BEFORE THE BOARD OF PSYCHOLOGY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:) Case No. 600-2015-000322
REX BIERLEY, PhD	
12 Palisades Drive)
Daly City, CA 94015)
Psychologist License No. PSY 11981	
Respondent.	
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<u>DECISION AN</u>	D ORDER
The attached Stipulated Surrender of Licens	e and Order is hereby adopted by the Board of
Psychology, Department of Consumer Affairs, as it	s Decision in this matter.
This Decision shall become effective on	August 24, 2017
It is so ORDERED July 25, 2017	

ANTONETTE SORRICK EXECUTIVE OFFICER BOARD OF PSYCHOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

1	Xavier Becerra Attorney General of California		
2	JANE ZACK SIMON Supervising Deputy Attorney General		
3	DAVID CARR Deputy Attorney General		
4	State Bar No. 131672 455 Golden Gate Avenue, Suite 11000		
5	San Francisco, CA 94102-7004 Telephone: (415) 703-5538		
6	Facsimile: (415) 703-5480 Attorneys for Complainant		
7	BEFOR		
8	BOARD OF PSYCHOLOGY DEPARTMENT OF CONSUMER AFFAIRS		
9	STATE OF C.	ALIFORNIA	
10	In the Matter of the Accusation Against:	Case No. 600-2015-000322	
11	REX BIERLEY, Ph.D.		
12	12 Palisades Drive	STIPULATED SURRENDER OF	
13	Daly City, CA 94015	LICENSE AND ORDER	
14	Psychologist License No. PSY 11981		
15	Respondent.		
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18	In the interest of a prompt and speedy settlement of this matter, consistent with the public		
19	interest and the responsibility of the Board of Psy	chology of the Department of Consumer	
20	Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order		
21	which will be submitted to the Board for approva	l and adoption as the final disposition of the	
22	Accusation.		
23	<u>PAR</u>	<u>TIES</u>	
24	1. Antonette Sorrick (Complainant) is the Executive Officer of the Board of Psychology		
25	(Board). She brought this action solely in her official capacity and is represented in this matter by		
26	Xavier Becerra, Attorney General of the State of California, by David Carr, Deputy Attorney		
27	General.		
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- 2. Rex Bierley, Ph.D., is represented in this proceeding by attorney Trevor Zink, Esq., of Omni Law Group LLP, 1940 Hamilton Ave., San Jose, CA 95125.
- 3. On March 4, 1991, the Board issued Psychologist License No. PSY 11981 to Rex Bierley, Ph.D. (Respondent). The Psychologist License expired on October 31, 2016, and has not been renewed.

JURISDICTION

4. Accusation No. 600-2015-000322 was filed before the (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 1, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 600-2015-000322 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 600-2015-000322. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 600-2015-000322, if proven at a hearing, constitute cause for imposing discipline upon his Psychologist License.

- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Psychologist License without further process.

RESERVATION.

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Psychology or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- 12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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<u>ORDER</u>

IT IS HEREBY ORDERED that Psychologist License No. PSY 11981, issued to Respondent Rex Bierley, Ph.D., is surrendered and accepted by the Board of Psychology.

- 1. The surrender of Respondent's Psychologist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Psychology.
- 2. Respondent shall lose all rights and privileges as a psychologist in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 600-2015-000322 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
- 5. Respondent may not petition for reinstatement of a surrendered license for three (3) years from the effective date of this Decision. If the Board grants future reinstatement, Respondent agrees to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$6,028.00, payable to the Board upon the effective date of such reinstatement decision.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 600-2015-000322 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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2	<u>ACCEPTANCE</u>
3	I have carefully read the above Stipulated Surrender of License and Order and have fully
4	discussed it with my attorney, Trevor Zink, Esq. I understand the stipulation and the effect it will
5	have on my Psychologist License. I enter into this Stipulated Surrender of License and Order
6	voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
7	Board of Psychology.
8	DATED: 15 2017 /) Why
9	REX BIERLEY, Ph.D. Respondent
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11	I have read and fully discussed with Respondent Rex Bierley, Ph.D. the terms and
12	conditions and other matters contained in this Stipulated Surrender of License and Order. I
13	approve its form and content.
14	DATED: 7-5-2017
15	TREVOR ZINK, Esq.
16	Attorney for Respondent
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18	<u>ENDORSEMENT</u>
19	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
20	for consideration by the Board of Psychology of the Department of Consumer Affairs.
21	Dated: July 11, 2017 Respectfully submitted,
22	Xavier Becerra
23	Attorney General of California JANE ZACK SIMON
24	Supervising Deputy Attorney General
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26	DAVID CARR
27	Deputy Attorney General Attorneys for Complainant
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Exhibit A

Accusation No. 600-2015-000322

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1 2 3 4 5	Xavier Becerra Attorney General of California Jane Zack Simon Supervising Deputy Attorney General David Carr Deputy Attorney General State Bar No. 131672 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-5538 Facsimile: (415) 703-5480 Attorneys for Complainant			
7 8 9	BEFORE THE BOARD OF PSYCHOLOGY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10	In the Matter of the Accusation Against: Case No. 600-2015-000322			
11	REX BIERLEY, Ph.D.			
12	12 Palisades Drive Daly City, CA 94015 ACCUSATION			
14	Duly City, On 94013			
15	Psychologist License No. PSY 11981	ļ		
16	Respondent.			
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18	Complainant alleges:			
19	PARTIES			
20	1. Antonette Sorrick ("Complainant") brings this Accusation solely in her official			
21	capacity as the Executive Officer of the Board of Psychology, Department of Consumer Affairs.			
22	2. On March 4, 1991, the Board of Psychology issued Psychologist License Number			
23	PSY 11981 to Rex Bierley, Ph.D. ("Respondent"). The Psychologist License expired on October			
24	31, 2016, and has not been renewed.			
25	JURISDICTION			
26	3. This Accusation is brought before the Board of Psychology ("Board"), Department of			
27	Consumer Affairs, under the authority of the following laws. All section references are to the			
28	Business and Professions Code unless otherwise indicated.			
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- 4. Section 2920.1 makes public protection the highest priority for the Board.
- 5. Section 2936 requires that the Board apply the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association as the standard of ethical conduct for psychologists in California.
 - A. Section 3.05 of the Ethical Principles of Psychologists and Code of Conduct forbids psychologists from entering into multiple relationships "if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness...."
 - B. Section 3.08 of the Ethical Principles of Psychologists and Code of Conduct states, in relevant part: "Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority, such as clients/patients, students, supervisees...."
 - C. Section 7.07 of the Ethical Principles of Psychologists and Code of Conduct states: "Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority."
 - 6. Section 2960 of the Code states:

"The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

- "(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.
- "(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

- "(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.
- "(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.
- "(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.
- "(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.
 - "(g) Violating Section 17500.
- "(h) Willful, unauthorized communication of information received in professional confidence.
- "(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.
 - "(j) Being grossly negligent in the practice of his or her profession.
 - "(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.
 - "(1) The aiding or abetting of any person to engage in the unlawful practice of psychology.
- "(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.
 - "(n) The commission of any dishonest, corrupt, or fraudulent act.
- "(o) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.
- "(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

- "(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.
 - "(r) Repeated acts of negligence."
- 7. California Code of Regulations (CCR) section 1387.1 delineates the responsibilities of psychologists acting as primary supervisors of student trainees.
 - A. Subdivision (j) of section 1387.1 states that supervisors "shall have no familial, intimate, business or other relationship with the trainee which could compromise the supervisor's effectiveness and/or which would violate the Ethical Principles and Code of Conduct of the American Psychological Association."
 - B. Subdivision (l) of section 1387.1 provides: "Primary supervisors shall not exploit trainees or engage in sexual relationships or any other sexual contact with trainees.
- 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- 9. Section 2964.6 of the Code provides that an administrative disciplinary decision that imposes terms of probation may include a requirement that the licensee pay the costs of monitoring the probation.
 - 10. The incidents described herein occurred within the State of California.

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

11. Respondent is subject to disciplinary action under section 2960(o) in that he committed acts of sexual misconduct substantially related to the qualifications, functions or duties of a psychologist. The circumstances are as follows:

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- 12. A.B.¹ was a fourth year student working on a doctorate in psychology when she was admitted to a one year practicum at a Kaiser Permanente facility where Respondent was employed as a supervisor in the psychology department. Respondent accepted A.B. into the program as his supervisee in the fall of 2014. Respondent was aware of the ethical restrictions of the supervisor/supervisee relationship, as evidenced by an October 14, 2014 e-mail he wrote to A.B., declining her offer of a walk on the beach: "It would undoubtedly be fun, but recall the rules on dual relationship. That friendship will have to wait until much later in your career."
- 13. The e-mail and text communications between Respondent and A.B. grew in number and became increasingly intimate. In an e-mail on February 1, 2015, Respondent stated that he likes to think about A.B. taking a shower. A week later, Respondent wrote: "My only fear involves professional consequences, including the possibility of being fired and losing my license." Despite that justified concern, over the next two months the written communication between Respondent and A.B. became more explicit and sexual: Respondent asked about details of her sexual history and refers to his state of sexual excitement when texting her. In February and March of 2015, Respondent and A.B. met at his home and hers and engaged in physical intimacy which included Respondent's touching A.B.'s breasts and buttocks and placing A.B.'s hand on his clothed penis. Respondent gave A.B. presents and offered to buy her jewelry and lingerie. A.B. stated to Board investigators that Respondent's conduct made her confused and uncomfortable. Respondent continued to act as A.B.'s supervisor in the psychology practicum during this time.
- 14. On March 11, 2015, A.B. told her therapist about the relationship; the following day A.B. informed her graduate school. The school terminated A.B.'s practicum with Respondent and informed Respondent's employer of the relationship.
- 15. Respondent has subjected his license to disciplinary action under section 2960(o) for engaging in sexual misconduct substantially related to the qualifications, functions, or duties of a psychologist.

¹ The student trainee is identified herein by the letters "A.B." to preserve confidentiality. The student trainee's identity is known to Respondent and will be provided in discovery.

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SECOND CAUSE FOR DISCIPLINE

(Sexual Relationship with Trainee)

The allegations of paragraphs 11 through 13 are incorporated by reference as if set 16. out in full. Respondent is subject to disciplinary action under section 2960(i), in that his sexual relationship with A.B. while he as acting as her practicum primary supervisor violates the prohibition of CCR section 1387.1(1) and violates section 7.07 of the Ethical Principles of Psychologists and Code of Conduct, the standard of conduct for psychologists in California by invocation of section 2936.

THIRD CAUSE FOR DISCIPLINE

(Multiple Relationship)

The allegations of paragraphs 11 through 13 are incorporated by reference as if set 17. out in full. Respondent is subject to disciplinary action under section 2960(k), in that his engaging in a sexual relationship with A.B. while she was his supervisee violates the proscriptions of sections 3.05 and 3.08 of the Ethical Principles of Psychologists and Code of Conduct, adopted as the standard of conduct for psychologists in California by section 2936.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

The allegations of paragraphs 11 through 13 are incorporated by reference as if set 18. out in full. Respondent is subject to discipline under section 2960 in that his engaging in a sexual relationship with a student trainee while he was exercising evaluative authority as her primary supervisor in a psychology practicum constitutes unprofessional conduct.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Psychology issue a decision:

Revoking or suspending Psychologist License Number PSY 11981, issued to Rex Bierley, Ph.D.;