

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	:	
	:	FINAL DECISION AND ORDER
TIMOTHY P. KABARA,	:	LS0906101PSY
RESPONDENT.	:	

[Division of Enforcement Case # 09 PSY 006]

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

Timothy P. Kabara
1827 River Lakes Road S
Oconomowoc, WI 53066

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

Wisconsin Psychology Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Notice of Hearing and Complaint were filed in this matter on June 10, 2009. Prior to the hearing on the formal complaint, the parties in this matter agreed 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 adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Timothy P. Kabara, Respondent, date of birth October 24, 1971, is licensed by the Wisconsin Psychology Examining Board (Board) as a private practice school psychologist in the state of Wisconsin pursuant to license number 875, which was first granted May 26, 2005.

2. Respondent's last address reported to the Department of Regulation and Licensing (Department) is 1827 River Lakes Road S, Oconomowoc, WI 53066.

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

4. To be qualified to renew the license for the next biennial registration period, the licensee must have completed, in the previous biennial registration period, at least 40 hours of board-approved continuing education, including 6 hours in ethics and 2 additional hours in either cultural competence, AODA, or supervision. [Wis. Adm. Code §§ Psy 4.01 and Psy 4.02]

5. On October 16, 2007, Licensee renewed his license online and answered “Yes” to the following question:

“I have completed 40 hours of continuing education (including 6 hours in ethics which must be approved by the board and 2 additional hours in either cultural competence, AODA, or supervision) as provided in section PSY 4.02, Wis. Admin. Code, during the biennium immediately preceding this application (10/1/05-9/30/07), and I have documentation of this coursework which I will furnish to the Department upon request.”

6. On July 31, 2008, in conducting a random audit on behalf of the Board, the Department sent a letter to Respondent at 247 South Street, Oconomowoc, WI 53066 (the address he then had on file with the Department) requesting him to send the Board verification that he had completed the continuing education prior to renewing his license for the October 1, 2007 through September 30, 2009 biennium. Respondent did not respond to the July 31, 2008 request for verification. The letter was not returned to the Department.

7. On October 8, 2008, as follow-up to the July 31, 2008 letter, the Department sent a second letter to Respondent by certified mail to the 247 South Street address which was returned marked “Return to Sender” and provided a forwarding address 1827 River Lakes Road S, Oconomowoc, WI 53066. Respondent had reported his change of address to the Department on August 1, 2008; after the first letter was sent to him, but before the second was sent. On December 4, 2008, the Department sent a letter requesting the continuing education information to Respondent by certified mail at 1827 River Lakes Road S, Oconomowoc, WI 53066. This letter was returned marked “Unclaimed.”

8. The matter was referred to the Department’s Division of Enforcement (DOE) for investigation and possible prosecution, and investigative file 09 PSY 006 was opened on January 26, 2009.

a. DOE located a telephone number for Respondent from an online website and Department of Health Services records. On February 3, 2009, DOE called Respondent at that number and left a message for him to call to confirm his current address. Respondent did not respond to that message.

b. On February 4, 2009, DOE wrote to Respondent notifying him of the investigation and requesting him to submit, by February 24, 2009, evidence of the continuing education credits he obtained from October 1, 2005 through September 30, 2007. Respondent was also asked to provide a written explanation as to why he did not respond to the Board’s earlier inquiries.

c. On February 19, 2009, Respondent called DOE and left a voice mail message confirming his current address and stating that he intended to provide the requested documentation, but might need additional time to obtain duplicate copies of attendance certificates for documentation that may have been destroyed by water damage.

d. On March 6, 2009, in a telephone conversation with DOE, Respondent explained that he had moved and his continuing education documentation was in storage. He also said that due to water damage, he may need to contact the sponsors of the continuing education programs to obtain replacement attendance certificates. DOE requested that he submit the requested documentation by March 20, 2009. Respondent neither provided the requested documentation or by that date nor requested additional time to do so.

e. On March 27, 2009, DOE called Respondent and left a message on his voice mail for him to return the call. Respondent did not do so. On April 23, 2009, after receiving no response from Respondent, DOE sent a letter to Respondent informing him that DOE would either subpoena him to appear at the Department with the requested information or issue a formal disciplinary complaint including a count that he failed to cooperate with the investigation.

f. On May 4, 2009, Respondent called DOE and left a voice mail message stating that he was still trying to locate the requested documentation and asked what his options were if he could not locate everything. DOE returned the call to Respondent and left a message on his voice mail for him to return the call. On May 5, 2009, Respondent and DOE again exchanged voice mail messages.

g. On May 12, 2009, DOE again called Respondent and left a message on his voice mail requesting him to return the call immediately. Respondent did so and discussed with DOE his options. Respondent told DOE that he would fax the documentation he had located thus far on May 13, 2009.

h. To this date, Respondent has not submitted the requested verification that he had completed any of the required continuing education during the October 1, 2005 through September 30, 2007 biennium.

9. Respondent failed to complete a total of 40 hours of board-approved continuing education during the October 1, 2005 through September 30, 2007 biennium prior to renewing his license for the October 1, 2007 through September 30,

2009 biennium, and therefore failed to comply with the continuing education requirements.

CONCLUSIONS OF LAW

1. The Wisconsin Psychology Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by failing to obtain the required hours of continuing education, during the biennium immediately preceding his application for the renewal of his license as required by Wis. Adm. Code §§ Psy 4.01 and Psy 4.02, is subject to discipline pursuant to Wis. Adm. Code § Psy 5.01(28) and Wis. Stat. § 455.09(1)(g).

3. Respondent, by stating on his renewal application that he had completed the required hours of continuing education and that he had documentation of the coursework which he would furnish to the Department upon request and then not providing the verification when requested, used deception in application for a license and is subject to discipline pursuant to Wis. Stat. § 455.09(1)(d).

4. Respondent, by failing to respond in a timely manner to the requests for verification that Respondent had completed the required continuing education, Respondent has committed unprofessional conduct and is subject to discipline pursuant to Wis. Adm. Code § Psy 5.01(24) and Wis. Stat. § 455.09(1)(g).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by Timothy P. Kabara, of his license as a private practice school psychologist in the state of Wisconsin is hereby ACCEPTED.

2. Respondent shall, within 180 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$525.00 pursuant to Wis. Stat. § 440.22(2).

3. Payment 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

4. This Order is effective on the date of its signing.

Wisconsin Psychology Examining Board

By: Donald Crowder
A Member of the Board

8/19/09
Date

STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
TIMOTHY P. KABARA,	:	<u>LS 0906101 PSY</u>
RESPONDENT.	:	

[Division of Enforcement Case # 09 PSY 006]

It is hereby stipulated and agreed, by and between Timothy P. Kabara, 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 disciplinary proceeding against Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this matter by stipulation and without a hearing.
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 agrees 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 Division of Enforcement 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. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.
7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board 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 Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Timothy P. Kabara
Respondent
1827 River Lakes Road S
Oconomowoc, WI 53066

Date

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

Date