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STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION
EXAMINING BOARD OF SOCIAL WORKERS
MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

BRADLEY J. ZERNOV, PSY.D.,
RESPONDENT

FINAL DECISION AND ORDER
LS0110253SOC

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

Bradley J. Zernov, Psy.D.
8225 42nd Avenue
Kenosha, WI 53142

Social Worker Section
Examining Board of Social Workers,
Marriage and Family Therapists and Professional Counselors
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 Social Worker Section. The Section 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., Respondent, date of birth June 18, 1965, was certified by the Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors as a social worker in the State of Wisconsin, pursuant to certificate number 407, which was first granted on August 2, 1993.
2. Respondent was granted certification pursuant to the grandparenting provisions of 1991 Act 160, §21(2)(a). Respondent had received a master of arts degree in counseling psychology from Trinity Evangelical Divinity School, Deerfield, Illinois on June 14, 1991.
3. Respondent has not renewed his certificate since it expired on June 30, 1999, but could renew it pursuant to §

440.08(3)(a), Stats. and Wis. Adm. Code § SFC 1.08(2) by payment of fees.

4. Respondent's last address reported to the Department of Regulation and Licensing is 5815 68th Street, Kenosha, WI 53142. The Division of Enforcement has determined that Respondent's current address is 8225 42nd Avenue, Kenosha, WI 53142.

5. Since becoming certified as a social worker, Respondent 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.

COUNTS I AND II

6. Respondent 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.

7. On September 16, 1998, Ms. A, a 27-year-old married woman, began receiving psychotherapy from Respondent 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. Respondent's initial diagnosis of Ms. A was adjustment disorder with depressed mood.

8. Respondent 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.

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

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

11. In approximately mid-December 1999, Respondent 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.

12. On December 12, 1999, Respondent 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 Respondent.
- o Ms. A feared that if she separated from her spouse that her spouse would come after Respondent.

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

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

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

16. Respondent 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."

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

18. On March 14, 2000, Ms. A had a therapy session with Respondent. 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."

19. Immediately following the March 14, 2000 therapy session, Respondent and Ms. A went to the same gym to work out. While Respondent and Ms. A sat in Respondent's truck in the gym's parking lot hugging and kissing each other, a man unfamiliar to Respondent 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.

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

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

22. Respondent and Ms. A did not speak to each other for a couple of weeks. However, despite his promise to end their relationship, Respondent 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.

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

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

25. Respondent 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, Respondent's employer at Covenant became aware of allegations regarding Respondent's relationship with Ms. A. Respondent denied to his employer that he had any physical relationship with Ms. A. Respondent and his employer agreed that Respondent's resignation would become effective immediately on May 17, 2000.

26. From May 17, 1999 to the present, Respondent 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.

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

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

29. On December 20, 2000, Respondent 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 Respondent's wife for their relationship.

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

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

COUNT III

32. § 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)

33. Respondent's conduct with Ms. A, as set out in paragraphs 17, 24 and 27 above, is in violation of § 895.70(2)(a), Stats.

34. § 895.70(2)(a), Stats., is a law the circumstances of which substantially relate to the practice of social work.

COUNT IV

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. Respondent's conduct with Ms. A, as set out in paragraph 17 above, is in violation of § 940.22(2), Stats.

37. § 940.22(2), Stats., is a law the circumstances of which substantially relate to the practice of social work.

CONCLUSIONS OF LAW

1. The Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has jurisdiction over this matter pursuant to § 457.26(2), Stats.

2. The Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has authority to enter into this stipulated resolution pursuant to § 227.44(5), Stats.

3. Respondent's conduct with Ms. A, as set out above, constitutes a failure to avoid a dual relationship or a relationship that may impair Respondent's objectivity or create a conflict of interest and subjects Respondent to discipline pursuant to § 457.26(2)(h) Stats., and Wis. Adm. Code § SFC 20.02(13). (Count I)

4. Respondent'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 Respondent to discipline pursuant to § 457.26(2)(h), Stats., and Wis. Adm. Code § SFC 20.02(11). (Count II)

5. Respondent, 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 social work, and subjects Respondent to discipline pursuant to § 457.26(2)(h), Stats., and Wis. Adm. Code § SFC 20.02(2). (Count III)

6. Respondent, 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 social work, and subjects Respondent to discipline pursuant to § 457.26(2)(h), Stats., and Wis. Adm. Code § SFC 20.02(2). (Count IV)

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The surrender by Bradley J. Zernov, C.S.W., of his certificate and his right to renew his certificate to practice as a social worker in the State of Wisconsin is hereby accepted, effective immediately.

2. If Respondent ever petitions the Section for any certification as a social worker:

a. Respondent shall be required to meet all requirements for that certification which are then required by statute and administrative rule, prior to being certified.

b. Respondent shall notify the Division of Enforcement (Division) of the request and the Division shall have the opportunity to apprise the Section of all allegations and information contained in the investigative file.

c. If the Section believes that it will be of assistance to the Section in responding to Respondent's petition:

i. Respondent shall, at his own expense, have undergone an assessment by a mental health care practitioner experienced in assessing health care providers who have become involved sexually with clients.

ii. The practitioner performing the assessment must have been approved by the Section or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the assessment being performed.

iii. Respondent shall provide the Section with the practitioner's written report and provide the Section with the opportunity to discuss the evaluation and findings with the practitioner.

d. Following the presentation of information by the Division and review of any assessment requested by the Section, the Section may in its sole discretion elect to certify Respondent, with or without limitations, or to deny Respondent's petition.

e. If Respondent believes that the Section's denial of certification is inappropriate or that any limitation imposed by the Section is inappropriate, Respondent may seek a class 1 hearing pursuant to § 227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Section's decision is arbitrary or capricious. The denial of certification or limitations on Respondent's certification shall remain in effect until there is a final decision in Respondent's favor on the issue.

f. Any petition for certification or request for approval of an evaluator, therapist, supervisor or educational program required by this order shall be mailed, faxed or delivered to:

Department Monitor

Department of Regulation And Licensing

Division of Enforcement

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

Fax (608) 266-2264

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

Dated at Madison, Wisconsin this 25th day of October, 2001.

Cornelia Gordon-Hempe

Chairperson

Social Worker Section