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DIV. OF OCCUPATIONS  
& PROFESSIONS

Commonwealth of Kentucky  
Board of Examiners of Psychology  
Agency Case No. 07-01  
Administrative Action No. 07-KBEP-0382

Kentucky Board of Examiners of Psychology

Complainant

v.

**Amended Final Order**

Kathleen M. Kirby, Ed.D., Ph.D.

Respondent

\*\*\*\*\*

The Kentucky Board of Examiners of Psychology ("Board"), having met on November 14, 2008, and considered supplemental letters in the above-styled matter dated October 22, 2008, from the Initiating Complainant, Jason R. Segeleon, Attorney at Law, and October 28, 2008, from the Respondent's Counsel, J. Fox DeMoisey, Attorney at Law, and the Board being otherwise sufficiently advised;

**It is hereby ordered that**, under the authority of KRS 319.082(5), ¶ 2 of the Board's Final Order entered June 2, 2008, is hereby amended as follows:

2) The Board orders that the Respondent, within ninety (90) days of the date of entry of this Amended Final Order:

a) file proof with the Board per KRS 319.092(3)(f) of successful payment of the amount of \$750.00 to Darren W. Lambdin, including proof of the cashing or depositing of a check or money order paid to the order of Mr. Lambdin, or;

b) file proof of having paid the amount of \$750.00 restitution per KRS 319.092(3)(f) to the order of Jason R. Segeleon, Attorney at Law, by certified check or money order, for the benefit of Mr. Segeleon's former client Darren W. Lambdin, and with written proof of the payment of said restitution filed simultaneously with the Board.

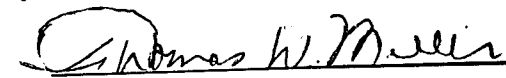
All other terms and conditions of the Final Order entered June 2, 2008, shall remain in effect.

The Respondent may appeal this Amended Final Order of the Board to the Franklin Circuit Court within thirty (30) days of the effective date of this Final Order.

Dated and effective this 5th day of January, 2009.

Kentucky Board of Examiners of Psychology

By:



Thomas W. Miller, Ph.D., Chair

### Certificate of Service

I hereby certify that the original of this Amended Final Order was filed in the administrative record, and that a copy was mailed as indicated below this the 5<sup>th</sup> day of January, 2009, to:


Kathleen M. Kirby, Ed.D., Ph.D.  
1015 East Spring Street  
New Albany, Indiana 47150-2942 (by certified mail, return receipt requested)  
*Respondent;*

J. Fox DeMoisey, Attorney at Law  
DeMoisey Law Office  
905 Baxter Avenue  
Louisville, Kentucky 40204-2046 (by regular mail)  
*Attorney for the Respondent;*

Mark Brengelman, Assistant Attorney General  
Office of Civil and Environmental Law  
Capitol Building, Suite 118  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449 (by messenger mail)  
*Counsel, Kentucky Board of Examiners of Psychology;*

Tad Thomas, Assistant Deputy Attorney General, for  
Thomas J. Hellmann, Hearing Officer  
Office of the Attorney General -- East Office  
Division of Administrative Hearings  
1024 Capital Center Drive  
Frankfort, Kentucky 40601-8204 (by messenger mail)  
*Hearing Officer*

Jason R. Segeleon, Attorney at Law  
125 South Seventh Street  
Louisville, Kentucky 40202-2703  
*Initiating Complainant*

  
\_\_\_\_\_  
Julie G. Jackson, Board Administrator

Commonwealth of Kentucky  
Board of Examiners of Psychology  
Agency Case No. 07-01  
Administrative Action No. 07-KBEP-0382

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JUN 02 2008  
DIV. OF OCCUPATIONS  
& PROFESSIONS

Kentucky Board of Examiners of Psychology

Complainant

v.

**Final Order**

Kathleen M. Kirby, Ed.D., Ph.D.

Respondent

\*\*\*\*\*

The Kentucky Board of Examiners of Psychology ("Board"), having met on June 2, 2008, considered the record in the above-styled administrative action, as defined by KRS 13B.130, and the Findings of Fact, Conclusions of Law, and Recommended Order ("Recommended Order") dated April 30, 2008, from its Hearing Panel, that no exceptions were filed; and the Board being otherwise sufficiently advised by separate counsel, Ryan M. Halloran, Assistant Attorney General;

**It is hereby ordered that** the Hearing Panel's Recommended Order dated April 30, 2008, is adopted, with the exception that no fine shall be imposed, as the Board's Final Order, pursuant to KRS 13B.120. Pursuant to the Final Order, **it is hereby further ordered that the Board:**

- 1) issues a letter of administrative reprimand against the Respondent per KRS 319.082(1), with this Final Order constituting the letter of administrative reprimand, and;
- 2) orders that the Respondent pay \$750.00 restitution per KRS 319.092(3)(f) to the legal client of the complainant, Jason Segeleon, Attorney at Law, in care of Mr. Segeleon, within thirty (30) days of the date of entry of this Final Order, and with written proof of the payment of said restitution filed simultaneously with the Board, and;
- 3) orders that the Respondent pay the Board's costs for this disciplinary proceeding per KRS 319.092(3)(g) consisting of the court reporter's fee and the hearing officer's costs per 201 KAR 26:140 Section 2, to be paid by certified check or money order paid to the "Kentucky State Treasurer" and tendered to the Board within thirty (30) days of the date of a letter from the Board to the Respondent totaling those costs.

The Respondent may appeal this Final Order of the Board to the Franklin Circuit Court within thirty (30) days of the effective date of this Final Order.

Dated and effective this \_\_\_\_ day of June, 2008.

Kentucky Board of Examiners of Psychology

By: \_\_\_\_\_  
S. Abby Shapiro, Ph.D., Chair

**Certificate of Service**

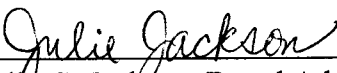
I hereby certify that the original of this Final Order was filed in the administrative record, and that a copy with the Findings of Fact, Conclusions of Law, and Recommended Order dated April 30, 2008, was mailed as indicated below this the 3<sup>rd</sup> day of June, 2008, to:

Kathleen M. Kirby, Ed.D., Ph.D.  
1015 East Spring Street  
New Albany, Indiana 47150-2942 (by certified mail, return receipt requested)  
*Respondent;*

J. Fox DeMoisey, Attorney at Law  
DeMoisey Law Office  
905 Baxter Avenue  
Louisville, Kentucky 40204-2046 (by regular mail)  
*Attorney for the Respondent;*

Mark Brengelman, Assistant Attorney General  
Office of Civil and Environmental Law  
Capitol Building, Suite 118  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449 (by messenger mail)  
*Counsel, Kentucky Board of Examiners of Psychology;*

James L. Gay, Chief Hearing Officer, for  
Thomas J. Hellmann, Hearing Officer  
Office of the Attorney General -- East Office  
Division of Administrative Hearings  
1024 Capital Center Drive  
Frankfort, Kentucky 40601-8204 (by messenger mail)  
*Hearing Officer.*

  
\_\_\_\_\_  
Julie G. Jackson, Board Administrator

**RECEIVED**

MAY 01 2008

DIV. OF OCCUPATIONS  
& PROFESSIONS

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY  
AGENCY CASE No. 07-01  
ADMINISTRATIVE ACTION NO. 07-KBEP-0382**

COMMONWEALTH OF KENTUCKY  
BOARD OF EXAMINERS OF PSYCHOLOGY

COMPLAINANT

vs.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDED ORDER**

KATHLEEN M. KIRBY, Ed.D., Ph.D.  
(Licensed Psychologist No. 0883)

RESPONDENT

\* \* \* \* \*

The Kentucky Board of Examiners of Psychology brought this action against the respondent, Kathleen M. Kirby, charging her with several violations of the statutes governing the practice of licensees of the Board. The administrative hearing was conducted on February 20, 2008. Hon. Mark Brengelman represented the Board, and Hon. J. Fox DeMoisey represented Ms. Kirby. Hon. Thomas J. Hellmann presided over the case as hearing officer, and Dr. Dennis Buchholz sat as the single Board representative who submits this recommendation to the Board for its consideration and approval. Based upon the evidence admitted at the hearing, Dr. Buchholz recommends that the Board find Kirby guilty of the charges against her. In support of that recommendation, Dr. Buchholz makes the following findings of fact, conclusions of law, and recommended order.

## FINDINGS OF FACT

1. On August 13, 2007, the Kentucky Board of Examiners of Psychology issued a *Notice of Administrative Hearing and Order* charging Kathleen M. Kirby with four violations of the statutes governing the conduct of licensed psychologists. Exhibit 1.

2. The Board asserted that on September 29, 2005, Hon. Jason Segeleon, an attorney in private legal practice, hired Kirby to provide her expert opinion on a matter involved in an ongoing custody dispute between Mr. Segeleon's client and his former wife. In spite of the fact that Kirby was paid for her services, the Board alleged that she delayed until February 23, 2007, in providing Mr. Segeleon with a report containing her expert opinion. The Board asserted that the delay occurred in spite of Segeleon's periodic and increasingly insistent requests for Kirby to issue her report and that it was issued only after Segeleon filed a complaint with the Board against Kirby. Exhibit 1.

3. The Board also asserted that Kirby failed to respond to Segeleon's inquiries as to her delay in completing the expert report, failed to perform psychological services within a reasonable time after accepting a fee for those services, and failed to refund the payment or to complete the report within a reasonable time of the client's request for such action.

4. Based upon those allegations the Board asserts that Kirby violated KRS 319.082(1)(c) by committing unfair, false, misleading, or deceptive acts or practices and violated KRS 319.082(1)(d) by being incompetent or negligent in the practice of psychology. Exhibit 1.

5. In her defense Kirby admits that she received a retainer fee from Segeleon and that she received several letters and telephone messages from him, but she asserts that she made attempts to communicate with Segeleon and that she advised him that a formal opinion would be issued after a new study was formally published. Therefore, she denies the allegations of misconduct and asserts that "an appropriate and scholarly psychological report was "timely" completed and delivered to [Segeleon]." Exhibit 2, page 3.

6. Kirby has been teaching psychology at the University of Louisville since 1992, and she has been in private practice since 1994. Transcript of Evidence, pages 175-176 (hereinafter TE 175-176).

7. Jason Segeleon is engaged in the private practice of law in Louisville, Kentucky, and his legal practice focuses primarily upon administrative law, criminal defense, personal injury, and family law. TE 33.

8. Segeleon's law office was located at the same address throughout the time period at issue in this action, and he has two staff members who answer the telephone between 8:30 a.m. and 5 p.m. each business day. The office has a separate fax number. TE 52-53.

9. In 2005 Segeleon represented a father in a divorce action in which the mother alleged that he had inappropriate sexual contact with their daughter.

10. The mother had videotaped a conversation between herself and the

daughter in which she allegedly stated that the father had touched her in an inappropriate manner.

11. Segeleon contacted Kirby in September 2005, and she agreed to review the videotape and to provide her professional opinion as to whether the child was making the allegations based upon her own recollection of events or in response to coaching and prodding by the mother.

12. By letter to Kirby dated September 29, 2005, Segeleon confirmed that she agreed to review the videotape and to render a professional opinion in exchange for the payment of the fee enclosed with the letter. Exhibit 3.

13. In spite of the fact that the letter is dated September 29, 2005, and the envelope has a postage meter stamp with that same date, Kirby asserts that she did not receive the letter until late November or early December 2005. TE 151-152.

14. Although the letter stated that Segeleon "would appreciate your prompt attention and review of this information," she never attempted to write or call Segeleon to report that she had just received the letter and information sent with it. TE 193.

15. In addition, Kirby apparently made no inquiry of the United States Postal Service at that time as to why the delivery had been delayed for approximately three months. TE 151-152.

16. The parties agree that Kirby was paid \$750 for her services and that she cashed the check sometime after receiving it. Exhibit 4.



17. The videotape provided to Kirby for review was forty-nine minutes in length. TE 154.

18. When several months passed without a response from Kirby and in spite of numerous messages left at her office and personal cell phone numbers, Segeleon wrote her a letter dated February 28, 2006. Exhibit 5.

19. In the letter he reminded Kirby that he had sent her the original letter the previous September, and he stated that he had placed "countless" telephone calls to her and had "left messages on each occasion." Consequently, he stated that he "would appreciate a telephone call to discuss this matter." TE 42, Exhibit 5.

20. This was the first of many letters sent to Kirby by Segeleon which she asserted that she did not receive, and she also asserted at the hearing that she had received none of Segeleon's previous telephone messages. TE 152-153.

21. When Kirby did not respond to the February 28, 2006, letter, and did not return Segeleon's telephone calls, he sent her another letter dated April 4, 2006. TE 42-44.

22. Kirby asserts she did not receive the April 4, 2006, letter either. TE 153-154.

23. In that letter Segeleon stated that he had left Kirby "multiple phone messages" and had "written multiple letters," but he had received no response from her. Therefore, Segeleon stated, "I either need a response and report from you, or would ask that you immediately refund those fees so that we may retain a new expert." Exhibit 6.

24. Kirby finally called Segeleon on April 18, 2006, but in the six month period between their initial conversation in September 2006, and April 18, 2006, Segeleon had no communication from her either by telephone or letter and had not received a copy of her report. TE 44.

25. Segeleon asserted that during the April 18, 2006, conversation, Kirby stated that she had mailed Segeleon her report, but he informed her that he had not received it. Consequently, he requested that she send him another copy. Exhibit 7.

26. Kirby had a different recollection of the April 18, 2006, conversation. She asserted at the hearing that she was not to provide her "formal report" at that time, which would contain her conclusions supported by peer-reviewed research, but instead, she asserted that she was to provide Segeleon with her "talking points" or a "preliminary report." TE 156.

27. Nevertheless, Kirby acknowledges that she agreed to send him another copy of the report that she had prepared, and she also agreed to discuss the case with a colleague who was a psychiatrist to determine whether that person would be willing to testify on behalf of Segeleon's client. TE 155-156.

28. After their conversation on April 18, 2006, Segeleon sent Kirby a letter dated April 20, 2006, memorializing the matters discussed, and Kirby acknowledges that she received that letter. TE 154, Exhibit 8.

29. Segeleon asserted, however, that he did not receive the second copy of

Kirby's report in response to the April 20, 2006, letter, and as a result he wrote her again on June 13, 2006. Exhibit 8.

30. Segeleon was concerned since he was facing deadlines in the divorce/custody action to identify expert witnesses and to exchange copies of exhibits. TE 48.

31. Therefore, in the June 13, 2006, letter Segeleon reiterated his understanding that Kirby "had prepared a report based upon a review of the videotape," but he stated that he had "yet to receive a copy of that report." In addition, he stated that he "need[ed] this report immediately in order to prepare for the defense of this action." Exhibit 8.

32. Kirby asserted, however, that she did not receive the June 13, 2006, letter, and she asserted that he never indicated in their telephone conversations or in the messages that he left her that he needed the report to prepare for trial. TE 158.

33. Segeleon wrote Kirby again on July 5, 2006, and reiterated the same points contained in the earlier letter about the need to receive her report and the name of a psychiatrist who may be willing to participate in the case. Exhibit 9.

34. In the time between the mailing of his two letters in the summer of 2006, Segeleon asserted that he attempted to telephone Kirby several times, but she did not answer or return those calls. TE 50.

35. Kirby asserted that she did not receive the July 5, 2006, letter, and she could

recollect only three or four messages from Segeleon between their initial conversation in September 2006 and the filing of the complaint against her in January 2007. TE 158.

36. Segeleon described himself in July 2006 as being "extremely frustrated and worried" about Kirby's cooperation in providing the professional services on behalf of his client. TE 49-50.

37. Segeleon and Kirby finally spoke again by telephone in early October 2006 which was over five months since their last contact and over one year since she had agreed to review the videotape. TE 51.

38. As reflected in his letter to Kirby dated October 12, 2006, he understood that Kirby's report had been prepared and that she had agreed to e-mail him a copy. When he did not receive the report within a few days of their conversation, he sent the letter and included his current e-mail address. TE 52, Exhibit 10.

39. Again, Kirby's recollection of the October 2006 conversation was substantially different than Segeleon's. She asserted that he requested that she send him only her list of talking points, consisting of a page and a half or two pages, and which she had allegedly sent him in response to their April 2006 conversation. She also asserted that during the conversation, he notified her for the first time that she could finally begin the drafting of her formal report. TE 161-163.

40. Kirby admitted that she received the October 12, 2006, letter which Segeleon sent as a result of their conversation. She asserted that she sent Segeleon her talking

points to the e-mail address listed in the letter and that she received no indication from her internet service provider that the e-mail had not been received. TE 163, 198; Exhibit 10.

41. Kirby did not introduce a copy of the talking points allegedly sent to Segeleon.

42. Segeleon did not receive a report from Kirby in response to the October 12, 2006, letter, and he made no mention of receiving an e-mail containing Kirby's talking points. TE 53.

43. On October 20, 2006, Kirby sent a letter to the United States Postal Service complaining about the misdirection of her mail to other addresses and the receipt of mail for other addresses at her business address. Kirby offered that letter in support of her assertion as to a possible explanation for why she had received only three of the eleven letters sent to her by Segeleon. TE 164-165, 198; Exhibit 20.

44. Kirby did not suggest, however, that during the time period at issue, she failed to receive more than 70% of the other mail that had been addressed to her office.

45. In addition, at no time throughout the course of Segeleon's dealings with Kirby did she ever suggest to him that she had failed to receive mail that Segeleon had sent to her, and likewise, during that same period of time, he had not received persistent complaints that mail he had sent to other persons was not received. TE 60-61.

46. Segeleon next spoke with Kirby on November 29, 2006, and he mailed a letter to her on the following day. TE 54, Exhibit 11.

47. From their conversation Segeleon understood that the report had been prepared by mid-April 2006, and while she may have stated that she had amended the report with new studies or information, he believed that the report was complete. TE 54-55.

48. In the November 30, 2006, letter Segeleon stated that based upon their conversation, "it is my understanding that you will be forwarding your report in this matter immediately." He requested that she send the report by regular mail or to his new e-mail address which he included. Exhibit 11.

49. Segeleon did not receive the report in response to his November letter, but Kirby asserts that she did not receive that letter. TE 55, 166.

50. Again, Kirby's recollection of the conversation differed substantially from Segeleon's. Kirby asserts that she told Segeleon that she would have the formal report finished by early January or mid-January at the latest if he could wait for a relevant article that was scheduled to be published in the February edition of a professional monthly publication. TE 166.

51. On December 19, 2006, Segeleon wrote Kirby and demanded that she "immediately mail me the report that you have prepared, or immediately return the \$750.00 that my client paid to you for the preparation of this report." Exhibit 12.

52. Kirby asserts that she never received that letter. TE 167.

53. On January 4, 2007, Segeleon sent Kirby a certified letter demanding the

refund of his client's money within ten days and asserting that he would file a complaint with the Board if he did not receive the money. Exhibit 13.

54. Kirby stated not only that she failed to receive the letter but that she did not recognize the signature of the person who signed for the letter at her business address. TE 167-168.

55. When Segeleon did not receive the refund, he filed a complaint with the Board dated January 18, 2007. TE 62, Exhibit 14.

56. By letter dated January 23, 2007, the Board notified Kirby that a complaint had been filed against her. She received that mailing from the Board, and as a result, she retained J. Fox DeMoisey to represent her on the complaint. TE 169-170, Exhibit 15.

57. DeMoisey contacted Segeleon, and since Segeleon indicated that he still wanted the report, in spite of the fact that he had lost contact with his client, DeMoisey agreed to send the report to Segeleon. TE 64-65.

58. Thus, with a cover letter dated February 23, 2007, DeMoisey mailed Kirby's report dated January 7, 2007, to Segeleon.

59. Kirby asserted that she had been waiting for the publication of the articles that are included in Exhibit 21 before finalizing her report. TE 171-172.

60. Kirby asserted that if Segeleon had expressed an immediate need for the report, such as an approaching trial date, she could have spent a weekend preparing the report. Since the report "wasn't the highest priority," however, she concentrated on other matters, such as the appointments she had. TE 173-174.

61. Because Segeleon had lost contact with his client, the report was never used in the divorce action. TE 68.

62. Even giving Kirby the benefit of a doubt that she did not receive some correspondence and telephone messages from Segeleon, she had received the September 29, 2005, letter from Segeleon by December 2005, and by cashing the check enclosed with the letter, she agreed to provide professional psychological services in exchange for the fee.

63. Again, assuming that Kirby did not receive Segeleon's initial letter until December 2005, she had no communication with him from December 2005 until her telephone call to him on April 18, 2006. That four month time period represents an unreasonable delay in her communication with her client.

64. Although there is some dispute as to what the parties' expectations were as to the report that was to be provided by April 2006, there was an expectation that she would produce something in writing, but she did not.

65. If Kirby could not produce some type of report by April 2006 as expected by Segeleon, she had a professional obligation to communicate that fact to him, but she did not.

66. Even assuming Kirby's assertion to be true that she sent Segeleon her talking points in October 2006, she failed to provide him with any written work product for over a ten month period, again assuming that she received the initial letter from



Segeleon in December 2005. That time period represents an unreasonable delay in providing the services agreed upon by the parties.

67. Even assuming Kirby's assertion to be true that she did not receive much of the correspondence from Segeleon, she acknowledged that she spoke with him on April 18, 2006, in October 2006, and on November 29, 2006, and on that last date she agreed to complete her formal report by mid-January 2007.

68. The report, however, was not delivered until February 2007, and only after she had received notice of the filing of the complaint with the Board of Examiners of Psychology. That delay in issuing the report was unreasonable considering the date of the initial agreement in September 2005 to provide professional services, the date that she allegedly received the videotape in December 2005, and the date that the report was finally delivered in February 2007.

69. In addition, her November 2006 statement as to the expected completion date of the report was misleading since it was not issued until February 23, 2007, which was one month later than the stated mid-January completion date and well over one year after she had been retained to provide professional services.

#### CONCLUSIONS OF LAW

1. Pursuant to KRS Chapter 319, the Kentucky Board of Examiners of Psychology has jurisdiction to hear and decide this matter.

2. In accordance with KRS 319.092(1), the administrative hearing was conducted pursuant to the provisions of KRS Chapter 13B.

3. Under KRS 13B.090(7), the Board had the burden to prove by a preponderance of the evidence the allegations of misconduct against Kirby.

4. The Board has met its burden on the charges against Kirby.

5. Pursuant to KRS 319.082(1)(c), a licensee is subject to discipline by the Board if she has "committed any unfair, false, misleading, or deceptive act or practice."

6. Pursuant to KRS 319.082(1)(d), a licensee is subject to discipline by the Board if she has "been incompetent or negligent in the practice of psychology."

7. Kirby violated KRS 319.082(1)(d) by accepting a fee to perform professional psychological services and by failing to complete in a timely manner any type of report. While Kirby may not have been required to provide a final report by April 2006, she was required to produce something in writing to Segeleon, but she did not. Kirby herself asserts that she did not send her initial work product to Segeleon until after receipt of his letter dated October 12, 2006.

8. Kirby also violated KRS 319.082(1)(d) by failing to respond to Segeleon's inquiries about the delay in completing the report and by failing to have regular communications with him. A licensee has an obligation to maintain communication with her client, and even giving her the benefit of a doubt that she did not receive Segeleon's initial letter until December 2005, her delay until April 2006 to have any follow-up communication with him was unreasonable and negligent.

9. Kirby violated KRS 319.082(1)(c) by committing false, misleading, and deceptive acts by accepting the fee and failing to complete her final report in a timely

manner after receipt of the videotape and check. She also violated that statute by failing to complete her report by mid-January as she allegedly told Segeleon in November 2006 that she would do.

10. Although the reason for Kirby's excessive delay in completing her report was unclear, the preponderance of the evidence does not support the conclusion that she acted with malice or that she generally is a danger to the community. Her conduct did, however, impede Segeleon's ability to defend and to represent the interests of his client.

#### **RECOMMENDED ORDER**

Based upon the foregoing findings of fact and conclusions of law. Dr. Buchholz recommends that the Board find Kirby guilty of violating KRS 319.082(1)(c) and (d), and he recommends that the Board impose the following sanctions against her:

1. Issue a letter of reprimand to Kirby for the misconduct found in this action.
2. Impose a fine against Kirby in an amount that the Board finds to be appropriate for Kirby's violations of KRS 319.082(1)(c) and (d), but not in excess of \$2,000 per violation in accordance with KRS 319.092(3)(b).
3. Order that she pay \$750 restitution to Segeleon's client.
4. Order that Kirby pay the Board's cost for this disciplinary proceeding.

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

A party also has a right to appeal the Final Order of the agency pursuant to KRS 13B.140(1) which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO RECOMMENDED this 30<sup>th</sup> day of April, 2008.

*Dr. Dennis Buchholz by Thomas Helton*  
Dr. Dennis Buchholz with approval from Pn. Buchholz  
Board Representative

**CERTIFICATE OF SERVICE**

*30th* I hereby certify that the original of this RECOMMENDATION was mailed this day of April, 2008, by messenger mail, to:

JULIE G JACKSON  
BD OF EXAMINERS OF PSYCHOLOGY  
911 LEAWOOD DR  
PO BOX 1360  
FRANKFORT KY 40602

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

J FOX DEMOISEY  
DEMOISEY LAW OFFICE  
905 BAXTER AVE  
LOUISVILLE KY 40204-2046

and, by messenger mail, to:

MARK BRENGELMAN  
CIVIL & ENVIRONMENTAL LAW DIVISION  
OFFICE OF THE ATTORNEY GENERAL  
CAPITOL BLDG STE 28  
700 CAPITOL AVE  
FRANKFORT KY 40601-3449

  
\_\_\_\_\_  
DOCKET COORDINATOR

070382FC