

**COMMONWEALTH OF KENTUCKY  
BOARD OF EXAMINERS OF PSYCHOLOGY  
AGENCY CASE NO. 14-03  
ADMINISTRATIVE ACTION NO. 16-KBEP-289**

**COMMONWEALTH OF KENTUCKY,  
BOARD OF EXAMINERS OF PSYCHOLOGY**

**COMPLAINANT**

**V.**

**TODD Van DENBURG, PH.D.  
(LICENSED PSYCHOLOGIST NO. 130006)**

**RESPONDENT**

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**SETTLEMENT AGREEMENT, RELEASE,  
ADMINISTRATIVE REPRIMAND AND FINAL ORDER**

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This Settlement Agreement, Release, Administrative Reprimand, and Final Order ("the Settlement Agreement") is made, by and among the Kentucky Board of Examiners of Psychology (the "Board") and Todd Van Denburg, Ph.D. ("Respondent").

**Witnesseth**

**Whereas**, the Respondent is a licensed Psychologist in the Commonwealth of Kentucky, having been issued License No. 130006 and Legacy No. 0813;

**Whereas**, the Respondent entered into a professional relationship with S.W. (the "Client") to provide psychological services;

**Whereas**, the professional relationship at issue occurred between May, 2013, and September, 2013, when the Client terminated services;

**Whereas**, in September, 2013, upon termination of the professional relationship, the Client received psychological services from Dr. Marilyn Robie, Ph.D.;



**Whereas**, on February 3, 2014, the Client filed a Complaint against the Respondent on the grounds that he failed to respond to Client's request for records and to adequately communicate with the Client's insurance company regarding her case;

**Whereas**, the Respondent received three separate letters from the Board advising him of the Complaint filed against him and his requirement to respond to the Complaint. The Board letters were dated February 10, 2014, October 31, 2014, and November 11, 2014;

**Whereas**, The Respondent never filed his response to the February 3, 2014 Complaint filed against him.

**Whereas**, the Client was a self-pay client who was reimbursed, in whole or in part, by a third-party insurance company, OPTUM Health ("OPTUM"), after the Client submitted copies of paid bills from the Respondent;

**Whereas**, the Client submitted a claim for reimbursement of professional services provided by the Respondent to OPTUM;

**Whereas**, on May 2, 2013, and May 7, 2013, OPTUM attempted to contact the Respondent by phone and left messages for the Respondent to contact it regarding the anesthesia used as part of the treatment rendered to the Client;

**Whereas**, OPTUM alleges that the Respondent did not respond to these messages. The Respondent disputes the allegation and states that he did respond to the messages left by OPTUM;

**Whereas**, on May 14, 2013, OPTUM sent a "Lack of Response from Provider" letter to the Client and Respondent;

**Whereas**, between May, 2013, and September, 2013, the Client contacted the Respondent regarding his efforts to provide necessary documents to the insurance company required for payment/reimbursement for therapy sessions;



**Whereas**, the Respondent informed the Client that he was in contact with the insurance company;

**Whereas**, on July 24, 2013, the Client received a letter from United Behavioral Health (UBH) informing the Client that the submitted reimbursement request was denied because UBH had not received the information requested in the May 7, 2013 letter from the Respondent;

**Whereas**, in September 2013, during the termination of services session, the Client confronted the Respondent regarding her failed insurance reimbursement claim and his contact with the insurance company;

**Whereas**, by letters dated October 29, 2013, and December 6, 2013, the Client requested a copy of her records from the Respondent;

**Whereas**, following the establishment of the professional relationship between Dr. Robie and the Client, Dr. Robie attempted to contact the Respondent to request the Client's records and left a message for the Respondent. The Respondent never responded. The Respondent states that he never received any contact from Dr. Robie or a written authorization from the Client to release her medical records to Dr. Robie or another healthcare professional;

**Whereas**, in August 2015, the Client's records and all other client records kept and maintained by the Respondent were destroyed when his basement flooded;

**Whereas**, the parties mutually desire to settle the issues in an expeditious manner, without the need for a formal hearing;

**Whereas**, the Respondent has had the opportunity at all times to seek advice from competent counsel of choice, and no coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Settlement Agreement; and

**Whereas**, the Respondent freely and voluntarily enters into this Settlement Agreement, motivated by a desire to resolve the issues addressed herein, and the Respondent has executed



this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms.

### **Costs**

The Respondent shall reimburse the Board in the amount of \$3,103.06 for costs associated with the investigations and prosecution of Agency Case Nos. 14-03; Administrative Action No 16-KBEP-289.

### **Terms of Agreement**

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to settle this matter. The Respondent admits to the allegations alleged in the initiating Complaints. The Respondent agrees that this Settlement Agreement constitutes disciplinary actions against his license by the Board. The Board agrees that this Settlement Agreement shall resolve any issues over which the Board has authority under KRS Chapter 319 and 201 KAR Chapter 26 that arise from the facts in Agency Case Nos. 14-03; Administrative Action No 16-KBEP-289.

2. The Respondent agrees to the following terms to resolve the matter of Agency Case Nos. 14-03; Administrative Action No 16-KBEP-289:

- (a) To accept an Administrative Reprimand issued by the Board;
- (b) To pay the sum of \$3,103.06 within thirty (30) days of the effective date of this Settlement Agreement;



(c) To complete a three-hour continuing education course regarding HIPAA or records retentions and security within one hundred eighty (180) days of the effective date of this Settlement Agreement; and

(d) The Respondent waives his right to an administrative hearing under KRS Chapter 13B and judicial review of the Final Order under KRS 13B.150.

3. The Board agrees to issue an Administrative Reprimand and not seek any additional disciplinary action against the Respondent based on the factual allegations enumerated in the Administrative Complaint issued in the matter of Agency Case Nos. 14-03; Administrative Action No 16-KBEP-289.

4. The Parties agree to execute all documents necessary to settle and dismiss Board Agency Case Nos. 14-03; Administrative Action No 16-KBEP-289.

5. The Respondent expressly understands that this Settlement Agreement, Release, and Final Order shall constitute a reportable disciplinary action against the Respondent's license for purposes of any professional organization, national database, or licensing board.

6. The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement shall constitute failure to comply with an Order of the Board under KRS 335.540(1)(f) for which the Board may impose additional penalties available under law after notice and opportunity to be heard.

7. The Respondent expressly understands that a violation of the terms of his probation may result in the Board revoking his probation resulting in the revocation of the Respondent's credential to practice counseling in the Commonwealth of Kentucky

8. The Parties agree to take all actions necessary that would cause the conditions and obligations under this Agreement to become effective upon the date of this Agreement, or, in the



event that additional documents may need to be executed after the date of this Agreement, the Parties agree to cooperate with each other and execute such additional documents to effectuate the purposes as stated herein.

9. Each of the Parties represents and warrants to the other that it has taken all requisite action to authorize the execution, delivery and performance of its obligations hereunder, and that each Party has all requisite power and authority to enter into this Agreement and to effectuate the purposes herein and that the Agreement will in fact be legally binding and will constitute the valid and legally binding obligation of each Party and will be enforceable against each Party in accordance with the respective terms hereof.

10. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, in accordance with the laws of the Commonwealth of Kentucky without reference to its choice of law rules. Any dispute arising hereunder shall be settled by a state court of appropriate jurisdiction in Franklin County, Kentucky. The Parties irrevocably consent to the personal jurisdiction and venue of such court. The Parties agree that any such litigation shall be by bench trial only, each of the Parties irrevocably waiving its right to jury trial in any dispute arising hereunder.

11. This Agreement may not be modified except by a written agreement signed by all Parties.

12. The Parties represent, agree, and acknowledge that they have read this Agreement in its entirety and fully understand and agree to its terms.

#### **Release of Liability**

In consideration of execution of this Settlement Agreement, the Respondent, the Respondent's executors, administrators, successors and assigns, hereby releases and forever



discharges the Commonwealth of Kentucky, the Board of Examiners of Psychology, and the Kentucky Attorney General, and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this settlement or its administration.

#### **Acceptance by the Board**

This Settlement Agreement, when executed by the Respondent, shall be presented to the Kentucky Board of Examiners of Psychology with a recommendation for approval from the Board's counsel and case manager at the next regularly scheduled meeting of the Board following receipt of the executed Agreement. The Settlement Agreement shall not become effective until it has been approved by a majority of the Board and endorsed by the Chair of the Board.

The Respondent understands the Board is free to accept or reject this Settlement Agreement. The Respondent hereby agrees to waive any rights he might have to challenge, based solely on the presentation of this Settlement Agreement to the Board, the impartiality of the Board to hear this administrative action if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted by the Board, it shall be regarded as null and void. Representations and/or admissions by the Respondent in the Settlement Agreement, or other settlement proposals, will not be regarded as evidence against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences



against the Respondent will be made from the willingness to have entered into this Settlement Agreement.

#### **Open Records**

The Respondent acknowledges this Settlement Agreement is subject to disclosure under the Kentucky Open Records Act, may be reportable under federal law, and may be shared with any professional organization or licensing board as the Board deems appropriate in its discretion.

#### **Complete Agreement**

This Settlement Agreement, Release, Administrative Reprimand, and Final Order consists of fourteen (14) pages including the Certificate of Service, which embodies the entire agreement between the Board and the Respondent. It may not be altered, amended or modified without the express written consent of both Parties.

#### **Effective Date**

The effective date of this Settlement Agreement, Release, and Final Order shall be the date it is accepted by the Board and signed by the Chairperson of the Board.

#### **Findings of Facts, Conclusions of Law, and Final Order**

This matter is before the Board of Examiners of Psychology from the Settlement Agreement, Release and Final Order. Pursuant to KRS 13B.110(5), after having reviewed the administrative record, and the terms of the Settlement Agreement, Release and Final Order, the Board makes the following findings:

1. The Respondent is a licensed Psychologist in the Commonwealth of Kentucky, having been issued License No. 130006 and Legacy No. 0813.
2. The Respondent entered into a professional relationship with S.W. (the "Client") to provide psychological services.



3. The professional relationship at issue occurred between May, 2013, and September, 2013, when the Client terminated services.

4. In September, 2013, upon termination of the professional relationship, the Client received psychological services from Dr. Marilyn Robie, Ph.D.

5. On February 3, 2014, the Client filed a Complaint against the Respondent on the grounds that he failed to respond to Client's request for records and to adequately communicate with the Client's insurance company regarding her case.

6. The Respondent received three separate letters from the Board advising him of the Complaint filed against him and his requirement to respond to the Complaint. The Board letters were dated February 10, 2014, October 31, 2014, and November 11, 2014.

7. The Respondent never filed his response to the February 3, 2014 Complaint filed against him.

8. The Client was a self-pay client who was reimbursed, in whole or in part, by a third-party insurance company, OPTUM Health ("OPTUM"), after the Client submitted copies of paid bills from the Respondent.

9. The Client submitted a claim for reimbursement of professional services provided by the Respondent to OPTUM.

10. On May 2, 2013, and May 7, 2013, OPTUM attempted to contact the Respondent by phone and left messages for the Respondent to contact it regarding the anesthesia used as part of the treatment rendered to the Client.

11. The Respondent did not return messages left by OPTUM.

12. On May 14, 2013, OPTUM sent a "Lack of Response from Provider" letter to the Client and Respondent.



13. Between May, 2013, and September, 2013, the Client contacted the Respondent regarding his efforts to provide necessary documents to the insurance company required for payment/reimbursement for therapy sessions.

14. The Respondent informed the Client that he was in contact with the insurance company.

15. On July 24, 2013, the Client received a letter from United Behavioral Health (UBH) informing the Client that the submitted reimbursement request was denied because UBH had not received the information requested in the May 7, 2013 letter from the Respondent.

16. In September 2013, during the termination of services session, the Client confronted the Respondent regarding her failed insurance reimbursement claim and his contact with the insurance company.

17. By letters dated October 29, 2013, and December 6, 2013, the Client requested a copy of her records from the Respondent.

18. Following the establishment of the professional relationship between Dr. Robie and the Client, Dr. Robie attempted to contact the Respondent to request the Client's records and left a message for the Respondent. The Respondent never responded. The Respondent never responded. The Respondent states that he never received any contact from Dr. Robie or a written authorization from the Client to release her medical records to Dr. Robie or another healthcare professional.

19. In August 2015, the Client's records and all other client records kept and maintained by the Respondent were destroyed when his basement flooded.

20. The Board has sufficient evidence to determine that the Respondent violated:



- (a) KRS 319.082(1)(c) by committing any unfair, false, misleading or deceptive act or practice regarding communications with the Client's insurance company;
- (b) KRS 319.082(1)(f) by violating 201 KAR 26:145 Section 6(6)(b) by failing to ensure that all records were maintained for a period of not less than six (6) years after the last date that services were rendered;
- (c) KRS 319.082(1)(f) by violating 201 KAR 26:130 Section 2(4) by failing respond to the initiating complaint filed against him;
- (d) KRS 319.082(1)(g)1 by failing to respond to the initiating complaint filed against him; and
- (e) KRS 319.082(1)(g)3 by failing to respond to the initiating complaint filed against him and not furnishing a complete explanation covering the matter contained in the complaint filed with the Board.


**IT IS HEREBY ORDERED THAT:**

1. That the Board shall issue the ADMINISTRATIVE REPRIMAND to the Respondent Todd Van Denburg, Ph.D.;
2. That the Respondent Todd Van Denburg, Ph.D. shall pay the sum of \$3,103.06 within thirty (30) days of the effective date of this Settlement Agreement;
3. That the Respondent Todd Van Denburg, Ph.D. shall complete a three-hour continuing education course regarding HIPAA or records retentions and security within one hundred eighty (180) days of the effective date of this Settlement Agreement




This is a final and appealable order. Pursuant to KRS 13B.140(1), a party may institute an appeal of this Final Order by filing a petition in the appropriate court of venue within thirty (30) days after the Final Order is mailed or delivered by personal service.

SO ORDERED this 17<sup>th</sup> day of July, 2017.

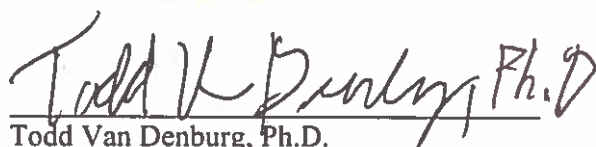
  
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Jamie A. Hopkins, Ph.D.  
Chairperson  
Kentucky Board of Examiners of Psychology



Reviewed and Agreed to by:

  
\_\_\_\_\_  
Brian T. Judy  
Assistant Attorney General  
Office of the Attorney General  
700 Capitol Avenue, suite 118  
Frankfort, Kentucky 40601  
*Counsel for the Board*

Date: 6/19/17

  
\_\_\_\_\_  
Todd Van Denburg, Ph.D.  
*Respondent*

Date: 6/15/2017



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the **SETTLEMENT AGREEMENT, RELEASE, AND FINAL ORDER** was sent on this 24<sup>th</sup> day of July, 2017, to:

**Certified Mail, Return Receipt Requested, to:**

Todd Van Denburg, Ph.D.  
663 Cooper Drive  
Lexington, Kentucky 40502  
*Respondent*

**Messenger Mail to:**

Hon. Stuart Cobb  
Office of the Attorney General  
Division of Administrative Hearings  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

Brian T. Judy  
Assistant Attorney General  
Office of the Attorney General  
700 Capitol Ave., Ste. 118  
Frankfort KY 40601

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Board Administrator  
Kentucky Board of Examiners of  
Psychology