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8 BEFORE THE
BOARD OF PSYCHOLOGY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation) No. W-61
Against:)
12) ACCUSATION
ELIZABETH MARIE RANDOLPH, Ph.D.)
13 8655 Water Road)
Cotati, CA 94931)
14)
Psychologist's License)
15 No. PSY 13339)
16 Respondent.)
17

18 THOMAS S. O'CONNOR alleges:

- 19 1. Complainant Thomas S. O'Connor makes and files
20 this accusation solely in his official capacity as Executive
21 Officer of the Board of Psychology (hereinafter referred to as
22 "Board").
- 23 2. On March 1, 1993, psychologist's license number
24 PSY 13339 was issued under the laws of the State of California to
25 Elizabeth Marie Randolph (hereinafter referred to as
26 "respondent"). The license is and has been in full force and
27 effect at all times pertinent herein and will expire on
28 October 31, 1996, unless renewed.

1 3. Under Business and Professions Code section 2960
2 the Board may suspend or revoke a license on the grounds that a
3 licensee has been convicted of a crime substantially related to
4 the qualifications, functions or duties of a psychologist.

5 4. Under Business and Professions Code section 125.3,
6 the Board may request the administrative law judge to direct any
7 licensee found to have committed a violation or violations of
8 the licensing act, to pay the Board a sum not to exceed the
9 reasonable costs of the investigation and enforcement of the
10 case.

11 5. Respondent has subjected her psychologist's
12 license to discipline under Business and Professions Code section
13 2960, subdivision (a) in that on or about August 15, 1994, in
14 Sutter County Municipal Court case number 94CRM0276, entitled
15 *People of the State of California v. Elizabeth M. Randolph*,
16 respondent was convicted, by a plea of guilty, of Penal Code
17 section 650 (counseling or aiding in the commission of a
18 misdemeanor), a misdemeanor.

19 WHEREFORE complainant prays that the Psychology Board
20 hold a hearing on the matters alleged herein and, following said
21 hearing, issue a decision:

22 1. Suspending or revoking psychologist's license
23 number PSY 19339 issued to Elizabeth Marie Randolph, Ph.D.;

24 2. Order respondent to pay reasonable costs of
25 investigation and litigation of this matter; and

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

In the Matter of the Accusation
Against:

ELIZABETH MARIE RANDOLPH, Ph.D..

Respondent.

No. W-61

OAH No. N-9512034

PROPOSED DECISION

On April 24, 1996, in Marysville, California, Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Arthur Taggart, Deputy Attorney General, represented the complainant.

Respondent was not present, but was represented by Carl R. Lindmark, attorney at law.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Respondent is licensed as a psychologist in the State of California.

II

On August 15, 1994, respondent pleaded guilty in the Municipal Court of Sutter County to violation of Penal Code

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3. Taking such other and further action as the Board
deems necessary and proper.

DATED: November 6, 1995



THOMAS S. O'CONNOR
Executive Officer
Department of Consumer Affairs
Board of Psychology
State of California

Complainant

03598160SAS5AD1416
(FAW 10/2/95)

section 659, counseling or aiding another in the commission of a misdemeanor which, under the circumstances involved, is substantially related to the qualifications, functions and duties of a licensed psychologist.

The parties stipulated to the following:

"Respondent admits that the stipulated factual basis for her conviction was that on or about October 13, 1993, she suggested that Cindy B., a person who had been referred to respondent for services by Sutter County Child Protective Services, commit an act of child abuse in order to obtain funds for mental health treatment."

Respondent was sentenced on October 5, 1994, to three years probation, 100 hours of Public Adult Work Service Program, and participation in a counseling program as deemed appropriate by her probation officer.

III

Respondent was not present at the hearing. Accordingly, there was no opportunity to hear any mitigating testimony or to evaluate her rehabilitation.

In a written statement from respondent, and in statements by her counsel, there were references to respondent being too ill to participate in the hearing. However, no medical evidence was offered to establish that respondent was unable to attend or participate in this hearing. No request for a continuance was received based on any illness of respondent.

IV

Respondent offered evidence from her treating therapists, friends and coworkers. They testified or wrote that respondent was an excellent therapist, committed to providing care to low income clients, highly ethical and unable to harm a child. Many could not believe respondent committed the offense, others indicated there must have been some explanation for her conduct.

V

Complainant established costs of \$1,889.39 for investigation and \$784 in attorneys fees.

DETERMINATION OF ISSUES

I

Cause for discipline of respondent's license for violation of Business and Professions Code section 2960(a) was established by Finding II.

II

Complainant seeks cost recovery on the basis of Business and Professions Code section 125.3. According to this section, the administrative law judge may

"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."

In this matter, the Committee has submitted costs including attorneys' and investigative fees.

There are cost recovery statutes in the Business and Professions Code specifically authorizing recovery of attorney's fees of the Attorney General or other attorneys prosecuting a disciplinary matter. Business and Professions Code section 3753.7 authorizes the Respiratory Care Board of California to recover "prosecuting attorney fees" in addition to other costs. Business and Professions Code section 5107 authorizes the Board of Accountancy to recover "all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees." These agencies with specific mandates enabling the recovery of attorney's fees as part of recoverable costs are part of the Department of Consumer Affairs, as is the Board of Psychology.

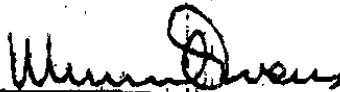
The inclusion of attorney's fees as recoverable costs in specific statutes applicable to other Consumer Affairs agencies precludes implication that attorney's fees were intended to be recoverable costs in section 125.3. Had the Legislature intended to include the award of attorneys' fees in section 125.3, it could have done so, as it did for the Respiratory Care Board and the Board of Accountancy. Accordingly, the long standing general rule prevails, that "attorney's fees are not recoverable from the opposing party in the absence of an express statutory provision or a contractual provision that they be paid." Reid v. Valley Restaurants, Inc. (1957) 48 Cal.2d 606, 610. D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 24-27.

The Board has established investigative costs of \$1,888.39, pursuant to Business and Professions Code section 125.3.

ORDER

Respondent's psychologist's license is revoked. Respondent is ordered to pay \$1,889.39 to the Board of Psychology.

Dated: May 14, 1996



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation

against: Elizabeth Marie Randolph, Ph.D.

No: W-61

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

DECISION

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Elizabeth M. Randolph, Ph.D.
8655 Water Road
Cotati, CA 94931

P 074 806 924

Carl R. Lindmark
Attorney at Law
951 Live Oak Blvd., Ste. 22
Yuba City, CA 95991


Arthur Taggart
Deputy Attorney General
1300 I Street, Ste. 125
P.O. Box 944255
Sacramento, CA 94244-2550

Muriel Evens
Administrative Law Judge
501 J Street, Ste. 230
Sacramento, CA 95814

Each said envelope was then, on June 6, 1996 sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on June 6, 1996 at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Kathi Burns
DECLARANT