ORIGINAL

BEFORE THE IDAHO STATE LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE & FAMILY THERAPISTS

In the Matter of the License of:	)	
	)	Case No. COU-2004-5
OTTO S. ZUCKSCHWERDT,	)	
License No. LCPC-20,	)	**STIPULATION AND**
	)	**CONSENT ORDER**
Respondent.	)	
	)	

COU\Zuckschwerdt\P5124lga

WHEREAS, information having been received by the Idaho State Board of Professional Counselors and Marriage & Family Therapists (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Otto S. Zuckschwerdt (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 professional counseling and marriage and family therapy in the State of Idaho in accordance with title 54, chapter 34, Idaho Code.

2. Respondent Otto S. Zuckschwerdt is a licensee of the Idaho State Board of Professional Counselors and Marriage & Family Therapists and holds License No. LCPC-20 to practice professional counseling in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 34, Idaho Code.

3. On or about April 17, 2003, Robert Jordan presented at Respondent's office at Living Hope Clinic in Boise, Idaho, for an MMPI-2. Mr. Jordan was seeking an independent evaluation and did not disclose to Respondent his past assessments and

counseling with others, including Dr. Charles Rice at Living Hope Clinic.

4. When Mr. Jordan entered Living Hope Clinic, Dr. Rice inquired as to why Mr. Jordan was there, and Mr. Jordan stated that he had an appointment with Respondent. Dr. Rice then gave his file on Mr. Jordan, which contained not only Dr. Rice's previous assessments but also a previous evaluation by Dr. David Sanford, to Respondent. According to Dr. Rice, he assumed Respondent would want to know Mr. Jordan's "complete history."

5. Respondent reviewed Dr. Rice's file on Mr. Jordan, including Dr. Sanford's report, before completing his assessment on Mr. Jordan. Respondent used the MMPI, his evaluation format, and reports from both Dr. Rice and Dr. Sanford to form his conclusions.

6. Respondent administered the MMPI to Mr. Jordan on a computer and informed Mr. Jordan that he could not "correct" a previous answer because he had to answer it "correctly" the first time. According to Mr. Jordan, the computer malfunctioned and he could not correct his mistakes, and the computer skipped over numerous questions.

7. Respondent provided Dr. Rice with a copy of Respondent's assessment on Mr. Jordan. Respondent did not, however, obtain a signed authorization from Mr. Jordan allowing Respondent to release the assessment to Dr. Rice.

8. Respondent failed to maintain records of his assessment on Mr. Jordan.

9. Respondent failed to inform Mr. Jordan of the limitations of confidentiality, if any, that Living Hope Clinic may have placed on Respondent in providing services to Mr. Jordan.

10. Respondent failed to ensure that the MMPI computer program functioned properly to provide accurate results when administering the MMPI to Mr. Jordan.

11. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of professional counseling, specifically Idaho Code §§ 54-3407(5) and 54-3410A, IDAPA 24.15.01.350, and American Counseling

Association Codes of Ethics B.1 (Right to Privacy), B.4 (Requirement of Records), B.4 (Disclosure or Transfer of Records), D.4 (Subcontractor Arrangements), E.3 (Informed Consent, Recipients of Results) and E.7 (Conditions of Test Administration, Computer Administration). Violations of these laws, rules and Codes of Ethics would further constitute grounds for disciplinary action against Respondent's license to practice professional counseling in the State of Idaho.

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

B.

I, Otto S. Zuckschwerdt, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice professional counseling 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 professional counseling 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. License No. LCPC-20 issued to Respondent Otto S. Zuckschwerdt is hereby suspended for a period of six (6) months with the entire six-month suspension WITHHELD provided Respondent complies with all other provisions of this Stipulation and Consent Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of One Thousand Five Hundred Seventy-Five and No/100 Dollars ($1,575.00) within one hundred and eighty (180) days of the entry of the Board's Order.

3. Within one (1) year after the date of entry of the Board's Order, Respondent shall satisfactorily complete a minimum of fifteen (15) contact hours of continuing education with emphasis on: confidentiality, recordkeeping, operating within the scope of qualifications, and HIPAA requirements. Respondent must receive prior approval by the Board as to both the institution and coursework for which he is seeking credit. After completion of the coursework, Respondent will provide certified transcripts to the Board. The fifteen (15) contact hours of continuing education shall be in addition to any continuing education hours required to maintain licensure.

4. Respondent's License No. LCPC-20 shall be placed on supervised probation for a period of six (6) months from the date of entry of the Board's Order. The conditions of probation are as follows:

a. Both the supervisor and the site of the supervised practice must receive preapproval by the Board. Successful completion of the 6-month program of supervised practice will be a prerequisite to reinstatement of Respondent's license without restriction.

b. The nature of supervision shall focus on developing and reviewing confidentiality and informed consent, HIPAA requirements, and office policies.

c. Respondent shall be supervised at a rate of one (1) hour of supervision for every twenty (20) hours of client contact. Respondent shall provide a copy of this Stipulation and Consent Order to the supervisor.

d. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of professional counseling in the State of Idaho.

e. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

f. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

g. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

5. At the conclusion of the 6-month supervised probationary period and provided Respondent has complied with Paragraphs C(2) through C(4) above, Respondent may request from the Board reinstatement of License No. LCPC-20 without restriction. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation. The Board retains discretion to grant reinstatement of Respondent's license or to deny reinstatement and continue the period of probation.

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 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 § 54-3407. 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.

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.

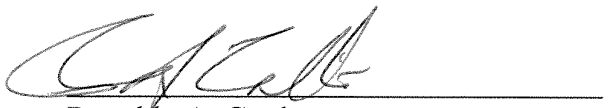
I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified 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 18 day of May, 2005.

Otto S. Zuckschwerdt
Respondent

Approved as to form.

DATED this 23rd day of May, 2005.

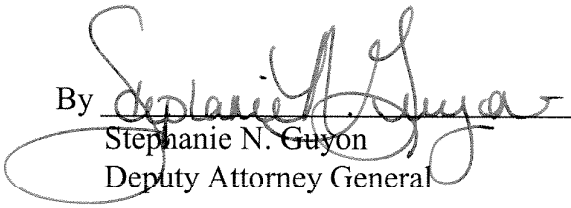


Ronaldo A. Coulter
Attorney for Respondent

I concur in this stipulation and order.

DATED this 23rd day of May, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

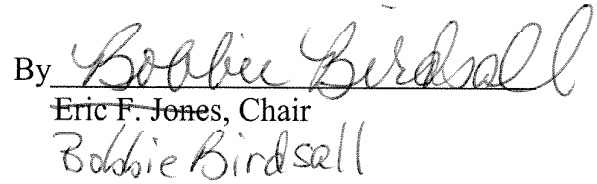


By _____
Stephanie N. Guyon
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-3404, the foregoing is adopted as the decision of the Board of Professional Counselors and Marriage & Family Therapists in this matter and shall be effective on the 10th day of June, 2005. **IT IS SO ORDERED.**

IDAHO STATE LICENSING BOARD OF
PROFESSIONAL COUNSELORS AND
MARRIAGE & FAMILY THERAPISTS



By _____
~~Eric F. Jones~~, Chair
Bobbie Birdsall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2005, I caused to be served a true and correct copy of the foregoing by the following method to:

Otto S. Zuckschwerdt 112 N. Poplar Street Nampa, ID 83651	☒ U.S. Mail ☐ Hand Delivery ☒ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ Statehouse Mail
Ronaldo A. Coulter MIMURA, COULTER & MIMURA, PLLC 1404 N. Main Street, Suite 100 Meridian, ID 83642	☒ 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