

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

PAUL M. SMERZ, PH.D.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

ORDER 0002195

Division of Legal Services and Compliance¹ Case No. 11 PSY 029

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Paul M. Smerz, Ph.D.
6110 N. Port Washington Rd.
Glendale, WI 53217

Division of Legal Services and Compliance
Department of Safety and Professional Services
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Psychology Examining Board
Department of Safety and Professional Services
1400 East Washington Avenue
P.O. 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 of this matter, subject to the approval of the Psychology Examining Board (Board). The Board has reviewed the attached Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Paul M. Smerz, Ph.D., (Respondent) was born on December 21, 1953 and is licensed to practice as a psychologist in the State of Wisconsin (license number 57-1242). This license was first granted on September 12, 1986 and is current through September 30, 2013.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

Respondent's most recent address on file with the Psychology Examining Board is 6110 North Port Washington Road, Glendale, Wisconsin 53217.

2. At all times relevant to this action, Respondent was employed as a licensed psychologist at Medical Psychology Associates, located in Glendale, Wisconsin.

3. This action relates to Respondent's performance of a custody evaluation only. At all times relevant to this action, Respondent did not regularly perform custody evaluations as part of his daily practice and does not intend to perform such evaluations in the future.

4. In 2010, Mr. A and Ms. B were in court proceedings for child custody. Dr. M.A. was appointed as an expert to assist the court in determination of proper placement for Mr. A and Ms. B's children.

5. Based on psychological testing, interviews of parties involved, and reviews of correspondences, hospital, court and police records and other materials, Dr. M.A. submitted a report to the court, recommending the children to be placed with Mr. A.

6. Ms. B was given an opportunity to have the child custody evaluation report reviewed by a psychologist. Respondent provided this service.

7. The family court ordered Respondent to review Dr. M.A.'s case files.

8. Respondent's review included examination of case files obtained from Dr. M.A.'s evaluation and interviews with Ms. B. Respondent did not interview Mr. A or any other individual involved.

9. On July 12, 2011, Respondent provided the court with a report of his review of Dr. M.A.'s child custody evaluation. Respondent's report stated, in part:

- a. "I do not agree, nor do I believe would the large majority of my professional colleagues, on the practice of re-testing individuals with psychological tests like the MMPI-2..." when discussing an alleged flaw in Dr. M.A.'s evaluation in re-testing Mr. A;
- b. "The following report is intended to convey a more thorough and accurately representative portrayal of [Mr. A] and [Ms. B]" when discussing detailed analysis of Mr. A and Ms. B's psychological findings;
- c. "This type of pattern is often associated with prominent hostility and paranoia of potentially delusion proportions. He is likely to be a hypervigilant individual who often questions and mistrusts the motives of others" when discussing results from Mr. A's testing results;
- d. "The Rorschach Inkblot test was administered to [Ms. B], but should not have been used in [Dr. M.A.'s] report, as he misrepresented her age when scoring

the test with the computer software program (indicating a birthdate [sic] of 5/15/2010)”; and

- e. “Given that the psychological test results clearly indicate that [Ms. B] appears to be significantly more psychologically healthy and well-adjusted than [Mr. A]...I would recommend that...the children should be placed with their mother on a primary placement basis...[and] visits with the father be regularly supervised by a neutral mental health professional.”

10. Respondent reported to the court that the majority view of the psychology profession is that re-administration of psychological tests is invalid, when in fact, this is the minority view.

11. Respondent admitted that he had not met with Mr. A. However, in his court report and testimony, Respondent shifted from describing the general personality associated with Mr. A’s test profile to diagnosing Mr. A with specific, adverse traits.

12. Rather than reviewing Dr. M.A.’s custody report, Respondent made contrary recommendations as to the placement of the children.

13. By failing to clarify the limits and intentions of his role, Respondent inadvertently provided a misleading report and testimony, which was not his intention.

14. Respondent had insufficient knowledge of the individuals involved to determine appropriate placement of Mr. A and Ms. B’s children.

CONCLUSION OF LAW

1. The Wisconsin Psychology Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 455.09(1), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described above constitutes unprofessional conduct as defined by Wis. Admin. Code § Psy 5.01(4) and (7) and subjects the Respondent to discipline pursuant to Wis. Stat. § 455.09(g).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Paul M. Smerz, Ph.D., (license no. 57-1242) is REPRIMANDED.

3. Within one hundred eighty (180) days of the date of this Order, Respondent shall successfully complete eight (8) hours of education on the role of a forensic psychologist offered by a provider pre-approved by the Board’s monitoring liaison, including taking and passing any exam offered for the courses:

- a. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.
- b. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.

4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this proceeding in the amount of \$2,000.00.

5. Request of approval of courses, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to provide evidence of satisfactory completion of the ordered education or pay the costs as set forth above in a timely matter, the Respondent's license (no. 57-1242) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has paid costs and submitted evidence of satisfactory completion of the ordered education.

7. This Order is effective on the date of its signing.

WISCONSIN PSYCHOLOGY EXAMINING BOARD

By: Bruce R. Edman P.D.
A member of the Board

December 5, 2012
Date