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DIV. OF OCCUPATIONS  
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Commonwealth of Kentucky  
Board of Examiners of Psychology  
Agency Case No. 09-06  
Administrative Action No. 09-KBEP-\_\_\_\_\_

Commonwealth of Kentucky,  
Board of Examiners of Psychology

Complainant

v. **Settlement Agreement**

James Phifer, Ph.D.  
(License No. 0830)

Respondent

\*\*\*\*\*

Whereas, the Kentucky Board of Examiners of Psychology (hereafter "Board") having investigated an initiating complaint and having authorized to be filed a Formal Complaint and Notice of Administrative Hearing and Order, under KRS Chapters 319 and 13B against James Phifer, Ph.D., Post Office Box 6456, Huntington, West Virginia 25772 (hereafter "Respondent"), and;

Whereas, for the purposes of this Settlement Agreement, the Respondent admits that the Board would prove as follows:

The Respondent violated KRS 319.082(1)(f) by violating an administrative regulation of the Board, 201 KAR 26:145 § 4(a), by continuing a professional relationship when the objectivity or competency of the Respondent was impaired due to the Respondent's mental or emotional condition, this violation having occurred in the State of West Virginia for which the Respondent was disciplined by the West Virginia Board of Examiners of Psychologists in the case styled *In the matter of: James Phifer, Ph.D., Case No. 2006-8.*

Whereas, the Respondent as fully complied with all terms and conditions of the disciplinary action taken by the West Virginia Board of Examiners of Psychologists, and;

**Whereas, the parties mutually desire to settle the matter in an expeditious manner without resorting to a disciplinary hearing; and**

**It is hereby stipulated and agreed between the undersigned parties that this matter shall be settled and resolved as follows:**

#### **Jurisdiction**

**The Respondent acknowledges the Board has jurisdiction over the Respondent and the conduct which has precipitated this Settlement Agreement.**

**The Respondent acknowledges the Board has the legal power and authority to take disciplinary action up to and including revocation of the Respondent's credential.**

**The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board. The Respondent expressly indemnifies the Board for any costs incurred, including reasonable attorney fees, in enforcing any provision of this Settlement Agreement should the Board determine the Respondent has not met any term of this Settlement Agreement after notice and opportunity to be heard.**

#### **Voluntary Waiver of Rights**

**The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Settlement Agreement. The Respondent has freely and voluntarily entered into this Settlement Agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms.**

The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the Formal Complaint, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Franklin Circuit Court as otherwise allowed by KRS 319.092(7). All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

#### **Costs**

The Board and the Respondent shall each bear their own costs incurred in this matter, except as provided below.

#### **Effect Upon Credential Status: Reprimand and Costs**

The Respondent hereby agrees to the following disciplinary action:

1) The Respondent's credential to practice psychology in the Commonwealth of Kentucky shall be reprimanded, with this Settlement Agreement constituting the reprimand, and;

2) The Respondent shall pay the amount of \$500.00 by certified check or money order made payable to "Kentucky State Treasurer" as reimbursement for costs to the Board mailed or delivered to the Board at Post Office Box 1360, 911 Leawood Drive, Frankfort, Kentucky 40602-1360, due on or before October 15, 2009.

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement shall constitute failure to comply with an Order of the Board under KRS 319.082(1)(h) for which the Board may impose additional penalties available under law after notice and opportunity to be heard. The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

#### **Release of Liability**

In consideration of execution of this Settlement Agreement, the Respondent, for the Respondent individually, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, Kentucky Board of Psychology, Kentucky Board of Examiners of Psychology, and the Kentucky Attorney General, and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this Settlement Agreement, or its administration.

#### **Acceptance by the Board**

This Settlement Agreement, when executed by the Respondent, shall be presented to the Kentucky Board of Examiners of Psychology at the next regularly scheduled meeting of the Board following receipt of the executed Settlement Agreement. The Settlement Agreement shall

not become effective until it has been approved by a majority of the Board and endorsed by the Chair of the Board.

The Respondent understands the Board is free to accept or reject this Settlement Agreement. The Respondent hereby agrees to waive any right the Respondent might have to challenge, based solely on the presentation of this Settlement Agreement to the Board, the impartiality of the Board to hear this administrative action if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted by the Board, it shall be regarded as null and void. Representations and/or admissions by the Respondent in the Settlement Agreement, or other settlement proposals, will not be regarded as evidence against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the willingness to have entered into this Settlement Agreement.

#### **Open Records**


The Respondent acknowledges this Settlement Agreement is subject to disclosure under the Kentucky Open Records Act, may be shared with any professional organization or licensing Board as the Board deems appropriate in its discretion, and shall be made public according to KRS 319.092(6) and 201 KAR 26:140 §12, and may be reported in accord with federal law.

#### **Complete Agreement**

This Settlement Agreement consists of six (6) pages and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set


forth above. The Respondent shall not rescind, revoke, or withdraw this Settlement Agreement prior to its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

**Have Seen, Understood and Approved:**

  
\_\_\_\_\_  
James Phifer, Ph.D.  
Post Office Box 6456  
Huntington, West Virginia 25772  
*Respondent*

Date: 7/25/09

Kentucky Board of Examiners of Psychology

By:   
\_\_\_\_\_  
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Date: Nov. 12, 2009