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BRADLEY J. ZERNOV, PSY.D.,

FINAL DECISION AND ORDER

DENYING LICENSE

APPLICANT

LS0110184PSY

The parties to this action for the purposes of § 227.53, Stats., are:

Bradley J. Zernov, Psy.D.

8225 42nd Avenue

Kenosha, WI 53142

Psychology Examining Board

PO Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

PO Box 8935

Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in this matter, subject to the approval of the Psychology Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Bradley J. Zernov, Psy.D., Applicant, date of birth June 18, 1965, submitted an application for a license to practice psychology dated May 18, 1998.
2. Applicant received a doctor of psychology (Psy.D.) degree with a major in clinical psychology from the Wisconsin School of Professional Psychology, Milwaukee, Wisconsin on September 16, 1998.
3. On April 14, 1999, Applicant took and failed the Psychology EPPP examination, which is required for licensure.
4. On April 5, 1999, the Bureau of Health Service Professions sent Applicant a letter requesting that he notify the Bureau whether he wished to continue the credentialing process or whether he wished to withdraw his application.
5. On April 30, 2000, Applicant sent the Bureau a letter stating that he wanted to continue the credentialing process and that he intended to take the examination during the fall of 2000. Applicant has not retaken the EPPP exam.
6. On September 12, 2000, the Board requested that the Division of Enforcement investigate allegations that Applicant had a sexual relationship with a client while and subsequent to the time he was providing her with psychotherapy at an outpatient psychotherapy clinic certified by the Department of Health and Family Services pursuant to Wis. Adm. Code § HFS 61.95.
7. Applicant practiced as a psychotherapist at Covenant Counseling Associates (Covenant) in Kenosha, Wisconsin, an outpatient psychotherapy clinic certified by the Department of Health and Family Services

pursuant to Wis. Adm. Code § HFS 61.95.

8. On September 16, 1998, Ms. A, a 27-year-old married woman, began receiving psychotherapy from Applicant at Covenant. Ms. A sought therapy because she was depressed, had self-esteem issues and was having difficulty in dealing with everyday life. From the beginning of therapy, one of the issues discussed was Ms. A's relationship with her spouse. Applicant's initial diagnosis of Ms. A was adjustment disorder with depressed mood.

9. Applicant continued to provide psychotherapy to Ms. A until March 14, 2000. Billing records indicate that he provided her with 60 one hour psychotherapy sessions over those 19 months. Included in the 60 sessions were three couples counseling sessions with Ms. A and her spouse on December 16, 1998, June 23, 1999 and November 2, 1999.

10. Ms. A lived approximately 30 miles from Covenant. Sometime prior to December 14, 1999, Ms. A began sending Applicant e-mails as updates between sessions.

11. Although the initial exchanges of e-mail messages between Ms. A and Applicant related to their professional relationship, the e-mails gradually became more personal in nature. Applicant began sharing aspects of his personal life with Ms. A.

12. In approximately mid-December 1999, Applicant and Ms. A acknowledged to one another that they were becoming too close personally. They set an appointment to meet in person to discuss their relationship.

13. On December 12, 1999, Applicant noted in Ms. A's treatment record that:

- o Ms. A's spouse suspected her of having an affair.
- o He suspected that the affair was with Applicant.
- o Ms. A feared that if she separated from her spouse that her spouse would come after Applicant.

14. During a December 1999 session, Ms. A and Applicant discussed their feelings for each other and Applicant told Ms. A that he had fallen in love with her. Applicant also told Ms. A that, because of the change in their relationship, he should refer her to another therapist. However, Ms. A told Applicant that she would not see another therapist and Applicant agreed to continue to serve as her therapist. They agreed they would try to keep their relationship appropriate and professional.

15. In mid-January 2000, Ms. A separated from her spouse. On January 18, 2000, Applicant noted in Ms. A's treatment records that he supported her decision to divorce her spouse.

16. In February 2000, during an appointment in Applicant's office, Applicant and Ms. A engaged in physical contact for the first time. The contact involved Applicant and Ms. A holding each other's hands and Applicant stroking Ms. A's hair. Applicant talked about how deeply he was in love with Ms. A.

17. Applicant sent Ms. A two e-mail messages, an hour apart, on February 2, 2000. They said, in their entirety:

"I think it will be very hard for me when you are going through marriage counseling. I know you have already decided to and you probably should but I think it might be good then to take like a month off from your counseling with me (for my sake). I just don't think I could handle it right now, if things got better between you two with the way I feel about you. The idea just tears me up!!! I can't even bear it. But, I totally understand why you feel you need to. We can write more later. I'm going to go to the club to try to workout."

"Here's the problem I have. On sat (sic) you told him it was over. If you go to counseling it sends a mixed message. I am having a hard enough time with this. I feel sorry for him in some ways. Just like you said it is not easy to love another person's spouse. But I hate the mixed message part. As a counselor it eats at me big time."

18. Following the session in which they first had physical contact, Applicant's relationship with Ms. A progressed to the point of heavy petting and kissing in Applicant's office. Although most of their physical contact occurred in Applicant's office, Applicant and Ms. A also met on occasion at a local gym to work out together.

19. On March 14, 2000, Ms. A had a therapy session with Applicant. There was no discussion of termination of the therapy. He noted in her record:

"[Ms. A] is exercising more on her treadmill at home and is feeling better. She still has anxiety. She is unwilling to consider psychopharmacological intervention even though I do bring up the idea."

20. Immediately following the March 14, 2000 therapy session, Applicant and Ms. A went to the same gym to work out. While Applicant and Ms. A sat in Applicant's truck in the gym's parking lot hugging and kissing each other, a man unfamiliar to Applicant and Ms. A knocked on the window of the truck. When Ms. A rolled the window down, the man handed her a cell phone and told her that her husband was on the phone. The man had been hired by Ms. A's spouse to follow her.

21. Ms. A never saw Applicant for professional services after March 14, 2000. Applicant made no effort to formally terminate her therapy or refer her to another therapist.

22. Shortly after the March 14 incident, Applicant's spouse found out about his personal relationship with Ms. A. Applicant and Ms. A promised each other and their respective spouses that the relationship between Applicant and Ms. A would end.

23. Applicant and Ms. A did not speak to each other for a couple of weeks. However, despite his promise to end their relationship, Applicant began to frequently call Ms. A, crying and hysterical over his marital situation and the fact that he was still in love with Ms. A.

24. In April 2000, Ms. A agreed to meet Applicant at a shopping mall in Racine, Wisconsin. They met, as agreed, and drove around in Applicant's truck and talked. A couple of weeks later, Applicant and Ms. A again met at the mall and drove around together in Applicant's truck.

25. A short time after their last meeting at the mall, Applicant told Ms. A that he was no longer living with his spouse. Ms. A began seeing Applicant at his apartment a couple of times a week. Applicant and Ms. A first engaged in sexual intercourse on April 20, 2000.

26. Applicant provided Covenant with 3 months notice that he was resigning his position. In June 2000, a few weeks before the resignation was to take effect, Applicant's employer at Covenant became aware of allegations regarding Applicant's relationship with Ms. A. Applicant denied to his employer that he had any physical relationship with Ms. A. Applicant and his employer agreed that Applicant's resignation would become effective immediately on May 17, 2000.

27. From May 17, 1999 to the present, Applicant has also been employed at Southern Oaks Girls School in Union Grove Wisconsin, a juvenile correctional institution of the Wisconsin Department of Corrections (DOC). Southern Oaks is a secure facility for adolescent females who have been adjudicated delinquent.

28. Applicant and Ms. A's personal and sexual relationship continued until September 14, 2000. On that date, Applicant's spouse confronted Ms. A at Ms. A's home. Applicant's spouse told Ms. A that she and Applicant were getting back together and that they had sex the previous night. Ms. A was devastated because she and Applicant had sex the night before Applicant had sex with his spouse. Ms. A felt betrayed and became hysterical and bedridden.

29. Applicant continued to call Ms. A over the next few weeks. Applicant and Ms. A agreed that their relationship was to come to an end and that Applicant was going to try to reconcile with his spouse. Despite their agreement, Applicant continued to call and e-mail Ms. A on a regular basis. In October 2000, Ms. A saw Applicant on two occasions.

30. On December 20, 2000, Applicant sent Ms. A an e-mail using his DOC address, in which he:

- Responded to her telling him that she was reconciling with her spouse by saying "this has made a complete mockery of all the work we did together."
- Told Ms. A that his wife had been "hurt and devastated beyond belief," that she "cries often, is in horrible pain most of the time" and that Ms. A should consider apologizing to Applicant's wife for their relationship.

31. In an attempt to prevent Applicant from contacting her, Ms. A put blocks on her telephone and her computer. Applicant continued in his attempts to contact her. Ms. A retained an attorney and on February 7, 2001, the attorney sent Applicant a letter putting him on notice that he was to immediately cease and desist from any further attempts to contact Ms. A.

32. As recently as March 7, 2001, Applicant was driving slowly by Ms. A's church. When confronted by Ms. A's spouse, Applicant admitted that he was looking for Ms. A and said he was checking to see if she were going to church.

33. § 895.70(2)(a), Stats., creates a civil cause of action for sexual exploitation by a psychotherapist, and states:

"Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended." (emphasis added)

34. Applicant's conduct with Ms. A, as set out in paragraphs 18, 25 and 28 above, is in violation of § 895.70(2)(a), Stats.

35. § 940.22(2), Stats., makes it a felony offense for a psychotherapist to have sexual contact with a patient during the time they are in a psychotherapist-client relationship.

36. Applicant's conduct with Ms. A, as set out in paragraph 18 above, is in violation of § 940.22(2), Stats.

CONCLUSIONS OF LAW

1. The Psychology Examining Board has jurisdiction over this matter pursuant to §455.04(1) and 455.09(1), Stats.

2. The Psychology Examining Board has authority to enter into this stipulated resolution pursuant to §227.44(5), Stats.

3. Applicant, by having had sexual contact with Ms. A while she was his psychotherapy patient and within 6 months of termination of psychotherapy, has violated § 895.70(2)(a), Stats., a law the circumstances of which substantially relate to the practice of psychology, and subjects Applicant to denial of license pursuant to § 455.09(1)(g) Stats., and Wis. Adm. Code § PSY 5.01(5).

4. Applicant, by having had sexual contact with Ms. A while she was his psychotherapy client has violated § 940.22(2), Stats., a law the circumstances of which substantially relate to the practice of psychology, and subjects Applicant to denial of license pursuant to § 455.09(1)(g) Stats., and Wis. Adm. Code § PSY 5.01(5).

5. Applicant's conduct with Ms. A, as set out above, constitutes engaging in sexual contact and sexual conduct with a client during, and within 2 years after termination of, professional services and subjects Applicant to denial of license pursuant to § 455.09(1)(g) Stats., and Wis. Adm. Code § PSY 5.01(14).

6. Applicant's conduct with Ms. A, as set out above, constitutes a failure to avoid a dual relationship or a relationship that may impair Applicant's objectivity or create a conflict of interest and subjects Applicant to denial of license pursuant to § 455.09(1)(g) Stats., and Wis. Adm. Code § PSY 5.01(17).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Bradley J. Zernov's application for a license to practice psychology is hereby DENIED.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 18th day of October, 2001.

Barbara Van Horne, Ph.D.

Chairperson

Psychology Examining Board