

time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder. After the hearing, unless otherwise specified by the Director of the Division, the fact finder will issue findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his review and action

The presiding officer for purposes of conducting hearings will be J. Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701. His telephone number is (801) 530-6648.

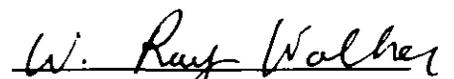
Counsel for the Division in this case is Dan Lau, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Mr. Lau will request the scheduling of a prehearing conference.

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Mr. Lau.

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly

Dated this 19th day of November, 2008.


W. Ray Walker
Regulatory & Compliance
Officer

1
DAN LAU (USB No 8233)
ASSISTANT ATTORNEY GENERAL
MARK L SHURTLEFF (USB No 4666)
ATTORNEY GENERAL
DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M Wells Building
160 East 300 South
Box 146741
Salt Lake City, Utah 84114-6741
Telephone (801) 366-0310

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE
OF T LEE BURNHAM TO
PRACTICE AS A PSYCHOLOGIST
IN THE STATE OF UTAH

PETITION

Case No DOPL-2008- 268

PRELIMINARY STATEMENT

These claims were investigated by the Division of Occupational and Professional Licensing (the Division) of the Department of Commerce of the State of Utah, upon a complaint that T Lee Burnham, (the Respondent), has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 through 58-1-504 (2004), the Psychologist Licensing Act, Utah Code Ann §§ 58-61-101 through 58-61-602 (2004), and the Mental Health Professional Practice Act, Utah Code Ann §§ 58-60-101 through 58-60-510 (2004),

PARTIES

1 The Division is a division of the Department of Commerce of the State of Utah and is established pursuant to Utah Code Ann § 13-1-2(2)(a) (2005)

1

2 The Respondent is licensed by the Division as a psychologist pursuant to the Psychologist Licensing Act. The Respondent was so licensed at all times relevant to the allegations herein.

STATEMENT OF ALLEGATIONS

3 The Respondent was first licensed as a psychologist in the State of Utah on or about June 13, 1977.

4 On or about June 2004, the Respondent was employed at the Family Development Center as a clinical director.

5 The Respondent failed to maintain an independent supervisory relationship with his supervisee, a certified counselor intern (CPCI) named C K (full name withheld for purposes of confidentiality). C K's former business card and the State of Utah corporation registration forms listed C K as the executive director of the Family Development Center. The Respondent told Division investigators that he was a business partner in the Family Development Center with his supervisee C K.

6 The Respondent failed to properly supervise M W (full name withheld for purposes of confidentiality), an intern at the Family Development Center, from January 16, 2006 until May 1, 2006. During this time, M W was employed by the Family Development Center, and she was not properly licensed to provide mental health therapy in the State of Utah. The Respondent did not have any face to face supervision with M W from January 2006 until at least September 2006. The Respondent's contract with the Family Development Center stated that he was responsible for the supervision of all interns.

7 The Respondent allowed his interns C K and M W to treat mental illness

and practice mental health therapy after hours at a doctor's office in Tooele, Utah, away from the Respondent's presence and supervision at the Family Development Center, which was located in West Jordan, Utah M W began working in Tooele in March 2006, when she was not licensed to provide mental health therapy in the State of Utah

8 While under the Respondent's nominal supervision, M W engaged in an inappropriate dual relationship with a former client by going on a day trip to Wendover, Nevada with the former client M W also attended said client's daughter's birthday party at the client's residence C K engaged in an inappropriate dual relationship with a former client, D L (full name withheld for purposes of confidentiality) C K allowed D L to live in C K 's basement and started a business with D L in Nevada On or about September 7, 2006, the Respondent told Division investigators that he was aware that C K and D L were starting a business together in Nevada

9 The Respondent failed to maintain a proper supervisory relationship with C K and M W by failing to ask appropriate supervisory questions regarding dual relationships or the quality of counseling C K and M W were providing their clients On or about September 7, 2006, the Respondent told Division investigators that he did not think he ever saw D L 's clinical chart

APPLICABLE LAW

10 Utah Code Ann § 58-1-401(2)(a) (1996) provides in part

(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title[]

1

11 Subsections (a), (b) and (g) of Utah Code Ann § 58-1-501(2) (2004)

defines "unprofessional conduct" in relevant part

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title,

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title,

* * *

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence[]

12 Subsections (1), (2) and (3) of Utah Admin Code R156-61-502 define

unprofessional conduct in relevant part

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, August 2002 edition, which is adopted and incorporated by reference,

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference,

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Section R156-61-302(d) and R156-61-302(e)[]

13 Subsections 1, 2, 4, 6 and 7 of Utah Admin Code R156-61-302(e) define

the duties and responsibilities of a supervisor providing supervision to a mental health therapy trainee to include

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy issue,

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised,

* * *

(4) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose patients, and other factors determined by the supervisor,

* * *

(6) provide timely and periodic review of the client records assigned to the supervisee, and

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology[]

14 Subsections 1, 2, 3, 4, and 6 of Utah Admin Code R156-60c-402 define the duties and responsibilities of a supervisor providing supervision to a professional counselor and mental health therapy trainee to include

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training,

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised,

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor,

(4) provide periodic review of the client records assigned to the supervisee, and

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division

15 Subsections 1 and 19 of Utah Admin Code R156-60c-502 define unprofessional conduct as

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402,

(19) failure to abide by the provisions of the American Counseling Association's Code of Ethics, 2005, which is adopted and incorporated by reference

AMERICAN COUNSELING ASSOCIATION'S CODE OF ETHICS (2005)

16 The American Counseling Association's (ACA's) Code of Ethics (2005) contains the following ethical provisions, which are relevant to the allegations raised in this petition

Section F 1 Counselor Supervision and Client Welfare

F 1 a Client Welfare

A primary obligation of counseling supervisors is to monitor the services provided by other counselors or counselors-in-training. Counseling supervisors monitor client welfare and supervise clinical performance and professional development. To fulfill these obligations, supervisors meet regularly with supervisees to review case notes, samples of clinical work, or live observations. Supervisees have a responsibility to understand and follow the ACA Code of Ethics.

F 4 Supervisor Responsibilities

F 4 a Informed Consent for Supervision

Supervisors are responsible for incorporating into their supervision the principles of informed consent and participation. Supervisors inform supervisees of the policies and procedures to which they are to adhere and the mechanisms for due process appeal of individual supervisory action.

F 4 c Standards for Supervisees

Supervisors make their supervisees aware of professional and ethical standards and legal responsibilities. Supervisors of post degree counselors encourage these counselors to adhere to professional standards of practice.

F 4 d Termination of the Supervisory Relationship

Supervisors or supervisees have the right to terminate the supervisory relationship with adequate notice. Reasons for withdrawal are provided to the other party. When cultural, clinical, or professional issues are crucial to the viability of the supervisory relationship, both parties make efforts to resolve differences. When termination is warranted, supervisors make appropriate referrals to possible alternate supervisors.

F 5 Counseling Supervision, Evaluation, Remediation, and Endorsement

F 5 a Supervisors document and provide supervisees with ongoing performance appraisal and evaluation feedback and schedule periodic formal evaluative sessions through the supervisory relationship.

17 Utah Code Ann § 58-60-110(1)(a), a section of the Utah Mental Health

Professional Practice Act, defines unprofessional conduct in relevant part as follows

(1) "Unprofessional conduct" includes

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state

18 Subsection (1)(f) of Utah Code Ann § 58-60-405 mandates that all applicants for licensure as a professional counselor shall

(f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection (1)(d), which training may be included as part of the 4,000 hours of training in Subsection (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct personal face to face supervision of a mental health therapist approved by the division in collaboration with the board

19 Utah Code Ann § 58-60-407(2)(a) and (b) states

(2)(a) To the extent an individual has completed the educational requirements of subsections 58-60-308(1)(a) through (1)(d), a certified professional counseling intern may engage in all acts and practices defined as the practice of professional counseling if the practice is

(i) within the scope of employment as a certified professional counselor with a public agency or private clinic as defined by

division rules, and
(ii) under supervision of a qualified mental health therapist as defined in Subsection 58-60-405(5)

(2)(b) A certified professional counseling intern may not engage in the independent practice of professional counseling

APA ETHICAL PRINCIPLES AND CODE OF CONDUCT

20 The APA Ethical Principles and Code of Conduct, as adopted by the APA, August 2002 edition, contains the following ethical provisions, which are relevant to the allegations raised in this petition

Principle B Fidelity and Responsibility Psychologists establish relationships of trust with those with whom they work They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work They are concerned about the ethical compliance of their colleagues' scientific and professional conduct Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage

Principle C Integrity Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology In these activities psychologists do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact Psychologists strive to keep their promises and to avoid unwise or unclear commitments In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques

Principle D Justice Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists Psychologists exercise reasonable judgment and take precautions to ensure that their potential

biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices

Principle E Respect for People's Rights and Dignity Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making Psychologists are aware of and respect cultural, individual and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language and socioeconomic status and consider these factors when working with members of such groups Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices

Ethical Standard 7.06 Assessing Student and Supervisee Performance
(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees Information regarding the process is provided to the student at the beginning of supervision
(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements

ASPPB CODE OF CONDUCT

21 The Association of State and Provincial Psychology Boards Code of Conduct, as adopted by the ASPPB, 2005 edition, contains the following ethical provisions, which are relevant to the allegations raised in this petition

III Rules of Conduct

A Competence

9 Providing supervision The psychologist shall exercise appropriate supervision over supervisees, as set forth in the rules and regulations of the Boards

10 Delegating professional responsibility The psychologist shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide such services

K Aiding Unauthorized Practice

1 Aiding unauthorized practice The psychologist shall not aid or abet another person in misrepresenting his/her professional credentials or in illegally engaging in the practice of psychology

2 Delegating professional responsibility The psychologist shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide such services

COUNT I

GROSS NEGLIGENCE OR A PATTERN OF NEGLECT

22 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

23 Because the Respondent allowed trainees under his charge to engage in the independent, unsupervised practice of mental health therapy, as described in paragraphs 6 through 9, he has engaged in a pattern of negligence and/or gross negligence and "unprofessional conduct" as defined under Utah Code Ann § 58-1-501(2)(g), Utah Code Ann § 58-60-110(1)(a) and Utah Admin Rule R156-61-502(3) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against the Respondent's license pursuant to Utah Code Ann § 58-1-401(2)(a)

COUNT II

ENGAGING IN A RELATIONSHIP WITH A SUPERVISEE WHICH WAS NOT INDEPENDENT FROM THE SUPERVISEE, AND WHICH WAS COMPROMISED BY THE SUPERVISEE'S FORMER POSITION AS THE EXECUTIVE DIRECTOR OF THE FAMILY DEVELOPMENT CENTER.

24 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

25 Because the Respondent engaged in a relationship with his supervisee C K in which his position as a supervisor was not independent from control by C K because C K was the executive director of the Family Development Center, as described in paragraph 5, he has engaged in "unprofessional conduct" as defined under Utah Code Ann § 58-1-501(2)(a) and Utah Admin Rule R156-61-502(3) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against his professional license pursuant to Utah Code Ann § 58-1-401(2)(a)

COUNT III

FAILURE TO MAINTAIN A PROPER SUPERVISORY RELATIONSHIP BY FAILING TO ASK APPROPRIATE MONITORING QUESTIONS AND FAILING TO PROVIDE TIMELY AND PERIODIC REVIEW OF HIS SUPERVISEES' RECORDS.

26 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

27 Because the Respondent failed to maintain a proper supervisory relationship with his supervisees by failing to ask the appropriate monitoring questions and failing to provide timely and periodic review of his supervisees' records, as described in paragraphs 6 through 9, he has engaged in unprofessional conduct as defined by Utah Code Ann § 58-1-501(2)(a) and (b), Utah Admin Code R156-61-502(3) and Utah Admin Code R156-60c-502(1) and (19) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against his professional license pursuant to Utah Code Ann § 58-1-401(2)(a)

COUNT IV

FAILURE TO ABIDE BY THE ASPPB'S CODE OF CONDUCT

28 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

29 Because the Respondent failed to exercise appropriate supervision over his supervisees, as set forth by the Utah Psychologist Licensing Act and as described in paragraphs 5 through 9, he has failed to abide by the ASPPB's Code of Conduct and engaged in unprofessional conduct as defined by Utah Admin Code R156-61-502(2) and Utah Code Ann § 58-1-501(2)(a) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against his professional license pursuant to Utah Code Ann § 58-1-401(2)(a)

COUNT V

FAILURE TO ABIDE BY THE APA'S ETHICAL PRINCIPLES AND CODE OF CONDUCT

30 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

31 Because the Respondent failed to exercise appropriate supervision over his supervisees, as set forth by the Utah Psychologist Licensing Act and as described in paragraphs 5 through 9, he has failed to abide by the APA's Ethical Principles and Code of Conduct and engaged in unprofessional conduct as defined by Utah Admin Code R156-61-502(1) and Utah Code Ann § 58-1-501(2)(a) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against his professional license pursuant to Utah Code Ann § 58-1-401(2)(a)

COUNT VI

FAILURE TO ABIDE BY THE ACA'S CODE OF ETHICS

32 Paragraphs 1 through 21 are incorporated herein and by this reference made a part hereof

33 Because the Respondent failed to exercise appropriate supervision over his supervisees, as set forth by the Utah Psychologist Licensing Act and as described in paragraphs 5 through 9, he has failed to abide by the ACA's Code of Ethics and engaged in unprofessional conduct as defined by Utah Admin Code R156-60c-502(1) and (19) and Utah Code Ann § 58-1-501(2)(a) Therefore, the Respondent's conduct constitutes grounds for imposing sanctions against his professional license pursuant to Utah Code Ann § 58-1-401(2)(a)

WHEREFORE, the Division requests the following relief

1 That the Respondent be adjudged and decreed to have engaged in the acts alleged herein,

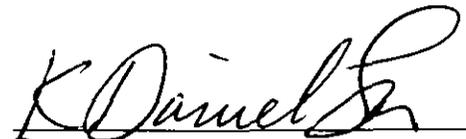
2 That by engaging in the above acts, the Respondent be adjudged and decreed to have violated the enumerated provisions of the Division of Occupational and Professional Licensing Act, the Psychologists Licensing Act, the Mental Health Professional Practice Act, the APA Ethical Principles and Code of Conduct, the ASPPB Code of Conduct and the ACA Code of Ethics

3 That an Order be issued imposing appropriate sanctions against the Respondent's license to practice as a Psychologist in the State of Utah A nonexclusive list of potentially appropriate sanctions against the Respondent's license is probation,

suspension, educational classes, a restricted license which requires the Respondent's practice as a psychologist to be supervised by a DOPL-approved psychologist, a psychological and/or psychiatric evaluation of the Respondent, a minimum suspension period of six months in which the Respondent cannot supervise trainees/supervisees and revocation of the Respondent's license

DATED this 18 day of November, 2008

MARK SHURTLEFF
UTAH ATTORNEY GENERAL


Daniel Lau
Assistant Attorney General