BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:	)	
	)	Case No. PSY-2005-7
JON FRANKLIN BURKE, Ph.D.,	)	
License No. PSY-324,	)	**STIPULATION AND**
	)	**CONSENT ORDER**
Respondent.	)	
	)	

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WHEREAS, information having been received by the Idaho State Board of Psychologist Examiners (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Jon Franklin Burke, Ph.D. (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of psychology in the State of Idaho in accordance with title 54, chapter 23, Idaho Code.

2. Respondent Jon Franklin Burke, Ph.D. is a licensee of the Idaho State Board of Psychologist Examiners and holds License No. PSY-324 to practice psychology in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 23, Idaho Code.

3. On or about May 25, 2004, client R.C. presented at Respondent's office in Twin Falls, Idaho, for an ADHD evaluation. According to Kathy Minard, Respondent's secretary, it is standard practice in Respondent's office for Ms. Minard to give each patient a notice of privacy practice and obtain signatures on an acknowledgement,

information sheet, and release of information form. On the date of R.C.'s appointment, Ms. Minard was out of the office and a temporary secretary failed to obtain a signed release of information form from R.C. However, the patient data form signed by R.C. states: "Payment in full at time of service unless payment arrangements have been made with the billing office." In addition, there are two signs in Respondent's office that state that payment is expected at the time of service.

4. R.C.'s appointment lasted two hours. Respondent discussed the costs of the evaluation with R.C. at the end of the appointment, at which time Respondent had sufficient information to determine those costs. R.C. wrote Respondent a check for the costs, but later placed a stop payment order on the check because she felt Respondent's charges were not appropriate.

5. Respondent maintains that (a) he attempted to speak with R.C. about her failure to pay the charges, but R.C. refused to discuss the matter with him, and (b) he notified R.C. that her account would be submitted to collections. R.C. disputes that Respondent attempted to speak with her or that Respondent notified her that her account would be submitted to collections. Respondent subsequently submitted R.C.'s account to a collection agency with which Respondent has a HIPAA-compliant Business Associate Agreement. R.C. received a notice from the collection agency and subsequently responded to the collection agency. The collection agency requested that Respondent reply to R.C.'s response. Respondent submitted a reply to the collection agency and included a copy of R.C.'s evaluation to support his claim for payment. The collection agency subsequently forwarded Respondent's reply, including the copy of the evaluation, to R.C. The collection agency later informed Respondent that all the collection agency needed to support the debt was a detailed list of charges, dates of service, places of service, etc.

6. After reviewing the file, Respondent realized that the temporary secretary had failed to obtain a signed release of information form from R.C. Respondent

requested that the collection agency stop collection efforts and destroy the copy of R.C.'s evaluation in the collection agency's file pursuant to the Business Associate Agreement. Although Respondent's charges for the services were reasonable, Respondent also wrote off R.C.'s balance owing.

7. On July 23, 2004, Respondent provided the Bureau of Occupational Licenses investigator with a copy of R.C.'s evaluation without asking for or seeing a signed release of information from R.C.

8. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of psychology, specifically Idaho Code § 54-2309(e) and American Psychological Association Ethical Principles of Psychologists and Code of Conduct (2002) Ethical Standards 4.05(a) (Disclosures—psychologists disclose confidential information only with appropriate consent), 4.05(b) (Disclosures—disclosure of confidential information without consent to obtain payment is limited to minimum that is necessary to achieve purpose), 6.04(a) (Fees and Financial Arrangements—psychologists and clients shall reach agreement specifying compensation and billing arrangements as early as is feasible in the relationship), and 6.04(e) (Fees and Financial Arrangements—psychologists first inform clients before using collection agencies and provide opportunity to make prompt payment). Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice psychology in the State of Idaho.

9. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against his license as set forth in Section C below.

B.

I, Jon Franklin Burke, Ph.D., by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in section A. I make no admissions in signing this document, but I acknowledge that, if

proven, these allegations constitute cause for disciplinary action upon my license to practice psychology in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of psychology in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall reimburse the Board for its investigative costs of Eight Hundred Eighty Seven and 50/100 Dollars ($887.50) and attorney's fees of Two Hundred Fifty and No/100 Dollars ($250.00) within one hundred twenty (120) days of the entry of the Board's Order.

2. Respondent shall not initiate services with a client until an agreement has been reached specifying compensation and billing arrangements.

3. Respondent shall not use a collection agency or take other legal measures to collect fees without first informing the client that such measures will be taken and providing the client an opportunity to make prompt payment.

4. Within thirty (30) days of entry of the Board's Order, Respondent shall provide documentation to the Board that the forms and contracts in use by his office are HIPAA compliant.

5. On December 9, 2004, Respondent completed the APA-approved 6-hour

course entitled *Legal and Ethical Issues for Mental Health Practitioners*. Within six (6) months of the date of entry of the Board's Order, Respondent shall complete one more APA-approved course, at least six hours, in ethical standards which shall include HIPAA ethics. The continuing education described herein shall be in addition to any other continuing education required to maintain licensure. Proof of completion shall be mailed to the Bureau of Occupational Licenses, 1109 Main Street, Owyhee Plaza, Suite 220, Boise, Idaho 83702-5642, no later than thirty (30) days after completion of the course.

6. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Stipulation and Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the

Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-2309. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials at any hearing on a violation of this Stipulation and Consent Order.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, title 9, chapter 3, Idaho Code.

8. This Stipulation and Consent Order contains the entire agreement between

the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 26th day of May, 2005.

Jon F. Burke, Ph.D.

Jon Franklin Burke, Ph.D.
Respondent

DATED this 27 day of May, 2005.

HALL, FARLEY, OBERRECHT
& BLANTON, P.A.

By J. Kevin West

J. Kevin West
Of Attorneys for Respondent

I concur in this stipulation and order.

DATED this 31ST day of May, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Stephanie N. Guyon

Stephanie N. Guyon
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2305, the foregoing is adopted as the decision of the Board of Psychologist Examiners in this matter and shall be effective on the 1st day of June, 2005. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF PSYCHOLOGIST EXAMINERS

By Anne Marie Nelson
Anne M. Nelson, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2005, I caused to be served a true and correct copy of the foregoing by the following method to:

Jon Franklin Burke, Ph.D. 1264 Madrona Street North Twin Falls, ID 83301	☒ U.S. Mail ☐ Hand Delivery ☒ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ Statehouse Mail
J. Kevin West HALL, FARLEY, OBERRECHT & BLANTON, P.A. P.O. Box 1271 Boise, ID 83701	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ Statehouse Mail
Stephanie N. Guyon Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	☐ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☒ Statehouse Mail

Rayola Jacobsen

Rayola Jacobsen, Chief
Bureau of Occupational Licenses