

BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS
FOR THE STATE OF ARIZONA

In the Matter of
Donald Durham, Ph.D.
Holder of License No. 1822
for the Practice of Psychology
in the State of Arizona

Case No. 10-29
CONSENT AGREEMENT,
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

On April 29, 2011, the Arizona Board of Psychologist Examiners ("Board") met to discuss Case No. 10-29 regarding Donald Durham, Ph.D. ("Licensee"). Dr. Durham and his attorney, Charles Hover, were present at the proceedings and made a presentation to the Board. The complainant, L.M. ("Complainant"), was also present and made a presentation to the Board. After its consideration of the matter, the Board voted to offer Licensee this Consent Agreement for Order of Probation and Supervision.

JURISDICTION

1. The Board is authorized to regulate the practice of psychology in Arizona pursuant to A.R.S. § 32-2061, *et seq.*
2. Licensee is the holder of license number 1822 for the practice of psychology in Arizona.
3. The Board has personal and subject matter jurisdiction over Licensee pursuant to A.R.S. § 32-2061, *et seq.*

CONSENT AGREEMENT

Licensee understands and agrees that:

4. The Board and Licensee enter into this Consent Agreement to promptly and judiciously resolve this matter, consistent with the public interest and the statutory requirements of the Board.
5. The Board has jurisdiction over Licensee and the subject matter pursuant to A.R.S. § 32-2061 *et seq.*
6. Licensee has the right to consult with an attorney prior to entering into this Consent Agreement.

1 7. Licensee has a right to a public hearing concerning this case. He further acknowledges
2 that at such formal hearing he could present evidence and cross-examine witnesses. Licensee
3 irrevocably waives his right to such a hearing.

4 8. Licensee irrevocably waives any right to rehearing or review or to any judicial review
5 or any other appeal of this matter.

6 9. This Consent Agreement shall be subject to the approval of the Board and shall be
7 effective only when signed by the Executive Director and accepted by the Board. In the event that the
8 Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value
9 and shall not be relied upon nor introduced in any action by any party, except that the parties agree that
10 should the Board reject this Consent Agreement and this case proceeds to hearing, Licensee shall assert
11 no claim that the Board was prejudiced by its review and discussion of this document or any records
12 relating thereto.

13 10. The Consent Agreement, once approved by the Board and signed by the Licensee, shall
14 constitute a public record which may be disseminated as a formal action of the Board.

15
16 FINDINGS OF FACT

17 11. On April 3, 2008, Licensee began counseling L.M., S.M. (wife of L.M.) and their
18 children for a total of 16 sessions for individual, family and couples therapy.

19 12. On September 11, 2008, Licensee emailed L.M. stating that L.M. is hiding something.
20 Licensee indicated in the email that L.M. may be struggling with certain psychological issues.

21 13. On September 17, 2008, L.M. replied to Licensee's email stating that the email was not
22 professional and if Licensee had concerns, Licensee should have invited him to attend a therapy session.

23 14. Subsequently, Licensee responded stating that he would contact L.M. the following day
24 via telephone.

25 15. On September 18, 2008, L.M. and S.M. attended their last session with Licensee.

26 16. In the coming months, S.M. and L.M. obtained a legal separation

27 17. On August 2, 2010, S.M. once again commenced therapy with Licensee.

28 18. On August 11, 2010, Licensee contacted L.M., via email, and recommended that L.M.
undergo a psychological evaluation and gave a referral to a psychologist. Licensee made this

1 recommendation without interviewing L.M.

2 19. On September 22, 2010, Licensee contacted L.M., via email, and recommended that
3 L.M. "share with S.M. the changes he had begun to make in his life, not all of the things that he was
4 learning, to show his commitment to his own healing."

5 20. Subsequently, L.M. responded thanking Licensee and stated that he is scheduled to see
6 a psychologist to undergo a psychological evaluation on October 12, 2010.

7 21. On September 23, 2010, S.M.'s attorney contacted L.M.'s attorney, via email. S.M.'s
8 attorney stated that there had been communication with Licensee and that Licensee recommended L.M.
9 undergo a psychological evaluation and also recommended that "...marital therapy be deferred until
10 L.M. has had this thorough assessment..."

11 22. Subsequently, L.M.'s attorney forwarded the email to L.M. and stated that Licensee
12 should not be contacting S.M.'s attorney and should not be discussing any of L.M.'s previous
13 counseling or therapy.

14 22. On September 25, 2010, Licensee responded to L.M.'s September 22, 2010, email and
15 forwarded his email that he sent to S.M. regarding his recommendation that L.M. undergo a
16 psychological evaluation.

17 23. On September 27, 2010, L.M.'s attorney contacted S.M.'s attorney, via email, and
18 stated that L.M. is objecting to the ongoing involvement of Licensee, L.M. believes that Licensee had
19 formed an unhealthy relationship with S.M. and that "I am also concerned about the tenor of Licensee's
20 comments, particularly since he had not seen L.M. for 2 years".

21 24. On October 2, 2010, Complainant L.M. filed this Request for Investigation with the
22 Board.

23 25. On November 27, 2010, Licensee contacted L.M., via telephone, to discuss the pending
24 Request for Investigation.

25 **CONCLUSIONS OF LAW**

26 26. The conduct and circumstances described above constitute unprofessional conduct
27 pursuant to A.R.S. § 32-2061(A)(13)(o) - Providing services that are unnecessary or unsafe or
28 otherwise engaging in activities as a psychologist that are unprofessional by current standards of
practice for the manner in which Licensee contacted L.M. after the Request for Investigation was filed
with the Board to discuss the complaint and try to persuade L.M. to withdraw the complaint.

1 27. The conduct and circumstances described above constitutes unprofessional conduct
2 pursuant to A.R.S. § 32-2061(A)(13)(r) – Failing to obtain a client’s informed and written consent to
3 release personal or otherwise confidential information to another party unless the release is otherwise
4 authorized by law for the manner in which Licensee contacted L.M.’s attorney and S.M.’s attorney to
5 make recommendations about L.M. without having interviewed L.M. and for releasing information
6 regarding the joint sessions of L.M. and S.M. without L.M.’s consent.

7 28. The conduct and circumstances described above constitute unprofessional conduct
8 pursuant to A.R.S. § 32-2061(A)(13)(dd) – Violating an ethical standard adopted by the Board.
9 American Psychological Association: Ethical Principles of Psychologists and Code of Conduct: 3.05
10 Multiple Relationships (a) A multiple relationship occurs when a psychologist is in a professional role
11 with a person and (1) at the same time is in another role with the same person, (2) at the same time is in
12 a relationship with a person closely associated with or related to the person with whom the psychologist
13 has the professional relationship, or (3) promises to enter into another relationship in the future with the
14 person or a person closely associated with or related to the person. A psychologist refrains from entering
15 into a multiple relationship if the multiple relationship could reasonably be expected to impair the
16 psychologist’s objectivity, competence, or effectiveness in performing his or her functions as a
17 psychologist, or otherwise risks exploitation or harm to the person with whom the professional
18 relationship exists. Licensee entered into a multiple relationship by counseling S.M. individually after
19 Licensee had provided joint, family and marriage counseling.

20 **ORDER**

21 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree as
22 follows:

23 29. **PROBATION:** Licensee’s license as a Psychologist is placed on probation for a
24 minimum period of 3 months from the effective date of this Consent Agreement. The effective date of
25 this Consent Agreement is the date that it is signed by the Board’s Executive Director, or her designee,
26 on behalf of the Board.

27 30. **SUPERVISION:** During the period of probation, Licensee shall obtain a Supervisor to
28 assist him in understanding the issues surrounding confidentiality, multiple relationships, and forensic
psychology. Licensee has consulted with Dr. David McPhee on some of these issues. Dr. McPhee may
serve as supervisor for those cases in which Licensee is providing therapy in the areas of: custody

1 matters and marital/couple issues. In the event that Dr. McPhee is unable or unwilling to provide
2 supervision for Licensee, Licensee shall contact the Board, in writing, within ten (10) days of the
3 effective date of this Order or within ten (10) days of Dr. McPhee terminating the supervisor/supervisee
4 relationship and request 3-4 names of other supervisors approved by the Board. The Licensee shall meet
5 with the Supervisor face to face at least once a month for three months of his probationary period and
6 for at least ninety minutes per session. At the end of three months, the Licensee may petition the Board
7 and request that he be released from Supervision and Probation.

8 31. SELF-STUDY: Licensee shall update and increase his knowledge of (a) Informed
9 consent when treating couples individually and conjointly and the related issue of confidentiality in such
10 circumstances. Licensee shall ensure he addresses these practice issues with his Supervisor and that the
11 Supervisor addresses Licensee's progress in these areas in one or more of the required reports (b)
12 Licensee shall continue to participate in peer consultation and continue to utilize the Arizona
13 Psychological Association's list serve.

14 32. REPORTS: At the end of the 3 month probationary period, the Supervisor shall
15 provide a written report, due by the 30th of the following month, to the Board regarding the
16 Licensee's progress and understanding of therapeutic issues associated with martial/couples therapy,
17 informed consent and breach of confidentiality issues. In addition, at least one report shall indicate the
18 extent of Licensee's increased knowledge and understanding of Informed consent in individual/family
19 therapy situations. The Licensee is responsible for ensuring that the Supervisor submits his/her reports
20 to the Board.

21 33. COSTS: The Licensee shall be responsible for all costs incurred as a result of his
22 compliance with this Order.

23 34. TERMINATION OF PROBATION: At the end of 3 months, unless otherwise
24 ordered by the Board, Licensee shall petition the Board, in writing, and request termination from
25 probation and supervision. If the Board determines that Licensee has not complied with all the
26 requirements of this Consent Agreement, the Board may either (a) continue the probation, including
27 supervision, or (b) institute proceedings for noncompliance with this Consent Agreement, which may
28 result in the suspension, revocation or other disciplinary and/or remedial action.

35. ACKNOWLEDGEMENT OF CONTINUING EDUCATION: The Board
acknowledges that since the filing of this complaint against him, Licensee has completed approximately

1 34 hours in continuing education in the areas of confidentiality, marriage/couples therapy and ethics,
2 among others.

3 36. RESTRICTION OF PRACTICE: During the term of probation, Licensee agrees to
4 restrict his area of practice to matters that do not involve forensic psychology. Licensee further agrees
5 that should any individual or couple seek psychological services from him that would involve forensic
6 psychology that he will decline to treat those individuals and make the appropriate referrals.

7 37. CONTINUED APPLICATION OF TERMS: If, between the effective date of this
8 Consent Agreement and the termination of Licensee's probation by the Board, Licensee fails to renew
9 his license while under this Consent Agreement and subsequently applies for a license, the remaining
10 terms of this Consent Agreement, including probation and supervision, shall be imposed if the
11 application for licensure is granted.

12 38. VOLUNTARY ACCEPTANCE OF TERMS: Licensee has read and understands this
13 Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement
14 with an attorney or has waived the opportunity to discuss this Consent Agreement with an attorney.
15 Licensee voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and
16 uncertainty of an administrative hearing.

17 39. WAIVERS: Licensee understands that he has a right to a public administrative hearing
18 concerning each and every allegation set forth in the above-captioned matter, at which administrative
19 hearing he could present evidence and cross-examine witnesses. By entering into this Consent
20 Agreement, Licensee freely and voluntarily relinquishes all rights to such an administrative hearing, as
21 well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other
22 administrative and/or judicial action, concerning the matters set forth herein. Licensee affirmatively
23 agrees that this Consent Agreement shall be irrevocable.

24 40. CONSIDERATION IN FUTURE ACTIONS: Licensee understands that this Consent
25 Agreement, or any part thereof, may be considered in any future disciplinary action against him.

26 41. FINAL RESOLUTION: The parties agree that this Consent Agreement constitutes final
27 resolution of this disciplinary matter but further understands that this Consent Agreement does not
28 constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does

1 not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding
2 any other pending or future investigation, action or proceeding. Licensee also understands that
3 acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this
4 state from instituting other civil or criminal proceedings with respect to the conduct that is the subject of
5 this Consent Agreement.

6 42. TIME: Time is of the essence with regard to this agreement.

7
8 43. NON-COMPLIANCE: If Licensee fails to comply with the terms of this Consent
9 Agreement, the Board shall properly institute proceedings for noncompliance with this Consent
10 Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial actions.
11 Licensee agrees that any violation of this Consent Agreement is a violation of A.R.S. § 32-2061(13)(aa),
12 which is "violating a formal board order, consent agreement, term of probation or stipulated
13 agreement."

14 44. ACCEPTANCE BY THE BOARD: Licensee understands that the foregoing Consent
15 Agreement shall not become effective unless and until adopted by the Board of Psychologist Examiners
16 and executed on behalf of the Board. Any modification to this original document is ineffective and void
17 unless mutually approved by the parties in writing.

18 45. PUBLIC RECORD: Licensee understands that this Consent Agreement is a public record
19 that may be publicly disseminated as a formal action of the Board.

20
21 8/24/11
22 Dated this 8/18/11 day of August, 2011.

23
24 Donald Durham, Ph.D.
25 Donald Durham, Ph.D.
26 Licensee

23
24 Cindy Olvey
25 Cindy Olvey, Psy.D.
26 Executive Director
27 Board of Psychologist Examiners

28 ORIGINAL of the foregoing filed this
24th day of August, 2011, with:

1 The Arizona State Board of Psychologist Examiners
2 1400 West Washington, Suite 235
3 Phoenix, Arizona 85007

4 COPY of the foregoing mailed by Certified Mail
5 No. 70092250000111488961 this 70092250000111488046
6 24th day of August, 2011, to:

7 Donald Durham, Ph.D.
8 Address of Record

9 Copy of the foregoing mailed this
10 24th day of AUGUST, 2011, to:

11 Charles S. Hover, III
12 Renaud Cook Drury Mesaros, PA
13 One North Central, Ste. 900
14 Phoenix, AZ 85004-4417

15 Copy of the foregoing mailed by interagency mail this
16 24th day of AUGUST, 2011, to:

17 Jeanne Galvin, Esq.
18 Office of the Attorney General
19 1275 West Washington, CIV/LES
20 Phoenix, Arizona 85007

21 By: Heather Duracinski