

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY
AGENCY CASE No. 09-08
ADMINISTRATIVE ACTION NO. 10-KBEP-0143

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OCCUPATIONS
AND PROFESSIONS

COMMONWEALTH OF KENTUCKY
BOARD OF EXAMINERS OF PSYCHOLOGY

COMPLAINANT

vs.

FINAL ORDER OF THE BOARD

JAMES J. COOKSEY, Ph.D.
(License Psychologist No. 309)

RESPONDENT

* * * * *

A hearing was conducted before a quorum of the Kentucky Board of Examiners of Psychology (Athe Board@) on February 15, 16, 17, and 18, 2011, at the Board's offices, 911 Leewood Dr., Frankfort, KY. The following Board members constituted the Hearing Panel: Barbara Kay Jefferson, Ph.D., Board Vice Chair; Sally L. Brenzel, Psy.D.; William G. Elder, Jr., Ph.D.; Owen T. Nichols, Psy.D.; and Paula Glasford, Citizen-at-Large. All of the Hearing Panel members were present on all of the days of the hearing.

On all days of the hearing, the Complainant was present through its party representative, Eva R. Markham, Ed.D., and was represented by counsel, Mark Brengelman, Assistant Attorney General. The Respondent, James J. Cooksey, Ph.D., and his counsel, Tracy S. Prewitt and Andrew Pellino, were present on all days of the hearing.

The hearing was conducted by Michael Head, Hearing Officer, Administrative Hearings Branch, Office of the Attorney General.

Neither party objected to the notice they received of the charges or the hearing dates in this matter. The issue is whether the Respondent's license to practice psychology in the Commonwealth of Kentucky should be sanctioned based on allegations that he engaged in inappropriate, personal discussions with a student during supervision; that he failed to refer the student for appropriate mental health treatment indicated by the student's behavior; that he conducted supervision of the student at inappropriate times and places; that he attempted to induce the student to engage in a romantic relationship with his daughter; and that he gave the student massages with sexual overtones and sexual contact.

After consideration of the entire record, and based on a preponderance of the evidence, the Board decided to suspend the license to practice psychology in the Commonwealth of Kentucky of James J. Cooksey, Ph.D., for a period of one year, probating nine months of the suspension for three years, with fines, fees, and terms as set forth hereafter. In support of this order, the Board issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

Background

1. This case concerns interactions between [REDACTED] and James J. Cooksey, Ph.D., while [REDACTED] was a student in the psychology doctorate program at Spalding University from the 2003-2004 school year through the 2008-2009 school year. The charges stem particularly from [REDACTED] and Dr. Cooksey's interactions during the 2008-2009 academic year.

2. Dr. Cooksey was [REDACTED] Spalding university supervisor in his second year, the 2004-2005 academic year. As a Spalding university supervisor, Dr. Cooksey's responsibilities included reviewing in a group setting several supervision students' clinical cases. Each Spalding

supervision student performed psychological services to patients at a location away from the Spalding campus. A separate off-site supervisor oversaw the students' clinical work at the off-site location. University supervision gave student group members the benefit derived from reviewing a fellow-student's clinical cases.

3. [REDACTED] had two off-site supervisors in the 2005-2006 school year: Dr. Marlana Woodmansee and Dr. Elizabeth McKune. Off-site supervisors directly supervise students' provision of clinical services to patients at the off-site locations.

4. At the beginning of the 2005-2006 school year, by his own admission, [REDACTED] resisted both Dr. McKune's and Dr. Woodmansee's recommendations concerning his clinical technique. He went so far as to tell Dr. McKune that she was incompetent. As a result, the psychology faculty jointly decided to place [REDACTED] on "special status," which was something less than academic or disciplinary probation. Other faculty advised [REDACTED] to be more receptive to criticism by his superiors. [REDACTED] admitted in his testimony that he had a "difficult relationship" with his father and that he was "contentious with authority figures." Spalding University personnel, including Dr. Cooksey, testified that in the latter half of the 2005-2006 school year, [REDACTED] took the advice of his supervisors and other faculty advisors, that his behavior improved, and that Spalding University removed him from special status.

5. The faculty knew that [REDACTED] and Dr. Cooksey had related well the previous year, and the faculty recommended that Dr. Cooksey act as [REDACTED] off-site supervisor in [REDACTED] fourth academic year, the 2006-2007 school year. Dr. Cooksey accepted the assignment and served as [REDACTED] off-site and university supervisors that year.

6. Dr. Cooksey again served as [REDACTED] off-site and university supervisor in the 2007-2008 school year. The proof did not clarify how that assignment occurred, but [REDACTED] testified he was pleased to have Dr. Cooksey as his off-site and university supervisor for two successive years.

7. Dr. Cooksey was a senior, if not the most senior, faculty member at Spalding University during [REDACTED] tenure as a student. Dr. Cooksey was demanding of his students and exacting in his academic standards. Students were somewhat jealous of [REDACTED] relationship with Dr. Cooksey because of Dr. Cooksey's status and level of expertise. [REDACTED] testified that he was very pleased to have Dr. Cooksey as his supervisor, and he felt Dr. Cooksey helped significantly improve his clinical skills.

Inappropriate Personal Discussions Between [REDACTED] and Dr. Cooksey

8. The Board charged Dr. Cooksey with having personal discussions with [REDACTED] about subjects that were not appropriate for supervision. Hearing Exhibit 1 ("HE 1"), page 4, Count 1.

[REDACTED] Boundary and Attachment Issues

9. Both [REDACTED] and Dr. Cooksey testified to interactions between them that indicated [REDACTED] had significant boundary and attachment issues with Dr. Cooksey that affected their supervisor-supervisee relationship.

10. For example, at some time while Dr. Cooksey supervised [REDACTED], [REDACTED] began attending Sunday church services with Dr. Cooksey. The church was Christian but non-denominational, and members met in various individuals' homes, including in Dr. Cooksey's home. [REDACTED] also began attending Thursday night prayer meetings with members of the church Dr.

Cooksey attended. The prayer meetings were held at various church members' homes, including at Dr. Cooksey's home.

11. █████ attendance at these church services and prayer meetings probably began in 2008, but they could have started earlier. His attendance at both continued through May 7, 2009.

12. Also, █████ on several occasions called or showed up at Dr. Cooksey's house late at night when he had personal difficulties, or he remained at Dr. Cooksey's house after gathering there with other students who had failed in their fifth year to match with an internship program. In each case he asked Dr. Cooksey if he could stay overnight because he was upset, and Dr. Cooksey agreed that he could.

13. █████ also arranged for Dr. Cooksey's wife to spend time with his daughter when she came from Ohio to visit him.

14. █████ also testified that he enjoyed being Dr. Cooksey's favorite, an attitude that Dr. Cooksey fostered by allowing █████ to have a special relationship with him. Dr. Cooksey also invited or allowed █████ to have meals with Dr. Cooksey's family at his home. █████ testified that he enjoyed the attention and enjoyed "getting a family out of it."

15. Again, █████ attitude toward Dr. Cooksey crossed appropriate boundaries between a psychology supervisor and supervisee. The boundary and attachment issues led to unhealthy interactions that interfered with their supervision relationship.

16. The Board finds that Dr. Cooksey did not set appropriate limits with █████, nor did he maintain appropriate boundaries with █████ Whenever this happens between a supervisor and his student, a line cannot be drawn between the licensee's role as supervisor and his personal interactions with the supervisee.

17. The Board believes Dr. Cooksey underestimated the potential risk and damage that could occur without appropriate professional boundaries in place with [REDACTED]. The Board also believes Dr. Cooksey attempted to live up to people's view of him as having the ability to supervise any student, no matter how difficult. Although [REDACTED] had mental health issues that complicated the supervision relationship with Dr. Cooksey, [REDACTED] also had an intellectual curiosity that the Board believes was both stimulating and appealing to Dr. Cooksey. The Board also believes that Dr. Cooksey enjoyed receiving [REDACTED] attention, and that he viewed [REDACTED] as a protégé. The Board also believes that [REDACTED] interest in Dr. Cooksey's church and prayer meetings provided an emotional link for Dr. Cooksey, and that Dr. Cooksey developed religious goals for [REDACTED]. Dr. Cooksey's motivations impaired his judgment and caused him to miss [REDACTED] signs and symptoms of psychological problems. The Board believes Dr. Cooksey's personal relationship with [REDACTED] interfered with his professional judgment regarding his supervision of [REDACTED].

18. The Board also believes Dr. Cooksey, at times, assumed a therapeutic role with [REDACTED]. An example of this is Dr. Cooksey's interaction with [REDACTED] on May 3, 2009. *See* HE 9, page 18, line 24, et sequa., and page 23, line 11, et sequa.; *and see* HE 14 (actual recordings). While Dr. Cooksey on May 3, 2009, discusses [REDACTED] situation therapeutically, he also mixes in many personal comments about the Lord's place in a solution to [REDACTED] difficulties. This aspect of his discussions with [REDACTED] is inappropriate for a supervisor/supervisee relationship.

Improper Personal Discussions

19. As a result of [REDACTED] ongoing attendance at these church services and prayer meetings, Dr. Cooksey became more personal in his discussions with [REDACTED] about religious

matters. The Board is convinced that Dr. Cooksey began talking with [REDACTED] about religious matters whenever they met, including when they met for supervision.

20. Examples of discussions about religious matters in various settings are contained in the recordings that [REDACTED] made of his interactions with Dr. Cooksey on May 3, 4, 7, and 8, 2009. See HE 12, 13, and 14.

21. While [REDACTED] recorded several non-supervision interactions with Dr. Cooksey, the Board specifically finds the May 8, 2009, recorded meeting was a supervisory session. See HE 12, 13, and 14. The Board makes this finding because Dr. Cooksey and [REDACTED] met every Friday in the 2008-2009 academic year to discuss [REDACTED] clinical activities. Dr. Cooksey cannot now argue that the May 8 Friday meeting was not a supervisory meeting.

22. Additionally, although they did not discuss patients during the May 8, 2009, meeting, Dr. Cooksey and [REDACTED] discussed topics related to [REDACTED] supervision. These topics included, for example, [REDACTED] failure to obtain an internship in February 2009 and [REDACTED] activities during the May 4 to 8 week that he undertook to address his failure to match (HE 12, page 4, et sequa.); the psychology conference Dr. Cooksey attended earlier in the week (HE 13, page 2, et sequa.); and [REDACTED] efforts to obtain temporary licensure (HE 13, page 23, et sequa.). All of these are topics appropriate for supervision.

23. [REDACTED] asserted that Dr. Cooksey always made religious comments when they met, even when the meeting was a supervision meeting. The Board views the transcript of the May 8, 2009, meeting as corroboration for this assertion. Again, while several of [REDACTED] recordings are non-supervision interactions with Dr. Cooksey, instances of Dr. Cooksey's religious comments

during all these meetings (even excluding the prayer meeting of May 7, 2009), including the May 8 supervision meeting, are pervasive and spontaneous by Dr. Cooksey.

24. For instance, while discussing on May 8, 2009, [REDACTED] failure to obtain an internship match, Dr. Cooksey said,

We (Dr. Cooksey and his wife) thought it seemed more like the hand of the Lord at work because He had other, He had higher priorities for you (another student) and STUDENT ([REDACTED]) than Internship this next year.

HE 12, page 5.

25. Again, later during the May 8 meeting, Dr. Cooksey asked [REDACTED] about his stress level due to [REDACTED] failure to obtain an internship match. When [REDACTED] answered that it was a difficult question to answer, Dr. Cooksey said,

Well, when do you find is your best time with the Lord, like is it in reading Scriptures and having time when you're meditating on the Scriptures before Him and praying, and that sort of thing, or—I know sometimes you've said that, you know, you use your walk time to serve as a time to be before the Lord about things and that's also part of your time with Him so, I just didn't know what, that is, what you found was your best time for sort of spiritually having yourself strengthened and fortified.

HE 12, page 15.

26. Dr. Cooksey's religious comments are clearly inappropriate for supervision.

Failure to Refer [REDACTED] for Mental Health Treatment

27. The Board charged Dr. Cooksey with failing to take sufficient steps to ensure that [REDACTED] sought out appropriate mental health treatment outside his supervisory relationship with Dr. Cooksey. HE 1, page 4, Count 2.

28. Early in the supervisory relationship, Dr. Cooksey observed serious problems with [REDACTED] respect for authority. Dr. Cooksey testified that he and [REDACTED] had "knock down, drag out"

arguments when he was █████ university supervisor in the 2004-2005 academic year. These arguments arose because █████ would reject Dr. Cooksey's suggestions about █████ clinical technique.

29. Dr. Cooksey also admitted that he knew about aspects of █████ personal history that indicated █████ had significant psycho-social problems. In his Response to the Board's charges, Dr. Cooksey wrote,

When the student who made the complaint against me came to my supervision nearly 4 years ago it was immediately apparent from his social and emotional immaturity that he was going to be a supervisory challenge. He revealed in a very early supervisory session that he was physically and emotionally abused as a child and grew up as, what he termed, a "child of the street." He spoke of a substantial drug history during much of his adolescence and indicated he often felt he had missed out on critical social development during that time because of his involvement with drugs. He also reported that he did not feel an emotional connection to any family members apart from his seven-year-old daughter. I learned during the first year that the student also frequently talked about his abuse experiences with other students and supervisors. By his report this student frequently had conflicts in his relationships with other students which ended in estrangement and he acknowledged that he had not developed a strong social network with his peers in the program.

HE 23, page 3.

30. As previously stated, during the 2005-2006 school year, Dr. Cooksey participated in a faculty discussion of █████ significantly contentious relationship with his off-site supervisor, Dr. McKune.

31. In his Response to the Board, Dr. Cooksey described significant psychological difficulties that █████ displayed during the 2008-2009 academic year. Dr. Cooksey stated,

While the student has made good progress in his clinical skill development during the supplemental practicum there were notable times during the last 10 months when the student reported, and demonstrated behavior consistent with his report, of "being able to barely function." He explained not being able to sleep or eat; "walking the streets" in his neighborhood for many hours each night; and, finding it impossible to keep up with his

studies. The first of these times occurred last summer while he was anticipating his nine-year-old daughter coming to stay with him for a week and he would have to provide for her care all on his own. The second time occurred in the fall when he began reporting a problem with noisy neighbors in his apartment complex which escalated into open confrontation and ended with him moving from the apartment complex to another part of the city. The third occurrence was a huge conflict, as he described it, involving family members around the time of Christmas. He discussed these issues with me and supervision as they occurred and asked for suggestions on how to deal with them. As I began to offer suggestions he would become very defensive and upset, and angrily accused me of blaming him for these problems and begin to attack me personally. Having learned by this point, from our previous work together, how to be more effective in handling his irrational and escalating outbursts, I would begin by switching my position to a softer, less confronting and more appeasing one which agreed with his position initially. This had the effect of undermining his need to continue to adamantly defend and insist upon his initial position thus allowing him to consider and, most of the time, ultimately choose a more appropriate course of action with a better outcome. Again, after these sessions were over he would thank me for my help and make a sheepish apology for his angry, combative attitude which he assured me was getting better.

HE 23, page 6.

32. Dr. Cooksey admitted during his testimony that [REDACTED] also displayed significant psychological difficulties in February 2009 after he failed to match for an internship. Dr. Cooksey described [REDACTED] as “not himself,” “despondent,” “uncommunicative,” and “barely functional” after he failed to match with an internship program.

33. Finally, on May 8, 2009, Dr. Cooksey says [REDACTED] falsely accused him of performing a massage on May 1, 2009, during which he, Dr. Cooksey, massaged [REDACTED] penis or touched it in a sexual manner. Dr. Cooksey testified that in his opinion [REDACTED] had a “psychological breakdown” on May 8, 2009. Dr. Cooksey also testified that he felt like [REDACTED] “was suicidal” on May 8, 2009, and that he, Dr. Cooksey, thought [REDACTED] was like a person about to jump off a cliff with him, Dr. Cooksey, chained to [REDACTED].

34. Dr. Cooksey testified that at the end of the May 8, 2009, session with [REDACTED], he, Dr. Cooksey, thought [REDACTED] seemed to have gotten past all the "awful sexual stuff." Despite Dr. Cooksey's testimony, the Board finds that [REDACTED] condition was emergent, and he needed to be assessed to determine the level of risk presented by his condition.

35. After [REDACTED] left Dr. Cooksey's office on May 8, 2009, Dr. Cooksey did not contact anyone from the University, did not write any notes concerning his interaction with [REDACTED], and did not refer [REDACTED] to any mental health official or service.

36. Regardless of whether one believes [REDACTED] allegations of what happened on May 8, 2009, or believes Dr. Cooksey's explanation that [REDACTED] suffered a psychological breakdown, Dr. Cooksey had a duty to refer [REDACTED] for mental health services that day. Instead, Dr. Cooksey said he was going to wait to check with [REDACTED] on Monday, May 11, 2009, to see how he was doing.

37. Dr. Cooksey also did not alert anyone about his concerns for [REDACTED] mental health when Spalding University officials contacted him Monday, May 11 to tell him his classes had been canceled.

38. The Board also believes there is ample evidence, as outlined above, indicating that [REDACTED] was an impaired student, and that Dr. Cooksey should have referred him for mental health evaluation and counseling long before May 8, 2009.

39. The proof showed [REDACTED] was able successfully to continue his clinical work during all of the periods of time that he exhibited psychological difficulties and issues. The Board does not find that this relieved Dr. Cooksey of his responsibility to refer [REDACTED] for mental health services based on [REDACTED] presentation outside of his clinical work.

Supervision at Inappropriate Times and Places

40. The Board alleged that Dr. Cooksey conducted supervision with [REDACTED] at inappropriate times and places such as at a fast food restaurant and during or after religious prayer meetings. HE 1, page 5, Count 3.

41. The Board finds that there was insufficient proof to support this charge.

42. The Board's counsel argued that Dr. Cooksey and [REDACTED] would sometimes meet at a Wendy's and discuss [REDACTED] clinical cases. There was proof indicating that the two of them met at Wendy's on occasion, but the proof showed only that Dr. Cooksey helped [REDACTED] revise essays during these meetings. Except for [REDACTED] allegations, no proof showed Dr. Cooksey discussed [REDACTED] clinical cases when they met at a Wendy's.

Dr. Cooksey's Attempts to Encourage a Relationship with his Daughter

43. The Board charged Dr. Cooksey with attempting to induce or to suggest that [REDACTED] engage in a romantic relationship with Dr. Cooksey's daughter. HE 1, page 5, Count 4.

44. The Board finds that there was insufficient proof to support this charge.

45. [REDACTED] alleged that Dr. Cooksey spoke numerous times about [REDACTED] marrying Dr. Cooksey's daughter, and that Dr. Cooksey said, "nothing will make me happier than if you married my daughter and became my son." Both Dr. Cooksey and his daughter, who also testified, denied that Dr. Cooksey ever encouraged [REDACTED] and her to become a couple. Dr. Cooksey's daughter had a boyfriend, and she never considered [REDACTED] as anything more than a classmate and friend.

46. No proof supports [REDACTED] allegation other than his testimony, which the Board does not find credible. The Board believes [REDACTED] allegations stem from his boundary and attachment

issues with Dr. Cooksey, and that [REDACTED] probably misinterpreted something that Dr. Cooksey said about his daughter.

Improper Foot Massages

47. The Board charged Dr. Cooksey with giving [REDACTED] foot massages with sexual overtones and feelings. HE 1, page 5, Count 5.

48. The Board does not find credible [REDACTED] allegations that Dr. Cooksey gave him multiple foot massages.

49. The Board does not find plausible [REDACTED] description of the circumstances of these foot massages. The boundary and attachment issues he had with Dr. Cooksey were so significant and pervasive that they call into question [REDACTED] testimony about his interactions with Dr. Cooksey. Without corroboration, [REDACTED] allegations alone are not sufficient for the Board to find [REDACTED] credible.

50. Additionally, there was testimony that contradicted in significant ways [REDACTED] allegations about the foot massages. For example, [REDACTED] claimed Dr. Cooksey's wife was present during one of the foot massages. [REDACTED] testified Mrs. Cooksey remarked that people might perceive the nature of the foot massage wrongly. Mrs. Cooksey denied ever seeing Dr. Cooksey give [REDACTED] a foot massage, and she denied ever making such a remark. The Board found Mrs. Cooksey's testimony credible.

Improper Massage on May 1, 2009

51. The Board charged Dr. Cooksey with giving [REDACTED] a massage on May 1, 2009. The Board alleges that [REDACTED] pants were removed; that Dr. Cooksey massaged [REDACTED] back, leg, and thighs; that both [REDACTED] and Dr. Cooksey became sexually aroused; that Dr. Cooksey pulled [REDACTED]

legs around his waist; and that Dr. Cooksey kept saying "relax." HE 1, page 4; and page 5, Count 6.

52. Again, [REDACTED] relationship with Dr. Cooksey was so distorted by his attachment issues that the Board cannot take his allegations at face value, not even the recorded statements [REDACTED] made on May 8, 2009, which Dr. Cooksey seems to admit on the recording. See HE 12, 13, and 14. The Board believes Dr. Cooksey massaged [REDACTED] on May 1, 2009. But the Board believes [REDACTED] exaggerated what happened on May 1, 2009, when he talked with Dr. Cooksey on May 8, when he spoke to various investigators, and in his testimony.

53. Based on Dr. Cooksey's own statements on the May 8, 2009, recording, the Board is persuaded some kind of massage occurred on May 1, 2009. Because the evidence was insufficient, the Board cannot find that the massage Dr. Cooksey performed on [REDACTED] on May 1, 2009, involved touching of any of [REDACTED] sexual or other intimate parts. However, Dr. Cooksey's recorded statements are not consistent with the explanation he gave in his testimony and his written response. HE 2.

54. Dr. Cooksey testified that [REDACTED] did not record one hour of his conversation with [REDACTED] on May 8, 2009, between 10 A.M. and 11 A.M. Dr. Cooksey says this unrecorded hour transpired before the first recording [REDACTED] made that day and submitted to investigators. That first recording begins at approximately 11 A.M. HE 12 and 14. The Board's counsel argued that the May 8 meeting began with [REDACTED] first recording because Dr. Cooksey and [REDACTED] agreed the night before to meet at 11 A.M., as reflected on the end of the recording of May 7 prayer meeting at Dr. Cooksey's house. HE 11, page 78. Dr. Cooksey testified he changed his mind after [REDACTED] left his

house, and he called [REDACTED] to reschedule the start time of the meeting to 10 A.M. [REDACTED] denied the meeting start time was changed.

55. Dr. Cooksey testified regarding the first unrecorded one hour of exchange between him and [REDACTED] on May 8. Dr. Cooksey says [REDACTED] walked in his office at 10 A.M. and said, "I think I've been sexually exploited, and I think the person who did it is you." Dr. Cooksey says he was stunned, and unlike in [REDACTED] first May 8 taped conversation, he challenged [REDACTED] accusations. Dr. Cooksey says this made [REDACTED] angrier, louder, and more insistent, which, Dr. Cooksey explained, was the way [REDACTED] used to react to him when [REDACTED] was his second year supervisee. Dr. Cooksey testified that on May 8 he used a technique called "strategic appeasement," which he said he started using with [REDACTED] when [REDACTED] was a second year supervisee. Dr. Cooksey said this technique involved appearing to agree with [REDACTED] to calm him down. Dr. Cooksey said that during the unrecorded hour, the technique worked, and by the end of the hour, [REDACTED] had calmed down. Dr. Cooksey says they took a break at about 11 a.m., and that just before he left for the bathroom, [REDACTED] said, "I don't know why I thought that was you." Dr. Cooksey testified that when [REDACTED] returned from the bathroom, the first conversation that is recorded from May 8 began. HE 12.

56. Dr. Cooksey says his statements during the second hour, which is the first recorded hour, he used the strategic appeasement technique again when [REDACTED] raised the issue of the massage again.

57. The Board finds that the first May 8 recording is not consistent with Dr. Cooksey's explanation. The Board believes the exchange that occurs almost 45 minutes into the

May 8 recording, when [REDACTED] first speaks of the May 1 message, reflects admissions by Dr.

Cooksey, not "strategic appeasement":

STUDENT: Does he ("Brother [REDACTED]/[REDACTED]") know about other things?
COOKSEY: What do you mean?
STUDENT: Well, like last Friday, for instance.
COOKSEY: What do you mean "last Friday"?
STUDENT: Just, you know, things that occurred last Friday.
COOKSEY: I don't know what you mean. Can you be a little more specific?
STUDENT: Well, like the message.
COOKSEY: I, I don't know what you mean by that.
STUDENT: Does he know about that?
COOKSEY: Does [REDACTED]?
STUDENT: Yeah.
COOKSEY: I wouldn't think so.
STUDENT: Does anybody know?
COOKSEY: Only you and I.
STUDENT: There's nobody else that knows about that?
COOKSEY: No. I mean, I thought that's what you wanted. I mean, that, that seems to be the most normal thing.
STUDENT: Does [REDACTED] (Dr. Cooksey's daughter) know?
COOKSEY: No. No. I wouldn't mention that to anybody else.
STUDENT: What about your wife?
COOKSEY: No, I wouldn't mention it to anybody else. Absolutely not. Would you?
STUDENT: No, no.
COOKSEY: Well, I thought it was just, I thought it was something that was helpful to you. It was just between you and me. I wouldn't violate your confidence on that, not for an instant.
STUDENT: Well, it kind of scared me a little.
COOKSEY: It did? I'm very sorry.
STUDENT: Well, I am, I just wasn't, you know, prepared.
COOKSEY: Well, I'm very sorry. What scared you, [REDACTED]?
STUDENT: Well, just a reaction, I just, I didn't know where it was going.
COOKSEY: Well, when you said, "How about a message?" I thought, I thought that's what I just did. That's what I was doing.
STUDENT: Yeah, I know, it was good. I wasn't, I didn't have any forewarning to be prepared for it. I wish you would have been a little bit more explicit.
COOKSEY: Oh. Okay. I'm, I'm sorry if it frightened you or anything. Did you feel I was being inappropriate with you? Is that what frightened you?
STUDENT: I don't know what you mean by "inappropriate".

COOKSEY: I don't know. Did you feel it was, uh, that it was like over sexual overtones or something to it? Is that what—I'm trying to figure out what might have frightened you.

STUDENT: A little bit.

COOKSEY: Oh, well I'm very sorry about that.

STUDENT: Why?

COOKSEY: Why what?

STUDENT: Why are you sorry?

COOKSEY: Well, you said it frightened you.

STUDENT: Well I mean—

COOKSEY: I didn't mean it to fright—I was trying to—I thought it might be helpful, especially when you asked for it, I just thought maybe it would be helpful, so I certainly didn't mean for it to frighten you.

HE 12, page 27 (41:54), line 23 through page 29 (46:25), line 24.

58. The Board does not believe this exchange sounds like strategic appeasement.

Rather, the exchange sounds like an admission by Dr. Cooksey that he massaged █████ on May 1.

59. Further, the Board does not believe anything on the recordings of Dr. Cooksey's and █████ May 8 conversations can be interpreted as strategic appeasement. Dr. Cooksey's statements are not therapy, and they are not supervision.

60. The Board finds inappropriate physical contact occurred between Dr. Cooksey and █████ on May 1, and that the contact involved a massage of █████ by Dr. Cooksey. Other details about what occurred cannot be determined for the reasons previously stated. Thus, due to insufficient proof, the Board rejects both the charge that Dr. Cooksey massaged or contacted █████ penis on May 1.

Dr. Cooksey's Personal Emotional Needs

61. The Board finds, however, that the massage, as well as the instances when Dr. Cooksey allowed █████ to violate appropriate supervisor-supervisee boundaries, show that Dr.

Cooksey and [REDACTED] had an interdependent relationship, and that their relationship, at least in part, was meeting Dr. Cooksey's personal emotional needs.

CONCLUSIONS OF LAW

1. Pursuant to KRS Chapter 319, the Kentucky Board of Examiners of Psychology has jurisdiction to hear and decide this matter.
2. Neither party having objected to the notice they received of the charges or the hearing dates in this matter, all such objections are waived.
3. With the appropriate proof, the Board has authority to sanction a credential holder under KRS 319.082(1).
4. If the Board finds a violation under KRS 319.082(1), the Board has authority under that statute and KRS 319.092 to impose the following penalties, sanctions, and terms:
 - Revoke or suspend the license;
 - Impose a monetary penalty not to exceed two thousand dollars (\$2,000) per violation;
 - Revoke or suspend the license or impose a monetary penalty, but suspend enforcement thereof by placing the credential holder on probation, which shall be revocable if the board finds the conditions of the probation order are not being followed by the credential holder;
 - Require the credential holder, as a condition of probation, to submit to care, counseling, or treatment by a professional designated by the board, or require the credential holder to be supervised by a licensed psychologist

designated by the board. The expense of this action shall be borne by the credential holder on probation;

- Require restitution; and
- Assess the costs of the disciplinary proceeding, which include a hearing fee in an amount equal to the costs of stenographic services and the costs of the services of a hearing officer, if any. In case of financial hardship, the board may waive all or part of the fee.

Undue Influence Used to Exploit a Student or Supervisee

5. Pursuant to KRS 319.082(1)(q), a credential holder can be sanctioned if he has exercised undue influence in such a manner as to exploit a student or supervisee for personal advantage to the practitioner.

6. The Board concludes that the legal and professional responsibilities of a supervisor towards a supervisee are no different when performing what was referred to in the testimony as “clinical supervision” than when performing what Spalding University termed “university supervision.”

7. Based on the findings concerning Count 1 of the Notice of Administrative Hearing and Order, the Board concludes that Dr. Cooksey’s personal discussions with [REDACTED], especially their discussions about religion, were inappropriate. They also met Dr. Cooksey’s personal emotional needs. Thus, his personal discussions with [REDACTED] exploited [REDACTED] for his own personal advantage. For that reason, Dr. Cooksey violated KRS 319.082(1)(q) based on the charge concerning inappropriate personal discussions during supervision.

8. For this violation alone, Dr. Cooksey should receive a private admonishment.

9. Based on the findings concerning Count 4, the Board concludes that Dr. Cooksey did not violate KRS 319.082(1)(q) because it found that he did not urge ██████ to develop a relationship with his, that is, Dr. Cooksey's, daughter.

10. Based on the findings concerning Count 5, the Board concludes Dr. Cooksey did not violate KRS 319.082(1)(q) based on the allegation of a foot massage because the Board found the foot massage did not happen.

11. Based on the findings concerning Count 6, the Board concludes Dr. Cooksey violated KRS 319.082(1)(q) because, in giving ██████ a massage that involved inappropriate physical contact, Dr. Cooksey exploited ██████, Dr. Cooksey's student and supervisee, to gratify his own personal emotional needs.

12. For this violation alone, the Board imposes the penalties set forth in the final order.

Incompetence or Negligence in the Practice of Psychology

13. Pursuant to KRS 319.082(1)(d), a credential holder can be sanctioned if he has been incompetent or negligent in the practice of psychology.

14. Based on the findings concerning Count 2, the Board concludes Dr. Cooksey violated KRS 319.082(1)(d) because Dr. Cooksey failed to refer ██████ for mental health evaluation and services after their encounter on May 8, 2009. A supervisor must refer for mental health evaluation and services psychology doctorate students who show signs and symptoms of mental health issues regardless of whether those signs and symptoms affect the student's ability to perform clinical services. A supervisor in Dr. Cooksey's position should know that a student showing signs and symptoms of mental health issues will potentially have significant difficulties

in therapeutic relationships. Thus, Dr. Cooksey had an obligation to refer [REDACTED] for mental health counseling both to protect [REDACTED] from himself in the near term and the public in the long term.

15. For this violation alone, the Board imposes the penalties set forth in the final order.

16. Based on the findings concerning Count 3, the Board concludes Dr. Cooksey did not violate 319.082(1)(d) because the Board does not believe that Dr. Cooksey conducted supervision at inappropriate times or places.

Sexual Contact

17. Pursuant to KRS 319.082(1)(o), a credential holder can be sanctioned if he has been found by the Board to have had sexual contact as defined in KRS 510.010 with a student or supervisee

18. Pursuant to KRS 510.010(7), "sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

19. Based on the findings concerning Count 5, the Board concludes Dr. Cooksey did not violate KRS 319.082(1)(d) because the Board found there was insufficient proof that Dr. Cooksey gave [REDACTED] foot massages of any kind.

20. Based on the findings concerning Count 6, the Board concludes Dr. Cooksey did not violate KRS 319.082(1)(d) because the Board found that during the May 1, 2009, massage, Dr. Cooksey did not touch any of [REDACTED] sexual or other intimate parts.

Penalties

21. For each of Dr. Cooksey's remaining two violations, which are based on Counts 2 and 6, taken alone and together, it is appropriate to suspend his license for a term and probate a portion of the service of the suspension, with terms, fines, and fees as set forth in the final order.

FINAL ORDER

Based upon the foregoing findings of fact and conclusions of law, the Kentucky Board of Examiners of Psychology hereby ORDERS:

1. For violating KRS 319.082(1)(q) by having personal discussions with [REDACTED], especially about religion, during supervision, the Respondent, James J. Cooksey, Ph.D., shall receive a private admonishment.

2. For each of Dr. Cooksey's remaining two violations, which are based on Counts 2 and 6, taken alone and together, Dr. Cooksey is sanctioned as follows:

3. The license of Dr. Cooksey is suspended for one year.

4. Nine months of Dr. Cooksey's one year suspension is probated for a period of three years on the following terms:

a. Dr. Cooksey shall begin his three months license suspension from the date he receives service of this final order.

b. At the end of the three months suspension, Dr. Cooksey's license is automatically reinstated, so long as he complies with the terms set forth hereafter.

- c. For the period of probation, Dr. Cooksey shall be supervised at his own expense by a licensed psychologist appointed by the Board and according to the terms of 201 KAR 26:171.
- d. Before his license is reinstated, Dr. Cooksey shall establish a supervision relationship with the Board's supervisor.
- e. For 12 months following the reinstatement of his license, Dr. Cooksey shall not supervise any student or anyone providing psychological services, even if an exemption allows supervision without a license. During this 12 month period, Dr. Cooksey can provide clinical services.
- f. During the second 12 month period following his license reinstatement, Dr. Cooksey can supervise students and individuals providing psychological services and provide clinical services;
- g. The Board's supervisor shall establish the duration and frequency of each supervision session with Dr. Cooksey. Dr. Cooksey shall pay the costs of each supervision session.
- h. The Board's supervisor shall submit quarterly reports to the Board beginning three months after Dr. Cooksey's license is reinstated. Dr. Cooksey shall pay the costs of these reports.
- i. After two years following reinstatement of his license, Dr. Cooksey may petition the Board to suspend supervision.
- j. If the Board receives credible evidence that Dr. Cooksey has committed further violations of the Board's laws during the period of his probation,

Dr. Cooksey's license to practice psychology in Kentucky shall be summarily suspended by emergency order for the remaining nine months of his license suspension under this order; in which case, Dr. Cooksey can request an emergency hearing pursuant to KRS 13B.125.

5. Dr. Cooksey shall pay a monetary penalty in the amount of \$250 for the violation based on Count 1; \$ 500 for the violation based on Count 2; and \$ 500 for the violation based on Count 6. Dr. Cooksey shall pay all monetary penalties before his license is reinstated.

6. For each of Dr. Cooksey's three violations, taken alone and together, Dr. Cooksey shall pay all costs of these disciplinary proceedings as allowed by 201 KAR 26:140 ' 2. Dr. Cooksey shall pay these costs before his license is reinstated.

7. For each of Dr. Cooksey's three violations, taken alone and together, Dr. Cooksey shall obtain six hours of ethics continuing education for supervisors. These six hours will count towards the continuing education hours the Board's laws require a licensee to obtain to be licensed.

NOTICE TO PARTIES OF APPEAL RIGHTS

Pursuant to KRS 13B.140:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business.

Pursuant to KRS 23A.010(4), ASuch review [by the Circuit Court] shall not constitute an appeal but an original action.@ Some courts have interpreted this language to mean that summons must be served when filing an appeal petition in the Circuit Court.

SO ORDERED this 7th day of March, 2011.



BARBARA KAY JEFFERSON, PH.D.,
BOARD VICE CHAIR, on behalf of the
BOARD OF EXAMINERS OF PSYCHOLOGY

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was filed this 7th day of March, 2011, by:

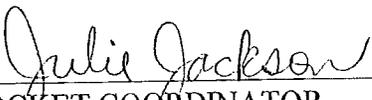
JULIE G JACKSON
BOARD ADMINISTRATOR
BD OF EXAMINERS OF PSYCHOLOGY
911 LEAWOOD DR
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and a true copy was sent by certified mail, return receipt requested, to:

TRACY PRUITT
O'BRYAN BROWN & TONER
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LOUISVILLE KY 40202

and, by messenger mail, to:

MARK BRENGELMAN
CIVIL & ENVIRONMENTAL LAW DIVISION
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