

BEFORE THE INDIANA STATE
PSYCHOLOGY BOARD
CAUSE NUMBER: 2005 ISPB 0001

STATE OF INDIANA

Petitioner,

v.

SUSAN E. SPENCER
License Number: 20040523,

Respondent.

FILED

SEP 28 2006

Indiana Professional
Licensing Agency

**FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

The Petitioner, the State of Indiana, by Steven P. Douglas, Deputy Attorney General, Division of Consumer Protection ("Petitioner"), and the Respondent, Susan E. Spencer, ("Respondent"), and Respondent's counsel, Douglas R. Long, Esq., signed an Agreement which purports to resolve all issues involved in the action by the Petitioner and the Indiana State Psychology Board ("Board") regarding Respondent's licenses, and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the September 22, 2006 meeting now finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement as fully set forth herein and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 5 in favor and 0 against and 1 abstaining. Incorporated into the Agreement was the consensus of both parties to the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law

and Order. The Board hereby issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On or about July 23, 2001, the Madison County Superior Court issued an Order. The Order called for a psychological evaluation of minor child, N.S., by Dr. Thomas Murray for the purposes of determining child visitation, and problems between Linda Phelps, mother of N.S. and custodial parent, and Brian Sell, father of N.S. and non-custodial parent. The Respondent testified at this hearing.

2. At the July 23, 2001 hearing, the Respondent testified regarding the records of N.S. Under questioning by the attorney of Linda Phelps, the Respondent testified that, in her opinion, Brian Sell should not have access to his daughter's records. The Respondent also testified about her impressions of Mr. Sell's personality characteristics, even though she had never met Brian Sell or evaluated him in a professional context. Respondent stated that she believed Mr. Sell's knowledge of N.S.'s records could be detrimental to N.S. This opinion was based on respondent's impressions of Mr. Sell which were gained by his phone messages and letters sent to respondent. Respondent met with N.S. on two (2) occasions for consultations. N.S. was not a therapy client of the Respondent's. Brian Sell suffered no adverse consequence other than the lapse of about 90 days time in getting the records. A full and complete psychological examination of Brian and Linda Sell by Dr. Tom Murray was presented for the Court's consideration at the custody hearing.

3. Ms. Phelps was originally sent to Respondent by her attorney for consultation

regarding her concerns of possible sexual abuse by Brian Sell against N.S. Ms. Phelps presented seven (7) pages of drawings her daughter, N.S. had drawn. Several of the drawings depicted penises on people and animals. Respondent consulted with Ms. Phelps and sent a follow-up letter to the attorney. Respondent, however, did not notify law enforcement or Child Protective Services because although the drawings were odd and worthy of further consideration, they did not necessarily indicate child abuse or molest.

4. After learning of his daughter's visit to Respondent, Brian Sell, N.S.'s non-custodial parent requested N.S.'s records from the Respondent. The Respondent did not send the records. Respondent instead contacted Ms. Phelps who asked that the records not be sent.

5. Mr. Sell repeatedly attempted to contact the Respondent in his efforts to get copies of the records. Respondent chose to ignore Brian Sell's messages and letters, at the request of the child's mother, and testified to this at the July 23, 2001 hearing.

6. Several motions were made in the Madison County Court between Linda Phelps and Brian Sell. Ms. Phelps sought to bar Mr. Sell from getting the records. Mr. Sell sought to get the records.

7. Having been denied the records on his daughter, Brian Sell filed complaints against the Respondent with the American Psychological Association ("APA") and the Attorney General's Office.

8. On or about September 6, 2001, the Respondent sent a letter to Mr. Sell regarding N.S.'s records and Mr. Sell's complaints to the Attorney General's Office and the APA. In this letter, the Respondent states:

It has been necessary for me to spend numerous hours writing letters to various agencies with whom you filed complaints, copying records for the Court, phone calls with those agencies, attorneys, etc. Due to the volume of work which you have created, it is necessary for you to reimburse me for my time.

Please forward to me a bank draft or money order in the amount of \$350 at your earliest convenience. As soon as I receive it I will personally deliver the records to Dr. Murray. They will undoubtedly be helpful to him in completing his evaluation. As the custodial parent, Linda can request the records be sent. However, if you do not wish the records to be sent, the amount owed remains the same and your wishes will be recorded.

The letter was written in anger and frustration but was not a serious attempt to collect a fee. Respondent took no action to collect on any money. No statements were sent. Respondent agrees the letter was in poor taste and inappropriate. Contrary to the tenor of the letter, she did not withhold the records for payment and delivered them to Dr. Thomas Murray as directed by the court the day the letter was sent.

9. On or about January 28, 2003, the APA confirmed in a letter to Brian Sell that the Respondent was in violation of Standards 7.02(a), 7.02(b), 7.02(c) and 1.25(b) of the 1992 Ethics Code and was censured.

10. In her Response to the Attorney General's inquiries, the Respondent admitted to withholding the records of N.S., who is a child, requested by Brian Sell. The Respondent also admits to sending Brian Sell the bill referenced above in item #15.

11. With the exception of the inappropriate letter, all actions taken by the Respondent were taken with the objective of protecting the child. The APA panel specifically found that Dr. Spencer was motivated by her intention to protect the child

from potential harm. Further Respondent has produced evidence of an exemplary career, and in particular a letter from Judge Dennis Carroll of Madison Superior Court I, in which he describes her as tireless, dedicated and an effective child and family advocate. She is, according to Judge Carroll, widely respected by bench and bar in Madison County. Judge Carroll opines that she has done more custody evaluations than any other local psychologist.

ULTIMATE FINDINGS OF FACT

1. Respondent's conduct constitutes a violation of Ind. Code § 16-39-2-9 in that she ignored Brian Sell's request for his daughter's records in deference to the wishes of the mother and out of professional concern for the health and safety of the child. Respondent did ultimately produce the records to Dr. Thomas Murray as per the court's direction in about 90 days.

2. Respondent's conduct constitutes a violation of 868 IAC 1.1-11-5(b) in that she made an evaluative statement of Brian Sells without being able to sufficiently substantiate the finding and APA Ethics (1992) section 2.01 in that she testified about the possible personality characteristics of Brian Sell based only on his letters to her and the messages he left on her answering machine.

3. Respondent's conduct constitutes a violation of Ind. Code § 16-39-9 in writing her letter of September 6, 2001 to Brian Sell.

CONCLUSIONS OF LAW

1. Respondent's failure to comply with the above referenced standards is

cause for disciplinary sanctions which may be imposed singly or in combination such as censure, a letter of reprimand, probation, suspension, or a revocation of license, and a fine up to the amount of \$1000.00 per violation, as detailed at Ind. Code § 25-1-9-9 and Ind. Code § 25-23-1-7.

ORDER

Based on the foregoing Findings of Fact, Ultimate Findings of Fact, and Conclusions of Law, the Board now issues the following **ORDER**:

1. The Respondent's license shall be placed on **INDEFINITE PROBATION** and the Respondent may not petition to withdraw the probation from her license for a period of one (1) year from the date of the Order.

2. While on Indefinite Probation, the Respondent's license shall be subject to the following **TERMS AND CONDITIONS**:

a. The Respondent shall keep the Board informed of her residential address and telephone number at all times;

b. The Respondent shall keep the Board informed of her office address and telephone number or employer address and telephone number at all times;

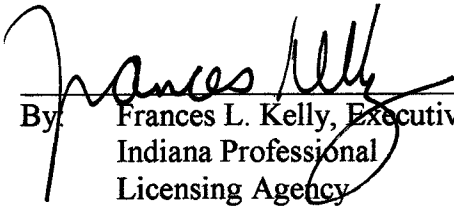
c. While on Indefinite Probation, the Respondent shall be supervised by a Board-approved psychologist. The Respondent shall submit a list of three (3) names of qualified psychologists to the Board for selection purposes. Said list shall be submitted within ten (10) days of the issuance of the Final Order. **Respondent shall be responsible for all applicable fees incurred by the supervisor.**

- d. The supervising psychologist will meet with the Respondent on at least a monthly basis to review her cases and her supervision of interns. Review and oversight of the Respondent shall focus on, but not be limited to, the following areas:
 - i. Forensic psychology; and
 - ii. Supervision of interns.
- e. The Respondent shall cause her supervising psychologist to submit supervisory reports to the Board. Said reports shall be submitted on a quarterly basis for the length of the Respondent's Indefinite Probation. **A Board member will be assigned to act as practice monitor.**
- f. If the Respondent chooses to leave private practice and enter the employ of another psychologist, clinic, or other employer for the purpose of practicing psychology, she shall cause said psychologist /employer to sign a copy of the Board's Order and return it to the Board within seven (7) days of the commencement of employment; and
- g. The Respondent shall take and complete continuing education courses/classes as directed and approved by the Board unless said classes have been taken by the Respondent within the last year. The Respondent shall submit proof of completion of said continuing education to the Board within one (1) year of the date of this Order.

3. Violation of this Final Order, or otherwise reported non-compliance with the statutes and regulations relating to the competent practice of psychology, may result in the State of Indiana requesting an emergency suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4(a)(10), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

So ORDERED, ADJUDGED, DECREED, this 28 day of September, 2006.

INDIANA STATE BOARD
OF PSYCHOLOGY


By: Frances L. Kelly, Executive Director
Indiana Professional
Licensing Agency

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