed professional counselor has rendered at any time within the previous twenty-four (24) months psychotherapeutic or other professional counseling services.

15. "Sexual intimacies" is defined in 4 CSR 95-3.020(6) as:

(6) Sexual intimacies - physical or other contact by and/or between the licensed professional counselor and/or the client including, but not limited to:

(A) Sexual intercourse - any penetration or contact with the female sex organ by a finger, the male sex organ or any object;

(B) Sodomy - oral or anal copulation; or sexual intercourse between a person and an animal; or any penetration of the anal opening by any body part or object;

(C) Kissing, hugging or caressing by either the licensed professional counselor or the client;

(D) Touching by either the licensed professional counselor or the client of the other person's legs, stomach, chest, breasts, genitals or buttocks;

(E) Exhibitionism and voyeurism - exposing one's self or encouraging another to expose him/herself for the purpose of sexual gratification; or

(F) Deliberate or repeated comments, gestures or physical contacts or a sexual nature that exploit the professional relationship with the client.

16. Cause exists for Petitioner to take disciplinary action against the professional counselor's license of Respondent pursuant to § 337.035.2(5), (6), (13), and (15), RSMo 1994.

II

DISCIPLINARY ORDER

In light of the foregoing stipulation of facts, Respondent and the Committee hereby consent and agree to the following disciplinary action to be imposed against License No. CS001477 effective on the date stated herein.

1. By agreement of the parties, License No. CS001477 of Douglas M. Strauss is suspended for a period of three years beginning April 17, 1996, and ending April 16, 1999. Immediately following the termination of the period of suspension, Respondent's license is placed on probation for a period of five years. The terms of the disciplinary period are stated below.

A. During the period of suspension, Respondent shall not practice counseling as defined in Chapter 337. Respondent must renew his license annually and meet the requirements to maintain his license.

B. The probationary period shall run during any period of time that Respondent is engaged in the practice of professional counseling as defined in Chapter 337.

C. During the probationary period, Respondent's practice as a professional counselor shall be supervised by a licensed professional counselor, licensed psychologist, or psychiatrist approved by the Committee. At least sixty days before Respondent's entering practice as a professional counselor, licensee shall submit a list of five proposed licensed professional counselors, licensed psychologists, or psychiatrists to supervise Respondent's practice as a professional counselor. The Committee may approve a supervisor from this list or may require a second list of five potential supervisors which the licensee shall submit within twenty days of the Committee's request. Supervision includes full order and control of Respondent's practice of professional

counseling by the supervisor. Full order and control includes, but is not limited to, on sight face-to-face meetings twice a month for the first year of the probationary period and monthly thereafter for the remainder of the probationary period. Topics for discussion during supervision include case consultation and case management and control. The supervisor must also co-sign all reports and case notes and provide documentation that a review has occurred. Respondent shall be responsible for any payment associated with the supervision.

D. The approved supervisor shall submit quarterly progress reports to the Committee. Reports must be sent directly from the supervisor to the Committee. The supervisor shall answer questions submitted by the Committee. The Committee retains the right to determine, and if necessary, change the content of the questions on the report. Respondent is responsible for the supervisor meeting the specified deadlines. If the supervisor fails to submit a report by the deadline, the Committee shall notify Respondent. Respondent shall not be in violation of this provision unless no report has been received within 30 days of Respondent being notified.

E. In the event the supervisor becomes unable or unwilling to continue serving in his/her capacity as a supervisor or otherwise ceases to serve as a supervisor during the period of probation, the Respondent shall:

a) within three business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, advise the Committee in writing that he is needing to secure a supervisor and the reasons for such change; and

b) within twenty days of being notified of the supervisor's inability or unwillingness to continue serving as supervisor or otherwise learning of the need to secure a supervisor, submit names of five proposed replacement supervisors to the Committee pursuant to and in accordance with the terms and conditions set forth in this Order. After twenty days, the Respondent shall not practice professional counseling if he has not submitted such names.

F. Respondent may not serve as a supervisor for any counseling trainee, counseling intern, counseling resident, counseling assistant, counselor-in-training, provisional licensed professional counselor, or any other person undergoing supervision.

G. Respondent must keep the Committee apprised in writing at all times of his current home and work addresses and telephone numbers.

H. Respondent is required to pay all fees required by law to renew and keep current his professional counselor's license in Missouri.

I. Respondent is required to comply with all provisions of § 337.500 to § 337.540, RSMo, the rules and regulations duly promulgated by the Committee for Professional Counselors, and all state and federal laws.

J. Respondent must provide reports to the Committee of his compliance with this Order not later than the first day of January, April, July, and October each year of the probationary period. In these quarterly reports, Respondent shall describe how he is meeting the requirements of probation. If conditions are not being met, Respondent must submit a report immediately describing the problems and a plan to correct the problems. The Committee reserves the right to reject the plan and to implement corrective measures. During the period of suspension, and during any period in which the probation is not running pursuant to paragraph 1B of this Order, Respondent shall notify the Committee in writing of his current address and employment no later than the first day of January, April, July, and October of each year.

K. Respondent shall meet with the Committee at his expense at reasonable intervals as designated by the Committee, not to exceed once per calendar year.

L. During the first four years of the probationary period, Respondent shall not provide counseling services to females or groups exclusively comprised of females unless a co-therapist is present. Respondent may provide counseling to couples or to groups in which

women are present, provided that Respondent not be left alone with one or more females.

M. If Respondent is engaged in the practice of counseling, he must inform supervisors, employers, and co-therapists that he is under probation and supervision. If Respondent is not engaged in the practice of counseling, he shall have no obligation to inform his supervisor/employer of the discipline. Respondent shall attest to compliance, under oath, in his quarterly reports.

2. Upon the expiration of the disciplinary period, Respondent's license as a licensed professional counselor in Missouri shall be fully restored, provided that all provisions of this Order and all other requirements of law have been satisfied.

3. If the Committee determines that Respondent has violated a term or condition of his discipline, or has otherwise failed to comply with a provision of § 337.500 to § 337.540, RSMo, which violation would be actionable in a proceeding before the Committee, the Administrative Hearing Commission, or a circuit court, the Committee may elect to pursue any lawful remedies or procedures afforded to it, and is not bound by this Order in the selection of remedies concerning such violation.

4. Respondent 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 42 USC 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.

5. The parties to this Order understand that the Committee for Professional Counselors will maintain this Order as an open record of the Committee as provided in Chapters 337, 610, and 620 RSMo.

RESPONDENT

Douglas M. Strauss 1/12/98
Douglas M. Strauss date
Respondent

Lori J. Levine 1/17/98
Lori J. Levine, #26172 date
Carson & Coil
515 E. High Street
P.O. Box 28
Jefferson City, MO 65102
(573) 636-2177

COMMITTEE FOR PROFESSIONAL COUNSELORS

Loree Kessler 1/26/98
Loree Kessler date
Executive Director

Mark D. Schoon 1/26/98
Mark D. Schoon, #42848 date
Assistant Attorney General
Broadway State Office Bldg., 7th Floor
221 W. High Street
P.O. Box 899
Jefferson City, MO 65102
(573) 751-4087
(573) 751-5660 Facsimile

Before the
Administrative Hearing Commission
State of Missouri

COMMITTEE FOR PROFESSIONAL COUNSELORS,	)	
Petitioner,	)	
vs.	)	No. 97-002002 PC
DOUGLAS M. STRAUSS, PH.D.,	)	
Respondent.	)	

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 1996, gives us jurisdiction.

On January 26, 1998, the parties filed a "Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and Committee for Professional Counselors 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. We find that the facts stipulated are true. We conclude that the licensee is subject to discipline under section 337.035.2(5), (6), (13) and (15) RSMo, 1994. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order under 1 CSR 15-2.450(1)(B). We certify the record to the licensing agency under section 621.110, RSMo 1994.

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

SO ORDERED on February 2, 1998.

WILLARD C. REINE
Commissioner