

SETTLEMENT AGREEMENT BETWEEN THE STATE COMMITTEE OF
PSYCHOLOGISTS AND LEIGH ANN BERRY, PhD.

The State Committee of Psychologists of the State of Missouri (the “Committee”) and Leigh Ann Berry, PhD (“Dr. Berry” or “Licensee”) enter into this “Settlement Agreement Between the State Committee of Psychologists and Leigh Ann Berry, PhD” (the “Settlement Agreement”) to resolve the question of whether there is cause to discipline the psychologist license issued to Dr. Berry and if so, to agree on the appropriate level of discipline to impose on Dr. Berry’s psychologist license.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo¹, the parties waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri and the right to a disciplinary hearing before the Committee and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that she understands the various rights and privileges afforded to her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a hearing before the Committee at which time she may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against her license. Being aware of these rights provided to her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her. Licensee has

¹ All statutory references are to the Revised Statutes of Missouri (2016), as supplemented, unless otherwise indicated.

been advised of her right to consult with private legal counsel, at her expense, regarding this Settlement Agreement.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Committee in determining there is cause for discipline, along with citations to law and/or regulations the Committee believes were violated. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Committee that Licensee's license to practice as a psychologist is subject to disciplinary action by the Committee in accordance with the provisions of Chapters 324, and 621, RSMo, and Sections 337.010 through 337.345, RSMo.

Relevant Statutes

1. Section 337.035, RSMo, authorizes the Committee to discipline a psychology license and states, in relevant part:

1. The committee may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The committee shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621.

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

* * *

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

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

* * *

(13) Violation of any professional trust or confidence;

* * *

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

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the committee may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the department deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

2. Regulation 20 CSR 2235-5.030 sets forth the Ethical Rules of Conduct for psychologists and states, in relevant part:

(1) General Principles.

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

(B) Scope. The psychologist shall be governed by these ethical rules of conduct whenever providing psychological services in any context. These ethical rules of conduct shall apply to the conduct of all licensees and applicants, including the applicant's conduct during the period of education, training and employment which is required for licensure. The term psychologist, as used within these ethical rules of conduct, shall be interpreted accordingly whenever psychological services are being provided in any context.

(C) Responsibility for Own Actions. The psychologist, when functioning as a licensed psychologist, shall be fully responsible for his/her own professional decisions and professional actions.

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

* * *

(3) Competence.

(A) Limits on Practice. The psychologist shall limit practice and supervision to the areas in which competence has been gained through professional education, training derived through an organized training program and supervised professional experience. If important aspects of the client's problems fall outside the boundaries of competency, then the psychologist shall assist his/her client in obtaining additional professional consultation.

(B) Maintaining Competency. The psychologist shall maintain current competency in the areas in which s/he practices, through continuing education, consultation, other training, or any combination of these, in conformance with current standards of scientific and professional knowledge.

(C) Adding New Services and Techniques.

1. The psychologist, when developing competency in a new service or technique, shall engage in ongoing consultation with other psychologists or relevant professionals and shall seek appropriate education, training, supervised experience or all of the above in the new area, service or technique. The psychologist shall inform any client whose treatment will involve a newly developing service or technique of its innovative nature and the known risks associated with it, and of the client's right to freedom of choice concerning services received.

2. In those emerging areas without generally recognized standards for preparatory training, psychologists shall take reasonable steps to ensure the competence of their work and to protect clients/patients, organizational clients, and others from harm.

3. When assuming forensic roles, psychologists shall become familiar with the judicial or administrative rules governing the psychologists' roles and seek relevant consultation and training.

* * *

(4) Maintenance and Retention of Records.

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

1. Name of the client and other identifying information such as address, telephone number, age, and/or sex;
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;
6. The fee arrangement and documentation of discussion with client prior to initiation of services;
7. A copy of all test or other evaluative reports prepared as part of the professional relationship;
8. Notation and results of formal consults with other providers;
9. Notation of referrals given or recommended to the client;
10. Any releases executed by the client;

Jointly Stipulated Findings of Fact and Conclusions of Law

The parties agree and stipulate for the purposes of settlement to the following findings of fact and conclusions of law:

3. The Committee is an agency of the state of Missouri, created and established pursuant to Section 337.050, RSMo, for the purposes of executing and enforcing the provisions of Sections 337.010 through 337.090, RSMo.

4. Dr. Berry holds psychologist license number RO365 and has registered her address with the Committee in St. Louis, Missouri². This license has been current and active at all times relevant to this Settlement Agreement,

5. Upon the recommendation of the guardian ad litem in a divorce proceeding, Dr. Berry was retained to provide counseling to the children³ (the "Children").

6. Dr. Berry had previously provided psychological services for one of the Children.

²Licensee's address is on file with the Committee and is available upon request.

³Licensee has been provided with information to know the identities of the family involved. Names are not used to protect the family members' privacy.

7. Dr. Berry provided psychological services to the Children.
8. The Children's mother had heard rumors that the Children's father had been dating men.
9. The Children's mother drafted a script/letter to tell the Children that their father was dating men. Dr. Berry reviewed this script/letter and complimented the Children's mother on it.
10. Dr. Berry suggested the father tell the Children that he was dating men.
11. The Children's father never identified himself as gay.
12. The Children's father was under the care of a mental health professional and had a history of mental health care.
13. Dr. Berry had no previous experience nor had she sought out any method to obtain competency in the area of providing services to teen children in telling them about a parent in a same sex dating relationship.
14. Dr. Berry had no previous experience nor had she sought any method to obtain competency in the area of potential harm and complexities involved in the process of a father telling his family that he was gay.
15. Dr. Berry failed to take proper steps to ensure the safety of all involved in this family dynamic.
16. Dr. Berry failed to create and maintain professional records that contained required information including, not but limited to, "the presenting problem(s) or purpose or diagnosis", and "the nature, type and goals of any psychological interventions."
17. Since November 2019, Dr. Berry has been taking steps to close her practice no later than February 28, 2021.

18. Dr. Berry has advised the Committee she intends to relocate out of State soon after she closes her practice.

19. There is cause to discipline the psychologist license held by Dr. Berry pursuant to Sections 337.035.2 (5), (6), (13), and (15), RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of Sections 337 and 621.045.3, RSMo:

20. Licensee's license to practice as a psychologist is placed on **PROBATION** for a period of **TWO YEARS OR THIRTY (30) DAYS AFTER LICENSEE PROVIDES WRITTEN NOTICE TO THE COMMITTEE, INCLUDING DOCUMENTARY EVIDENCE, THAT SHE IS NO LONGER PROVIDING LICENSED SERVICES IN MISSOURI, WHICHEVER OCCURS FIRST**, from the effective date of this Settlement Agreement (collectively, the "Disciplinary Period"), subject to compliance with the following terms and conditions as set forth in this Settlement Agreement. During the Disciplinary Period, Licensee may engage in the practice of psychology, subject to compliance with the terms and conditions of the Disciplinary Period.

Terms and Conditions of the Disciplinary Period

21. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

- a. Licensee understands that her wall hanging license will indicate that her license is on probation. Licensee shall provide a copy of this Settlement Agreement to any patient/client who requests a copy;

- b. Licensee's Informed Consent for each client must include consent to allow their treatment records to be reviewed by the Committee or its representative;
- c. Licensee's practice as a professional psychologist shall be monitored on a weekly basis by a licensed psychologist (the "Monitor") who has been approved by the Committee. Licensee and the Committee have agreed upon a suitable monitor for Licensee to comply with the provisions of this section. If the approved monitor and Licensee terminate their monitoring relationship, Licensee shall immediately retain another monitor by submitting to the Committee the name, license number and a brief summary of the qualifications of any proposed new monitor for the Committee's review and approval. The Committee may request Licensee to submit the names of up to 3 proposed new monitors for approval. At no time shall Licensee practice without a Committee-approved monitor in place;
- d. The Monitor shall spend at least one hour per week in discussions with Licensee reviewing clinical issues, case management, other professional activities (such as, self-management, ethical issues, self-monitoring, mental status, behavioral status, etc.) by using HIPAA-compliant, synchronous video-conferencing during the pendency of the current novel coronavirus (COVID-19) pandemic, or in individual face-to-face meetings once the CDC determines the current pandemic is over;
- e. The Monitor shall provide the Committee with written compliance reports due on or before March 1, June 1, September 1 and December 1, but not earlier than 2 weeks before they are due, of each year during the Disciplinary Period. Licensee shall be responsible to ensure the Monitor provides these reports timely;
- f. Licensee shall bear all costs associated with the monitoring;

General Requirements

- g. Licensee may not serve as a supervisor for any psychological trainee, psychological intern, psychological resident, psychological assistant, or any person undergoing supervision during the course of obtaining licensure as a psychologist, professional counselor, or social worker;
- h. Licensee shall keep the Committee informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Committee in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Committee with her current and active e-mail address;
- i. Licensee shall comply with all applicable provisions of Chapters 337, RSMo, all Committee regulations and all federal, state and local laws and regulations related to practice as a psychologist;
- j. Licensee shall engage in no conduct that would give the Committee cause to seek authority to discipline from the Administrative Hearing Commission;
- k. Licensee shall meet in person with the Committee or any Committee representative at any such time and place as required by the Committee or its representative upon reasonable notice. Any such meetings shall be at the Committee's discretion;
- l. Upon the request by the Committee or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- m. Licensee shall renew timely all licenses, shall pay timely all fees required for licensure/ and shall meet all other requirements necessary to maintain all licenses

issued by the Committee current and active including not allowing any license to be suspended for failure to comply with any revenue law of the State. Licensee shall accept and cooperate with unannounced visits from the Committee, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period; and

- n. Licensee shall submit written compliance reports to the Committee no later than April 1, August 1, and December 1 during the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each compliance report shall report truthfully, completely, and accurately whether Licensee has been in full compliance with all terms and conditions of this Settlement Agreement and if she has not, provide a full and detailed explanation of the lack of compliance.

22. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement 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.

23. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Committee determines that Licensee has violated any term or condition of this Settlement Agreement, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

24. The Committee shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Committee in accordance with the provisions of Chapter 536, RSMo.

25. If the Committee determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in 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 its determination of appropriate legal actions concerning such violation(s).

26. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Committee may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license of Licensee. The Committee has continuing jurisdiction to hold a hearing to determine if a violation of the terms and conditions of the Disciplinary Period occurred.

27. Licensee, together with her heirs and assigns and her attorney(s), does hereby waive, release, acquit and forever discharge the Committee, its respective members and any of its employees, agents or attorneys, including any former Committee members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity

even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

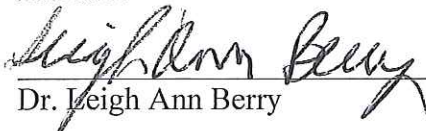
28. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

29. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, Third Floor, 131 West High Street, Jefferson City, Missouri 65102.

30. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Committee.


31. This Order of the Committee shall be maintained as an open and public record of the Committee as provided in Chapters 337, 610 and 324, RSMo.

Licensee



Dr. Leigh Ann Berry

Committee

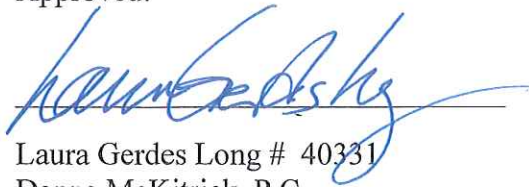


Pamela Groose
Executive Director
State Committee of Psychologists

Dated: 10/3/2020

Dated: 10-14-2020

Approved:



Laura Gerdes Long # 40331
Danna McKittrick, P.C.
7701 Forsyth Blvd, Suite 1200
St. Louis, Missouri 63105
314-726-1000 (voice)
314-725-6592 (fax)
llong@dmfirm.com

COUNSEL FOR LICENSEE



Sharon K. Euler # 42950
Division of Professional Registration
615 East 13th Street, Suite 501
Kansas City, Missouri 64106
(816) 889-3687 (voice)
(816) 889-2345 (fax)
Sharon.euler@pr.mo.gov

COUNSEL FOR THE COMMITTEE

EFFECTIVE: October 29, 2020

4814-3670-3949, v. 1

