

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF PSYCHOLOGY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

DAVID L. THAYER, Psy.D.
License No. 63-01-008205

Complaint No. 63-15-139677

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Bridget K. Smith, on behalf of the Department of Licensing and Regulatory Affairs, Complainant herein, files the within First Superseding Administrative Complaint against David L. Thayer, Psy.D. (Respondent), alleging upon information and belief as follows:

1. The Board of Psychology, an administrative agency established by the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee.
2. Respondent is currently licensed as a psychologist pursuant to the Code. At all times relevant to this Complaint, Respondent worked as a psychologist at David L. Thayer, Psy.D. P.C. located in Kalamazoo, Michigan.
3. Section 16221(a) of the Code authorizes the Disciplinary Subcommittee to take disciplinary action against a licensee for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent

delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, Respondent's ability to safely and skillfully practice as a psychologist.

4. Section 16221(b)(i) of the Code provides the Disciplinary Subcommittee with the authority to take disciplinary action against a licensee for incompetence, which is defined in section 16106(1) of the Code to mean "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice from the health profession, whether or not actual injury to an individual occurs."

5. Section 16221(b)(vi) of the Code provides the Disciplinary Subcommittee with the authority to take disciplinary action against a licensee for lack of good moral character, defined at section 1 of 1974 PA 381, as amended; MCL 338.41 *et seq*, as the "propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

6. Section 16221(e)(vi) of the Public Health Code provides the Disciplinary Subcommittee with authority to take disciplinary action against a licensee for unprofessional conduct, consisting of any conduct by a health professional with a patient, while he is acting within the health profession for which he is licensed, including conduct initiated by a patient or to which the patient consents, which is sexual or can reasonably be interpreted as sexual.

7. Section 16221(h) of the Code authorizes the Disciplinary Subcommittee to take disciplinary action against a licensee for violating, or aiding and abetting in a violation of Article 15 or a rule promulgated under Article 15.

8. Michigan Administrative Code R 338.2527(b) prohibits a psychologist from soliciting or engaging in a sexual relationship with a current patient.

9. Michigan Administrative Code R 338.2527(c) prohibits a psychologist from soliciting or engaging in a sexual relationship with a former patient within two years after the termination of the treatment or professional relationship.

10. Michigan Administrative Code R 338.2527(d) prohibits a psychologist from soliciting or engaging in a multiple relationship with a patient.

11. Section 16233(5) of the Public Health Code provides for the summary suspension of a license, reading, in pertinent part, as follows:

After consultation with the chair of the appropriate board or task force or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, being section 24.292 of the Michigan Compiled Laws. If a licensee or registrant is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance, the department shall find that the public health, safety, or welfare requires emergency action and, in accordance with section 92 of the administrative procedures act of 1969, shall summarily suspend the licensee's license or the registrant's registration.

12. Section 16226 of the Code authorizes the Disciplinary Subcommittee to impose sanctions against persons licensed by the Board if, after opportunity for a hearing, the Disciplinary Subcommittee determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

Allegations

Count I

Patient S.M.

13. Respondent treated S.M. from approximately March 2014 until December 2015 for depression, anxiety, and Obsessive Compulsive Disorder.

14. After several months of therapy, Respondent began hugging S.M. at the end of therapy sessions and complimenting her appearance.

15. Respondent and S.M. exchanged numerous emails, some of which were non-therapeutic in nature. In some of the emails, Respondent gave S.M. dating advice and counsel that went beyond the client/therapist relationship. Furthermore, the content of the emails is not reflected in Respondent's progress notes of the same time period.

16. Specifically, in emails dated September 10, 2014, S.M. expressed concern regarding boundary crossing in session. There is nothing in corresponding progress notes that reflects that Respondent appropriately addressed S.M.'s concerns. In fact, Respondent's progress notes contain very little clinical content.

17. In October 2014, S.M. told Respondent that she had feelings for him. In the following session, Respondent told S.M. that he found her attractive and discussed their feelings for each other.

18. Shortly thereafter, Respondent began making jokes with S.M. that were sexual in nature.

19. Subsequently, Respondent began fondling S.M. through her clothing. This progressed to additional touching that was sexual in nature, including Respondent touching S.M.'s vagina and masturbating in her presence. This continued until S.M. reported Respondent's behavior to the police in December 2015.

20. Respondent's conduct as described above constitutes negligence and failure to exercise due care, in violation of section 16221(a) of the Code.

21. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

22. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

23. Respondent's conduct as described above constitutes sexual conduct by a health professional with a patient, in violation of section 16221(e)(vi) of the Code.

24. Respondent's conduct as described above constitutes engaging in a sexual relationship with a patient, contrary to Mich Admin Code, R 338.2527(b), in violation of section 16221(h) of the Code.

25. Respondent's conduct as described above constitutes engaging in a multiple relationship with a patient, contrary to Mich Admin Code, R 338.2527(d), in violation of section 16221(h) of the Code.

Count II

Patient S.C.

26. On April 4, 2014, Respondent completed an evaluation of S.C. as part of her court-ordered therapy following an arrest for Operating While Intoxicated.

27. Respondent continued to treat S.C. until June 2015.

28. Respondent began engaging in a sexual relationship with S.C. in December 2014, while she was his patient. The sexual relationship continued until December 2015.

29. From December 2014 until June 2015, Respondent had weekly sessions with S.C. at his office. S.C. believed Respondent continued to bill her insurance for the session; however, Respondent did not provide any therapy during the sessions. Instead they would engage in sexual activity.

30. During a December 2015 interview with a Kalamazoo Police Department Detective, Respondent admitted to engaging in a sexual relationship within one year of termination of her therapy.

31. Respondent's conduct as described above constitutes negligence and a failure to exercise due care, in violation of section 16221(a) of the Code.

32. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

33. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

34. Respondent's conduct as described above constitutes sexual conduct by a health professional with a patient, in violation of section 16221(e)(vi) of the Code.

35. Respondent's conduct as described above constitutes engaging in a sexual relationship with a patient, contrary to Mich Admin Code, R 338.2527(b), in violation of section 16221(h) of the Code.

36. Respondent's conduct as described above constitutes engaging in a sexual relationship with a former patient within two years after termination of the treatment, contrary to Mich Admin Code, R 338.2527(c), in violation of section 16221(h) of the Code.

COUNT III

37. From January 2003 until December 2003, Respondent treated C.O. for issues stemming from the death of her seven-year-old daughter. Treatment occurred at Pine Rest Christian Mental Health Services at their office in Kalamazoo, Michigan.

38. Shortly after the therapy began, Respondent started complimenting C.O. and telling her she was beautiful.

39. After several months of therapy, Respondent began giving C.O. prolonged hugs. Respondent then began touching C.O.'s breasts and kissing her romantically. Respondent also had C.O. touch his penis through his underwear. On one occasion Respondent had C.O. sit on his lap, and he reached his hand under her shirt and stroked her lower back.

40. Respondent conducted one of C.O.'s sessions at her daughter's gravesite. During that session, Respondent had C.O. sit on his lap in his car.

41. Respondent's conduct as described above constitutes negligence and a failure to exercise due care in violation of section 16221(a) of the Code.

42. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

43. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

COUNT IV

44. Respondent treated S.B. on three occasions from approximately February 2011 until March 17, 2011.

45. When S.B. walked into her March 17, 2011 appointment, Respondent asked to see the shirt she was wearing. S.B. unbuttoned her blazer and showed him the shirt she was wearing underneath. Respondent then fondled S.B.'s breasts. Respondent also told S.B. that she had beautiful breasts and was a beautiful young girl.

46. Respondent then continued with the session, focusing on issues related to S.B.'s sexuality. At the end of the session, Respondent pushed S.B. against the wall and groped her breasts a second time.

47. S.B. stopped therapy with Respondent after the March 17, 2011 incident.

48. Respondent's conduct as described above constitutes negligence and failure to exercise due care, in violation of section 16221(a) of the Code.

49. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

50. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

51. Respondent's conduct as described above constitutes soliciting or engaging in a sexual relationship with a patient, contrary to Mich Admin Code, R 338.2527(b), in violation of section 16221(h) of the Code.

COUNT V

52. Respondent treated C.G. approximately in the spring and fall of 2011 for issues related to anxiety and trust.

53. During the fall sessions, Respondent began complimenting C.G. on her looks. Respondent also referred to her breasts as "the girls," telling her that "the girls look good today."

54. Respondent also hugged C.G. at the end of her appointments.

55. Respondent's conduct as described above constitutes negligence and a failure to exercise due care in violation of section 16221(a) of the Code.

56. Respondent's conduct as described above constitutes incompetence in violation of section 16221(b)(i) of the Code.

57. Respondent's conduct as described above constitutes a lack of good moral character in violation of section 16221(b)(vi) of the Code.

COUNT VI

58. Ch.G. and her husband had a joint-therapy session with Respondent in fall of 2013.

59. Respondent then saw Ch.G. without her husband present.

60. During the second appointment, on multiple occasions Respondent motioned suggesting that Ch.G. show him her breasts. Respondent also told Ch.G. she was "smoking hot."

61. As a result, Ch.G. did not go back to therapy with Respondent.

62. Respondent's conduct as described above constitutes negligence and a failure to exercise due care, in violation of section 16221(a) of the Code.

63. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

64. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

65. Respondent's conduct as described above constitutes soliciting or engaging in a sexual relationship with a patient, contrary to Mich Admin Code, R 338.2527(b), in violation of section 16221(h) of the Code.

COUNT VII

66. In approximately May or June 2014, Respondent treated K.H.

67. During her appointments, Respondent made inappropriate comments to K.H. that made her feel uncomfortable, including complimenting her on her appearance.

68. During one appointment, Respondent asked K.H. about how she masturbated and whether she had an orgasm despite the fact they were unrelated to the topic of therapy at that time.

69. During the final therapy session, K.H. was looking at the calendar on her phone. Respondent bent down, took her chin in his hand and lifted her chin up to look him in the face. The incident made K.H. incredibly uncomfortable and she did not return to Respondent for any additional therapy.

70. Respondent's conduct as described above constitutes negligence and a failure to exercise due care, in violation of section 16221(a) of the Code.

71. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

72. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

COUNT VIII

73. Respondent treated S.R. from 2011 until October 2014.

74. In approximately 2012, S.R. began having issues with her marriage that led to her husband moving out of the house.

75. Around that same time, Respondent began complimenting her appearance and flirting with S.R.

76. During one visit, Respondent told S.R. that she "looked hot" in her jeans and asked her to turn around so that he could see how her butt looked.

77. At the end of another visit, S.R. was crying and Respondent grabbed her face in both hands and told her she was beautiful, sexy, hot and “her husband didn’t deserve her.”

78. During one visit, Respondent told S.R. that he would like to see her naked using sex toys.

79. Respondent’s conduct confused S.R. Furthermore, Respondent was focused more on flirting with S.R. than engaging in the therapy that S.R. and her insurance company was paying him for.

80. Respondent’s conduct as described above constitutes negligence and a failure to exercise due care in violation of section 16221(a) of the Code.

81. Respondent’s conduct as described above constitutes incompetence in violation of section 16221(b)(i) of the Code.

82. Respondent’s conduct as described above constitutes a lack of good moral character in violation of section 16221(b)(vi) of the Code.

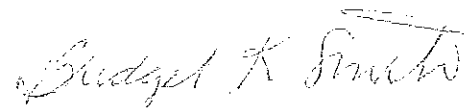
THEREFORE, Complainant requests that this Complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq.*

FURTHER, the administrative complaint previously filed against Respondent on February 26, 2016 is hereby WITHDRAWN and replaced in full by this superseding complaint.

Respectfully submitted,

BILL SCHUETTE
Attorney General

By

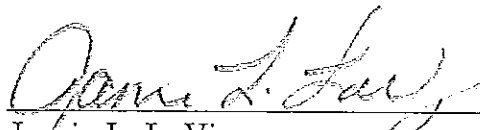


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Dated: May 6, 2016

PROOF OF SERVICE

The undersigned certifies that on the date indicated above a copy of the foregoing document was served upon Donald L. Sappanos, Esq., Respondent's attorney, by faxing same to his facsimile number of 269-375-7827.


Jamie L. LaVigne