

**SETTLEMENT AGREEMENT BETWEEN THE STATE COMMITTEE OF PSYCHOLOGISTS,
STATE OF MISSOURI AND BYRON C. ENGLISH, Ph.D.**

Come now Byron C. English, Ph.D. ("Licensee") and the State Committee of Psychologists, State of Missouri ("Committee") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a psychologist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo.

Licensee 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 a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; 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 Committee at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him 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 him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Committee in determining there was cause to discipline his license, 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, numbered 00450 is subject to disciplinary action by the Committee in accordance with the provisions of Chapter 621, and Sections 337.010 through 337.345, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Facts and Conclusions of Law

1. The State Committee of Psychologists ("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 Sections 337.010 through 337.345, RSMo.

2. Licensee Byron English, Ph.D. is licensed by the Committee as a psychologist License No. 00450. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about June 30, 2017, the Committee received a letter from Licensee. The letter stated he was retiring from the Department of Mental Health but "I was told the Southeast Missouri Mental Health Center may file a complaint against me." The letter stated that though a secretary recently reported he was sexually harassing her, "I have never said anything of a sexual nature to her and have never touched her in an inappropriate matter." The letter stated it could negatively impact his license "which I wouldn't let happen." The letter also stated that three of his co-workers wanted to undergo gastric bypass surgery and had to have a psychological evaluation before surgery that "indicated they were psychologically stable." The letter stated that he did them on break times and did not get paid for doing them but "shouldn't have had them typed at the mental health center."

4. On or about December 5, 2017, Licensee appeared before the Committee. During the appearance, Licensee testified under oath to the following:

- a. He wrote a letter to the Committee on June 30, 2017, at the request of Dr. Linda Moll, head of psychology at SMMHC. He stated he wrote the letter "because a secretary was saying I was essentially harassing her and I wasn't."
- b. He stated that he was never told the outcome of the charges of sexual harassment even though correspondence received by the Committee from SMMHC stated that the "allegations were substantiated." He stated he was curious to find out but he did not know what he did for the allegations to be substantiated so he quit and left SMMHC because he could retire. He stated he didn't have any particular time in mind to retire but that "got me out of a bad situation." He testified that the investigation did perpetuate him making the decision to retire. He stated he left because it was good timing to leave because the situation was messy.

- c. He wrote the letter because he "had done psychological evaluations on three ... women who wanted to undergo gastric bypass surgery ... they were colleagues ... I didn't charge them anything for doing that, but I did an evaluation on each one and ... submitted it to the doctor who was doing the surgery."
- d. SMMHC did not tell him what kind of sexual harassment it was and he was surprised.
- e. Regarding the evaluations of three coworkers for gastric bypass surgery, Licensee stated he did part of the evaluation at SMMHC and part at home. He stated he did a verbal evaluation with them, interviewed them, to see if there was "any symptomology present." He stated he "administered the MMPI to see if anything showed up on the MMPI" and because "none of the three had any problems", I "didn't have to go any farther than that." He stated he wrote a letter to the doctor doing the surgery and "that was the end."
- f. He stated the three were people he worked with and they "just asked if I would do that and I didn't have any problem with it." He did not talk with anybody at the facility that he was going to do the evaluations on his time at SMMHC and had his secretary do the final reports.
- g. He testified his typical job duties did not include pre-surgical evaluations and he had not done them in the past. He stated he was "looking for any type of mental or psychiatric disorder that the person might have had that could impact or have any concern." He stated he was not aware of guidelines for providers to follow when doing the evaluations.
- h. He testified that he did not think of a dual relationship because his co-workers were not his patients. He stated that even though he did a psychological evaluation on them, he "wouldn't consider them a patient" because he was "simply doing an evaluation that they needed." He stated it was different than doing one for members of the general public because "they were colleagues that I worked with for years." He stated he had no preexisting expectations about the results but if there were abnormal results he "would have talked with them about that."
- i. He stated he thought he got informed consent but could not provide a copy of it because SMMHC "made him leave all his paperwork there" when he retired. He stated he had no obligation to maintain any records on clients.

j. He stated he did renew his license and wanted to keep it active because he had several job possibilities.

5. On or about December 12, 2017, the Committee received a complaint from the Director of Psychology for the Southeast Missouri Mental Health Center (SMMHC) in Farmington, Missouri, stating that a female staff member at SMMHC alleged that Licensee sexually harassed her via email, on transcription tapes and in person. As a result of the complaint, the Committee initiated an investigation.

6. As part of the investigation, Division of Professional Registration Central Investigative Unit Investigator Nick McBroom met with the Director on February 1, 2018 about her complaint. The Director stated that Licensee "touched the female staff member's arm in a manner that made her feel uncomfortable and singled her out for gifts." She stated that he told the staff member "You are easy to look at" and "You are easy on the eyes in other ways too." The Director stated that the Department of Mental Health (DMH) conducted an investigation and confirmed that Licensee's actions constituted sexual harassment. The Director also stated that Licensee misused state resources by conducting personal assessments for co-workers, including using state materials, and asking other state employees to type the reports of his assessments. The Director stated this constituted a dual relationship. SMMHC asked Licensee to self-report his behavior to the Committee in lieu of SMMHC filing a formal complaint but when he did, Licensee denied harassing the female staff member and did not inform the Committee that the claims were substantiated. Licensee refused to report that the allegations were substantiated to the Committee so SMMHC filed the complaint on December 12, 2017. Due to Department of Mental Health guidelines, DMH could not release the result of the substantiated allegations or investigation to the Committee. DMH did provide copies of its policies related to sexual harassment and the code of conduct.

7. On or about January 25, 2018, Licensee responded to the complaint, again denying the allegations.

8. As part of the investigation, on February 6, 2018, Investigator McBroom also spoke with Licensee. Licensee stated he had a "good working relationship" with the secretary and made no inappropriate or sexually suggestive statements to her and never touched her inappropriately. He stated he never singled one out for a gift but would "thank them" with candy or flowers. He denied making the comment that his secretary was easy on the eyes but stated that if he would have ever said something like that he would have considered it

"a compliment." He stated he had a meeting with "some investigator" about the complaint against him but did not "hear back from HR." Licensee acknowledged that he'd read and reviewed DMH's sexual harassment policies.

9. As part of the investigation, Investigator McBroom interviewed the secretary who made the allegations against Licensee, K.J., by telephone. K.J. stated he started sexually harassing her almost two years ago. K.J. stated that in the beginning she thought if she kept the harassment quiet, "it would just go away." She stated Licensee made comments on the dictation tapes, in emails and in person such as "you're easy on the eyes and a good typist," "you're a good typist and good to look at." K.J. stated that on the dictation tapes, Licensee would say things such as what he would like to do to her but told her he would only tell her in person. K.J. stated at times he bought her chocolate and did not include the other employees in the office. She stated he would come by and pinch or touch her arm. K.J. stated that in early 2017, he made comments on a transcription tape and she told him he would have to stop. In response, K.J. stated that Licensee just chuckled. She stated she gave human resources copies of the emails, tapes and voicemails Licensee left for her.

10. Regulation 20 CSR 2235-5.030, Rules of Conduct, states, in relevant part:

(1) General Principles.

...

(B) Scope. The psychologist shall be governed by these ethical rules of conduct whenever providing psychological services in any contest. 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.

(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.

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(2) Definitions.

(A) Client – means a receiver of psychological services.

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(E) Professional relationship – means a mutually agreed upon relationship between a psychologist and a client(s) for the purpose of the client(s) obtaining the psychologist’s professional expertise.

(F) Professional service – means all actions of the psychologist in the context of a professional relationship.

...

(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 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.

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(6) Multiple Relationships

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(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.

11. Licensee’s conduct as described in paragraphs 3 through 9 above constitutes cause to discipline Licensee’s license pursuant to § 337.035.2(5), (6), (13) and (15), RSMo.

12. Cause exists for the Committee to take disciplinary action against Licensee’s license under § 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 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, assisting, or enabling any person to violate, any provision of this chapter, or 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.

Joint Agreed Disciplinary Order

Based upon 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 § 621.045.4, RSMo:

13. The terms of discipline shall include that the psychologist license of Byron C. English, Ph.D., license number 00450, shall be **VOLUNTARILY SURRENDERED IN LIEU OF DISCIPLINE**. The Voluntary Surrender in Lieu of Discipline shall be reportable discipline.

14. The parties to this Agreement understand that the State Committee of Psychologists will maintain this Agreement as an open record of the Committee as provided in Chapters 337, 610 and 324, RSMo.

15. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided 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.

16. Licensee, together with his heirs and assigns, and his attorneys, do 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 § 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 this settlement agreement. The parties

acknowledge 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 to be void or unenforceable.

17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, 131 West High St, Jefferson City, MO 65102.

18. If Licensee has requested review, Licensee and Committee jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Byron C. English
Byron C. English, Ph.D.

Date 9/3/18

COMMITTEE

Pamela Groose
Pam Groose,
Executive Director
State Committee of Psychologists

Date 9-4-2018

EFFECTIVE: September 19, 2018

