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STATE OF WISCONSIN
BEFORE THE MARRIAGE AND FAMILY THERAPIST SECTION
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING
AND SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
FRANK A. BACCHUS, L.M.F.T.,	:	LS0804222 MFT
RESPONDENT.	:	

[Division of Enforcement Case # 03 MFT 001]

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

Frank A. Bacchus, L.M.F.T.
2925 S. Amor Drive
New Berlin, WI 53146

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
PO Box 8935
Madison, WI 53708-8935

Marriage and Family Therapist Section
Marriage and Family Therapy, Professional Counseling
and Social Work Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 Marriage and Family Therapist Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Frank A. Bacchus, L.M.F.T., Respondent, date of birth March 25, 1951, is licensed by the Marriage and Family Therapist Section as a marriage and family therapist in the state of Wisconsin pursuant to license number 225, which was first granted April 15, 1994. (Prior to a statutory change effective November 1, 2002, Respondent's credential was a certificate as a marriage and family therapist.)

2. Respondent was granted his credential pursuant to the grandparenting provisions of 1991 Act 160, §21(2)(e). For this reason, Respondent did not take the examination otherwise required for certification.

3. Respondent's last address reported to the Department of Regulation and Licensing is 2925 S. Amor Drive, New Berlin, WI 53146. Since he has been credentialed, Respondent has had a solo private practice as a marriage and family therapist at that location.

1997-1998

4. On April 27, 1997, Ms. A began seeing Respondent for issues relating to her relationship with Mr. B, her husband. Ms. A chose Respondent because he had been the pastor of her church for one year 15 years earlier.

a. Ms. A had six more individual sessions with Respondent through June 3. Following the second session, Respondent's initial diagnosis of Ms. A was adjustment reaction with mixed emotional features (309.28).

b. From June 21 to August 26, Ms. A and Mr. B had five joint sessions with Respondent. Prior to the June 29 session, Mr. B had a separate session with Respondent. Following a quick assessment during that session,

Respondent diagnosed Mr. B with Dysthymia (300.40).

c. After the August 26 joint session, Mr. B was dissatisfied with his interactions with Respondent and wanted the couple to obtain their marital therapy from another therapist. Ms. A and Mr. B went to a therapist at another clinic and began having joint sessions with her. Among other things, that therapist recommended that Mr. B see a psychiatrist for anti-depressant medication. The marital therapy with the other therapist ended in approximately April 1998 when that therapist said she was unable to help them.

d. From September 18 through May 25, 1998, Ms. A had nine individual sessions with Respondent. When marital issues arose, Respondent appropriately suggested to Ms. A that she address them in the joint sessions with the other therapist.

5. Respondent originally charged his usual fee of \$85 per hour session, but later reduced it to \$50 a session when Mr. B expressed financial concerns. Financial concerns remained an issue for Mr. B. No third party payer was ever billed for the sessions with Respondent and for that reason, no diagnosis information or CPT codes were included on the billings.

2001-2003

6. Ms. A and Mr. B returned to couples counseling with Respondent in 2001.

a. Respondent had joint sessions with them on February 1 and 8, March 6 and 20, June 10 and 12, July 15 and 19, August 2, October 25, November 2 and 30 and December 9, 2001 and January 31, 2002.

b. Respondent had individual sessions with:

1) Ms. A: September 18, 21 and 28, October 4, 7, 11 and 18, November 2, 7, 15 and 30 and December 6, 2001 and January 4, 10, 17 and 24, February 14, 21 and 28, March 6, 14 and 28, April 4 and 25, May 2, 9 and 30, July 9, September 12 and 19, October 17 and 31, 2002.

2) Mr. B: October 14, November 2 and December 2, 2001 and January 16 and 24, February 21, March 6 and May 9, 2002.

7. Beginning in September 2001, the treatment plan included individual sessions with the children of the couple to determine and address the impact of the conflictual marriage on them. The notes of the sessions with the children reflect the children's concerns about their parents' conflicts and behavior, but do not include any diagnosis of any of the children or symptoms to support any diagnosis. Respondent's sessions with the children were:

a. Son (12 years old): September 21, October 4 and 18 and November 7 and 15, 2001 and January 4 and 10, March 14, April 25, May 9 and September 19, 2002.

b. Daughter (9 years old): September 28 and October 11, 2001 and April 4, May 2 and 30, July 9 and September 12, 2002.

c. Daughter (3 years old): October 17, 2002.

8. Respondent billed for the February 2001 sessions at his usual fee of \$85 per hour session. Mr. B called Respondent, once again expressed financial concerns and requested a rate reduction retroactively. Respondent agreed to reduce the fee to \$65 per hour session. From that point, the bills sent to Ms. A and Mr. B were at the \$65 per hour rate.

9. In an October 7 telephone call and at an individual session on October 14, 2001, Mr. B asked for a further reduction because of the additional sessions with the children. Respondent agreed that the total billing for all sessions in a month, no matter how many, would not exceed \$510 per month. This was an amount which equaled 6 sessions at the usual rate of \$85. At that time, Mr. B told Respondent he did not want to use his health insurance because he didn't want sensitive family information available to the company. Respondent noted: "I told him I was willing to serve his family to their level of need."

10. The note of a joint session of October 25, 2001 includes: "[Mr. B] said, however, that now that everybody was participating in therapy that they should use their insurance. I reminded him of his previous concern that his statements to the company would contain diagnostic codes. He said it didn't matter. I took down the information [insurance company, policy number and contact information]." On November 1, 2001, Ms. A signed a form authorizing payment of benefits to Respondent for the purpose of billing the insurance company. Mr. B was never asked to sign an authorization of payment.

11. In early November 2001, Respondent's office staff called the company and spoke with a representative. The representative said that it was a PPO and provided information about deductibles and coverage for out-patient mental health benefits by an out-of-network provider. The note of the conversation made by Respondent's staff person includes that there was coverage for both marriage and family therapy and that the CPT code 90847 should be used.

12. Respondent sent billing to the company. The billings:

a. Show that Respondent was the provider and that he is a LMFT.

b. Use the family therapy CPT code of 90847 for all joint sessions.

c. Use the psychotherapy CPT code of 90806 for all individual sessions.

- d. Show diagnoses for: Ms. A – adjustment reaction (309.28), Mr. B – Dysthymia (300.40), son and nine year old daughter – anxiety states (300.00) and 3 year old daughter – adjustment disorder with anxiety (309.24).
- e. Indicate that a signed authorization of payment was on file.
- f. Were for all sessions retroactive to February 1, 2001.
- g. Billed all of the sessions at the hourly rate of \$85 per hour until February 21, 2002 when he began billing at \$95 per hour, which reflected an increase at that date in Respondent's usual fee.
- h. For sessions before November 2, 2001 were paid by the company at 70% (\$59.50 per hour), leaving a co-pay for Ms. A and Mr. B of 30% (\$25.50) and then at 80% (\$68 per hour), leaving a co-pay of 20% (\$17). Mr. B's employer changed companies in March 2002 and the new company paid only 60%.

13. The result of Respondent retroactively billing the company at the rate of \$85 for sessions that Respondent had agreed to charge the couple only \$65 was that the couple ended up paying only \$25.50 for each session and because the company paid the balance, Respondent received a total of \$85. Whatever Respondent's intention was in doing this, it was a misleading billing practice.

14. Respondent applied all of the payments made by the couple to the co-pay amounts. In early 2003, Respondent and Mr. B were in disagreement over the balance due for the co-pays. Respondent agreed to forgive the balance.

15. During the time of the disagreement, Mr. B made a complaint to the company that Respondent had billed for the sessions. In February 2003, the company sent Respondent a letter requesting that the payments they made to Respondent be returned because there was no coverage for services by an out-of-network marriage and family therapist, unless the therapist was under the supervision of a physician or psychologist and it was billed through the supervisor. The letter also said that Mr. B, the insured, had told the company the sessions were for marriage/family counseling and Respondent had agreed to provide his services at \$60 per session hour. The letter noted Respondent's billings were at a higher rate and that some of them were for psychotherapy. Respondent declined to return money to the company and cited the information the company's representative had provided to his office staff before he submitted the first billing.

16. The following conduct by Respondent was inappropriate:

- a. Sending billings to the company for payment of Mr. B's sessions, based on Mr. B's oral authorization without having a written authorization signed by Mr. B as required by Wis. Stat. § 146.82(1).
- b. Sending billings to the company showing a rate of \$85 per session for those sessions which occurred from February 1, 2001 through October 24, 2001 and for which he had agreed with his clients to receive only \$65.
- c. Sending billings which included the diagnosis 300.00 (anxiety states) and 309.24 (adjustment disorder with anxiety) for the sessions with the three children, when there were insufficient symptoms noted in the treatment records to support the diagnoses.

17. On March 13, 2008, Respondent voluntarily completed "Ethical Pitfalls: Avoiding Professional Hazards," a six credit hour program sponsored by Cross Country Education and presented by Steven Polovick, MS, LSW, a former investigator for the Ohio Counselor, Social Worker, Marriage and Family Therapist Board.

CONCLUSIONS OF LAW

1. The Marriage and Family Therapist Section of the Wisconsin Marriage and Family Therapy, Professional Counseling and Social Work Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 457.26(2) and has authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct set out above, has committed unprofessional conduct and is subject to discipline pursuant to Wis. Stat. § 457.26(2)(h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

- 1. Respondent, Frank A. Bacchus, L.M.F.T., is hereby REPRIMANDED for the above conduct.
- 2. Respondent's completion of "Ethical Pitfalls: Avoiding Professional Hazards," as set out in Finding of Fact 17, is accepted and approved, in lieu of ordering further education.
- 3. Respondent is prohibited from applying any of the 6 hours of continuing education from the March 13, 2008 "Ethical Pitfalls: Avoiding Professional Hazards" program toward satisfaction of the continuing education required to be obtained during the July 1, 2007 through June 30, 2009 registration biennium to become registered for the subsequent biennium.

4. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$350.00, pursuant to Wis. Stat. § 440.22(2).

5. Payment of costs required by this Order shall be mailed or delivered to:

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

6. In the event Respondent fails to pay costs as ordered, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

7. This Order is effective on the date it is signed.

Marriage and Family Therapist Section
Wisconsin Marriage and Family Therapy,
Professional Counseling and Social Work Examining Board

BY: Arlie J. Albrecht	4/22/08
A Member of the Section	Date

STATE OF WISCONSIN
BEFORE THE MARRIAGE AND FAMILY THERAPIST SECTION
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING
AND SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
FRANK A. BACCHUS, L.M.F.T., : LS _____ MFT
RESPONDENT. :

[Division of Enforcement Case # 03 MFT 001]

It is hereby stipulated and agreed, by and between Frank A. Bacchus, L.M.F.T. Respondent; Samuel J. Leib of Leib & Katt, LLC, attorneys for Respondent; and, John R. Zwieg, 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 investigation of Respondent's licensure by the Division of Enforcement (file 03 MFT 001). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent neither admits nor denies the allegations in this matter, but agrees to the adoption of the attached Final Decision and Order by the Section. 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 Section's Order, if adopted in the form as attached.

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

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Section ever assigned as a case advisor in this investigation may appear before the Section in open or closed session, without the presence of the Respondent or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with the Section's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.

Frank A. Bacchus, L.M.F.T.
Respondent
2925 S. Amor Drive
New Berlin, WI 53146

Date

Samuel J. Leib
Krista Buchholz
Leib & Katt, LLC
Attorneys for Respondent
740 N. Plankinton Avenue, Suite 600
Milwaukee, WI 53203

Date

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date