

CLERK OF THE COURT

1 ORDER

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 STATE OF NEVADA, BOARD OF
9 PSYCHOLOGICAL EXAMINERS,

Plaintiff,

10 vs.

11 DAVID HOPPER,

12 Defendant.

Case No: A-10-626745-C

Dept. No: XXXII

13
14 AMENDED ORDER

15 This matter came before the Court on November 6, 2014, for a decision on Plaintiff
16 State of Nevada Board of Psychological Examiners' ("Board") request for a permanent
17 injunction against Defendant David Hopper ("Hopper") after a four-day evidentiary hearing.
18 David Hopper was present, along with his counsel, John A. Hunt, Esq. Deputy Attorney
19 General Sarah A. Bradley was present on behalf of the Board.

20 On October 5, 2010, the Board filed its Verified Complaint for Injunctive Relief. On
21 April 21 and 28, 2014, and October 13 and 14, 2014, the Court conducted an evidentiary
22 hearing on the Board's Complaint.

23 On November 6, 2014, the parties appeared before the Honorable Rob Bare, District
24 Court Judge, who presented the Findings of Fact and Conclusions of Law that were
25 transcribed and set forth in the Recorder's Transcript ("Trans.") that is attached hereto as
26 Exhibit A.

27 On March 9, 2015, an Order was filed relative to the Court's decision issued from the
28 bench at the November 6, 2014, hearing. On March 30, 2015, Hopper filed his Motion to Alter

1 and Amend (NRCP 52(b) and 59(e)) or, Alternatively, for Reconsideration (EDCR 2.24)
2 Regarding Order Filed March 9, 2015 ("Motion to Alter and Amend"). On April 21, 2015, the
3 Board filed its Opposition to Defendant's Motion to Alter and Amend (NRCP 52(b) and 59(e))
4 or, Alternatively, for Reconsideration (EDCR 2.24) Regarding Order Filed March 9, 2015. On
5 June 23, 2015, the Motion to Alter and Amend came on for hearing before the Court wherein
6 the same was granted in part and denied in part. In part, at the June 23, 2015, hearing, the
7 Court ordered the Order filed March 9, 2015, to be amended such that its Paragraph 6 at page
8 8, line 24 to page 9, line 8, be stricken. Hence, this Amended Order reflecting the amendment
9 of the Order filed March 9, 2015, pursuant to the hearing held on June 23, 2015.

10 FINDINGS OF FACT

11 A. The Parties

12 1. Plaintiff, Nevada Board of Psychological Examiners ("Board"), is trusted with and
13 has the authority to deal with issues relevant to the unauthorized practice of psychology. See
14 NRS 641.010; Trans. at 4:1–3. The Board has standing and may maintain a suit for an
15 injunction against any person practicing psychology without a license and such an injunction
16 may be issued without proof of actual damage. See NRS 641.316; Trans. at 4:8–12. The
17 provisions of NRS 641.316 are expressly intended to be preventive as well as a punitive
18 measure. *Id.* at 4:13–14.

19 2. Defendant, David Hopper ("Hopper"), is a licensed alcohol and drug abuse
20 counselor. Hopper is not licensed as a psychologist nor has he ever been so licensed in this
21 State or elsewhere. Hopper has obtained extensive training and credentialing in a variety of
22 therapy fields that do not include licensure in psychiatry, psychology, neuropsychology and
23 related disciplines; Hopper's considerable training is believed to explain his conduct, behavior
24 and multiple violations of the law. This training and experience, as is set forth more fully
25 below, does not excuse nor is it a defense to the prohibitions, restrictions, limitations and
26 constrictions of Chapter 641. See *infra*.

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1 **B. Factual Findings**

2 1. The Board contends and submitted evidence to the Court through testimony and
3 exhibits indicating that the "practice of psychology" as set forth in NRS 641.025, and which
4 includes, among other terms, the term "biofeedback," is inclusive of the acts continually
5 conducted by Hopper from August, 12, 2006, to currently and that Hopper does not satisfy the
6 requirements for the exemption found in NRS 641.029 or any other provision of Nevada law.

7 2. The Board also contends that the use of the term "neuropsychophysicologist" by
8 Hopper when he is not a licensed psychologist is a knowing violation of NRS 641.440 and that
9 Hopper "has unlawfully held himself out as a neuropsychophysicologist" to the public. See *e.g.*,
10 *Trans.* at 3:24–25.

11 3. Hopper has not applied for nor has he ever obtained a license to practice as a
12 psychologist.

13 4. Hopper has engaged in the practice of biofeedback and other psychological
14 testing and competency evaluations on numerous occasions that constituted multiple
15 violations of the provisions of Chapter 641 over several years pursuant to NRS 641.440.
16 Further, credible expert testimony from Dr. Gary Lenkeit established that biofeedback is not
17 within the scope of the practice of an alcohol and drug abuse counselor. *Trans.* at 14:11–12.
18 See also *Webb v. Clark County School District*, 125 Nev. 611 (2009).

19 5. Hopper presented evidence that other jurisdictions outside the state of Nevada
20 allow individuals who are not licensed psychologists to provide treatment such as biofeedback
21 to patients. See *Trans.* at 6:18–19.

22 6. Upon a thorough review of the record and the facts presented, the Court finds
23 that Hopper used the term "neuropsychophysicologist" in such a manner that an average
24 member of the public would believe that Hopper was a psychologist. *Trans.* at 12:4:10. This
25 Finding of Fact has bearing upon the Conclusions of Law and bases for the injunctive relief
26 afforded below. See *infra*.

27 7. The Board presented expert testimony including, *inter alia*, testimony from
28 Dr. Thomas Kinsora who had an opportunity to review Hopper's work. Dr. Kinsora testified as

1 an expert that it appeared that Hopper was engaged in neuropsychology without a license to
2 do so and was found to be "credible" by the Court. Dr. Kinsora further testified that the results
3 of Hopper's test results were "horrible and horrendous" and that these were Dr. Kinsora's
4 words under oath. Trans. at 15:8--16.

5 8. Hopper's education and training made it difficult for him to limit himself to alcohol
6 and drug counseling within the confines of NRS 641C, *et seq.* Trans. at 16:21--23.

7 9. Dr. Elizabeth Neighbors, Director of Lake's Crossing Center, testified that
8 Hopper engaged in activities regarding criminal competency which requires licensure as a
9 psychologist and/or psychiatrist and approval by the State of Nevada, Division of Public and
10 Behavioral Health of the Department of Health and Human Services, under Nevada law and
11 Hopper meets neither of these requirements. Trans. at 15:17--24, 16:12--16. *See also*
12 NRS 178.415.

13 10. Mary Alice Stockdale from Nellis Air Force Base testified about evaluations
14 Hopper conducted for service members. After hearing Ms. Stockdale's testimony, the Court
15 finds that the efforts Hopper put forth in those evaluations contained evidence of the
16 unauthorized practice of psychology. Trans. at 15:25--16:11.

17 CONCLUSIONS OF LAW

18 A. Jurisdiction

19 1. This Court maintains primary jurisdiction over the instant matter pending before
20 the Court regarding the facts and issues presented in this case. Specifically, this Court has
21 primary jurisdiction over whether Hopper has wrongfully engaged in the practice of
22 psychology, in violation of Nevada Revised Statutes (NRS) Chapter 641; whether the unlawful
23 practice of biofeedback is within the purview of the Board; and whether Hopper is operating
24 outside the scope of his current license as an alcohol and drug abuse counselor, excluding
25 any potential disciplinary action initiated by the Board of Examiners for Alcohol, Drug and
26 Gambling Counselors.

27 2. The Executive Branch of the State of Nevada is tasked with enforcing the
28 statutes and regulations passed by the Legislative Branch, but it is the providence of the

1 Judicial Branch of this State to be the final arbiter regarding the interpretation of those statutes
2 and regulations.

3 3. This Court has reviewed the documents submitted by Hopper concerning the
4 Legislative intent of NRS 641.025, 641.029, *et al.* but does not reach any conclusion as to the
5 Legislative intent of those statutes because those statutes are clear on their face and are not
6 vague as a matter of law. A Court is prohibited from reviewing the legislative intent of statutes
7 that are clear on their face. *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959
8 (1983).

9 4. This Court finds that what other jurisdictions permit or allow as to unlicensed
10 individuals and/or non-psychologists engaging in the practice of biofeedback is not relevant in
11 the State of Nevada. See, e.g., Trans. at 7:16–8:22.

12 **B. The Legislative Declaration of Chapter 641 and Chapter 641C**

13 1. The Legislature's declaration in NRS 641.010 is important and tells us that:

14 the practice of psychology is declared to be a learned profession
15 affecting the public safety, health and welfare and subject to
16 regulation to protect the public from the practice of psychology by
17 unqualified persons ... when the Legislature sends that kind of
18 message and tells us that's the whole intention behind the chapter,
it demonstrates to me as a judge that the Legislature takes this
seriously in that there is an effort, I think that's well within that
branch of government the Legislature, to protect the public. That's
what this is all about. *This is a public protection statutory scheme.*

19 Trans. 4:20–5:4 (*emphasis added*).

20 2. The Legislature has defined the practice of "psychology" in NRS 641.025.
21 See Trans. at 5:14–15. This definition includes "[p]sychological testing and the evaluation of
22 personal characteristics, including, without limitation, intelligence, personality, abilities,
23 interests, aptitudes and neuropsychological functioning" and "[b]iofeedback," all of which are
24 at issue in the instant matter. See NRS 641.025(1) and (6).

25 3. Pursuant to the express provisions of NRS 641.025(6) the Legislature has
26 defined the term "biofeedback" as part of the practice of psychology. The use of the term
27 "biofeedback" as a single term signifies that the Nevada Legislature intended to include
28 "biofeedback" as a component of the practice of psychology. See Trans. at 5:22–25, 7:16–18.

1 4. The practice of counseling alcohol and drug abusers, as well as problem
2 gamblers, is set forth at NRS 641C.010, *et seq.* and was considered by the Court in rendering
3 this decision and Order. See Trans. at 9:22–10:25. More specifically, the Court considered
4 whether NRS 641C afforded Hopper any exemption from the punishment, sanctions,
5 injunctive provisions, equitable relief and other forms of penalties the Board may impose upon
6 a violator of Chapter 641.

7 5. NRS 641.440 addresses the applicability of Chapter 641 and the persons who
8 are exempt from Chapter 641. This Court holds that pursuant to NRS 641.440 a person
9 cannot represent himself or herself as a psychologist or, “use any title, description which
10 incorporates the word psychology, and goes on from there.” Trans. at 11:25–12:1. This Court
11 further holds that this statute precludes an individual from “indicating or implying that he or she
12 is a psychologist, unless [he or she has] a license.” Trans. at 12:3–4.

13 **C. Findings and Violations of Chapter 641**

14 1. The Court holds that, after conducting the evidentiary hearing and reviewing the
15 testimony and evidence from experts such as Dr. Lenkeit and Dr. Kinsora, Hopper has
16 engaged in the practice of psychology by performing biofeedback, engaging in psychological
17 and/or psychometric testing, conducting psychological and/or neuropsychological evaluations,
18 calling himself a “neuropsychophysicologist,” and otherwise holding himself out and/or
19 representing himself as a psychologist without the required license issued by the Nevada
20 Board of Psychological Examiners.

21 2. The Court further holds that Hopper has operated outside the scope of his
22 license as an alcohol and drug abuse counselor by performing biofeedback, engaging in
23 psychological and/or psychometric testing, conducting psychological and/or
24 neuropsychological evaluations, calling himself a “neuropsychophysicologist,” and other
25 practices outside the scope of his auspices as an alcohol and drug counselor.

26 3. In NRS 641.029, certain licensed professionals and members of the clergy may
27 be exempt from the application of NRS Chapter 641 if they do not “commit an act described
28 by NRS 641.440 or represent himself or herself as a psychologist.” Trans. at 11:11–14.

1 Hopper is a licensed alcohol and drug abuse counselor and licensed alcohol and drug abuse
2 counselors are included in the list of possibly exempted professions. The question before the
3 Court then becomes: has Hopper committed an act in NRS 641.440 or, separately and
4 distinctly, has he represented himself as a psychologist? The Court finds, after careful
5 consideration, that Hopper committed an act described in NRS 641.440 in that he represented
6 himself as a psychologist, used a title that incorporated the word "psychology" through the use
7 of the title "neuropsychophysicologist" and engaged in the practice of psychology by engaging
8 in biofeedback and psychological and/or psychometric testing and/or psychological and/or
9 neuropsychological evaluations. Therefore, the Court finds that Hopper is not exempt from
10 the provisions of NRS Chapter 641 pursuant to NRS 641.029. Trans. at 13:18–21.

11 4. The Court also finds that the title used by Hopper, "neuropsychophysicologist,"
12 and activities engaged in by Hopper such as "neuropsychophysiology," and conducting
13 psychological and/or neuropsychological evaluations were misleading and deceptive, and a
14 reasonable member of the public would have been led to believe that Hopper was a
15 psychologist. Trans. at 12:11–18. Accordingly, the Court finds that Hopper misleadingly held
16 himself out as a psychologist. See Trans. at 11:15–12:10.

17 5. NRS 641C.065(2) expressly provides that the clinical practice of counseling
18 alcohol and drug abusers does not include "the use of a psychological or psychometric
19 assessment test to determine intelligence, personality, aptitude and interests." Trans.
20 at 10:23–11:1. Testimony and evidence presented to the Court indicated that Hopper
21 engaged in the use of psychological or psychometric tests in conducting psychological
22 evaluations and/or neuropsychological evaluations. Pursuant to NRS 641C.065(2) and the
23 other evidence presented to the Court, the Court holds that the use of psychological or
24 psychometric tests and/or the conducting of psychological evaluations and/or
25 neuropsychological evaluations by Hopper is outside the scope of practice authorized by
26 NRS and NAC Chapters 641C for licensed alcohol and drug counselors.

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1 6. As a matter of law, as held by the Nevada Supreme Court in *Webb v.*
2 *Clark County School District*, 125 Nev. 611 (2009), the practice of biofeedback requires a
3 license to practice psychology issued by the Board.

4 7. This Court, therefore, holds that biofeedback, as a matter of law, is the practice
5 of psychology.

6 8. The practice of biofeedback requires a license to practice psychology in the
7 reasoned opinion of an expert, Dr. Lenkeit, who testified under oath. Hopper readily admits to
8 the Court that he has engaged in the practice of biofeedback and does not possess a license
9 to practice psychology. Accordingly, this Court hereby finds, and this finding is supported by
10 expert testimony and the admissions of Hopper, that Hopper's practice of biofeedback
11 constitutes the practice of psychology without the required license issued by the Nevada
12 Board of Psychological Examiners in violation of Chapter 641. See e.g., Trans. at 13:1–3,
13 14:10–20. Therefore, Hopper, at all relevant times expressed in the pleadings, was in
14 violation of the provisions of Chapter 641, generally, and, *inter alia*, NRS 641.440 and
15 NRS 641C.065(2).

16 **D. The Board's Request for Injunctive Relief**

17 1. It is within the sound discretion of a district court to decide whether to grant a
18 permanent injunction and such a decision will not be overturned unless it is an abuse of
19 discretion. *Commission on Ethics v. Hardy*, 125 Nev. 285, 291, 212 P.3d 1098, 1103 (2009).

20 2. NRS 641.316 allows the Court to enter an injunction against any person
21 practicing psychology without a license.

22 3. An injunction entered pursuant to NRS 641.316 may be issued without proof of
23 actual damage sustained by any person, this provision being a preventative as well as
24 punitive measure.

25 4. As stated above, the Court finds that Hopper did and has engaged in the
26 practice of psychology without a license by his use of the title "neuropsychophysicologist,"
27 conducting biofeedback, engaging in psychological and/or psychometric testing, conducting

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1 psychological and/or neuropsychological evaluations, holding himself out to the public as a
2 psychologist, and engaging in other activities that constituted the practice of psychology.

3 5. Hopper may be subject to discipline by other courts, commissions, boards,
4 entities and/or qualified examiners with appropriate jurisdiction and powers.

5 6. This order is specific as to Hopper and his conduct while performing functions
6 outside the scope of his licensure as a licensed drug and alcohol counselor and while
7 unlicensed as a psychologist in the state of Nevada. The Court makes no finding regarding
8 the issues in this case as it relates to the scope of practice of other licensees regulated by the
9 other licensing boards included in NRS 641.029. Each of those boards, working in
10 conjunction with the Board of Psychological Examiners, may review their statutes and
11 regulations and make independent determinations as to whether the modalities listed in
12 NRS 641.025 are acceptable practices for each of those professions. In deciding the instant
13 case and rendering this Order, the Court did not review or determine the appropriate scope of
14 practice for other licensed professionals and kept its focus solely on the relevant provisions of
15 Chapters 641 and 641C of NRS and NAC.

16 DECISION

17 Now therefore, based upon the foregoing and other good cause appearing:

18 IT IS HEREBY ORDERED that David Hopper is permanently restrained and enjoined
19 from performing biofeedback, conducting and/or interpreting psychological testing, conducting
20 psychological and/or neuropsychological evaluations and otherwise practicing psychology
21 without obtaining a license from the Nevada Board of Psychological Examiners.

22 IT IS HEREBY ORDERED that David Hopper is permanently restrained and enjoined
23 from using the title "neuropsychophysicologist" or any other title that would mislead the public
24 into believing that he can practice psychology.

25 IT IS HEREBY ORDERED that David Hopper may not rely on his license as an alcohol
26 and drug abuse counselor in this state to practice or perform the functions of a psychologist,
27 including but not limited to, the use of biofeedback.

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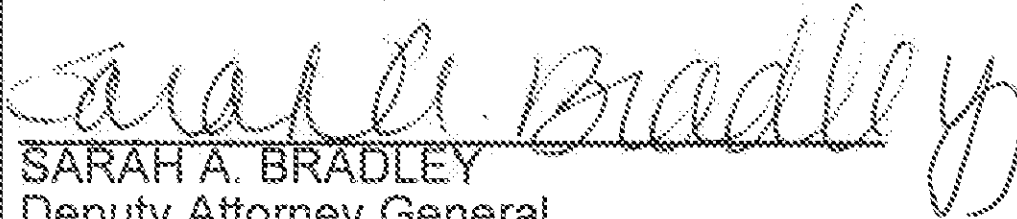
1 IT IS HEREBY FURTHER ORDERED that any violation of this Order shall be
2 punishable by contempt, censure, fines equivalent to those imposed for gross misdemeanors,
3 disqualifying Hopper from seeking psychology licensure and such other and further relief as
4 the Court may deem appropriate.

5 ORDERED this 5 day of Oct, 2015.

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DISTRICT JUDGE

8 ROB BARE
9 JUDGE, DISTRICT COURT, DEPARTMENT 32
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15 SUBMITTED BY:

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Dated: 9/8/15

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