

STATE OF SOUTH DAKOTA  
BOARD OF EXAMINERS OF PSYCHOLOGISTS

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IN THE MATTER OF THE  
LICENSURE PROCEEDINGS

RE: JAMES IRA HESS,  
License No. 198,

STIPULATION AND ORDER

Licensee.

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WHEREAS, James I. Hess, Ed.D. ("Licensee"), is licensed to practice as a psychologist in the State of South Dakota and holds License number 198; and

WHEREAS, allegations have been made that beginning in January, 1987, and continuing through at least April, 1994, Licensee violated SDCL § 36-27A-28(1) and § 36-27A-28(6). Licensee admits that beginning in November, 1986, Licensee began providing psychology services to [REDACTED] and her husband [REDACTED]. Licensee admits that in September, 1987, Licensee employed [REDACTED] in his psychology office, which employment continued until October, 1988. Allegations were also made that Licensee continued to provide counseling service and supervision to [REDACTED] through 1988 and beyond. Licensee received reports from other care givers and mental health professionals providing services to [REDACTED] through 1988. Licensee admits that he kept no records of his psychology services provided to [REDACTED] other than ledger cards showing the alleged date of service, provider, and amount charged. [REDACTED] alleges that in November, 1987, Licensee entered into an intimate relationship with [REDACTED].

progressing to sexual intercourse at least by September, 1988, and continued until May 1, 1993. Licensee admits a sexual relationship with [REDACTED] commencing in the fall, 1989, continuing through May 1, 1993; and

WHEREAS, Licensee admits that he provided services to [REDACTED] from August, 1989, through at least February 4, 1991, and provided testing services in October, 1992, to [REDACTED] and that [REDACTED] was also a student of Licensee from 1990 to 1993 and that Licensee also had a financial arrangement with [REDACTED] investing [REDACTED] monies in a business venture from May, 1989, to May, 1994. Allegations have been made that Licensee engaged in sexual and physically intimate relations with [REDACTED] from November, 1990, through 1993, which allegations Licensee denies. Licensee admits that he kept no records of his psychology services provided to [REDACTED] other than ledger cards showing the alleged date of service, provider, and amount charged; and

WHEREAS Licensee admits that he counseled [REDACTED] in September, and October, 1984, and April, 1986. [REDACTED] alleges that Licensee also provided psychology services to her beginning in 1990, which Licensee denies. Licensee admits that in February, 1990, he hired Lee as an employee and in September, 1992, he entered into a business relationship with [REDACTED] wherein [REDACTED] managed one of Licensee's businesses. Licensee admits that in 1992 [REDACTED] was a student of Licensee. [REDACTED] alleges that beginning in 1991 and continuing through March, 1994, Licensee engaged in a physically intimate-sexual relationship with her. Licensee admits a sexual relationship with [REDACTED] commencing in 1992 and continuing through

March of 1994. It is alleged that such actions described in the above paragraphs violated the Code of Ethics in force for South Dakota practitioners as follows, thus violating SDCL §36-27A-28(6):

(1) Alleged violations of the APA Code of Ethical Principles of Psychologists (the Code in force from 1982 through October 30, 1991, in South Dakota):

(a) Violation of principle 1.f. providing that practitioners are alert to personal, social, and financial situations that may lead to misuse of their influence, which was violated by Licensee's entering into and continuing the sexual, social, personal, and financial relationships with [REDACTED]

(b) Principle 3b states that as employers, psychologists do not engage in or condone practices resulting in unjustifiable actions. The entering into and continuing of sexual and employer-employee relationships at the time [REDACTED] were counseling with Licensee, at Licensee's office, and Licensee was reviewing reports from other treating mental health professionals and supervising [REDACTED] counselors, and the entering into and continuing of sexual and financial relationships at the time [REDACTED] was counseling with Licensee, a student of Licensee, and Licensee was making investments for [REDACTED] violated this ethical principle.

(c) Principle 3d says that psychologists must act in accord with Association standards and guidelines relating to practice. Standards and Guidelines of the APA specifically the 1987 General Guidelines for Providers of Psychological Services and

the 1981 Specialty Guidelines for Delivery of Services by Counseling Psychologists, required maintenance of accurate current and pertinent documentation of essential clinical psychological services, maintenance for at least seven (7) years of the records, including four (4) years of full records, amelioration of conflicts of interest through peer review or consultation and restraint in bartering of services. Licensee's actions of exploitation of [REDACTED] sexually, failure to keep charts or other notes, and failure to consult with others concerning or avoid the dual relationships, with [REDACTED] and bartering of services with [REDACTED] violated this ethical principle.

(d) Principle 4 provides that "Individual diagnostic and therapeutic services are provided only in the context of a professional psychological relationship." Licensee's actions in discussing [REDACTED] situation with her and [REDACTED] situation with her in conferences Licensee has claimed were outside of a professional relationship violated this ethical principle.

(e) Principle 6.a. provides in part, "Psychologists are continually cognizant of their own needs and of their potentially influential position *vis à vis* person such as clients, students and subordinates. They aren't exploiting the trust and dependency of such persons." In his actions with [REDACTED] as a client, a student, and as an employee and with [REDACTED] as a client, investor and student, and with [REDACTED] as a client and an employee, Licensee violated this ethical principle.

(f) Principle 6.a. specifically provides that "Psychologists make every effort to avoid dual relationships that could impair their professional judgment or increase the risk of exploitation." Licensee's actions with [REDACTED] violated this ethical principle. The principle further lists a nonexclusive list of examples of dual relationship includes treatments of employees or close friends and states sexual intimacies with clients are unethical. Licensee violated this ethical principle.

(g) Principle 7.d. specifically provides that "Psychologists do not exploit their professional relationships with clients, supervisees, students, employees or research participants sexually or otherwise." Licensee's conduct with [REDACTED] [REDACTED] violated this ethical principle.

(2) Effective October 30, 1991, the Board adopted as its Code of Ethics the "AASP Code of Conduct," May, 1991. Alleged violations of the AASP Code of Conduct are:

(a) [REDACTED] was vulnerable to exploitative influence by Licensee from October 30, 1991, through May 1, 1993, at a time when Licensee engaged in a sexual relationship with [REDACTED] [REDACTED] was vulnerable to exploitative influences by Licensee from October 30, 1991, to 1993, at a time when Licensee engaged in a sexual relationship with [REDACTED] was vulnerable to exploitative influences by Licensee from October 30, 1991, to March, 1994, when Licensee engaged in a sexual relationship with [REDACTED]

(b) Principle 2.b. and 2.c. of the AASP Code provide that "The Psychologist, in interacting with a former client to whom the psychologist has at anytime within the previous twenty-four (24) months, rendered counseling, psychotherapeutic or other professional services for the treatment or amelioration of emotional distress or behavioral inadequacy, will not (1) engage in any physical behavior toward her which is sexually seductive; or engage in sexual intercourse or other physical intimacies with her; and that the twenty-four (24) month prohibition is extended indefinitely if the client is proven to be clearly vulnerable to exploitative influence by the psychologist." [REDACTED] were clearly vulnerable to exploitative influence by Licensee and Licensee's conduct with [REDACTED] [REDACTED] violated this ethical prohibition; and

WHEREAS, allegations have also been made that Licensee submitted billing records to the Board and in civil litigation purporting to show services provided in 1987 and 1988 by one of Licensee's employees, [REDACTED] to [REDACTED] which were initialed "PM" by someone other than [REDACTED] and were inconsistent with some of the dates [REDACTED] provided treatment to [REDACTED], thus violating SDCL § 36-27A-28(1). Licensee denies these allegations; and

WHEREAS, the Licensee recognizes and agrees that these matters, if proven, are of a nature which would constitute grounds for the discipline of his license to practice as a

psychologist in South Dakota under SDCL § 36-27A-28(1) and (6), and ARSD 20:60:07;  
and

WHEREAS, the South Dakota Board of Examiners of Psychologists (hereinafter "the Board") has a statutory obligation to protect the public health, safety and welfare set forth in SDCL § 36-27A, including the protection of the public from unsafe practices and practitioners; and

WHEREAS, the Licensee has requested the Board's Investigative Officer to present this Stipulation to the Board for action and recognize that the Board may approve this Stipulation, reject it, or modify it; and

WHEREAS, in the event the Board, in its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, this Stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party. Licensee agrees that if the Board rejects this Stipulation and the case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any of the records or information relating hereto; and

WHEREAS, a complaint has been filed against Licensee and a hearing examiner appointed, but the Licensee has expressed a desire to resolve this matter without the necessity of additional formal disciplinary proceedings and hearings; and

WHEREAS, it is the intent of this Stipulation to provide for a settlement of the licensing issues presented by the Licensee's conduct, in a professional manner, without the

necessity of further hearings and proceedings herein, to resolve the complaint against Licensee with no further involvement of the hearing examiner, and to provide for a responsible solution; now, therefore,

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. That the Board has jurisdiction over the person of the Licensee and the subject matter of this Stipulation.

2. Allegations have been made that beginning in January, 1987, and continuing through at least April, 1994, Licensee violated SDCL § 36-27A-28(1) and § 36-27A-28(6).

- a) Licensee admits that beginning in November, 1986, Licensee began providing psychology services to [REDACTED] and her husband [REDACTED]. Licensee admits that in September, 1987, Licensee employed [REDACTED] in his psychology office, which employment continued until October, 1988. Allegations were also made that Licensee continued to provide counseling service and supervision to [REDACTED] through 1988 and beyond. Licensee received reports from other care givers and mental health professionals providing services to [REDACTED] through 1988. Licensee admits that he kept no records of his psychology services provided to [REDACTED] other than ledger cards showing the alleged date of service, provider, and amount charged. [REDACTED] alleges that in November, 1987, Licensee entered into an intimate relationship with [REDACTED] progressing to sexual intercourse at least by September, 1988, and continued until May 1, 1993. Licensee admits a sexual relationship with [REDACTED] commencing in the fall, 1989, continuing through May 1, 1993.
- b) Licensee admits that he provided services to [REDACTED] from August, 1989, through at least February 4, 1991, and provided testing services in October, 1992, to [REDACTED] and that [REDACTED] was also a student of Licensee from 1990 to 1993 and that Licensee also had a financial arrangement with [REDACTED]

investing monies in a business venture from May, 1989, to May, 1994. Allegations have been made that Licensee engaged in sexual and physically intimate relations with from November, 1990, through 1993, which allegations Licensee denies. Licensee admits that he kept no records of his psychology services provided to other than ledger cards showing the alleged date of service, provider, and amount charged.

- c) Licensee admits that he counseled in September, and October, 1984, and April, 1986. alleges that Licensee also provided psychology services to her beginning in 1990, which Licensee denies. Licensee admits that in February, 1990, he hired as an employee and in September, 1992, he entered into a business relationship with wherein managed one of Licensee's businesses. Licensee admits that in 1992 was a student of Licensee. alleges that beginning in 1991 and continuing through March, 1994, Licensee engaged in a physically intimate sexual relationship with her. Licensee admits a sexual relationship with commencing in 1992 and continuing through March of 1994.
- d) It is alleged that such actions described in the above paragraphs violated the Code of Ethics in force for South Dakota practitioners as follows, thus violating SDCL §36-27A-28(6).
- e) Allegations have also been made that Licensee submitted billing records to the Board and in civil litigation purporting to show services provided in 1987 and 1988 by one of Licensee's employees, to which were initialed "PM" by someone other than and were inconsistent with some of the dates provided treatment to, thus violating SDCL § 36-27A-28(1). Licensee denies these allegations.

3. The Licensee has been given an opportunity to discuss this Stipulation with an attorney of Licensee's choice, and is aware of Licensee's right to a hearing in this matter, and

all rights under the United States and South Dakota Constitutions, laws, rules and/or regulations. Licensee hereby voluntarily waives all such rights to a hearing, notice, appearance, or any other rights under said Constitutions, laws, rules and/or regulations. Licensee is entering into this Stipulation voluntarily and without duress or compulsion. Licensee also agrees that the Board's Investigative Officer may present this Stipulation to the Board and disclose to the Board all items of his investigation, including, but not limited to, any communications with Licensee.

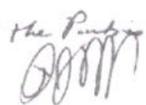
4. Licensee's license to practice as a psychologist shall be suspended indefinitely for a period from the date of this Order as described below. Licensee shall immediately furnish his license to the Board. Licensee may apply to have his license reinstated after a period of at least eighteen (18) months from the date this Order is approved by the Board, and the Licensee shall be reinstated after completion of the terms and conditions set forth in paragraph 5 below.

5. Conditions for Reinstatement. If the Licensee requests reinstatement, the Licensee shall bear the burden of presenting the information showing that his license should be reinstated [following the minimum eighteen (18) month period described in paragraph 4 above]. In order to prove that his license should be reinstated, Licensee must provide the Board with a written request for reinstatement.

In addition in Licensee's application for reinstatement, Licensee shall document compliance with the following:

- 1) Licensee shall sign a release of information for all documentation, including, but not limited to, progress notes, psychological evaluations, diagnoses, and treatment plans from any physicians, psychiatrist, psychologists, counselors, or other mental health professionals seen during Licensee's suspension and shall, prior to the application for reinstatement, provide copies of all records and documentation from said providers.
- 2) Licensee shall cause all his physicians, psychiatrists and psychologists to submit a report to the Board or a Board representative regarding the mental health status, treatment and prognosis in relation to Licensee's ability to safely practice as a psychologist. The reports shall provide and/or address:
  - a) Verification that the professional has seen a copy of the Stipulation and Order, and the Complaint filed against Licensee, and the Statement of ~~Facts~~ prepared by the parties; *Declarations of the Parties* 
  - b) Diagnosis and any treatment plan;
  - c) Licensee's ability to practice as a professional psychologist;
  - d) Any other information which the reporter believes would assist the Board in its ultimate review of the case.
- 3) Licensee shall furnish a recommendation by Gary Schoener, Walk-In Counseling Center, Minneapolis, Minnesota. It is anticipated that Mr. Schoener will furnish the initial assessment, to be paid for by Licensee, and the initial treatment plan. Licensee shall carry out the treatment plan with a therapist who is pre-approved by the Board. Following completion of the treatment plan, Schoener will conduct a re-evaluation. During treatment, the therapist will consult with Schoener on an as-needed basis. All costs of Schoener or the therapy will be paid by Licensee. Licensee recognizes that Schoener may conclude, after the initial assessment, that rehabilitation is impossible.

Before reinstatement, both the therapist and Schoener must prepare a report to the Board confirming that in the counselor's or therapist's unconditional opinion and evaluation, reinstatement of Licensee's license shall not present any danger of Licensee's inappropriate sexual behavior in the future to a reasonable degree of psychological certainty and that the goals set forth for the rehabilitation have been attained. The report shall also address:

- a) Verification that the therapist has seen a copy of this Stipulation and Order and the Complaint filed against Licensee and the Statement of ~~Facts~~; *Declarations of the Parties* 

- b) Licensee's ability to practice as a professional psychologist;
  - c) Diagnosis and any treatment plan;
  - d) Any other information which the therapist believes would assist the Board in its ultimate review of the case.
  - e) Any testing done with respect to Licensee's sexual behavior as requested by the therapist;
  - f) Documentation that Licensee has completed a specified structured treatment and rehabilitation program with documentation of the hours of treatment;
  - g) Whether the reporter would have any questions whatsoever of having his daughter or spouse see Licensee for private counseling.
- 4) Licensee will notify the Board in writing of any employment, including changes in employment.
- 5) In the event Licensee should leave South Dakota to reside or practice outside the State, Licensee shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside South Dakota will not apply to the reduction of any period of Licensee's suspended license in South Dakota.
- 6) Licensee shall arrange with a Board representative a pre-reinstatement meeting no sooner than forty-five (45) days and no later than fifteen (15) days prior to his application for reinstatement being heard at a Board meeting. It will be the obligation of the Licensee to schedule this meeting at such time and place as the designated Board representative would reasonably designate.

Furthermore, the Licensee will submit a self-evaluation report to the Board office. The report shall provide and/or address:

- a) Licensee's mistakes in judgment dealing with the particular case alleged in the Complaint;
- b) Licensee's understanding of inappropriate sexual behavior between psychologists and patients;

- c) Licensee's participation in a rehabilitation program;
- d) Licensee's professional employment status;
- e) Licensee's future professional goals for practice as a psychologist;
- f) Licensee's future personal goals;
- g) What Licensee has learned about himself after taking ethics training and counseling; and
- h) Any other information which the Licensee believes would assist the Board in it's ultimate review of the case.

References/resources utilized in the report shall be documented.

- 7) Licensee shall at any time during the period of suspension, report in person to such meetings of the Board or to its designated representatives as directed and otherwise fully cooperate with the Board or its representatives in the terms of this suspension, and shall appear in person before the Board to petition for reinstatement.
- 8) Licensee shall not violate any law or regulation regarding the practice of psychology or counseling.
- 9) Licensee shall notify the Board, in writing, within one (1) week of any change in employment, personal address and/or telephone number.
- 10) Licensee shall bear all Licensee's costs in carrying out the provisions of this Stipulation.
- 11) During the period of suspension, Licensee shall not provide psychological, mental health or any counseling services to any member or members of the public, regardless of whether or not Licensee holds himself out as a licensed psychologist, and regardless of whether or not Licensee is compensated for such services. This provision shall not prohibit academic advice or referrals pursuant to his job description in Licensee's current employment at Black Hills State University.

6. Additional Probation After Reinstatement. If the Licensee is reinstated, Licensee will be placed on probationary status for an additional period of reasonable

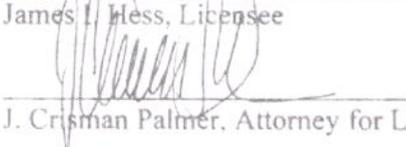
duration, terms and conditions which may be set by the Board in its discretion upon granting the reinstatement. Such terms and conditions may include practice restrictions, supervision, disclosures to future patients, and/or monitoring.

7. It is further stipulated and agreed that this Stipulation is being entered into voluntarily by the Licensee and without threats or coercion and is entered into after the Licensee has been given ample opportunity to consider these matters and to discuss this Stipulation with an attorney of Licensee's choice and that the Licensee has a full understanding of the legal consequences of this Stipulation and of the Licensee's rights to a formal hearing on these matters, which rights are hereby waived by the signing of this Stipulation.

NOW, THEREFORE, the foregoing Stipulation is entered into and is respectfully submitted to the Board with the request that the Board adopt its terms as an order of the Board in the above matter.

Dated this 31 day of Dec, 1996.

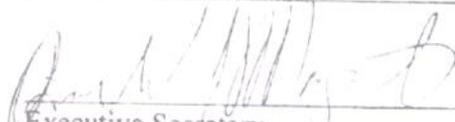
  
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James I. Hess, Licensee

  
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J. Crisman Palmer, Attorney for Licensee

The South Dakota Board of Examiners of Psychologists' meeting on the 7<sup>th</sup> day of February, 1997, (approved)(rejected) the attached Stipulation (as written) (with the following modifications):

and issued its order consistent herewith as follows:

IT IS HEREBY ORDERED that the above Stipulation is adopted shown herein by the South Dakota Board of Examiners of Psychologists as an Order of the Board this 7 day of February, 1997, by vote of 3-0.

  
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Executive Secretary  
*Director*