

1                                   **BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS**  
2                                   **FOR THE STATE OF ARIZONA**

3  
4 **In the Matter of :**                                    )  
5 **Eugene S. Cherry, Ph.D.**                            )  
6 **Holder of License No. 3520**                        )  
7 **for the Practice of Psychology**                    )  
8 **in the State of Arizona**                            )

**Case No. 11-01**  
**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW**  
**AND ORDER**

9           On May 4, 2012, EUGENE CHERRY, Ph.D. (“Licensee”), appeared before the Arizona  
10 Board of Psychologist Examiners (“Board”) for an Informal Interview with his counsel, Larry  
11 J. Cohen. The proceedings in this matter are governed by A.R.S. §§ 32-2081 and 32-2082.  
12 Having heard the testimony of the Licensee, arguments from Mr. Cohen, having read and  
13 considered the documents contained in the complaint file (RFI 11-01), and having deliberated  
14 fully, the Board adopted the following Findings of Fact and Conclusions of Law and Order on  
15 May 4, 2012.

16                                    **JURISDICTION**

- 17           1.     Licensee received sufficient and timely notice of the Informal Interview.  
18           2.     The Board is authorized to regulate the practice of psychology in Arizona  
19 pursuant to A.R.S. § 32-2061, *et seq.*  
20           3.     Licensee is the holder of license number 3520 for the practice of psychology in  
21 the State of Arizona.  
22           4.     The Board has personal and subject matter jurisdiction over Licensee pursuant  
23 to A.R.S. § 32-2061, *et seq.*

24                                    **FINDINGS OF FACT**

- 25           5.     This case arises out of a custody proceeding involving the biological parents of a  
26 minor child. The Complainant is the biological father (Father).  
27           6.     Dr. Cherry was a limited partner in the business “Family Legacy and Children  
28 Services” (Legacy). The other partners in the business were Ciara and Michael Coultrap.  
According to Dr. Cherry, he was responsible for the supervision of all clinical activities at  
Legacy. On March 15, 2011, Dr. Cherry became a consultant to Legacy on a contractual basis.

1 In a letter to the Board and in testimony offered at the May 4, 2012 Informal Interview, Dr.  
2 Cherry indicated that he recently ended his professional relationship with Legacy.

3 7. According to Dr. Cherry, his role at Legacy was to provide advice on how to  
4 optimize healthy visitations between parents and children who were subject to court ordered  
5 supervised visits.

6 8. In Complainant's divorce proceedings, the Court appointed Legacy to supervise  
7 the Father's visits with the minor child. Ciara Coultrap referred the case to Dr. Cherry, who  
8 agreed to act as the Parenting Time Supervisor.

9 9. During the custody proceedings, the Complainant requested the Court to order an  
10 Independent Medical Evaluation (IME) of his wife (Mother), who is the biological mother of  
11 the minor child. Before the Court ruled on the issue, the Mother's legal counsel asked the  
12 Coultraps to request that Dr. Cherry observe the Mother to determine if an IME was warranted.  
13 After Dr. Cherry's observations of Mother, the mother's counsel asked that Dr. Cherry perform  
14 the evaluation of Mother (through the Coultraps). With Mother's consent, Dr. Cherry  
15 interviewed Mother and performed diagnostic tests. Dr. Cherry's assessment included an  
16 interview that lasted two hours. In addition, Mother took an MMPI-2, which, according to Dr.  
17 Cherry, took seven hours because Mother was also taking care of her child at the same time she  
18 was trying to complete the exam. Dr. Cherry wrote a report indicating that he did not observe  
19 any behaviors or statements that would warrant an IME of the Mother.

20 10. The testing procedures were not in accordance with the MMPI-2 testing protocol.  
21 Dr. Cherry failed to acknowledge in his report that there were deviations from protocol, and  
22 without first referencing the protocols specifically for custody evaluations. This report was  
23 provided to the Mother's legal counsel, who submitted the report to the judge in the divorce  
24 proceedings. The Court utilized statements made in Dr. Cherry's report in the custody  
25 recommendation.

26 11. On September 20, 2010, the Coultraps and Dr. Cherry testified at a divorce  
27 proceeding involving the Mother and Father. In response to questions posed by the judge, Dr.  
28 Cherry made statements regarding his concerns about the mental health of the  
Complainant/Father without having consulted with or evaluating Father, and without obtaining  
Father's informed consent. At the conclusion of the hearing, Complainant's supervised

1 parenting time was suspended and Mother was granted sole custody.

2 12. On or about October 20, 2010, Dr. Cherry advised Ciara Coultrap to prepare an  
3 application for Emergency Admission of Complainant/Father to Urgent Psychiatric Care. Dr.  
4 Cherry signed the application based on information provided by the Coultraps, and without  
5 ever formally assessing or evaluating Complainant/Father. The Court ordered the Complainant  
6 to be admitted to an urgent psychiatric facility for a 72-hour involuntary commitment based on  
7 information provided in the application, including the assertion that Complainant was a “danger  
8 to others.”

9 13. On October 20, 2010, Legacy was relieved of its appointment as supervisor for  
10 Complainant’s parenting time by the Court, and Complainant’s supervised parenting time was  
11 restored.

12 **CONCLUSIONS OF LAW**

13 14. The conduct and circumstances described above and as set forth in the Findings of  
14 Fact constitute unprofessional conduct pursuant to A.R.S. § 32-2061(13)(e) – gross negligence  
15 in the practice of psychology by providing information to the courts about a person whom Dr.  
16 Cherry did not assess or evaluate, by failing to adequately screen qualifications of Legacy  
17 employees and thereafter failing to take appropriate actions regarding the activities of Legacy  
18 employees under his supervision, and by continuing to work with Ciara and Michael Coultrap  
19 when serious professional and ethical issues became apparent.

20 15. The conduct and circumstances described above and as set forth in the Findings of  
21 Fact constitute unprofessional conduct pursuant to A.R.S. §32-2061(13)(o) – providing services  
22 that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are  
23 unprofessional by current standards of practice by Dr. Cherry’s failure to maintain and retain  
24 adequate business records, by his signing of documents submitted to the court without first  
25 reviewing them, for making recommendations to the court without qualifications, and for  
26 offering a diagnosis absent any personal observations, interviews, assessments, or evaluations.

27 16. The conduct and circumstances described above and as set forth in the Findings  
28 of Fact constitute unprofessional conduct pursuant to A.R.S. § 32-2061(13)(dd) – Violating an  
ethical standard adopted by the Board, by engaging in Multiple Relationships pursuant to  
American Psychological Association Ethical Principles of Psychologists and Code of Conduct

1 §3.05 (2003) (hereinafter APA Code) by Dr. Cherry serving as both a parent advisor and then  
2 providing an Independent Medical Evaluation for the Mother, Conflict of Interest pursuant to  
3 APA Code § 3.06 by Dr. Cherry acting as clinical therapist and director of Legacy  
4 simultaneously, failing to provide Informed Consent pursuant to APA Code § 3.10 for not  
5 providing an informed consent form signed by the client as part of the evaluation,  
6 Psychological Services Delivered to or Through Organizations pursuant to APA Code § 3.11  
7 by not notifying clients of the services provided and the relationship of each individual within  
8 the organization, and Use of Assessments pursuant to APA Code § 9.02 by not following  
9 accepted protocol when deviating from standard assessment practices.

10 **ORDER FOR PROBATION, PRACTICE MONITOR, CONTINUING EDUCATION**  
11 **AND COMMUNITY SERVICE**

12 Pursuant to A.R.S. §32-2081(Q) the Board has determined that the Licensee's conduct  
13 in RFI No. 11-01 warrants disciplinary action. Based upon the foregoing Findings of Fact and  
14 Conclusions of Law, IT IS ORDERED THAT:

15 17. **PROBATION:** Licensee's license as a Psychologist is placed on probation for  
16 a minimum period of twelve months from the effective date of this Order. The effective date of  
17 this Order is 35 days after the date it is mailed to the Licensee.

18 18. **PRACTICE MONITOR:** During the period of probation, Licensee shall  
19 obtain a Practice Monitor to assist him in understanding the issues surrounding multiple  
20 relationships and forensic psychology. Within 15 days of the effective date of this Order the  
21 Licensee shall choose a psychologist from the following list to serve as his Practice Monitor:

- 22 1. David McPhee, Ph.D.  
23 5320 N. 16<sup>th</sup> Street, Suite 207  
24 Phoenix, AZ 85016  
602-374-5345
- 25 2. John Moran, Ph.D.  
26 1730 E. Northern Avenue, Suite 112  
Phoenix, AZ 85020  
602-795-4449
- 27 3. Brian Yee, Ph.D.  
28 7220 N. 16<sup>th</sup> Street, Building K  
Phoenix, AZ 85020  
602-943-0447

1  
2 The Licensee shall meet with the Practice Monitor face-to-face at least twice each month for at  
3 least two hours per session for the full twelve months of his probationary period. The Practice  
4 Monitor shall submit to the Board quarterly reports of the meetings to include topics covered  
5 and any modifications made to the Licensee's practice. [A.R.S. §32-2081]. The Practice  
6 Monitor shall provide reports to the Board 30 days after the end of each quarter. The first  
7 quarter shall begin on the effective date of this Order. At the conclusion of twelve months, the  
8 Practice Monitor is to complete a final written report to the Board summarizing his/her  
9 interaction with Dr. Cherry, topics discussed, areas of progress, matters of remaining concern  
10 and overall impressions. The final report shall be submitted to the Board within 30 days of the  
11 end of the last quarter of the term of probation. Licensee shall present this Order to the Board  
12 approved Practice Monitor prior to the date of the first meeting. The first meeting between  
13 Licensee and his Practice Monitor shall occur within 30 days of the effective date of this Order.  
14 At the end of twelve months, the Licensee must petition the Board in writing and request that  
15 he be released from Probation.

16 19. **CONTINUING EDUCATION REQUIREMENT:** Licensee shall complete  
17 12 hours of continuing education as follows:

- 18 a) Six hours in the area of ethics, to be attended in-person, and  
19 b) Six hours of ethics specifically in the area of forensic psychology (may be  
20 completed through distance education).

21 The Licensee shall submit the proposed continuing education courses to the Board's Executive  
22 Director for approval prior to taking a course. These 12 hours of Continuing Education may  
23 not be used toward the 60 hours required for license renewal and shall be completed within 6  
24 months of this Order, unless no in-person ethics Continuing Education Course is available, at  
25 which time Licensee shall request an extension from the Board. Within two weeks of  
26 completion of the additional continuing education, Licensee shall provide the Board with  
27 verification of completion of these hours. [R4-26-207(G)].

28 20. **SPECIALTY GUIDELINES FOR FORENSIC PSYCHOLOGY:** In  
addition, Licensee must obtain, review, and study the most recent edition of the Specialty  
Guidelines for Forensic Psychology.

1           21.    **APPEARANCE BEFORE THE BOARD:** The Licensee shall appear before  
2 the Board for questioning regarding Licensee's knowledge of ethics and forensic practice in  
3 psychology. This appearance shall be after the completion of required Continuing Education  
4 coursework, and upon Licensee's review of the APA Specialty Guidelines for Forensic  
5 Psychology. The Licensee shall notify the Board in writing upon completion of the ethics  
6 courses and self-study of the Specialty Guidelines in Forensic Psychology and the Board will  
7 subsequently schedule Dr. Cherry's personal appearance.

8           22.    **COMMUNITY SERVICE:** Licensee shall prepare and present a Community  
9 Service Plan (Plan) to the Board within 30 days of the effective date of this Order. Upon  
10 approval by the Board or its Executive Director, the Licensee shall serve community service  
11 pursuant to the Plan. The Plan shall include a minimum of 40 hours of community service and  
12 designate all organizations/entities where the community service will be served. The Plan  
13 shall provide that the community service shall be completed within six months of the effective  
14 date of this order.

15           23.    **EFFECTIVE DATE:** The effective date of this Order is 35 days after the date  
16 that a copy, signed by the Board's Executive Director, or her designee, on behalf of the Board,  
17 is mailed to the Licensee.

18           24.    **CONSIDERATION IN FUTURE ACTIONS:** Licensee understands that this  
19 Order, or any part thereof, may be considered in any future disciplinary action against him.

20           25.    **FINAL RESOLUTION:** This Order constitutes a final resolution of this  
21 disciplinary matter but does not constitute a dismissal or resolution of other matters currently  
22 pending before the Board, if any, and does not constitute any waiver, expressed or implied, of  
23 the Board's statutory authority or jurisdiction regarding any other pending or future  
24 investigations, actions or proceedings. Further, this Order does not preclude any other agency,  
25 subdivision or officer of this State from instituting other civil or criminal proceedings with  
26 respect to the conduct that is the subject of this Order.

27           26.    **TIME:** Time is of the essence with regard to this Order.

28           27.    **COSTS:** The Licensee shall be responsible for all costs incurred as a result of  
his compliance with this Order.

1           28. **NON-COMPLIANCE:** If Licensee fails to comply with the terms of this Order,  
2 the Board shall properly institute proceedings for noncompliance with this Order, which may  
3 result in suspension, revocation, or other disciplinary and/or remedial actions. Violation of this  
4 Order is a violation of A.R.S. § 32-2061(13)(aa), which is “violating a formal board order,  
5 Order, term of probation or stipulated agreement.”

6           29. **PUBLIC RECORD:** This Order is a public record that may be publicly  
7 disseminated as a formal action of the Board.

8           30. **RIGHT TO PETITION FOR REHEARING OR REVIEW:** Licensee is  
9 hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. §  
10 41-1092.09, the petition for rehearing or review must be filed with the Board’s Executive  
11 Director within 30 days after service of this Order. Pursuant to A.A.C. R4-25-308, the petition  
12 must set forth legally sufficient reasons for granting a rehearing. Service of this Order is  
13 effective five days after date of mailing. If a motion for rehearing is not filed, the Board’s  
14 Order becomes effective 35 days after it is mailed to the Licensee.

15                         Licensee is further notified that the filing of a motion for rehearing is required  
16 to preserve any rights of appeal to the Superior Court.

17           Dated this 17<sup>th</sup> day of June, 2012.

18  
19   ARIZONA BOARD OF PSYCHOLOGIST EXAMINERS

20  
21           By: Cindy Olvey Psy.D.  
22   Cindy Olvey, Psy.D  
23   Executive Director

24           /////

25           /////

1 ORIGINAL of the foregoing filed this

2 7<sup>th</sup> day of June, 2012, with:

3 The Arizona State Board of Psychologist Examiners  
4 1400 West Washington, Suite 235  
5 Phoenix, Arizona 85007

6 COPY of the foregoing mailed by Certified Mail

7 No.

8 this 7<sup>th</sup> day of June 2012, to:

9 Eugene S. Cherry, Ph.D.

10 Address of Record

11  
12 Copy of the foregoing mailed this

13 7<sup>th</sup> day of June 2012, to:

14 Larry J. Cohen  
15 The Cohen Law Firm  
16 P.O. Box 10056  
17 Phoenix, AZ 85064

18 Copy of the foregoing mailed by interagency mail this

19 7<sup>th</sup> day of June 2012, to:

20 Jeanne Galvin, Esq.

21 Office of the Attorney General

22 1275 West Washington, CIV/LES

23 Phoenix, Arizona 85007

24 By: Megan Martin