

SETTLEMENT AGREEMENT BETWEEN THE MISSOURI STATE
COMMITTEE OF PSYCHOLOGISTS AND HERMAN LUCKE

Herman Lucke ("Lucke") and the Missouri State Committee of Psychologists ("Committee") enter into this Settlement Agreement for the purpose of resolving the question of whether Lucke's license as a psychologist, no. 01499, will be subject to discipline Pursuant to § 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo. The Committee and Lucke jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Lucke 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 proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his 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 charges

pending against him, the right to a ruling on questions of law by the Administrative Hearing Commission, the right to a disciplinary hearing before the Committee at which time Lucke may present evidence in mitigation of discipline, the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Committee

Being aware of these rights provided to him by law, Lucke 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.

Lucke acknowledges that he has received a copy of documents that were the basis upon which the Committee determined there was cause for discipline, along with citations to law and/or regulations the Committee believes were violated. Lucke stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Committee that Lucke's license as a psychologist, license no. 01499, is subject to disciplinary action by the Committee in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 337, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Committee and Lucke in Part II herein is based only on the agreement set

out in Part I herein. Lucke understands that the Committee may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the Committee or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Committee and Lucke herein jointly stipulate to the following:

1 The Committee is an agency of the State of Missouri created and established pursuant to Chapter 337, RSMo, for the purpose of carrying out the provisions of Chapter 337, RSMo, relating to psychologists.

2. Herman Lucke, Ph.D is a natural person. Lucke was licensed by the Committee as a psychologist, License No. 01499 By letter dated, November 30, 2015, Lucke informed the Committee he was terminating his practice in Missouri and moving to another state to reside. In addition, Lucke did not submit documents to renew his license by January 31, 2016. Lucke, therefore, currently does not have a license to practice psychology in Missouri.

3. On or about January 20, 2014, the Committee received a complaint regarding Lucke from R.V R.V 's complaint alleged that Lucke was

involved in an inappropriate relationship with a client, V.P. The complaint also alleged that Lucke "did not do any meaningful therapy for V.P. while she was his client." R.V also alleged that he observed text messages between Lucke and V.P. that he believed were "inappropriate" and V.P. acknowledged to him (R.V) that she was having "a personal relationship" with Lucke while she was Lucke's client.

4. On March 10, 2014, the Committee received Lucke's written response to R.V's complaint. He stated that V.P is still his patient. He described the January 16, 2014, incident in the complaint. He stated he had not been to V.P.'s residence prior to that day or after it. He stated he heard "a heavy struggle inside." He stated V.P called out to him to help her He stated he called the police prior to going to her home. He stated that "as soon as I knew [V.P.] started drinking, shortly after January 13, [he] assisted her in obtaining treatment for her alcohol problem " He denied having a "personal or unprofessional" relationship with V.P

5 On April 1, 2014, Division of Professional Registration, Central Investigative Unit Investigator Kevan Lager met with the complainant, R.V R.V stated he was V.P.'s coworker and that he used to be a licensed social worker He stated he became friends with V.P over time and she confided in him about "psychological and emotional problems." R.V stated that V.P told

him she had been in treatment with Lucke for the last five years. R.V stated that V .P. did not report for work on January 14 or 15, 2014, so he went to her apartment to check on her. R.V. stated he found her "intoxicated, lying on the couch and unable to stand on her own." He stated that while he was there, V.P. received a text message from Lucke that stated "thinking of last night" and that Lucke "loved her " R. V stated that he typed back to Lucke on V .P.'s phone that he was going to report him to the APA. R.V stated he was at V.P.'s apartment when Lucke arrived and he "exchanged some words" with Lucke R.V. stated that V.P called out for Lucke because he (R.V.) did not want to let Lucke in her apartment. R.V stated he had not seen her since that night and was "only trying to help her." R.V. denied any other motive or sexual relationship with V .P

6. On April 11, 2014, Investigator Lager interviewed V.P. V.P. stated she worked with R.V and had befriended him because he was "safe" and she needed someone to drive her to appointments and work as she'd lost her driver's license as a result of multiple DUI convictions. She stated that R.V "had put more into their relationship" than she and that he was controlling. She stated that on the morning of January 16, 2014, R.V was in her apartment without her knowledge. She stated she had relapsed and was very intoxicated. She stated that R.V was upset and yelling at her and began

pushing her around. She stated she called Lucke for help because R. V. was demanding sex. She stated she did call out for Lucke when he arrived but denied anything but a professional relationship with him. She stated they did text message each other but it was also professional. She stated Lucke testified in court on her behalf to try and get her driver's license back and wrote a report her attorney used in court.

7 On May 16, 2014, Investigator Lager met with Lucke. Lucke stated his treatment of V.P. began as family therapy and then individual counseling. He stated he was treating her for PTSD and alcohol dependency. He stated that he did communicate with V.P. by text message. He stated on January 16, 2014, he received a voice mail from V.P. indicating she was in distress. When he texted her, he stated he received a message back that led him to believe something was wrong so he went to her apartment after calling 911. He stated when he arrived, V.P. asked for his help. He stated he advised R.V. that the police were on the way. He stated he attempted to get V.P. to "go to detox" prior to the January 16 incident but she would not. On that day, she did agree to go. He stated that he maintained a professional relationship with her. He stated he was helping her with her legal problems including testifying for her in March 2014 and writing a report on her behalf regarding restoring her driver's license.

8 Lucke also provided his client records for V.P. Lucke's records for November 15, 2013, state that V.P. had consumed alcohol for several days and was going to the hospital. Lucke described it as a "set back." On the same day, Lucke's notes reflect that V.P.'s criminal lawyer was requesting a letter from him regarding her therapy. The file also contained a letter Lucke wrote to the attorney dated November 20, 2013, in which Lucke stated that V.P.'s last withdrawal crisis was June 2013 and that she was "in full remission." The file also contained a letter dated January 12, 2014, to the judge in V.P.'s case. In the letter to the judge, Lucke stated she had "maintained 100% sobriety for more than five months." Lucke's records for V.P. did not reflect an informed consent document or documents regarding financial transactions.

9 On December 4, 2014, Lucke appeared before the Committee at their regularly scheduled meeting. Regarding the patient note on November 15, 2013, Lucke stated that he wrote "definitely intoxicated" in his notes of the session because "of [her] slurred speech and the way she was talking." He stated he later found out she was sick. He stated he did not go back and change his notes from that day. Likewise, other patient notes did not reflect that she was not drinking. He stated that a note from November 25, 2013, stated "stop drinking, continues with migraine. Able to quit after two days, two or three." The notes also said "[g]reat progress considering alcohol use for

a few days." He stated he wrote all this but only spoke with her on the phone. He stated he should have reported to the judge or changed the letter he wrote regarding how long she had been sober. He stated he was not certain she was drinking and to tell the judge anything other than he did if he was not certain would be too damaging to the patient. He stated if he had known she was drinking, he "maybe" could have communicated with the judge and "I admit that is something that I should have done. I didn't do it because I was too busy[]" Lucke stated he remembered telling the investigator that she had been drinking but he does not remember exactly why he said that. He stated that in his professional opinion, he should have told the judge about her relapse. Lucke also stated he had a great deal of empathy for V.P. He stated he did not document all text messages and phone calls with clients.

10. Regulation 20 CSR 2235-5 030 states, in relevant part.

...

(3) Competence

(A) Limits on Practice. The psychologist shall limit practice and supervision to 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.

...

(E) Sufficient Professional Information A psychologist rendering a formal professional opinion about a person, for example about the fitness of a parent in a custody hearing, shall not do so without direct and substantial professional contact with or a formal assessment of that person or a detailed explanation of why such contact did not occur

(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.

...

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

...

11 Records shall contain data relating to financial transactions between the psychologist and client, including fees assessed and collected,

12 Written informed consent must be obtained concerning all aspects of services including assessment and therapy;

...

14. Entries in the records must be made within ten (10) days following each consultation or rendition of service. Entries that are made after the date of service must indicate the date entries are made, as well as the date of service.

...

(13) Violations of Law

(A) Violations of Applicable Statutes. The psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology

(B) Use of Fraud, Misrepresentation or Deception. The psychologist shall not use fraud, misrepresentation or deception in

6. Reporting the results of psychological evaluations or services, or

7 Conducting any other activity related to the practice of psychology

11. Therefore, as a result of Lucke's conduct, as set forth in paragraphs 3 through 9 above, cause exists for the Committee to discipline Lucke's psychology license under § 337 035.2(5), (6), (13) and (15), RSMo.

12. Cause exists for the Committee to take disciplinary action against Lucke'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.

II.

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 § 536 060, RSMo, and §§ 621 045 4 and 621 110, RSMo

1. The terms of discipline shall include that Herman Lucke, in lieu of discipline, shall surrender his right to practice psychology in the State of Missouri, and further, he shall relinquish any right he has to restore his

license under Section 337.030, RSMo. This Voluntary Surrender in Lieu of Discipline shall be reportable discipline.

2. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning any future violations by Lucke of Chapter 337, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

3. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Committee or may be discovered.

4. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

5. 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.

6. The parties to this Settlement Agreement understand that the Committee will maintain this Settlement Agreement as an open record of the

Committee as required by Chapters 324, Chapter 337, and 610, RSMo, as amended.

7 Lucke, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Committee, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536 087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

8. Lucke understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination

that the facts agreed to by the parties constitute grounds for disciplining Lucke's license. If Lucke desires the Administrative Hearing Commission to review this Settlement Agreement, Lucke may submit his request to Administrative Hearing Commission, P O Box 1557, Jefferson City, Missouri 65102.

9 If Lucke 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 Lucke's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Committee may proceed to seek discipline against Lucke as allowed by law. If Lucke does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Committee.

LICENSEE

Herman Lucke

Herman Lucke

Date 1/27/17

STATE COMMITTEE OF PSYCHOLOGISTS

Pamela Groose

Pamela Groose, Executive Director

Date: 2-7-2017

EFFECTIVE: 2-22-2017

