

Commonwealth of Kentucky
Board of Examiners of Psychology
Agency Case No. 01-01
Administrative Action No. 2001-KBEP-

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DIV. OF OCCUPATIONS
& PROFESSIONS

Commonwealth of Kentucky,
Board of Examiners of Psychology

Complainant

v.

Order

Michael G. Borack, Psy.D.
Licensed Psychologist No. 1186

Respondent

* * * * *

The State Board of Psychology having met on February 4, 2002, and having considered and voted to pre-approve terms of settlement in the above-referenced matter hereby affirms, adopts and incorporates the Settlement Agreement, as amended after February 4, 2002, attached hereto as its own.

It Is So Ordered.

Dated this 21st day of February, 2002.

State Board of Psychology

By: Robert J. Illback
Robert J. Illback, Psy.D.
Board Chair

Copies sent this the 21st day of February, 2002, to:

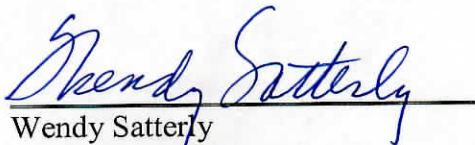
Michael G. Borack, Psy.D.
636 Northland Blvd., Suite 110
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Respondent (by regular mail)

Mark Brengelman
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Previous Attorney for Respondent


Wendy Satterly
Board Administrator

Commonwealth of Kentucky
Board of Examiners of Psychology
Agency Case No. 01-01

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DIV. OF OCCUPATIONS
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Commonwealth of Kentucky,
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v.

Settlement Agreement

Michael G. Borack, Psy.D.
Licensed Psychologist No. 1186

Respondent

Whereas, the Kentucky Board of Examiners of Psychology (hereafter "Board") having investigated an initiating complaint and having authorized a Formal Complaint and Notice of Administrative Hearing and Order under KRS Chapters 319 and 13B against Michael G. Borack, Psy.D., Licensed Psychologist No. 1186 (hereafter "Respondent"), and;

Whereas, the parties mutually desire to settle the matter in an expeditious manner without resorting to a disciplinary hearing and without the need to file the Board's Formal Complaint; and

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 agreement; and

Whereas, the Respondent freely and voluntarily enters into this 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;

It is hereby stipulated and agreed between the undersigned parties that this matter shall be settled and resolved as follows:

Jurisdiction

The Respondent acknowledges the Board has jurisdiction over the Respondent and the conduct which has precipitated this Settlement Agreement, and shall abide by KRS Chapter 319 all the regulations thereunder at 201 KAR Chapter 26, and shall hereafter abide by the Board's interpretation of its statutes and regulations as set forth in this Settlement Agreement.

The Respondent acknowledges the Board has the legal power and authority to take disciplinary action up to and including revocation of the Respondent's credential.

The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board. The Respondent expressly indemnifies the Board for any costs incurred, including reasonable attorney fees, in enforcing any provision of this Settlement Agreement should the Board determine the Respondent has not met any term of this Settlement Agreement after notice and opportunity to be heard.

Costs

The Board and the Respondent shall each bear their own costs incurred in this matter except as provided below.

Findings

The Board has completed an investigation and authorized a Formal Complaint having made a finding of a *prima facie* violation of KRS Chapter 319. Specifically, the Board has

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evidence that might lead the Board to believe the Respondent has committed the following act(s) which, if committed, are violations of KRS Chapter 319:

The Respondent practiced psychology in Kentucky in violation of KRS 319.005 before applying for and being granted a license by the Board by serving as a consultant and an expert witness in a Kenton Circuit Court case in Kentucky without holding a Kentucky license and without registering with the Board under 201 KAR 26:215, and;

The Respondent rendered a formal, professional opinion about a person in that Kenton Circuit Court case in Kentucky without direct and substantial contact with or a formal assessment of that person, in violation of KRS 319.082(1)(f) and 201 KAR 26:145 § 3(5).

The Respondent admits to a violation of KRS 319.082(1)(f) by rendering a formal professional opinion about a person without direct and substantial contact with or a formal assessment of that person in violation of 201 KAR 26:171 § 3(5). The Board has no evidence to show that the Respondent intentionally or knowingly violated the provisions of Kentucky law set forth in this paragraph, or that the Respondent was dishonest, fraudulent, criminal, or malicious in the Respondent's violation of these provisions. The Respondent denies having intentionally violated these provisions of Kentucky law.

The Respondent denies any other violation(s) of KRS Chapter 319.005 for practicing in Kentucky without a license. The Board hereby acknowledges that the Respondent did not knowingly practice in Kentucky without a license in this particular case, and that the Respondent does now hold a Kentucky license. The Respondent agrees to maintain the Respondent's Kentucky license in good standing for the purposes of any future practice(s) in Kentucky.

Effect Upon Credential Status: Probation, and Supervision

Therefore, to avoid the time, cost, and expense of a hearing, and in settlement of disputed legal issues, the Respondent hereby agrees to the following as the agreed upon disciplinary action.

1) The Respondent shall be placed on probation for a period of one (1) year from the date of entry of an Order of the Board adopting this Settlement Agreement;

2) The Respondent shall pay the Board's investigative and mediation costs in the amount of \$1,600.00 by certified check or money order made payable to "Kentucky State Treasurer" as reimbursement for administrative costs to the Board, on or before ten (10) days after the date of entry of an Order of the Board adopting this Settlement Agreement, and;

3) The Respondent shall undergo supervision for a period of one (1) year of the Respondent's practice of psychology in Kentucky which shall begin within thirty (30) days of the appointment in writing of a Kentucky licensed psychologist pursuant to 201 KAR 26:171 § 13 appointed by the Board and to be paid for by the Respondent directly to the supervisor;

A) Said supervision shall include one-hour, weekly, face-to-face meetings with the supervisor in accord with 201 KAR 26:171 §§ 13 and 14, and shall encompass the practice of psychology with an initial and continued focus on forensics issues. In the event of unscheduled illness and conflicting vacation schedules, the supervision sessions may be rescheduled by agreement of the supervisor and the Respondent. It is the intention of the Board that this supervision shall be carried out in consecutive, weekly sessions although missed sessions may be made up at the end of the regular supervisory period. The frequency of supervision may be

modified at the recommendation of the Board Supervisor dependent upon case activity and case numbers. Any modification of supervision shall be subject to Board approval.

B) During the aforementioned period of supervision, the Respondent shall not supervise any candidates for licensure, certified psychologists, or psychological associates as a Board-approved supervisor under 201 KAR 26:171.

C) The Respondent, through the Board supervisor, may petition the Board in writing at the expiration of six (6) months of supervision for termination of the remaining time of supervision. The Board shall consider and rule upon the written request, if any, at its next regularly scheduled meeting after receipt of the written request. The Respondent shall not terminate supervision until and unless the Board so approves in writing.

In the event that the Respondent should stop practicing psychology in Kentucky, the Respondent shall notify the Board in writing within ten (10) days of the dates of departure and return or the dates of non-practice within Kentucky. Non-practice shall be defined as any period of time exceeding thirty (30) days in which the Respondent is not engaging in activities defined in KRS 319.010(3). Periods of temporary or permanent residency outside of Kentucky or practice of psychology outside Kentucky or of non-practice within Kentucky shall not reduce the probationary period and supervisory period.

The Respondent shall cooperate at all times with the supervisor, the Board, the Board's staff and its agents who are engaged in the supervision and investigation of compliance with this Settlement Agreement.

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement shall further constitute failure to comply with an Order of the Board

under KRS 319.082(1)(h) for which the Board may impose additional penalties available under law after notice and opportunity to be heard.

This action shall constitute disciplinary action against the credential of the Respondent.

Resolution of Pending Charges

The Board's authorized charges for violations of KRS 319.082(1)(f) and the specific statutory and regulatory charges of a violation of KRS 319.005 and 201 KAR 26:145 § 3(5) are hereby resolved.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent, for the Respondent, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, Kentucky Board of Psychology, Kentucky State 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 right 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.

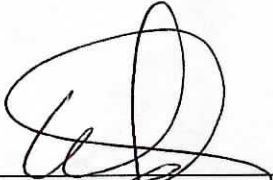
Open Records

The Respondent acknowledges this Settlement Agreement is subject to disclosure under the Kentucky Open Records Act, may be shared with any professional organization or licensing Board as the Board deems appropriate in its discretion, and shall be made public according to KRS 319.092(6) and 201 KAR 26:140 § 12, and may be reported in accord with federal law.

Complete Agreement

This Settlement Agreement and Order consists of eight (8) pages and a signature page and 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.

Have Seen, Understood and Approved:



Michael G. Borack, Psy.D.
636 Northland Blvd, Suite 110
Cincinnati, Ohio 45250

Respondent

Date: 2-14-02

State Board of Psychology

By: 

Mark Brengelman
Assistant Attorney General
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Counsel for the Board

Date: Feb. 7, 2002



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Attorneys for Respondent

Date: Feb. 19, 2002

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