

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PSYCHOLOGY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	LS0405031PSY
GARRY LIBSTER, ED.D.,	:	
RESPONDENT.	:	

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FINAL DECISION AND ORDER

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

Garry Libster, Ed.D.  
104 Steeplechase Drive  
Racine, WI 53402

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 Wisconsin 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. Garry Libster, Ed.D., Respondent, date of birth September 30, 1944, is licensed by the Wisconsin Psychology Examining Board for the private practice of school psychology in the state of Wisconsin pursuant to license number 259, which was first granted December 13, 1986.

2. Respondent's last address reported to the Department of Regulation and Licensing is 104 Steeplechase Drive, Racine, WI 53402.

COUNT I

3. Wis. Stats. § 455.02(1m) states:

“No person may engage in the practice of psychology or the private practice of school psychology, or attempt to do so or make a representation as authorized to do so, without a license issued by the examining board.” (Emphasis added)

4. Respondent has never been licensed to practice psychology in Wisconsin.

5. Respondent's license does not allow Respondent to practice psychology. It only allows Respondent to engage in the limited area of the private practice of school psychology, which is defined by Wis. Adm. Code § Psy 1.02(8), as:

“providing psycho educational evaluation and intervention for the prevention and treatment of educationally relevant problems. Intervention includes service to the student or consultation with persons who affect the student's education program.”

6. Wis. Stats. § 455.01(5) defines "Practice of psychology" to mean:

“rendering to any person for a fee a psychological service involving the application of principles, methods and procedures of understanding, predicting and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; the methods and procedures of interviewing, counseling, psychotherapy, psychoanalysis and biofeedback; and the methods and procedures of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion and motivation. The application of these principles and methods includes, but is not restricted to, all of the following:

- (a) Psychological diagnosis, prevention and treatment of problems in behavioral, vocational, educational, emotional, sexual, neuropsychological and mental disorders.
- (b) Treatment for alcohol and other substance abuse, disorders of habit and conduct, and the psychological and behavioral aspects of physical illness, accident or other disabilities.
- (c) Any other activity authorized by statute or by rules promulgated by the examining board.”

7. Wis. Stats. § 455.02(2m) provides limited exceptions which allow individuals to practice psychology without a license in specified circumstances. One of those exceptions is subsection (L), which provides:

“A mental health professional who has met all of the qualifications under s. HFS 61.96, Wis. Adm. Code, for employment as a mental health professional in an outpatient psychotherapy clinic certified by the department of health and family services under s. HFS 61.95, Wis. Adm. Code, if the person is performing activities that are a part of the duties for which he or she is employed by such a certified outpatient psychotherapy clinic and is performing those activities solely within the confines of or under the jurisdiction of the clinic by which he or she is employed.” (Emphasis added)

8. During the events of this matter, Respondent practiced at Lakeside Family Therapy Services (Lakeside), 4810 Northwestern Avenue, Racine, Wisconsin. Lakeside is an outpatient mental health treatment facility certified by the Wisconsin Department of Health and Family Services under Wis. Adm. Code § HFS 61.95. Respondent met the qualifications under Wis. Adm. Code § HFS 61.96 to be a mental health professional in that clinic and therefore could perform activities within the confines of the clinic and under the jurisdiction of the clinic.

9. On May 5, 1998, Respondent began providing treatment to Child C, the 6-year-old son of Ms. A and Mr. B, who had divorced in 1997. From October 2, 1998 to April 9, 1999, Respondent provided joint counseling to Ms. A and Mr. B on a weekly basis. Respondent also provided individual counseling to Ms. A and Mr. B. Respondent met with Mr. B on a weekly basis and saw Ms. A on a less frequent but regular basis until April 1999. All sessions took place at Lakeside.

10. Respondent appropriately used the title “Dr.” based on his Doctor of Education degree. At the time Respondent began treating Ms. A’s son, Respondent provided Ms. A with his Curriculum Vitae, which accurately set out his education. It also accurately set out his “Licenses Held” as: “Wisconsin – teacher of the Emotionally Disturbed (K-12); School Psychologist (Level II); Private Practice of School Psychology.” However, the Curriculum Vitae, under the heading “Professional Experience,” inaccurately stated that Respondent was a “Psychologist in Private Practice” from 1985 to the present. Because Respondent was not licensed as a psychologist, Wis. Stats. § 455.02(3M) prohibited him from identifying himself as a psychologist. Based on this information, Ms. A and her attorney believed Respondent to be a psychologist.

11. Following their divorce, Ms. A and Mr. B continued to have many conflicts regarding their child. They were in family court on several occasions, with one or the other party seeking orders relating to custody, placement or care of Child C. The issues to be determined were multiple and complex.

12. On September 21, 1999, the Racine County Family Court Branch issued an order upon its own motion appointing Respondent as expert witness, pursuant to Wis. Stats. § 907.06. Respondent agreed to act as expert witness and did so. Respondent never told the judge that he was not a licensed psychologist. The order specified that Respondent's duties were:

- a. To assess the best psychological interests in [Child C].
- b. To assess the individual and family factors which effect the best psychological interests of the child.
- c. To make an evaluation of the parenting capacity, psychological and developmental needs of the child, and the resulting fit.
- d. To address all of the factors raised by the Court's concern that possibly neither party is capable of parenting the child as well as [Mr. B's] Motion For Change in Custody and Physical Placement.
- e. To clinically examine and evaluate the parents and the child at least once more prior to the trial of this matter scheduled to commence October 5, 1999, and, render a written report to the Court, the Parties' attorneys, the Guardian ad Litem, and the Family Court Counselor assigned to the case no later than the close of business Sept. 29, 1999, regarding the psychological functioning of the child, parenting capacities of [Ms. A] and [Mr. B] and stating recommendations, if any, based on what is in the best psychological interests of the child and what is necessary to the child's health, both physical and mental." (Emphasis added)

13. Wis. Stats. § 907.06 directs that an expert witness shall not be appointed by the judge unless the expert witness consents to act. Performing the specified duties as expert witness for the court constituted the practice of psychology. The duties were beyond the scope of Respondent's license for the private practice of school psychology and were neither activities within his employment at Lakeside nor being performed solely within the confines of or under the jurisdiction of Lakeside. For these reasons, Respondent should have notified the court that he could not serve as court appointed expert.

14. On October 3, 1999, Respondent submitted his report to the court outlining his "recommendations for custody placement" of Child C. Respondent recommended that primary placement of the child be transferred from Ms. A to Mr. B. Respondent continued as the psychotherapist for Child C until May 31, 2001 when the Racine County Family Court Branch issued an order removing Respondent as Child C's therapist.

## COUNT II

15. Realleges paragraphs 8 through 14, above.

16. Serving as an expert witness for the court when Respondent had provided couples counseling and individual psychotherapy to Ms. A and Mr. B was a dual relationship and a relationship that could impair Respondent's objectivity and create a conflict of interest.

## COUNT III

17. Each person licensed for the private practice of school psychology in the state of Wisconsin must renew that license biennially, by October 1 of each odd numbered year. [Wis. Stats. §§ 440.08(2)(a)63. and 455.06]

18. To be qualified to renew the license for the next biennial registration period, Respondent was to have completed at least 40 hours of board-approved continuing education, including 8 hours in ethics, in the previous biennial registration period. [Wis. Adm. Code §§ Psy 4.01 and Psy 4.02]

19. Prior to October 1, 1999, the Wisconsin Department of Regulation and Licensing sent Respondent a form to execute and return with the required fee if Respondent wished to renew his license for the private practice of school psychology in the state of Wisconsin for the October 1, 1999 through September 30, 2001 biennium.

20. That renewal form contained the following language, immediately above the line which Respondent was to date

and sign:

“I have or will have completed 40 contact hours of board-approved continuing education, including 8 hours in ethics, during the biennium immediately preceding this application (10/1/97-9/30/99), and I have or will have evidence of this which I will furnish to the Psychology Examining Board upon request.”

21. Respondent signed and returned the renewal form certifying that he had completed the continuing education requirements of the Psychology Examining Board during the October 1, 1997 through September 30, 1999 biennium.

22. However, during the October 1, 1997 through September 30, 1999 biennium, Respondent completed only 21.5 of the required total 40 hours of board-approved continuing education and completed none of the required 8 hours in ethics, and therefore failed to comply with the continuing education requirements. Respondent had also completed additional hours which could not be approved under the Board's rules.

23. Respondent's failure was discovered and addressed, as follows:

- a. On September 28, 2000, Respondent was sent an audit letter by the Division of Enforcement (DOE) requesting Respondent to send verification Respondent had completed the 40 hours of board-approved continuing education, including 8 hours in ethics, which Respondent had claimed to have completed prior to renewing his license for the October 1, 1999 through September 30, 2001 biennium.
- b. In response to DOE's letter, Respondent submitted documentation of having completed two Board approved programs during the applicable biennium for a total of 21.5 approved hours. One program was for 1.5 hours. The other program was for 35 hours, but by rule, only 20 hours can be approved for any one program. None of the hours were in ethics.
- c. On November 21, 2000, DOE sent Respondent another letter notifying him of his non-compliance with the Board's continuing education requirements. The letter informed Respondent that he must either submit documentation of having completed an additional 18.5 hours of board-approved continuing education, including 8 hours in ethics, during the 1997-1999 biennium or a plan outlining how he intended to comply with the Board's requirements.
- d. On December 4, 2000, Respondent submitted his plan to complete two additional board-approved programs, *Autism* (5 hours) and *Three Seductive Ideas* (8 hours). The case advisor determined that Respondent's plan was acceptable and Respondent was requested to submit documentation upon completion of the two programs.
- e. Respondent also requested that he be allowed to apply the hours from *Ethical Decision Making in Therapy* which Respondent had completed after September 30, 1999 toward the requirement for the 1997-1999 biennium. The case advisor determined that Respondent would be allowed to apply the 10 ethics hours from that program toward the requirement for the 1997-1999 biennium.
- f. On December 8 and December 26, 2000, Respondent submitted the required documentation of his completion of the two programs as outlined in his plan.
- g. Respondent completed an additional 23 hours of board-approved continuing education after September 30, 1999, including 8 hours in ethics, of which 18.5 hours were counted toward fulfilling the continuing education requirements for the 1997-1999 biennium. Respondent agreed not to count those 18.5 hours toward the 40 hours or 8 ethics hours he was required to obtain during the 1999-2001 biennium.

#### CONCLUSIONS OF LAW

1. The Wisconsin Psychology Examining Board has jurisdiction over this matter pursuant to Wis. Stats. § 455.09 and authority to enter into this stipulated resolution of this matter pursuant to Wis. Stats. § 227.44(5).

2. Respondent, by engaging in the conduct set out in Count I, has practiced psychology without a license in violation

of Wis. Stats. § 455.02(1m) and identified himself as a psychologist in violation of Wis. Stats. § 455.02(3M) which constitutes a violation of Wis. Adm. Code § PSY 5.01(28), and subjects Respondent to discipline pursuant to Wis. Stats. § 455.09(g).

3. Respondent, by engaging in the conduct set out in Count II, has engaged in a dual relationship and a relationship that could impair Respondent's objectivity and create a conflict of interest, which constitutes a violation of Wis. Adm. Code § PSY 5.01(17), and subjects Respondent to discipline pursuant to Wis. Stats. § 455.09(g).

4. Respondent, by engaging in the conduct set out in Count III, failed to obtain 40 contact hours of board-approved continuing education, including 8 hours in ethics, during the biennium immediately preceding his application for the renewal of his license for the October 1, 1999 through September 30, 2001 biennium, as required by Wis. Adm. Code § PSY 4.01, and has violated a rule of the Board, which constitutes a violation of Wis. Adm. Code § PSY 5.01(28), and is subject to discipline pursuant to Wis. Stats. § 455.09(1)(g).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

A. Respondent, Garry Libster, Ed.D., is hereby Reprimanded for the conduct set out in Counts I through III, above.

B. Respondent's license for the private practice of school psychology is hereby limited, as follows:

#### Practice Limitations

1. Respondent shall not act as an expert witness for any person or entity or accept appointment from a court to serve as an expert witness in any legal proceeding, except in the area of school psychology, as defined by Wis. Adm. Code § Psy 1.02(8).
2. Respondent shall not practice psychology as defined by Wis. Stats. § 455.01(5), unless the practice falls within one of the exceptions of Wis. Stats. § 455.02(2m).
3. Respondent shall advise all employers and clients, current or prospective, that the license for the private practice of school psychology is the only clinical professional license or certificate Respondent holds from the State of Wisconsin.
4. If Respondent becomes aware that any employer or client, current and prospective, appears to believe that Respondent is a psychologist, Respondent shall immediately advise that person that Respondent is not a psychologist.

#### Education

5. Within 6 months of the date of this Order, Respondent shall take and complete 6 hours of continuing education on the subject of dual relationships/appropriate professional boundaries with clients, which course or courses shall first be approved by the Section, or its designee.
6. Respondent shall provide proof to the Board of completion of the continuing education within 30 days of its completion.
7. The credits required by this Order shall be in addition to the continuing education required for licensure renewal for the following biennium and Respondent shall not attempt to apply these credits to the biennial requirement.

#### Costs

8. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$875.00 pursuant to Wis. Stats. § 440.22(2).

#### Miscellaneous

9. If Respondent violates the terms of this Order, Respondent shall immediately submit written notification of the violation to the Board.
10. All requests, notifications, reports and payments shall be mailed, faxed or delivered to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax: (608) 266-2264  
Telephone: (608) 267-3817

11. Respondent may petition the Board for modifications of the limitations at any time, but it shall be in the sole discretion of the Board whether to grant any petition, in whole or in part.
12. If Respondent believes that any limitation imposed or maintained by the Board is inappropriate, Respondent may seek a class 1 hearing pursuant to Wis. Stats. § 227.01(3)(a), in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.
13. Violation of any term or condition of this Order, or of any limitation imposed under this Order, may constitute grounds for revocation of Respondent's license for the private practice of school psychology in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

Dated at Madison, Wisconsin this 13<sup>th</sup> day of October, 2004.

Don L. Crowder, Ph.D.  
Vice Chairperson  
Psychology Examining Board