

FINDINGS OF FACT

1. The Board has jurisdiction to decide this matter, conduct a hearing, and impose discipline upon Respondent's Psychology license in accordance with Indiana Code § 25-1 *et. seq.* and Indiana Code § 25-33-1-3. Respondent was provided adequate notice of the final hearing in accordance with Indiana Code § 4-21.5-3-8 and Indiana Code § 4-21.5-3-20.
2. The Respondent's address on file with the Board is 9776 Old Orchard Court, Terre Haute, Indiana 47805, and he is a duly licensed Psychologist in the State of Indiana having been issued license number 20010310A.
3. The State of Indiana, ("Petitioner") filed an administrative complaint against the Respondent's Psychology license on July 8, 2003.
4. The Respondent has been a Professor at Indiana State University ("ISU") since 1976 and was so employed at all times relevant herein.

COUNT I

1. The Respondent clinically supervised and taught S.H., a doctoral student at ISU, from 1994 through 1999.
2. In September of 1994, the Respondent entered the office of S.H. without knocking and began massaging his shoulders with both hands.
3. In the fall of 1995, the Respondent pinched the buttocks of S.H., while S.H. was in the psychology department mailroom.
4. During the same semester the Respondent again pinched S.H., on the buttocks while he stood in the doorway of his office.

5. The Respondent also touched and tickled S.H.'s stomach and placed his arm around S.H. as they walked during S.H.'s time as a graduate student.

6. The Respondent made several inappropriate comments to S.H., during S.H.'s academic career including requesting S.H. to describe his first masturbation experience and inquiring about S.H.'s "wet dreams."

7. In the spring of 1996, S.H. asked the Respondent for advice regarding potential positive reinforcement for a student S.H. was working with as a clinical assignment in one of the Respondent's classes. Respondent replied, "You'll have to find that out from her. Maybe she'll say that giving you a blow job would be reinforcing."

8. While the Respondent was the clinical supervisor of S.H. in the summer of 1996, he inquired if S.H. was circumcised.

9. In the fall of 1996, Respondent held a meeting with several students. S.H. asked the Respondent what the group would be doing during the meeting and Respondent replied, "We'll be having a circle jerk."

10. In the summer of 1996, when S.H. was wearing a pair of shorts the Respondent looked up and down his legs then asked him how far up the hair on his legs extended.

11. In June of 1996, the Respondent requested that S.H. serve as one of the research participants in Respondent's ejaculatory latency research project and gave S.H. a tour of the research lab.

ULTIMATE FINDINGS OF FACT COUNT I

1. The above conduct constitutes a violation of Ind. Code § 25-1-9-4(a)(5) in that the Respondent has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public.

2. The above conduct also constitutes a violation of Ind. Code § 25-1-9-4(a)(3) in that the Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 868 IAC 1.1-11-2(h) in that a psychologist shall not unjustly exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as students or supervisees and 868 IAC 1.1-11-4.1(j) in that a psychologist shall not engage in lewd or immoral conduct.

COUNT II

1. In the fall semester of 1996 the Respondent invited M.M., an undergraduate student at ISU, to participate in his ejaculatory latency research.

2. Respondent was aware that M.M. was taking medication, which disqualified him as a research candidate. Despite this knowledge, Respondent brought M.M. to the laboratory for the purpose of measuring his sexual response and timing his ejaculation. There was no scientific purpose for the procedure, as the results could not be used for research.

3. Respondent informed M.M. that his genitals would only be viewed once during the experimental procedure and M.M. signed a written consent to that effect.

4. During the procedure the Respondent both viewed and touched M.M.'s penis at least eight times during a two-day period without notice and for vague and ambiguous reasons.

5. During the procedure the Respondent also made several inappropriate comments to M.M. regarding ejaculate.

6. Two days after the procedures occurred the Respondent tickled the sides of M.M.'s abdominal area, while M.M. was at a water fountain in the Psychology Department. This incident caused M.M. discomfort and distress and prompted him to report the incident to the school.

ULTIMATE FINDINGS OF FACT COUNT II

1. The above conduct constitutes a violation of Ind. Code § 25-1-9-4(a)(3) in that the Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 868 IAC 1.1-11-2(h) in that a psychologist shall not unjustly exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as students or research participants.

2. The above conduct also constitutes a violation of Ind. Code § 25-1-9-4(a)(3) in that the Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 868 IAC 1.1-11-4.1(l) in that a psychologist shall exercise reasonable care and diligence in the conduct of research and shall utilize generally accepted scientific principles and current professional theory and practice.

3. The above conduct also constitutes a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that the Respondent has continued to practice although the practitioner has become unfit to practice due to failure to keep abreast of current professional theory or practice.

COUNT III

1. The State did not prove through clear and convincing evidence that the practitioner committed the acts alleged in Count III and therefore the Board dismisses Count III of the State's Complaint.

COUNT IV

1. The Respondent taught and academically advised C.J., a student at ISU in the fall of 1999 and the spring of 2002.

2. The Respondent questioned C.J. about his personal sexual activities and his ejaculation habits during their first meeting as academic advisor/student. The Respondent queried C.J. about participating in his research experiments.

3. C.J. again met with the Respondent in the spring of 2002, the Respondent again queried him about participating in his research experiments. C.J. did not commit to participation. As C.J. was leaving the meeting the Respondent patted him on the buttocks.

4. During the spring of 2002, the Respondent encountered C.J. at his place of employment, Menards, and placed his hand on C.J.'s shoulder and again patted his buttocks.

5. Near the end of the spring semester at ISU, C.J. went to see the Respondent in order to schedule his classes for the following semester and informed the Respondent about a problem he was having with another professor.

6. The Respondent again queried C.J. about his sexual activities, specifically his masturbation habits. Respondent also asked C.J. to keep him informed regarding his disciplinary problem.

7. A few days later C.J. informed the Respondent that he had to appear before the Vice President of Student Affairs. The Respondent told C.J. he would accompany him in order to make sure all his rights were protected and he didn't get into too much trouble. He then asked C.J. to join him in his laboratory.

8. In the laboratory, the Respondent asked C.J. to help him design a more ergonomic chair for participants in his research experiment. C.J. agreed and the Respondent then instructed him to disrobe from the waist down and sit on a piece of paper that was on a chair.

9. The Respondent then outlined C.J.'s legs, buttocks, and testicles. The Respondent then told C.J. he should participate in his research experiment.

10. The Respondent then accompanied C.J. to a hearing before the Vice President of Student Affairs. Afterwards, the Respondent arranged a time for C.J. to participate in the research experiment.

11. On June 7, 2002, C.J. went to the Respondent's laboratory and participated in the research experiment. After C.J. ejaculated the Respondent entered the room and began to wipe ejaculate off C.J.'s penis and instructed C.J. to perform the experiment a second time.

12. The Respondent then instructed C.J. to masturbate and stayed in the room while C.J. began the experiment a second time.

13. At the conclusion of the second experiment, the Respondent again entered the room and removed the rubber band from C.J.'s penis. The Respondent then commented on the size of C.J.'s penis saying, "You are pretty big."

14. The Respondent then attempted to contact C.J. on several occasions and have him join his research team.

ULTIMATE FINDINGS OF FACT COUNT IV

1. The above conduct constitutes a violation of Ind. Code § 25-1-9-4(a)(5) in that the Respondent has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public.

2. The above conduct also constitutes a violation of Ind. Code § 25-1-9-4(a)(3) in that the Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question, to wit: 868 IAC 1.1-11-2(h) in that a psychologist shall not unjustly exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as students or research participants and 868 IAC 1.1-11-4.1(j) in that a psychologist shall not engage in lewd or immoral conduct and 868 IAC 1.1-11-4.1(l) in that a psychologist shall exercise reasonable care and diligence in the conduct of research and shall utilize generally accepted scientific principles and current professional theory and practice.

3. The above conduct also constitutes a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that the Respondent has continued to practice although the practitioner has become unfit to practice due to failure to keep abreast of current professional theory or practice.

CONCLUSIONS OF LAW

1. Respondent's failure to comply with the above referenced standards is cause for disciplinary sanctions which could include censure, a letter of reprimand, a fine

up to the amount of \$1000.00 per count, probation, suspension, or a revocation of license as detailed at Ind. Code § 25-1-9-9 and 25-33-1-3.

ORDER

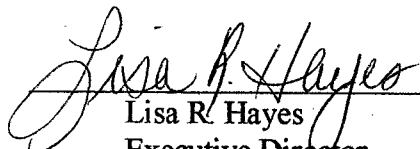
Based upon the above Findings of Fact, Ultimate Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. Respondent's Indiana Psychology license is hereby **REVOKED** per Ind. Code § 25-1-9-9(1).
2. Respondent is ordered to pay for the costs of the proceedings per Ind. Code § 25-1-9-15.
 - a. Costs payable under Ind. Code § 25-1-9-15(1), (4), & (6) totaling five hundred and seventy five dollars and four cents (\$575.04) are to be sent to the Health Professions Bureau.
 - b. Costs payable under Ind. Code § 25-1-9-15(2), (4), (6), & (8) totaling two thousand three hundred and fifty dollars and twenty cents (\$2350.20) are to be sent to the Office of the Attorney General.

SO ORDERED, this 28th day of January, 2004.

INDIANA STATE PSYCHOLOGY
BOARD

By:



Lisa R. Hayes
Executive Director
Health Professions Bureau

Distribution attached:

Copies to:

Jerome A. Cerny, Ph.D.
9776 Old Orchard Court
Terre Haute, IN 47805

**SENT CERTIFIED MAIL NO. 7001-2510-0001-2619-6667
RETURN RECEIPT REQUESTED.**

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BEFORE THE INDIANA
STATE BOARD OF NURSING
CAUSE NO. : 2003 NB 0068

STATE OF INDIANA,

Petitioner,

v.

JEROME AUGUST CERNY, Ph.D., R.N.,
License Number: 28086391A,

Respondent.

FINAL ORDER

FILED
JUN 23 2004
HEALTH PROFESSIONS
BUREAU

Laurie Peters, R.N., Carolyn Slagle, R.N., and Anne Parker, R.N., designated by the Indiana State Board of Nursing ("Board"), pursuant to IC 4-21.5-3-9 to act as an administrative law judges ("ALJ"), held an administrative hearing on May 3, 2004, in the Conference Room of the Health Professions Bureau, Indiana Government Center South, 302 West Washington Street, Room W064, Indianapolis, Indiana concerning the complaint filed against Jerome August Cerny, Ph.D., R.N., by the state on July 2, 2003.

A copy of the ALJ's Recommended Findings of Fact, Conclusions of Law and Order is attached hereto as Exhibit A and made a part hereof.

Counsel for the State of Indiana, Sara Matticks, and counsel for the Respondent, John Ittenbach, waived the eighteen (18) day appeal period.

Pursuant to IC 4-21.5-3-29(c) the Board, by a vote of 6 to 0 at its meeting of June 17, 2004, hereby affirms said Recommended Findings of Fact, Conclusions of Law and Order and adopts it as a final order in this proceeding.

Respondent's license is placed on INDEFINITE PROBATION.

ISSUED this 23rd day of June, 2004.

INDIANA STATE BOARD OF NURSING

By: Bonnie M. McElroy

Lisa Hayes
Executive Director
Health Professions Bureau

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