

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : LS 9709253 PSY
ROBERT BURKHAM, Ph.D. :
RESPONDENT. :

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Robert Burkham, Ph.D.
103 W. College Avenue Suite 815
Appleton, WI 54911

Wisconsin Psychology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Psychology Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Robert Burkham, Ph.D., Respondent, date of birth October 19, 1948, is licensed to practice psychology in the state of Wisconsin by the Wisconsin Psychology Examining Board pursuant to license number 000991, which was first granted November 5, 1982.
2. Respondent's last address reported to the Department of Regulation and Licensing is 103 W. College Avenue, Suite 815, Appleton, Wisconsin 54911.

3. In early 1993, Respondent was retained to perform an evaluation of Mr. A, Mr. A's wife and their three minor children for the purpose of making recommendations to the Waupaca County Family Court regarding the custody, placement and visitation of the three minor children.

4. Prior to February 8, 1993, but after Mr. A had contacted Respondent about performing the evaluation for the court, Respondent sent Mr. A a form letter confirming Mr. A's appointment for February 8 and requesting that Mr. A complete, and bring to the appointment, background information sheets and an insurance form which were enclosed.

5. The insurance form included the statement: "To find out what insurance benefits you have for outpatient psychotherapy or psychological evaluations, check your insurance booklet or call your insurance company." The form also directed: "Please record these benefits in the space below."

6. The background information sheet completed by Mr. A and provided to Respondent on February 8, 1993 indicated that Mr. A had been referred to Respondent by an attorney and that the reason Mr. A was coming to see Respondent was because of a trial for the custody of the children.

7. Mr. A also completed the insurance form by indicating that his insurance was with Employers Health Insurance, but did not complete the portion asking him to record what his benefits were. Mr. A also provided that form to Respondent on February 8, 1993.

8. During 1993 and 1994, Mr. A and his family were covered by a health insurance policy with Employers Health Insurance. The health insurance policy provided coverage for medically necessary services, with certain limitations. The policy did not cover services provided by health care professionals testifying in court about custody evaluations because Employers Health Insurance did not consider those services to be medically necessary.

9. In February of 1993, in the course of performing the evaluation for the court, Respondent:

a. Interviewed Mr. A and performed psychological testing (Minnesota Multiphasic Personality Inventory) of Mr. A on February 8.

b. Interviewed Mrs. A and performed psychological testing (Minnesota Multiphasic Personality Inventory) of Mrs. A on February 12.

c. Interviewed Child 1 (14 years of age) on February 19.

d. Interviewed Child 2 (12 years of age) on February 12.

e. Interviewed Child 3 (8 years of age) on February 12.

f. Had telephone conversations with Mr. A's treating psychiatrist and psychotherapist.

10. On March 3, 1993 Respondent completed the custody evaluation report, which was filed with the Waupaca County Family Court.

11. On August 16, 1993, Mr. A and Child 1 were seen by Respondent relating to issues about which Respondent testified in court the next day.

12. Respondent testified in court at hearings related to custody, placement and visitation of the three children on August 17, 1993; September 16, 1993 and January 11, 1994, and provided no other services to Mr. A or his family on those dates.

13. The American Medical Association publishes the Physicians' Current Procedural Terminology, which is a listing of descriptive terms and identifying codes (CPT codes) for reporting medical services and procedures performed by physicians and other health care professionals. It is the most widely accepted nomenclature for the reporting of procedures and services under government and private health insurance programs.

14. In 1993, CPT code 90882 (environmental intervention) was listed as "other psychiatric therapy" and was intended to be used for intervention for medical management purposes on a psychiatric patient's behalf with agencies, employers, or institutions.

15. CPT Code 90882 was not well defined in Physicians' Current Procedural Terminology. However, there is a consensus of opinion among psychologists that it was not intended to be used to report services provided in testifying in court regarding child custody placement issues.

16. From August, 1993 through February 1994, Respondent submitted claims forms to Employers Health Insurance, for the time spent in court testifying regarding child custody issues, as follows:

a.. For services provided to Child 1:

	Date	CPT Code	Amount
i.	08/17/93	90882 - environmental intervention	\$120
ii.	09/16/93	90882 - environmental intervention	144
iii.	01/11/94	90882 - environmental intervention	144
	TOTAL		\$408

b. For services provided to Child 2:

	Date	CPT Code	Amount
i.	08/17/93	90882 - environmental intervention	120
ii.	09/16/93	90882 - environmental intervention	96
iii.	01/11/94	90882 - environmental intervention	144
	TOTAL		\$360

c. For services provided to Child 3:

	Date	CPT Code	Amount
i.	08/17/93	90882 - environmental intervention	120
ii.	09/16/93	90882 - environmental intervention	96
iii.	01/11/94	90882 - environmental intervention	96
	TOTAL		\$312

17. The claims forms submitted by Respondent did not contain any information from which Employers Health Insurance could determine what the actual services were that were billed using the 90882 CPT Code.

18. On October 12, 1994, a representative of Employers Health Insurance called Respondent's office to obtain a description of the actual services Respondent had provided, which were submitted under the 90882 CPT Code. Respondent's Office personnel told the Employers Health Insurance representative that it was family psychotherapy.

19. Employers Health Insurance paid Respondent the amounts he submitted to them for the services provided to Mr. A's family on 8/17/93, 9/16/93 and 1/11/94 because Employers Health Insurance believed, based on the claims forms submitted by Respondent and the statement of Respondent's office personnel, that the claims were for medically necessary family psychotherapy.

CONCLUSIONS OF LAW

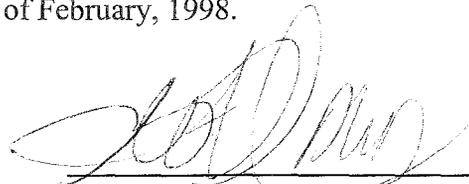
1. The Psychology Examining Board has jurisdiction over this matter pursuant to § 455.09, Stats.
2. The Wisconsin Psychology Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.
3. Respondent, by engaging in the conduct set out above, has engaged in misleading billing practice and is subject to discipline pursuant to Wis. Adm. Code § Psy 5.01(8) and § 455.09(1)(g), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent, Robert Burkham, Ph.D., is hereby REPRIMANDED.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 20th day of February, 1998.



Stephen F. Seaman, Ph.D.
Chair
Psychology Examining Board

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STATE OF WISCONSIN
BEFORE THE WISCONSIN PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	LS 9709253 PSY
	:	
ROBERT BURKHAM, Ph.D.	:	95 PSY 019
RESPONDENT.	:	

STIPULATION

It is hereby stipulated and agreed, by and between Robert Burkham, Ph.D., Respondent; John R. Teetaert of Menn, Nelson, Sharratt, Teetaert & Beisenstein, Ltd., attorneys for Respondent; and, John R. Zwieg, as attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent by the Department of Regulation and Licensing, Division of Enforcement on behalf of the Psychology Examining Board (investigative file 95 PSY 019 - case no LS 9709253 PSY).

2. The parties agree that this stipulated resolution may be submitted directly to the Psychology Examining Board and that it need not first be submitted to the administrative law judge assigned to the matter

3. Respondent understands that by the signing of this stipulation Respondent voluntarily and knowingly waives Respondent's rights, including: the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against Respondent; the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena; the right to testify; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

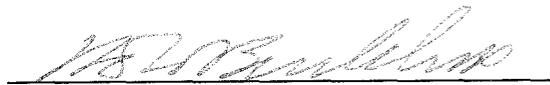
4. The parties agree to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the administrative law judge for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this stipulation agree that the Respondent, Respondent's attorney, if any, an attorney for the Division of Enforcement, and the member of the Board who has been appointed as the investigative advisor may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. The parties agree to waive the costs of the proceeding.

Dated this 21st day of January, 1998.


Robert Burkham, Ph.D.
Respondent

Dated this 6th day of ~~January~~ Feb., 1998.


John R. Teetaert
Menn, Nelson, Sharratt, Teetaert
& Beisenstein, Ltd.
Attorneys for Respondent

Dated this 22nd day of January, 1998.


John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

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