

FILED

JUL 03 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 304051

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

JAMES HENRY AND AMY DAWN ESKRIDGE,
Plaintiffs/Respondents

v.

DARLENE TOWNSEND, Ph.D.
Defendant/Appellant

APPELLANT'S OPENING BRIEF

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Geana M. Van Dessel, WSBA No. 35969
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I. INTRODUCTION

Jim and Amy Eskridge sued Dr. Darlene Townsend, a counselor who had treated both Jim and Amy Eskridge individually and the Eskridges as a couple. They alleged a number of violations of the standard of care applicable to Dr. Townsend as a licensed Mental Health Counselor.

At the time her professional relationship with the Eskridges ended, Dr. Townsend had made reports to Child Protective Services (“CPS”), the Spokane Police Department, the Washington State Bar Association, the Health Professions Quality Assurance Commission of the Department of Health (“HPQAC”), and the Eskridges’ insurance carrier relating her belief that Jim Eskridge might be abusing his children. Before trial, Dr. Townsend moved *in limine* to exclude evidence of the reports to official agencies because they are privileged under two distinct state statutes, RCW 4.24.510 (as to all reports) and RCW 26.44.060 (as to the report to CPS).

The trial court denied the motion, holding that Dr. Townsend had waived her defense of immunity under RCW 4.24.510, and further holding that in any event the broad immunity conferred by that statute was “nullified” by the assertedly narrower immunity under RCW 26.44.060.

The trial court allowed the evidence of the reports to be put before the jury. The report to CPS in particular, including extensive testimony from Denise Guffin, a CPS investigator who was permitted to testify at length about hearsay statements from the Eskridges (whom she believed) and from Dr. Townsend, ultimately turned out to be the central feature of the Eskridges' claim. The jury was instructed that Dr. Townsend bore the burden to establish the good faith of her report, including that the report had been made within 48 hours. The jury returned a verdict against Dr. Townsend in the amount of \$675,000.00. Dr. Townsend appeals.

II. ASSIGNMENTS OF ERROR & STATEMENT OF ISSUES

A. The Trial Court Erred In Denying Dr. Townsend's Motions *In Limine*.

1. Whether the trial court erred in concluding that Dr. Townsend had waived reliance on her immunity under RCW 4.24.510, where Dr. Townsend had pleaded immunity in her answer and had appropriately responded to discovery.
2. Whether the trial court erred in failing to construe and apply the parallel immunities of RCW 4.24.510 and RCW 26.44.060 in such a way as to give full effect to the terms of each, and instead nullified Dr. Townsend's immunity under RCW 4.24.510 by holding that it was inapplicable in light of the trial court's narrow reading of Dr. Townsend's parallel immunity under RCW 26.44.060.

B. The Trial Court Erred In Permitting Denise Guffin To Testify About, And Vouch For, Hearsay Statements Of Plaintiffs And Their Family Members.

1. Whether Denise Guffin's recitation of statements made to her by plaintiffs and plaintiffs' family members were inadmissible hearsay.
2. Whether permitting Denise Guffin to recite plaintiffs' and their family members' hearsay statements in the context of her testimony that Dr. Townsend's complaint was not substantiated by her investigation improperly bolstered plaintiffs' testimony.

C. The Trial Court Erred In Instructing The Jury That Dr. Townsend Was Only Entitled To RCW Immunity If She Made Her Report Within 48 Hours Of Learning Of The Facts Underlying The Report.

1. Whether statutory immunity under RCW 26.44.060 is available to persons who report suspected child abuse more than 48 hours after learning the facts underlying the report.
2. Whether the trial court erred, after ruling that immunity is available to reporters who make reports more than 48 hours after learning the facts underlying their report, in nevertheless instructing the jury that immunity is contingent upon meeting the 48-hour requirement.

III. STATEMENT OF THE CASE

A. Facts.

Jim and Amy Eskridge (collectively "the Eskridges" or, where individual identification is necessary to context, "Jim" or "Amy") sought counseling from Dr. Darlene Townsend ("Dr. Townsend") in August

2006. RP. 351, CP 2.¹ The Eskridges had suffered a dysfunctional marriage for several years, RP. 133-34, a result of Jim's depression, drinking, and sexual appetite, and Amy's frustration with these. RP. 135, 138, 142-43, 145. Jim had seen several mental health care providers over a period of years, *id.*, and sought out Dr. Townsend when the couple moved to Spokane. RP. 147:22-148:7. Dr. Townsend's engagement was later expanded to include couples therapy involving both Jim and Amy, RP. 151-52, and later still to include therapy with the Eskridges' two sons. RP. 333-334, 328:23-329:1.

In July 2007, Jim made statements to Dr. Townsend which, taken in context with earlier statements he had made about his sexual issues and his problem with anger toward his children, led Dr. Townsend to think Jim may be abusing his children. RP. 243-44, 327-28:5. Because Amy was traveling for her job at the time, Dr. Townsend was concerned that Jim might become angry and take out his anger on his children if she reported right away. RP. 329-33. She was able to keep an eye on the children through the weekly therapy sessions she had with them, so Dr. Townsend delayed making her report until Amy was back in the home and able to

¹ The references in this brief to the report of proceedings will be "RP. X", where X is the page number of the report; "CP Y", where Y is the page number of the Clerk's Papers; and Appx. Z, where Z is the page number of the Appendix filed herewith.

deal with the consequences of her intended report. RP. 333-39. Dr. Townsend told Amy upon her return that she intended to make the report. RP. 339-40. Jim reacted by sending Dr. Townsend a letter threatening her with litigation if she made her intended report. CP 83.

Dr. Townsend made the report to CPS, RP. 390, and at some later time to the Spokane Police Department. RP. 293, 385. When Dr. Townsend received a letter threatening litigation from Jim's brother, Attorney R. Perry Eskridge, she filed a grievance with the Washington State Bar Association in which she gave details about her report to CPS and the reasons for it. RP. 386-87, Appx. 030-038. Finally, when the Eskridges filed a complaint against her with the Washington State Health Professions Quality Assurance Commission, Dr. Townsend filed a response in which she again explained the reasons she had reported to CPS. RP. 384-85, 569; Appx. 015-024.

The report was investigated by Denise Guffin of CPS. She concluded that it was not substantiated, and so advised the Eskridges. RP. 629. The Eskridges later divorced. RP. 129-30. They believe that Dr. Townsend was at fault for their divorce. RP. 24:14-21; RP. 541-542.

B. Procedure Below.

The Eskridges sued Dr. Townsend in Spokane County Superior Court on June 5, 2009. They filed their amended complaint on November 16, 2009. CP 1-9.

The Amended Complaint alleged eight causes of action against Dr. Townsend, the first four of which were medical malpractice claims:

1. Breach of the standard of care because Dr. Townsend breached confidentiality by telling Amy facts revealed by Jim, and because Dr. Townsend had conflicts of interest in relation to the separate treatment of Jim and the treatment of Jim and Amy as a couple.
2. Breach of the standard of care because Dr. Townsend expanded her diagnosis and treatment plan to include sexual addiction as a diagnosis and tried to trick Jim into entering therapy for sexual addiction.
3. Breach of the standard of care because Dr. Townsend did not properly terminate treatment in a professional way.
4. Breach of the standard of care because Dr. Townsend (a) told Jim that he was terminated in front of strangers, (b) told Amy about diagnosis of Jim, and that she was terminating him as a patient, (c) told Amy that she intended to file a complaint about Jim with CPS, and (4) did file a complaint with CPS that was retaliatory and not in compliance with professional and legal standards.
5. Violation of statute because Dr. Townsend withheld records from the Eskridges.

6. Breach of contract in that Dr. Townsend's billings were not in conformity with the parties' agreement for services.
7. Violation of the Consumer Protection Act.
8. Defamation and slander, because Dr. Townsend filed a complaint with CPS, and a grievance with the bar association giving details about her complaint to CPS, both of which described Jim as an abuser.

CP 1-12.

Dr. Townsend answered, and in her answer she specifically raised as an affirmative defense her statutory immunity from suit:

Immunity Townsend is entitled to statutory immunity for the acts and omissions alleged within the Complaint.

CP 57; Appx. 011.

On December 17, 2010, the trial court granted Dr. Townsend's motion for summary judgment as to claims 5 through 8. CP 11-12. The trial court agreed with Dr. Townsend that since all the claims alleged harms resulting from rendition of medical services, RCW 7.70.010 *et seq.* required that only medical malpractice claims as prescribed within that chapter could be prosecuted. CP 11-12. Thereafter, the Eskridges issued discovery requests to Dr. Townsend. They asked, *inter alia*, that Dr. Townsend state for *which of the acts alleged* she claimed immunity:

With regard to your claim that you have immunity for the acts complained of by Plaintiffs in their Amended Complaint, *please identify any all such acts* for which you contend immunity applies, and please identify and describe

each material fact which you contend supports your claim of immunity.

CP 64. (Italics added.)

By the time this interrogatory was propounded, the fifth through eighth causes of action had been dismissed. It was only in the eighth cause of action that the Eskridges had complained about the reports to the police and to the Washington State Bar Association; in the first four, only the report to CPS was mentioned. *See* CP 1-9. Accordingly, Dr. Townsend responded:

Pursuant to various state statutes, Dr. Townsend is immune from civil liability for making her good faith report to Child Protective Services which was required by law. *See* RCW 26.44.060.

CP 64 (Italics added).

Dr. Townsend was never asked to specify the “various state statutes” that provided her immunity. The Eskridges did ask her to “provide copies of all documents pertaining to or referenced in your answer to the preceding interrogatory,” to which Dr. Townsend responded: “See RCW 26.44.060.” *Id.*

Trial was set for September 2011. In her motions *in limine*, Dr. Townsend asked that the court forbid the Eskridges from offering any evidence of the reports she had made to CPS, to the Spokane Police Department, to the Washington State Bar Association, or to the Health

Professions Quality Assurance Commission. CP 26. She cited as support for her motion Washington's Anti-SLAPP statute, RCW 4.24.510, as well as the child welfare reporting statute, RCW 26.44.060. CP 45-46. The trial court denied Dr. Townsend's motion, ruling that Dr. Townsend had waived any immunity under RCW 4.24.510 and that, in any event, RCW 4.24.510 was nullified by RCW 26.44.060 pursuant to which, the court ruled, Dr. Townsend was bound to prove her own good faith to be entitled to immunity. RP. 971-77.

The case proceeded to trial. In opening statement, the Eskridges based their case upon Dr. Townsend's reports to CPS, RP. 31-36, to the Washington State Bar, RP. 35, and to HPQAC, *Id.* They put particularly heavy emphasis upon Dr. Townsend's report to CPS and the effect it had upon them. RP. 31-36. The report to CPS was the central feature of the Eskridges' closing argument. RP. 873-886.

IV. SUMMARY OF ARGUMENT

Dr. Townsend has immunity for her reports under two statutes. The Abuse of Children statute, which was the first enacted of the two statutes (first enacted in 1965), provides in relevant part:

(1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting

or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

* * * *

(4) A person who, intentionally and in bad faith, knowingly makes a false report of alleged abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

RCW 26.44.060

The Anti-SLAPP statute, first enacted in 1989, provides:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

RCW 4.24.510.

Dr. Townsend was entitled to immunity under both statutes. The trial court erroneously concluded that she had waived her immunity under

RCW 4.24.510, apparently because she had not specified the titles of the “various statutes” she cited as supporting her immunity in response to a discovery request, which did not ask her to provide such a citation.

Second, the trial court erroneously held that RCW 4.24.510 was nullified by RCW 26.44.060 in a manner that deprived Dr. Townsend of her immunity under either statute. As a result of those errors, the trial court permitted the Eskridges to introduce evidence of Dr. Townsend’s privileged reports to government officials. It further permitted the Eskridges to introduce testimony of a CPS worker who bolstered the Eskridges’ credibility and attacked Dr. Townsend’s credibility. Finally, the jury was permitted to return a substantial verdict based primarily upon evidence of the impact the report to CPS had upon the Eskridges. The trial court’s rulings should be reversed, the judgment should be vacated, and the matter should be remanded for trial on the issue of whether Dr. Townsend committed malpractice in her treatment of the Eskridges, without reference to the official reports and without Ms. Guffin’s opinions about credibility.

V. ARGUMENT

A. The Trial Court Erred In Ruling That Dr. Townsend Waived Her Immunity.

1. *Standard of review: abuse of discretion.*

A trial court's rulings on the admissibility of evidence are reviewed for abuse of discretion. *City of Spokane v. Neff*, 152 Wn.2d 85, 91, 93 P.3d 158 (2004). A trial court abuses its discretion when the ruling is "manifestly unreasonable or based upon untenable grounds or reasons." *Veit, ex rel. Nelson v. Burlington N. Santa Fe Corp.*, 171 Wn.2d 88, 99, 249 P.3d 607, (2011). A trial court's discretionary ruling is unreasonable or based upon untenable grounds when it is based upon an error of law. "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A trial court's legal conclusions are reviewable *de novo* by the Court of Appeals. *State v. Vasquez*, 109 Wn. App. 310, 314, 34 P.3d 1255 (2001) *affirmed*, 148 Wn.2d 303 (2002). Likewise, a "court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts . . .; it is based on untenable grounds if the factual findings are unsupported by the record. . . ." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). The trial court's admission of evidence to

which Dr. Townsend objected, on the ground that Dr. Townsend had waived her right to object, was based upon errors of law and an erroneous factual determination of waiver that was plainly not supported by the record.

2. *Dr. Townsend appropriately raised her claim of immunity in her answer and in her responses to discovery.*

Dr. Townsend's Answer expressly raised her affirmative defense of statutory immunity:

Immunity. Townsend is entitled to statutory immunity for the acts and omissions alleged within the complaint.

Appx. 011.

Dr. Townsend also specifically referenced her reliance on "various state statutes" to support her claim of immunity in her responses to discovery requests issued by the Eskridges. CP 52, 64. Though the Eskridges would later suggest to the trial court that they had issued a discovery request calling upon Dr. Townsend to identify the statutory source of her claim of immunity, in fact the discovery request did not. An interrogatory specifically asked Dr. Townsend to identify "any and all such *acts* for which you contend immunity applies" and "each material *fact* which you contend supports your claim of immunity." CP 52, 64 (emphasis added).

Alternatively, the Eskridges contended that Dr. Townsend had failed in her discovery response to refer to the reports to the police, the bar association, and HPQAC as “acts” for which she claimed immunity. But those were no longer in the case at the time the Eskridges issued their discovery. At the time Dr. Townsend’s Answer was filed, the operative amended complaint had included, in its eighth cause of action, claims associated not only with Dr. Townsend’s complaint to CPS, but also her complaints to other agencies, including the police department and the bar association. CP 7-8. However, the trial court had since granted Dr. Townsend’s motion for partial summary judgment and dismissed the fifth through eighth causes of action. CP 11-12. Thereafter, the only report referred to in the operative complaint was the report to CPS, which was one of four acts or omissions asserted to be part of a breach of the medical standard of care in the fourth cause of action. CP 4-5.

The Eskridges propounded their discovery request after the summary judgment order, and Dr. Townsend’s response was appropriately directed to the allegations in the complaint which were operative at the time discovery requests were made and answered.

At all relevant times throughout the litigation, Dr. Townsend asserted her statutory immunity. At no time did she make any statement,

or take any step, demonstrating any intention to do anything other than assert her right to immunity.

3. *The trial court's findings did not justify its conclusion of waiver.*

The trial court concluded that Dr. Townsend had waived her right to rely upon RCW 4.24.510 as a legal source of her claim of immunity. It did so on the basis of three factual and legal errors.

First, the trial court said:

Clearly if at any time initially this issue might not come up, clearly I would think after the deposition on February 24th where some of these documents were used, that that would be notice to the defendant that these are the type of documents that the plaintiff is going to ask the court to consider for evidentiary purposes.

RP. 971:23-972:4.

This basis for the trial court's determination that Dr. Townsend had waived her right to rely on one of the immunity statutes is puzzling. We are unaware of any rule or custom in civil litigation that requires any party to seek a ruling on the ultimate admissibility of evidence (other than possibly materials subject to privilege, which Dr. Townsend's reports were not) in the middle of discovery. On the contrary, the discovery rules

expressly *inhibit* lawyers from seeking to limit discovery except where claims of privilege are involved.²

Second, the trial court said:

The interrogatories and requests for production that both counsel submitted clearly are only limited in terms of statutory citation to RCW 26.44. There is general language about other statutes, but there is no attempt to identify the SLAPP statute, which is RCW 4.24.510. It is not identified in any way shape or form that the defense is relying on to exclude various items of evidence.

RP. 972.

That conclusion was a clear error of fact, without support in the record. The interrogatory did not ask Dr. Townsend to identify the statutes upon which she founded her claim of immunity. CP 52, 64. The response nevertheless clearly indicated that more than one statute was relied upon. *Id.* The reference to RCW 26.44.060 did not “limit” Dr. Townsend’s statement that she relied on “various statutes”; rather, it followed Dr. Townsend’s assertion, in her response, that she was legally

² *See, e.g.*, CR 26(b)(1) (“It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”); *see also* CR 30(h)(2) (“Only objections which are not reserved for time of trial by these rules or which are based on privileges or raised to questions seeking information beyond the scope of discovery may be made during the course of the deposition.”).

mandated to report suspected child abuse, and was plainly intended to identify the source of that legal requirement.

Third, the trial court said:

Also I have in mind that we had a pretrial . . . The issue was not raised in the trial management report, it was not raised at that pretrial. This is the kind of issue I would expect to be a motion on the applicability of an immunity statute prior to trial and not just in the form of a motion in limine.

RP. 972: 12-20.

The trial court did not identify any court order or rule that could be said to have given Dr. Townsend notice that the court's expectations would be that the matter would be raised earlier. Spokane County Local Rule 16, pursuant to which the parties prepared and submitted their trial management report, did not anywhere require that the parties set out the bases for the admissibility, or not, of trial exhibits (although, to be sure, the parties did provide a listing of some of their objections in the report, and though Dr. Townsend did record objections to the reports' admissibility, she did not include a reference to immunity as an additional basis, CP 26). On the other hand, the Amended Civil Case Schedule Order, Appx. 014, specifically required that motions *in limine* be filed September 12, 2011. Dr. Townsend timely filed a motion *in limine* to exclude the reports, on hearsay grounds, to which the Eskridges responded. CP 65-69. Dr. Townsend then filed a reply to the Eskridges'

response, in which she added the grounds that the documents could not be admitted without violating her statutory immunity. CP 45-47.

Two important points should not be overlooked. First, the circumstances of this case were unique. Part of the trial court's thinking was doubtless that immunity questions almost always raise dispositive issues that are typically resolved earlier in the case by way of motions brought pursuant to CR 12 or CR 56. That was not possible in this case, however, because the Eskridges framed their fourth cause of action as a violation of the standard of care, citing four acts or omissions by Dr. Townsend, only one of which was her filing the CPS report. Dr. Townsend could not ask the court to dismiss the fourth cause of action based upon her immunity, because her immunity did not cover the other alleged acts, that were said to have breached the standard of care. Thus, her immunity presented an evidentiary question, not a question of ultimate liability, given the way the Eskridges pleaded their claim

Second, it is important to note that no rule anywhere *requires* a party to seek pretrial determination of an evidentiary issue by means of a motion *in limine*. The motion *in limine* exists as a useful tool to afford the court an opportunity to reflect upon evidentiary issues that is often not available amid the pressures of conducting the trial, and gives the parties some assurance that the jury will not already have heard objectionable

evidence before it is ultimately ruled inadmissible. But there is absolutely no basis in law for any contention that a party waives an objection to evidence by failing to bring a motion *in limine*. The trial court might properly have declined to consider the immunity issue before trial as part of a motion *in limine* because it was raised in reply, but there was absolutely no basis for a ruling that Dr. Townsend had waived her immunity; she could quite properly have raised the objection at trial even if she had not made a motion to address it before trial. The Eskridges were benefitted by the opportunity to address the evidentiary question before trial, not prejudiced, even though the immunity as a further basis for excluding the reports was raised in reply.

4. *The Eskridges' reliance on King v. Snohomish County is misplaced: the Eskridges were not unfairly prejudiced.*

The Eskridges relied upon *King v. Snohomish County*, 146 Wn.2d 420, 47 P.3d 563 (2002), for their assertion that Dr. Townsend had waived her right to immunity under RCW 4.24.510. But that case is inapposite.

In *King*, the government defendant raised as an affirmative defense the plaintiff's failure to follow the prescribed tort claim filing rules before bringing suit, and sought dismissal on the eve of trial, after the statute of limitations had run. The Washington Supreme Court concluded that the county had waived its defense based upon the failure to properly file a

claim. As the Washington Supreme Court later explained (in an opinion by the same justice who had been the author of the Court's opinion in *King*), the essential point of *King* and its predecessor, *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124 (2000), was that the plaintiff would suffer prejudice from its adversary's conduct if waiver were not applied; absent such prejudice, there is no occasion to apply the waiver doctrine:

We reasoned [in *Lybbert*] that under the common law doctrine of waiver, waiver of affirmative defenses can occur under certain circumstances in two ways: if the defendant's assertion of the defense is inconsistent with the defendant's previous behavior and if defendant's counsel has been dilatory in asserting the defense. . . . We found waiver of the affirmative defense of insufficiency of service of process because the county engaged in conduct inconsistent with asserting the defense and was dilatory in filing its answer. . . . [S]ee also *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002).

* * * *

We need not decide whether an affirmative defense raised in an untimely answer is waived if the delay in raising the defense causes prejudice to the plaintiff because no prejudice is established in this case. . . . [T]he Oltmans cannot show prejudice resulting from the untimely answer.

We hold that the trial court did not abuse its discretion in denying the motion to strike the affirmative defenses.

Oltman v. Holland America Line USA, Inc., 163 Wn.2d 236, 246-47, 178 P.3d 981 (2008).

Oltman, not *King*, furnishes the correct rule here: the Eskridges were on notice throughout the litigation of Dr. Townsend's claim of immunity. They can show no conduct inconsistent with that claim, and just as the Oltmans could not show that anything would have been different if the cruise line's position had been clearer to them earlier – the relevant limitations period had already run – the Eskridges cannot show that they were prejudiced. The evidence was inadmissible because of the immunity, and there is nothing they could have done differently in the case to change that. The trial court's determination that Dr. Townsend had waived her immunity was wrong and should be reversed.

B. The Trial Court Erred In Ruling That The Immunity Under RCW 26.44.060 Eviscerates The Immunity Under RCW 4.24.510.

1. *Standard of review: abuse of discretion & de novo.*

The trial court's decision to admit evidence is reviewed for abuse of discretion; a trial court abuses its discretion where its decision is based upon an error of law. *McKee v. American Home Products*, 113 Wn. 2d 701, 706, 782 P.2d 1045 (1989). This court reviews the trial court's conclusions of law *de novo* (see cases cited in Section V.A.1, at page 18-19, *supra*). The trial court's alternative basis for its decision to admit evidence of reports Dr. Townsend made to officials, *viz.*, that RCW

26.44.060 trumps RCW 4.24.510, was erroneous as a matter of law and should be reversed.

2. *The trial court ruled that RCW 26.44.060 nullifies RCW 4.24.510. in the area of child abuse reporting based on a policy judgment.*

The trial court was presented with two statutes, both of which clearly apply to Dr. Townsend and her conduct in making reports to CPS, the police, the bar association, and the Health Professions Quality Assurance Commission. First, RCW 4.24.510 broadly immunizes all of the reports made by Dr. Townsend:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.

CPS, the Washington State Bar Association, and the Health Professions Assurance Commission are agencies of state government.³ The Spokane Police Department is an agency of local government. Dr. Townsend plainly “communicate[d] . . . information” to those agencies. Dr. Townsend’s belief that Jim Eskridge might be abusing his children was

³ The Washington State Bar Association is not a part of the Executive Branch, but it is nevertheless an agency of state government, being, as its website explains, “an administrative arm of the Washington State Supreme Court. It administers the admissions, licensing, and discipline functions for the lawyers in Washington.” See <http://www.wsba.org/About-WSBA/Governance>, last visited June 27, 2012.

plainly “reasonably of concern” to CPS, the police and HPQAC (as part of her defense of a complaint the Eskridges lodged against her there), and her grievance against R. Perry Eskridge, for threatening litigation against her for having made a report she considered herself legally required to make, was a matter reasonably of concern to WSBA. In short, there is *nothing* in the literal terms of RCW 4.24.510 which means anything other than that Dr. Townsend’s reports could *not* be used against her to establish liability in a civil case, and she asked the trial court to exclude the reports on that basis.

The trial court found it problematic that RCW 4.24.510 formerly provided immunity for “good faith” communications, but the statute was amended in 2002 to remove the words “in good faith”.⁴ The effect was to immunize all reports of “information” to state agencies as to matters within their jurisdiction, whether true or false, well-intended or otherwise. The trial court made a policy judgment that unqualified immunity reports of child abuse would be a bad thing, and therefore refused to apply RCW 4.24.510:

⁴ Three city councilpersons from Spokane lobbied the legislature for the change after they were unable to obtain dismissal from various lawsuits associated with the River Park Square bond controversy because issues of fact existed as to their good faith. See Appx. 039-40 “Bill Strengthens SLAPP Suit Law”, *Spokane Spokesman-Review*, February 1, 2002.

I am just looking at this strictly from a policy standpoint – well, from a statutory construction and policy standpoint. From a statutory construction [standpoint], we clearly have under the reporting statute both an older statute and a statute that was very specifically geared to the report of child abuse under 26.44. The SLAPP statute is [a] much more general statute, it is later in time, and frankly even though it has been applied across the board for a number of things, it started out as something involving business and contracts and that sort of thing. The fact that under the SLAPP statute your motivation, good faith, is not a requirement of motivation, this is very similar to the jurisprudence under the public disclosure law that it does not matter why you wanted the public documents, you are entitled to have them no matter what, because this represents access to the government. All right? And I think that is how you have to look at the SLAPP statute, whether or not there is an infringement on access to government.

When you look at the child protection statute under 26.44, this statute is for the purpose of protecting children and protecting their families. If we were to – if there was no good faith – think about this, because I have seen a lot of dissolutions over my time. Think about allowing any disgruntled person in a dissolution to file anything they wanted to with Child Protective Services because they did not get custody or they do not like the visitation or whatever. Just file it, and without a good faith allegation of abuse. With virtually no consequences. Is that a kind of policy that we would support? And the answer to that question is no. We certainly want to investigate. And it is not [out] of the interest of the state to investigate child abuse and neglect. But it is not in the interest of anyone, the state or the family, to have to be a gatekeeper for every unfounded allegation that may come down the pike. . . . [I]f you say that you don't even have to have good faith, make an attempt to have good faith, to me that [as a] policy matter is totally unacceptable. And I do not believe the legislature intended to do that, and there is no indication in the SLAPP statute they intended to do it and there has been

no subsequent modification that CPS, 26.44 that says their good faith requirement has been abolished. The SLAPP statute does not apply to the cases that are covered by 26.44 and the good faith requirement is there.

RP. 973-976.

The trial court's view of the matter was not irrational, but its decision overlooked the legal requirements that (1) the policy judgments were for the Legislature, whereas (2) the court's role was to put *both* statutes into effect to the extent possible, then (3) to apply established rules of construction if it proved impossible to put all the statutory language into effect as written. As explained below the trial court erred in each category.

3. *The policy judgment was for the legislature; in any event, the trial court's ruling inadvertently subverted legislative policy.*

The Washington Supreme Court has often acknowledged that “the Legislature is the fundamental source for the definition of this state's public policy and we must avoid stepping into the role of the Legislature by actively creating the public policy of Washington.” *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001). “It is not the role of the judiciary to second-guess the wisdom of the legislature The court has no authority to conduct its own balancing of the pros and cons, . . . [I]t is not the function of the courts to substitute their evaluation of legislative

facts for that of the legislature. . . .” *Rouso v. State*, 170 Wn.2d 70, 75, 239 P.3d 1084 (2010) (internal citations and quotations omitted).

Accordingly, the trial court had no role to play in defining the policies and goals of legislation. The trial court’s concerns about the legislature’s decision to create an immunity for reports to the government were by no means irrational, but the legislature’s choice to remove the good faith requirement from RCW 4.24.510 was plainly deliberate, and made with awareness of the potential consequences disapproved by the trial court. The critics of the proposed amendment, anticipating the trial court’s concern about the consequences of removing the good faith component of the statute, pointed out that the proposed change to the law would provide “complete immunity for a citizen to make false statements to a government agency, in bad faith”, (“Bill Strengthens SLAPP Suit Law”, Appx. 039-40). The Legislature elected to make the change anyhow; it was not for the trial court to disapprove the policy choice made by the Legislature.

Even if it had been within the trial court’s purview to perform a policy analysis, its analysis was flawed in two respects. First, it is not correct that a false report of child abuse can be made “[w]ith virtually no consequences” if RCW 4.24.510 is applied according to its plain terms. RCW 26.44.060(4) imposes a criminal penalty upon anyone who

“intentionally and in bad faith, knowingly makes a false report of alleged abuse or neglect”

Second, the result reached by the trial court ironically actually tended to subvert the policy expressed by the Legislature. The trial court’s limitation on the scope of the immunity for reporting had the effect of chilling possible reporters of abuse and neglect like Dr. Townsend. The trial court concluded that Dr. Townsend could have reported the Eskridges to *any agency except CPS for anything except* child abuse with complete and unqualified immunity, but that she had only a limited immunity for reporting child abuse. That is exactly contrary to the policy actually declared by the State Legislature in RCW 26.44, which, unlike RCW 4.24.510, was intended not only to encourage reporting, but in fact to mandate it (RCW 26.44.030) on pain of criminal prosecution (RCW 26.44.080), subject to an immunity that can be removed only upon conviction of the crime of false reporting (RCW 26.44.060).

4. *The trial court had a duty to put both statutes into full effect.*

The trial court’s duty was to attempt to apply both statutes, according to their plain terms, giving full effect to each. “One statute should not be read so as to render another pertinent statute superfluous.” *City of Ellensburg v. State*, 118 Wn.2d 709, 826 P.2d 1031 (1992). In

Harmon v. Department of Social & Health Services, 134 Wn.2d. 523, 542, 951 P.2d 770 (1998), the Washington Supreme Court held that a court must not read one statute so as “to judicially create an exception” to another. Rather, the Court said, “statutes on the same subject matter must be read together to give each effect and to harmonize each with the other.” *Harmon* citing *Bour v Johnson*, 122 Wn.2d 829, 380, 864 P.2d 380 (1993).

The trial court assumed that the statutes could not be reconciled and did not make any effort to reconcile them. That was error, as the two statutes can indeed be read in a fashion that gives full effect to the plain language of each.

5. *The two immunity statutes can be harmonized: immunity is only lost upon conviction of false reporting of child abuse.*

RCW 4.24.510, as we have seen, applies by its plain terms to furnish immunity regardless of mental state to reporters like Dr. Townsend. RCW 26.44.060 can be harmonized with it.

To see how, it is important first to note that RCW 26.44.060(1)(a), which provides for immunity, has specific language detailing when immunity is *not* available. The very first words in the section are: “*Except as provided in (b) of this subsection*, any person participating in good faith in the making of a report” shall be immune. RCW 26.44.060 (1)(a) (italics)

added). The statute, in other words, expressly declares that the exceptions to the immunity provided are detailed in subsection (1)(b).

Subsection (1)(b) provides: “A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subdivision.” RCW 26.44.060 (1)(b). And subsection (4) in turn provides that “[a] person who, intentionally and in bad faith, knowingly makes a false report of alleged abuse and neglect shall be guilty of a misdemeanor. . . .” RCW 26.44.060.

It follows that the reference in the sentence to “in good faith” in subsection (1)(a) cannot be interpreted to imply a condition to the immunity provided in the section without doing violence to the legislative scheme by: (1) changing the Legislature’s express provision that the *only* exception to immunity is that which it prescribed in subparagraph (b); (2) negating the Legislature’s express provision that the immunity is lost only upon a showing of intentional false statements, in bad faith; and (3) rendering both the introductory words of subparagraph (1)(a) and the entirety of (1)(b) pointless surplusage.⁵ A construction in which “in good

⁵ We acknowledge that this court held in *Dunning v. Pacerelli*, 63 Wn. App. 232, 818 P.2d 34 (Div. 3, 1991) and *Yuille v. State Department of Social & Health Services*, 111 Wn. App. 527, 45 P.3d 1107 (Div. 3, 2002) that immunity under RCW 26.44.060 is conditional upon a showing by a defendant that it acted in good faith. We respectfully submit that these cases should be reexamined, not only because both were decided before

faith” in RCW 26.44.060(1)(a) means anything more than the absence of the condition specified in the “except” clause of that subsection and subsection (1)(b) would have the effect of rendering the latter two provisions pointless. If “in good faith” means the reporter must affirmatively prove her good faith, then that phrase captures the express exception and much more, with no indication the legislature so intended.

Reading the provisions together, it is clear that the Legislature intended to provide civil immunity for making an initial report that would not be lost to the reporter unless there were first a criminal conviction in which the State has to prove intent and bad faith. This makes sense because the legislature wanted to mandate that people who suspected child abuse or neglect must report so that the CPS experts could investigate, and

the effective date of the amendment to RCW 4.24.510 that removed the “good faith” requirement that was previously part of that statute, but also because it is not clear whether the meaning of “in good faith” was ever disputed (or the Legislature’s intent as revealed by the structure of RCW 26.44.060 was argued) in *Dunning*, which is the authority underlying cases in other divisions such as *Lesley for Lesley v. Department of Social & Health Services*, 83 Wn. App. 263, 921 P.2d 1066 (Div. 1, 1996), which begat *Whaley v. State Department of Social & Health Services*, 90 Wn. App. 658, 668, 956 P.2d 1100 (1998). “Where the literal words of a court opinion appear to control an issue, but where the court did not in fact address or consider the issue, the ruling is not dispositive and may be reexamined without violating stare decisis in the same court or without violating an intermediate appellate court's duty to accept the rulings of the Supreme Court.” See *ETCO, Inc. v. Dep't of Labor & Indus.*, 66 Wn. App. 302, 307, 831 P.2d 1133 (Div. 1, 1992). The Supreme Court has never passed upon the issue covered by *Dunning* and its progeny.

in order to protect them in the act of reporting the legislature expressly established a scheme whereby anyone who thought there had been bad faith would first have to convince a prosecutor to bring a criminal action and obtain a conviction. In no other way could the Legislature be certain that a reporter, threatened with litigation as Dr. Townsend was by the Eskridges, would not be deterred from making a report that might save a child's life.

This reading of RCW 26.44.060 harmonizes it perfectly with RCW 4.24.510. A person who reports child abuse to CPS is immune, except that the immunity is withdrawn for lack of good faith if she has been convicted of filing a false report.

6. *Even if there were an inconsistency between the two immunity statutes, the broader statute should be applied because it is more recent and creates a new right.*

The trial court concluded, without analysis, that the statutes were wholly incompatible and that one must take precedence over the other. Even if that were correct, the trial court's decision that RCW 26.44.060 nullifies RCW 4.24.510 was erroneous.

The trial court applied the familiar principle that the more specific statute should control over a statute of general application. But that rule is typically applied in cases of legislation that imposes limits and punishments. Some examples include: laws imposing criminal penalties

upon a specific kind of conduct that also fits within a general criminal statute (*see State v. Shriner*, 101 Wn.2d 576, 681 P.2d 237 (1984)); a specific legislative direction regarding appropriations and spending authority that is inconsistent with a general one (*see Pannell v. Thompson*, 91 Wn.2d 591, 589 P.2d 1235 (1979)); or the power of a court to affect agency orders on appeal when they threaten harm that is inconsistent with ordinary review of agency action (*see Gen. Tel. Co. of the Nw., Inc. v. Wash. Util. & Transp. Comm'n*, 104 Wn.2d 460, 464, 706 P.2d 625 (1985)). Sutherland on Statutory Construction, the authority resorted to by Washington's courts in virtually all cases dealing with the construction of statutes, has pointed out that the *opposite* rule applies when the two statutes in question create rights and remedies. In that situation, the logic of the jurisprudence on reconciliation of statutes dictates that the *broader* right should apply alongside the narrower one.

Courts frequently asserted that if a statute was affirmative and provided a new remedy for an existing right, the common-law remedy was not abolished, if the new remedy was consistent. The party possessing the right might pursue either the common law or statutory remedy. *The same rule applied as between successive statutory remedies or successive statutes creating rights.* An affirmative statute creating a new right does not necessarily destroy a previously existing right created by another statute to which it does not refer, unless the legislature intended that the two rights should not exist together.

41A Sutherland Statutory Construction § 24:3 (7th ed.)(2008)(*Emphasis Supplied*).

Here, where the Legislature created a right to an immunity in the broadest terms in RCW 4.24.510, and expressly made good or bad faith irrelevant to the availability of the immunity, its action in doing so should take precedence over any proposition that the immunity afforded in RCW 26.44.060 is limited by the defendant's ability to prove her good faith.

Further, it is also true that where statutes cannot be easily reconciled, the courts should favor the more recent statute adopted by the Legislature. *ETCO, Inc. v. Dep't of Labor & Indus.*, 66 Wn. App. 302, 307, 831 P.2d 1133 (Div 1, 1992). In this case, the most recent action by the Legislature on the topic of immunity for reporting to government agencies was its choice to remove the good faith requirement from RCW 4.24.510. Other sections of RCW 26.44 have been more recently amended, but the Legislature has not revisited RCW 26.44.060(1)(a) since it amended RCW 4.24.510 in 2002.

C. The Trial Court Erred In Permitting The CPS Worker To Testify Extensively To Hearsay Matters, And Effectively Bolster The Eskridges' Credibility While Attacking Townsend's Credibility.

The Eskridges called Denise Guffin, a former CPS worker, to testify about her investigation into Dr. Townsend's complaint of child abuse.

Over objection, RP. 600-601, 603, 606-607, Ms. Guffin was permitted to

testify at length about statements made to her by the Eskridges and their children. These statements were hearsay, subject to no exception identified by the Eskridges or the trial court, and should not have been admitted. ER 801. Worse, in testifying to the hearsay, Ms. Guffin went beyond a mere recitation of what was said to her by the children, and commented favorably upon their credibility. RP. 602-603.

Ms. Guffin was also invited by the Eskridges to testify as to statements made to her by Dr. Townsend. Once again, she was not content merely to relate what Dr. Townsend had said. Her testimony was liberally salted with her very negative view of Dr. Townsend's credibility, RP. 615-18, 621, 623-25, 627, 630, in gross and stark violation of the trial court's unequivocal and stern ruling *in limine* that:

No witness is entitled to comment on the credibility of any witness whether they are an expert or they are a lay person. . . . It is absolutely verboten and if anybody attempts to do it whether they have disclosed that opinion or not I will sustain an objection. It is up to the jury to decide the credibility of the witnesses, not the individual experts, they cannot do that. . . . [They] cannot say it no matter what.

RP. 953-954.

These violations of the trial court's ruling were deeply prejudicial, and would merit reversal all by themselves, given the centrality of the CPS complaint to the case as it was presented by the Eskridges.

D. The Trial Court Erroneously Instructed The Jury That Immunity Under RCW 26.44.060 Is Available Only As To Reports Made Within 48 Hours.

1. *The trial court correctly ruled at the close of the case that the immunity under RCW 26.44.060 is not limited by the 48-hour reporting requirement.*

The judgment in this case must be reversed even if Dr. Townsend was properly tasked with proving her good faith as a precondition to immunity, because the jury was improperly instructed that to be immune, the report must be made within 48 hours. RCW 26.44.030, which mandates that reports of suspected child abuse be made to CPS on pain of criminal prosecution, also requires that reports be made within 48 hours after the reporter learns the information. This requirement is obviously consistent with the strong policy of the statute to protect children.

In this case, Dr. Townsend waited approximately thirty days after hearing a statement from Jim Eskridge that she interpreted, in context with other things she knew from him, as meaning that he was potentially abusing his son by using him as a “sexual substitute” for Amy when she was gone on business travel. RP. 333. She explained that she did this because on the one hand, she wanted Amy to be present before she reported because she feared that if Jim learned she had reported him while Amy was away there was a risk that he would, in anger, injure his sons; while on the other hand, though she believed Jim’s conduct constituted

abuse, the physical contact did not involve the removal of any clothing, and she was seeing the sons once a week and would be able to tell if things were getting worse in the meantime. RP. 333-36.

Plaintiffs moved for a directed verdict that Dr. Townsend was not entitled to good faith immunity because she had not reported within 48 hours. The trial court denied the motion, correctly ruling that the intent of the legislature would not be served by creating disincentives to report in 49 hours, three days, or longer by withdrawing immunity after 48 hours. RP. 838-841:11.

2. *The Jury was erroneously instructed that immunity is available only for reports made within 48 hours.*

The parties and the court conferred on jury instructions immediately after the trial court ruled on the motion for directed verdict. A jury instruction was adopted which told the jury that Dr. Townsend was eligible for immunity only if she reported in 48 hours. CP 111. But the trial court had already correctly and explicitly ruled that that is not the law. It was error to instruct the jury to the contrary. While counsel for Dr. Townsend did not except to the instruction – having, along with the court, apparently overlooked that it limited the immunity to reports in 48 hours – counsel *did* object to the legal proposition that the immunity was limited to reports made within 48 hours, and the trial court (which apparently also

overlooked the discrepancy in the instruction) agreed and ruled correctly.
RP. 838-841. The judgment should be reversed.

VI. CONCLUSION.

Dr. Townsend was alleged to have breached the standard of care applicable to her in her role as the Eskridges' mental health care provider. That was the case that should have been tried. Instead, Dr. Townsend was put on trial for her reports to public agencies concerning her suspicion that Jim Eskridge was abusing his children, a matter regarding which she was immune. The trial court should have sustained Dr. Townsend's objection to the evidence concerning her reports to CPS, the police, the WSBA, and HPQAC. Its refusal to do so changed the entire focus of the case. The judgment should be vacated, the trial court's ruling refusing to exclude evidence concerning the reports should be reversed, and the matter should be remanded for a new trial.

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Respectfully submitted this 2nd day of July, 2012.

A handwritten signature in black ink, appearing to read "Leslie R. Weatherhead", written over a horizontal line.

Leslie R. Weatherhead, WSBA No. 11207

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 2nd day of July, 2012, the foregoing APPELLANT'S OPENING BRIEF was caused to be filed with the following Court:

Court of Appeals of the
State of Washington,
Division III
500 N Cedar St
Spokane, WA 99201-1905

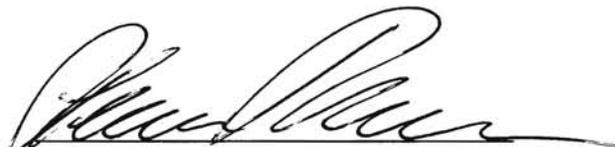
- By Hand Delivery
- By U.S. Mail
- By Overnight Mail
- By Facsimile Transmission
- By Email to

*1 Original, plus 1 Copy

Also, Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 2nd day of July, 2012, the foregoing APPELLANT'S OPENING BRIEF was caused to be served to the following:

John Allison
Eymann, Allison, Hunter & Jones
2208 West Second Avenue
Spokane, WA 99201
(509) 747-0101
*Attorney for James Henry and
Amy Dawn Eskridge*

- By Hand Delivery
- By U.S. Mail
- By Overnight Mail
- By Facsimile Transmission
- By Email to



Lennie M. Rasmussen

NO. 304051

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

JAMES HENRY AND AMY DAWN ESKRIDGE,
Plaintiffs/Respondents

v.

DARLENE TOWNSEND, Ph.D.
Defendant/Appellant

APPELLANT'S APPENDIX

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ORIGINAL

APPENDIX

No. 304051

Court of Appeals of the State of Washington, Division III

JAMES HENRY AND AMY DAWN ESKRIDGE, *Plaintiffs/Respondents v.*
DARLENE TOWNSEND, Ph.D., *Defendant/Appellant*

DESCRIPTION	PAGE NOS.
Answer and Statement of Affirmative Defenses	Appx. 002-013
Amended Civil Case Schedule Order	Appx. 014
Plaintiffs' Trial Exhibit #4 – Townsend Letter to Tony Pizzillo, Care Investigator – Department of Health	Appx. 015-024
Plaintiffs' Trial Exhibit #5 – Townsend Police Report No. 08-92771 via e-mail to Spokane Crime Reporting Center	Appx. 025-029
Plaintiffs' Trial Exhibit #6 – Townsend Grievance Against a Lawyer to Washington State Bar Association	Appx. 030-033
Plaintiffs' Trial Exhibit #8 – Townsend Correspondence to Felice P. Congalton, Senior Disciplinary Counsel at Washington State Bar Association	Appx. 034-038
" <i>Bill Strengthens SLAAP Lawsuit</i> ," Spokane Spokesman-Review, February 1, 2002 (printout of electronic version of article from Spokesman-Review sent via electronic message dated June 27, 2012)	Appx. 039-040

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FILED

DEC 01 2009

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

JAMES HENRY ESKRIDGE, II & AMY)
DAWN ESKRIDGE,)

No. 09-2-02494-9

Plaintiffs,)

**ANSWER AND STATEMENT OF
AFFIRMATIVE DEFENSES**

vs.)

DARLENE M. TOWNSEND, PhD.,)

Defendants.)

Dr. Darlene Townsend (hereinafter "Townsend"), through her attorneys, Andrew Mitchell of Paine Hamblen LLP, submits the following Answer to Plaintiffs' Amended Complaint for Health Care Malpractice and Statement of Affirmative Defenses

FACTS

1. Townsend admits the allegations contained in paragraph 1 of plaintiffs' Complaint.

2. Townsend denies the allegations contained in paragraph 2 of plaintiffs' Complaint as to licensing. Townsend admits the allegations contained in paragraph 2 of plaintiffs' Complaint as to residence and business nomenclature.

1 3. Townsend admits the allegations contained in paragraph 3 of plaintiffs'
2 Complaint.

3 4. Townsend admits the allegations contained in paragraph 4 of plaintiffs'
4 Complaint.

5 5. The allegations contained in paragraph 5 of plaintiffs' Complaint constitute
6 legal conclusion, to which no response is warranted. To the extent the Court deems a
7 response warranted, Townsend denies the allegations contained in paragraph 5 of plaintiffs'
8 Complaint.

9 6. Townsend admits the allegations contained in paragraph 6 of plaintiffs'
10 Complaint to the extent they relate to the date of an agreement between plaintiff James
11 Eskridge and Townsend for counseling services. Townsend denies the remaining allegations
12 contained in paragraph 6 of plaintiffs' Complaint.

13 7. Townsend admits the allegations contained in paragraph 7 of plaintiffs'
14 Complaint.

15 8. Townsend admits the allegations contained in paragraph 8 of plaintiffs'
16 Complaint to the extent it relates to the existence of a counseling relationship between
17 Townsend and the Eskridge minor children. Townsend denies the remaining allegations
18 contained in paragraph 8 of plaintiffs' Complaint.

19 9. Townsend admits the counseling relationships with plaintiffs ended on or
20 about the dates set forth in paragraph 9 of plaintiffs' Complaint.

21 10. Townsend admits the allegations contained in paragraph 10 of plaintiffs'
22 Complaint to the extent it relates to the existence of a report with Washington State
23 Department of Social and Health Services – Division of Children and Family Services and the
24

1 approximate date such report was made. Townsend denies the remaining allegations
2 contained in paragraph 10 of plaintiffs' Complaint.

3 **Count I – Health Care Malpractice**

4 11. Townsend admits, denies and does not respond, as set forth above, to
5 paragraphs 1 through 10, inclusive, of plaintiffs' Complaint.

6 12. The allegations contained in paragraph 12 of plaintiffs' Complaint constitute
7 legal conclusions, to which no response is warranted.

8 12. (second) Townsend is without sufficient knowledge to form a belief as to the
9 allegations contained in paragraph 12 (second) of plaintiffs' Complaint and, therefore, denies
10 the same.

11 13. Townsend admits the allegations contained in paragraph 13 of plaintiffs'
12 Complaint to the extent only as they relate to the existence of a counseling relationship
13 between plaintiff James Eskridge and Townsend. Townsend denies the characterization of the
14 nature of the counseling relationship. Townsend is without sufficient knowledge to form a
15 belief as to the allegations relating to Alcoholics Anonymous and, therefore, denies the same.
16 Townsend denies the remaining allegations contained in paragraph 13 of plaintiffs'
17 Complaint.

18 14. Townsend denies the allegations contained in paragraph 14 of plaintiffs'
19 Complaint.

20 15. Townsend denies the allegations contained in paragraph 15 of plaintiffs'
21 Complaint.

22 [NOTE TO COURT: Plaintiffs' Complaint does not contain a paragraph 16.]

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Count III – Health Care Malpractice

23. Townsend admits, denies and does not respond, as set forth above, to paragraphs 1 through 22, inclusive, of plaintiffs' Complaint.

24. The allegations contained in paragraph 24 of plaintiffs' Complaint constitute legal conclusions, to which no response is warranted.

25. Townsend admits the counseling relationship with plaintiff James Eskridge ended on or about the date alleged in paragraph 25 of plaintiffs' Complaint. Townsend denies all remaining allegations contained in paragraph 25 of plaintiffs' Complaint.

26. Townsend denies the allegations contained in paragraph 26 of plaintiffs' Complaint.

The unnumbered paragraph contained in plaintiffs' Complaint constitutes a legal conclusion, to which no response is warranted.

Count IV – Health Care Malpractice

27. Townsend admits, denies and does not respond, as set forth above, to paragraphs 1 through 26, inclusive, of plaintiffs' Complaint.

28. Townsend denies the allegations contained in paragraph 28 of plaintiffs' Complaint.

29. Townsend denies the allegations contained in paragraph 29 of plaintiffs' Complaint.

30. Townsend admits to having an appointment with plaintiff Amy Eskridge on or about the date set forth in paragraph 30 of plaintiffs' Complaint. Townsend denies the remaining allegations contained in paragraph 30 of plaintiffs' Complaint.

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31. Townsend admits the allegations contained in paragraph 31 of plaintiffs' Complaint to the extent plaintiff Amy Eskridge was informed a filing would be made with the Washington State Department of Social and Health Services – Division of Children and Family Services. Townsend denies the remaining allegations contained in paragraph 31 of plaintiffs' Complaint.

32. Townsend admits filing a report with the Washington State Department of Social and Health Services – Division of Children and Family Services on or about the date set forth in paragraph 32 of plaintiffs' Complaint and further alleges the any documents speak for themselves. The remaining allegations contained in paragraph 32 of plaintiffs' Complaint constitute legal conclusions, to which no response is warranted.

The unnumbered paragraph contained in plaintiffs' Complaint constitutes a legal conclusion, to which no response is warranted.

Count V – Wrongful Withholding Patient Records

33. Townsend is without sufficient information to respond to allegations concerning the acts or omission of other parties and, therefore, denies the same.

34. Townsend is without sufficient information to respond to the allegations concerning the acts or omissions of other parties and, therefore, denies the same.

35. The allegations contained in paragraph 35 of plaintiffs' Complaint constitutes legal conclusions, to which no response is warranted.

The unnumbered paragraph contained in plaintiffs' Complaint constitutes a legal conclusion, to which no response is warranted.

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Count VI – Breach of Contract

36. Townsend admits, denies and does not respond, as set forth above, to paragraphs 1 through 35, inclusive, of plaintiffs' Complaint.

37. Townsend admits the allegations contained in paragraph 37 of plaintiffs' Complaint only to the extent they relate to the existence of a counseling agreement between plaintiff James Eskridge and Townsend. Townsend further alleges the counseling agreement speaks for itself. Townsend denies all remaining allegations contained in paragraph 37 of plaintiffs' Complaint.

38. The allegations contained in paragraph 38 of plaintiffs' Complaint constitute legal conclusions, to which no response is warranted.

39. Townsend denies the allegations contained in paragraph 39 which relate to acts and omissions on the part of Townsend. Townsend is without sufficient knowledge to form a response as to the acts and omissions of third parties and, therefore, denies the same.

40. The allegations contained in paragraph 40 of plaintiffs' Complaint constitute legal conclusions, to which no response is warranted.

The unnumbered paragraph contained within plaintiffs' Complaint constitutes a legal conclusion, to which no response is warranted.

Count VII – Violation of the Washington State Consumer Protection Act

41. Townsend admits, denies and does not respond, as set forth above, to paragraphs 1 through 40, inclusive, of plaintiff's Complaint.

42. The allegations contained in paragraph 42 of plaintiffs' Complaint constitute legal conclusions, to which no response is warranted.

1 49. Townsend admits filing a report with the Washington State Department of
2 Social and Health Services – Division of Children and Family Services. Townsend alleges
3 that any documents related to the report speak for themselves. Townsend denies any and all
4 remaining allegations contained in paragraph 49 of plaintiffs' Complaint.

5 50. Townsend is without sufficient knowledge to form a responses as to the acts or
6 omissions of third-parties and, therefore, denies the same.

7 51. it is unclear what is meant by the phrase, "this pattern of behavior" and
8 Townsend requests clarification prior to submitting a response. Townsend admits filing a
9 complaint with the Washington State Bar Association against plaintiffs' counsel and further
10 alleges any documents related to such complaint speak for themselves. Townsend denies any
11 and all remaining allegations contained in paragraph 51 of plaintiffs' Complaint.

12 52. Townsend is without sufficient information to form a response as to the acts
13 and omissions of third parties and, therefore, denies the allegations contained in paragraph 52
14 of plaintiffs' Complaint.

15 53. Townsend is without sufficient knowledge to form a response as to the impact
16 of the acts and omissions of third parties upon plaintiffs and, therefore, denies the same.

17 54. Townsend is without sufficient knowledge to form a response as to the impact
18 of the acts and omissions of third parties upon plaintiffs and, therefore, denies the same.

19 The allegations contained in the unnumbered paragraph in plaintiffs' Complaint
20 constitutes legal conclusions, to which no response is warranted.

21 55. The allegations contained in paragraph 55 of plaintiffs' Complaint constitute
22 legal conclusions, to which no response is warranted.

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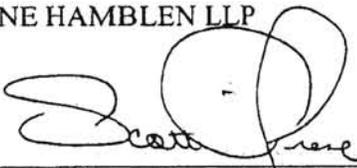
RESERVATION OF RIGHTS

As discovery in this matter is continuing and on-going, Townsend expressly reserves the right to amend, supplement or otherwise edit the above statement of affirmative defenses.

DATED this 1st day of December, 2009.

PAINÉ HAMBLÉN LLP

25778

By: 

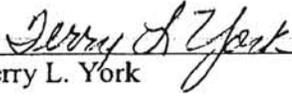
Andrew Mitchell, WSBA 30399
Attorneys for Dr. Townsend

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of December, 2009, I caused to be served a true and correct copy of ANSWER AND STATEMENT OF AFFIRMATIVE DEFENSES to the following:

R. Perry Eskridge P.O. Box 840 Ferndale, WA 98248-0840 Attorneys for Plaintiffs <u>rperryeskridge@comcast.net</u>	<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> FAX TRANSMISSION
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Terry L. York

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SUPERIOR COURT OF WASHINGTON
Spokane County

ESKRIDGE, JAMES H II ETAL

Plaintiff(s)

vs.

TOWNSEND, DARLENE M PHD

Defendant(s)

CASE NO. 2009-02-02494-9

Amended Civil Case Schedule
Order

(ORACS)

I. BASIS

Pursuant to LAR 0.4.1 IT IS ORDERED that all parties shall comply with the following schedule:

II. SCHEDULE

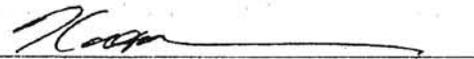
DUE DATE

- | | |
|--|--------------------|
| 1. Last Date for Joinder of Additional Parties, Amendment of Claims or Defenses | |
| 2. Plaintiff's Disclosure of Lay and Expert Witnesses | |
| 3. Defendant's Disclosure of Lay and Expert Witnesses | |
| 4. Disclosure of Plaintiff Rebuttal Witnesses | |
| 5. Disclosure of Defendant Rebuttal Witnesses | 07/01/2011 |
| 6. Last Date for Filing: Motions to Chng Trial Date, Note for Arbitration, Jury Demand | 07/01/2011 |
| 7. Discovery Cutoff | 07/25/2011 |
| 8. Last Date for Hearing Dispositive Pretrial Motions | 08/19/2011 |
| 9. Exchange of Witness List, Exhibit List and Documentary Exhibits | 08/19/2011 |
| 10. Last Date for Filing and Serving Trial Mgmt Joint Rpt, including Jury Instructions | 08/19/2011 |
| 11. Trial Memoranda, Motions in Limine | 09/12/2011 |
| 12. Pretrial Conference | 9:00 AM 09/16/2011 |
| 13. Trial Date | 9:00 AM 09/26/2011 |

III. ORDER

IT IS ORDERED that all parties comply with the foregoing schedule pursuant to Local Rules 0.4.1 and 16.

DATED: Duplicate



KATHLEEN M. O'CONNOR
JUDGE

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for
HUMAN DEVELOPMENT
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June 2, 2008

Tony Pizzillo, Health Care Investigator
Health Professions Quality Assurance Division
Department of Health , Investigative Service Unit
1500 West 4th Ave. Suite 313
Spokane Wa 99201

RE: 2007-11-0001LF, 2007-11-0002LH

Dear Mr. Pizzillo,

In January 2006, James Eskridge entered the inpatient program at The Meadows for treatment of Major Depression and long term Multiple Addictions, including alcohol, sexual and nicotine addiction. During this inpatient treatment he was able to acknowledge addiction to and abstain from the use of alcohol and chewing tobacco but remained in denial of his sexual addiction. He completed approximately thirty days of treatment and, AMA (Against Medical Advice), terminated treatment in February 2006. The recommended protocol which he refused would have included transfer to extended inpatient treatment at another facility for as long as medically necessary to treat his sexual addiction and remaining alcohol issues followed immediately upon discharge by long term outpatient treatment concurrent with involvement in a minimum of ninety Alcohol Anonymous (AA) meetings in ninety days.*

In January, 2006 the James Eskridge family lived in Virginia but following Mr. Eskridge's inpatient treatment, they moved to the Spokane area reportedly to be near extended family support. In August, 2006 Mr. Eskridge finally sought the previously recommended long term outpatient care and began treatment here at the Phoenix Institute. He reported a Family History of being a "former jock" playing college baseball, having a ten year marriage to Amy during which they had two children and attempting suicide using his car several times because he was depressed. His reported Family of Origin history included details of a highly autocratic, "workaholic", alcohol-addicted, politician father who engaged in extramarital affairs and sought divorce which was not finalized because "she would have taken his money". This father, of whom he reports being "very afraid", because he was a "baseball hotshot" and his brother was not, provided Jim with extensive resources denied to his brother. He describes an eating-disordered, highly overweight emotionally unstable mother, with whom he has no boundaries and who continues to be his confidante and protects him from his academic,

*Eskridge v. Townsend
Cause No. 09-2-02494-9*

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family and economic problems; and an older brother with whom he has a long-term ongoing highly antagonistic relationship. He reports long term significant academic problems although he claims to have earned a college degree. There is an extended family history of alcohol addiction and sexual addiction as a nephew has recently been sentenced for Child Pornography.

At the time of seeking outpatient treatment, he was unemployed and had been so for several months. He reported that, because of his addiction problems, he and his wife had decided that she would be the sole breadwinner and he, despite lacking much experience in the necessary duties, would be the "stay at home dad" caring for the housekeeping and the two sons, Taylor, age eight and Jordan, age four. He reported being very uncomfortable with this arrangement because of his father's disapproval of him not being employed outside the home. At the time of intake, he reported being "sober" from alcohol but not involved with any AA resources; had resumed his nicotine habit which he attempted to keep secret from his wife; and had resumed his sexual addiction pattern but described acting out only with his wife and pornography. He was taking several medications previously described at the time of his discharge from The Meadows as well as pain medication for a recent back injury, but no reported illegal drugs. He did not have a current primary care physician.

Mr. Eskridge was admitted to my practice August 14, 2006; signed a "Phoenix Institute Counseling Contract" and a copy of "Information Regarding Practice" which includes an explanation of applicable confidentiality laws; was given a verbal explanation of each document and the opportunity to ask and have answered any questions he had; was given a personal copy of each document; was referred to both a primary care physician as well as a psychiatrist; was asked to obtain inpatient records from The Meadows; and was requested to begin a personal exercise program as well as regular attendance at AA meetings adjunct to the outpatient treatment. He agreed to weekly outpatient therapy here. This is the Standard of Care for aftercare.

Approximately six weeks into treatment with the therapist (T) during which Mr. Eskridge has failed to comply with any therapeutic recommendations except physical exercise and establishing relationship with medical doctors, which Mr. Eskridge appears to utilize only for drug-seeking, and during which marital and child management problems are reported by him to escalate, Mr. Eskridge reports a "bad blow out" with his wife because she has told him that she has called asking also to be admitted into my practice, both for personal and marital counseling. He explains that he feels he is "doing all the changing" yet it is not resulting in having "more sex" with his wife, which appears to be his primary motivation for treatment. He repeatedly describes how he does not feel "loved" unless he receives sexual gratification from his wife and she is not forthcoming to meet his needs, though he does not explain why he had such a fight with her when she decided she wanted to ask for counseling also.

My practice has consistently had a "waiting list" for at least the past ten years. I decline an average of 3-4 patients per week, every week. In accepting new patients, I do give preference to

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professional referrals and family members. During Ms. Eskridge's initial call, I explained the availability of other therapists in the area and referred her to the "Therapist Locator" a free service of AAMFT on-line. Ms. Eskridge declined referral saying it would be more productive to see "someone who understands her family situation". In finally agreeing to see her, I had to decline service to another person on the "wait list."

After Ms. Eskridge has requested to be seen, T explains that, as a licensed Marriage and Family Therapist, she is qualified to work with both parties in a marriage, but has a very strict policy about confidentiality: absolutely no information will be imparted by the therapist from one individual session to another. The explanation continues: T cannot control their communication outside of sessions, and they will share information if they decide to have joint sessions, but T will not communicate information from one individual session to another although they may hear T making similar recommendations for each person in their individual sessions. An example might occur if each raised the same issue in their individual session and T suggests the same resources to each such as reading the same book on marital communication or child management e.g. "1-2-3 Magic" by Dr. Phelan,, etc. This policy is carefully and specifically given verbally to both parties individually and jointly and both Mr. and Mrs. Eskridge agree that they understand it.

Ms. Eskridge began therapy on September 26, 2006 and the identical protocol was followed in communicating to her the "Phoenix Institute Counseling Contract and Information Regarding Practice". She reported being employed full-time as a medical equipment representative working out of a home office and traveling a great deal. She described her Family of Origin as highly dysfunctional although she stated she did not recognize this until after attending Family Week as part of her husband's inpatient treatment. She states that her father is a disabled, controlling, long-term alcoholic; her mother is described as submissive and highly codependent; and her sister married an alcoholic who fathered her seriously mentally ill child, Austin who in age, is between Taylor and Jordan and with whom there is severe tension. Austin's father then suicided and Austin apparently has not received appropriate treatment and creates serious problems for Taylor and Jordan. Ms. Eskridge reports her terror in living for the past ten years with a depressive alcoholic husband who has serious anger management problems which emotionally damage her and their sons and is acting out with other women while trying to divorce her.

The record demonstrates that her therapy sessions are scheduled occasionally (not weekly) in accordance with her work demands and treatment consists of assisting her to cognitively understand the patterns of her dysfunctional lifestyle; her codependent situation; living with addictions; lack of boundaries in her personal life; the serious challenges of parenting children who have been impacted by their father's addictions/mental health problems and by her marital powerlessness. Ms. Eskridge has ongoing concerns over her husband's "sleeping all the time", "yelling and swearing" at her sons and his being tolerant of their serious fighting with each other which disrupts her work process. Her office is located in their home. She is

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using prescribed antidepressant medication though she does not have a primary care physician. She is given multiple referrals to medical doctors. Ms. Eskridge initiated all appointments except the final Parental Consult which T insisted on in order to provide Ms. Eskridge's protection of the children upon initiation of the Child Protective Services report based on their father's self-reported sexual molestation of Taylor and Jordan.

There was ongoing concern on the part of both Mr. and Ms. Eskridge regarding his non- and/or partial participation in an AA program. Mr. Eskridge finally began attending meetings and persisted only when he found it met with his wife's approval which resulted in her being more cooperative in engaging in sexual relations. As his therapist, my goal, and the goal verbalized by his wife, was to "work his program" (to use the language of AA) to assist in achieving and maintaining recovery as a growth process from sobriety. I was never critical of his actual attendance at meetings or his involvement with his Sponsor when he finally relented and obtained one. I was only critical of Mr. Eskridge's behavior when he refused to attend meetings and refused to cooperate with his Sponsor's appointments and expectations of "Working his Steps".

Please see dated case notes on timing and content of individual and joint sessions. Specifically, in Ms. Eskridge's very first session, (September 26th) she herself reveals that she is aware of Mr. Eskridge's extramarital affairs. It is a Standard of Care that the patient be referred to medical testing in such a case. Mr. Eskridge's records from the Meadows were not received by my Practice until after October 6th. There was no "violation of Confidentiality" on my part regarding this information. This is one of many, many discrepancies between the Complainant Statement and the facts of the written record.

Both Mr. and Ms. Eskridge request and mutually agree to be seen in joint session and they are first seen together on November 20, 2007. Subsequently they are seen together in multiple joint sessions during which Mr. Eskridge's diagnosis of Borderline Personality Disorder and the severity of his Sexual Addiction (see enclosed definition) are discussed as they relate to the marital problems and the management of their sons. They have both described the sons as having severe problems: the boys are "terrified" of their father and he has violated multiple promises he has made to each; Taylor is having serious problems in school despite having been held back a grade; Jordan is not only actively suicidal, but has more than one suicide plan which he has described to them; Jordan has a very serious speech problem which is causing him to retreat into being an "elective mute".

Confidentiality Issues: Early in their individual sessions, it becomes very apparent that both Mr. and Ms. Eskridge have severe inability to maintain personal boundaries. T has explained the Confidentiality Policies to each and to both. Often T even recommends, particularly to Ms. Eskridge, that some information be kept to herself. They each consistently individually raise the same issues about their relationship in their sessions, although T never reveals this. However it also becomes very apparent that each goes to the other after every individual session

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and discusses what they have dealt with in their session. T is absolutely precise in not violating confidentiality of either party. In fact, the record reveals that on December 22, 2006, Ms. Eskridge requested that T communicate for Ms. Eskridge an issue to Mr. Eskridge in his next session. T explains that she does not do this. Upon Ms. Eskridge's insistence, T relents only after specifically, with Ms. Eskridge's knowledge and agreement, entering Ms. Eskridge's request into the record. Please see Ms. Eskridge's file.

In addition, in the final session with Ms. Eskridge, a parental consult on the welfare of her children, Ms. Eskridge becomes quite angry because T will not violate confidentiality and divulge to her information that Mr. Eskridge has previously informed T that he has sexually molested their sons. Because of T's responsibility which mandated that this molestation be reported to Child Protective Services and because of T's "duty to warn" it was necessary to remind Ms. Eskridge again of Mr. Eskridge's diagnosis of Narcissistic Borderline Personality Disorder with its characteristic of symptomatic raging. T urgently requested her to preserve the confidentiality of Ms. Eskridge's session and yet, she immediately returned home and violated that confidentiality to her husband, despite being warned of possible consequences of her unstable husband's raging reactions. Indeed, he subsequently came to T's closed office in an assaultive manner; pounded on the then locked door; persistently yelled "Dr. Townsend, open this door"; left several threatening voice mail messages; and wrote a threatening letter. A Police Report Number 08-92771 was made of his threats. This behavior is entirely typical of persons with Narcissistic Borderline Personality Disorder who often use rage to attempt to control all aspects of their "world" in order that they be perceived as authority figures, not be required to take responsibility for their actions, and are not "abandoned".

Another example of the Eskridge's inability to preserve or respect confidentiality was sadly observed when the Eskridges' refused all of T's recommendations to utilize other resources for Jordan and T, fearing for the suicidal child's well-being, denied services to waiting patients and admitted him to her practice. It became very clear that Jordan had self-protective boundaries constructed to maintain safety from his parents' and brother's prying. Taylor regularly came in asking what Jordan had done in his session. His questions were quietly brushed aside and he was not told. Ms. Eskridge revealed that Jordan told her he was doing nothing in therapy except playing in the sand tray. That also was patently untrue but this was not revealed to Ms. Eskridge, as T respected Jordan's confidentiality as she consistently does for all patients. It was sad to observe a little child already perceiving the need to lie to his parent in order to preserve his own experiences.

Pressure for Appointment: The only time I was persistent in asking Ms. Eskridge to come in for an appointment was in requesting the August 28th parental consult. On August 6, 2007 Mr. Eskridge had stated his sexual molestation of his sons based on his sexual needs while his wife currently was out of town. Ordinarily I would have reported this to CPS that day. Because of Mr. Eskridge's unstable personality and the gravity of his diagnosis, I was very worried about making the report when I knew the boy's mother was out of the State and their logical support network of grandparents were also out of State. I felt a responsibility to make sure that, when

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the report was made, the mother would be present to insure both safety and appropriate custody of the children. As soon as Ms. Eskridge stepped out of my office at the conclusion of this session, I picked up the phone and made the CPS report. Within an hour, the threatening phone calls began coming from Mr. Eskridge. She again had violated confidentiality. I again observed that, in this family, they are almost completely unable to maintain any boundaries with each other. However, it is important to remember that she is as much a victim of his mental illness as their children and his emotional abuse coerces her into compliance with his wishes.

Patient Referrals: T has repeatedly asked both parents individually to utilize a structured child management plan to benefit their boys; over a period of six months referred both parents to several resources for Taylor's school problems, i.e. physician, school counselors, child psychiatrist; over a period of four to six months referred Ms. Eskridge to at least four different speech pathology treatment facilities for Jordan as well as to a child psychiatrist for his suicidality. T repeated these requests regarding the children in the joint sessions.

Sexual Addiction Treatment Referral: Mr. Eskridge's sexual addiction had been repeatedly addressed in the joint sessions and, because he refused an inpatient program, he is appropriately referred to a week-long Intensive treatment program at Pine Grove in Hattiesburg, Mississippi to be followed by a week-long couples' Intensive dealing with sexual addiction. They were given print brochures and a DVD which described the Pine Grove sexual addiction programs. Both were in agreement with this treatment plan and understood that they can return to therapy here for aftercare if they wish.

Economic Gain Accusations: Ms. Eskridge's current inferences that T's recommendation of treatment facilities for Mr. Eskridge are economically motivated is patently untrue. Because of my involvement in national professional associations, I am personally acquainted and on a first-name basis with colleagues who are the program directors of virtually every quality sexual addiction treatment facility in the United States and Europe. We maintain very high standards of ethics and integrity and refer our patients to the facilities which have the programs which best meet our clients' specific needs. Absolutely NO financial gain results from these referrals. There is a clear pattern in the Eskridge complaint that they try to describe me as "money grubbing" but those who know me would clearly disagree with that denigration. As a healthcare provider, I utilize Discovery Toys as a therapeutic tool and was given the opportunity to purchase all their materials at a twenty percent discount. I offer that same discount to any patient who wishes to utilize Discovery Toys and although it would be perfectly ethical to do so, I make no profit from their purchases. Likewise, I receive a twenty percent business discount from Barnes and Noble, purchase frequently utilized resources in bulk and pass along the discount to patients. The same conditions hold with Melaleuca vitamins and supplements. My personal ethics as well as my desire to provide convenience to patients supports making resources available at no profit whatsoever. No patient is ever pressured to accept any of these resources. My practice is so successful that I do not advertise, but instead

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regretfully have to turn away patients on a weekly basis.

Doctoral Degree: T does possess an earned Doctorate (see enclosed) from an accredited University graduate program and has maintained all the requirements of licensing status as well as literally thousands of hours of Continuing Education Units. In an unusual request one day, a significant portion of his session was devoted to Mr. Eskridge's questions about all the certificates on T's office wall attesting to training and education. T explained to him that eighteen years of post secondary education had been completed, as compared to some medical doctors (non-specialists) who take eleven or twelve years, plus several thousand hours of professional supervision and continuing education credits earned every year. He appeared to understand. T is generally addressed by the appropriate title "Dr. Townsend" although T often tells children they can call her "Dr. Darlene". Both the adult Eskridges referred to T as "Darlene".

Referrals for Safety of Children: At almost every session, Ms. Eskridge focused her concern on feeling "unsafe" with Mr. Eskridge: her complaints that he was verbally and physically abusive with the boys; his inability to maintain the household cleaning, food preparation, grocery shopping; his pattern of sleeping all day; his neglect of the boys which disturbed her work place and failed to meet their needs; his overspending and over-focus on his "toys" (sports and camping equipment, motorcycles; etc.); his obsession with sexual activity, etc., etc. Mr. Eskridge would bring the boys to their sessions dressed in dirty clothing, with dirty faces, having had no lunch and having delayed their meals until later in the day after he had carried out his football coaching responsibilities. Ms. Eskridge often spoke of Mr. Eskridge as if he were her third child. T responded that she did appear to have to assume parenting responsibilities of him and the record shows that we spoke of her needing to teach him how to prepare meals, shop for groceries and clean house. It was very clear that he would forget the children's needs e.g. cupcakes for Taylor's birthday party at school, while he focused on his personal interests. T did, on many occasions, suggest that she alleviate her feelings of needing safety for the boys by placing them in day care or obtaining a "nanny" to care for them in a safe manner. T referred her to many resources to locate safe care for the boys.

(As a therapist, I found this case to be tragically sad. Month after month, for more than ten months, I made referral after referral to this mother to try to connect these seriously abused and neglected children with critical resources to benefit both their health and safe welfare, and there was absolutely no positive response. In October, 2006, I gave her written information regarding AD/HD based on her concerns over Taylor. Nothing was done until May when Mr. Eskridge was personally embarrassed by a negative written report brought home from school by Taylor. I again provided written information for them to give the teacher and Mr. Eskridge was enraged that the teacher had not acted earlier to assist Taylor! Without waiting for a diagnosis he impulsively took the child to a physician in his typical drug-seeking pattern and demanded drugs for the child. Ms. Eskridge was just too afraid of Mr. Eskridge's reaction to initiate any action to benefit the boys and, until Mr. Eskridge described his sexual molestation, I did not

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have enough grounds to make a CPS report. When confronted by the CPS worker after the report, Ms. Eskridge reportedly told the worker that "she was between a rock and a hard place" with Mr. Eskridge's unsafe treatment of her and the boys.)

File Termination: As of this date, none of the Eskridge files have been terminated because there are outstanding balances on each. After his disclosure in his session on August 6, 2007 that he had been sexually molesting his sons, Mr. Eskridge failed his next regular appointment on August 13, 2007 and did not call to either explain the failure or make another appointment. He did show up on August 20th expecting to have an appointment and interrupted the session of a patient who had been on the wait list. T simply explained that he had not scheduled another session and said nothing more as he was in the presence of another patient. He was not pleased with this result of his actions. With his consent, T had already facilitated a referral to the Pine Grove program most appropriate for his care at this stage in his treatment and was aware that he was also seeing Dr. Hedges to whom T had referred, so there was assurance that he did have counseling resources.

Billing Issues: The Phoenix Institute bills patients in accordance with the "Counseling Contract" which is mailed to patients before their first appointment; explained verbally to them at their first appointment; and a copy given to them to take home after their first appointment. The costs of the most commonly used services are clearly described in English in writing in this document at a readability level of approximately fifth/sixth grade, but, just to be sure of clarity, the terms are verbally clarified and questions invited. The document clearly states that additional, less utilized costs, e.g. court costs, etc., are itemized in a full "Fee Schedule" which is available upon request.

There were no problems with billing or payment issues until T was advised that Ms. Eskridge was changing jobs and changing insurance carriers effective June 1, 2007 according to Mr. Eskridge. The new carrier was stated by Ms. Eskridge as "Cigna" (a company which has a problematic history of nonpayment to mental health providers) however, when Mr. Eskridge brought the insurance card to be utilized, the card clearly stated that their carrier was United Healthcare (see copy in file). Providers are strongly encouraged by the insurance companies to bill electronically, which I do, and we must utilize the information contained on the card issued to the patient by the insurance company.

As instructed by the Eskridges, effective June 1, 2007, T began properly billing their new insurance carrier. The insurance carrier then denied all payment, although they did process the requests for payment under the account of Ms. Eskridge's employer, General Electric (see copies in file). Because the Eskridges subsequently adamantly refused all communication with T, there is no understanding as to the reason for the insurance company denial. However, the "Counseling Contract" is very clear that the patient is ultimately responsible for payment of services rendered when their carrier denies payment. The Eskridges received copies of all the Explanations of Benefit (see file copies).

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In 2007, my regular charges for Individual Psychotherapy (90806) were \$130 per session (in 2008, the charge is \$135). This is what is billed to the insurance companies. When patients self-pay, reducing bookkeeping charges, the usual charge is \$120, unless other arrangements are discussed. The charge for Failed Appointments is \$120 and Case Management services are billed at \$60 per quarter hour. These are the charges utilized in the Eskridge account. All payments, such as co-pays, previously made have been credited to their account.

New information arose when Mr. Pizzillo met with me on May 21, 2008, indicating that Ms. Eskridge was insisting that they had continuing coverage with Premera Blue Cross in June, 2007. Therefore, I did submit a new billing to Premera for that month, instead of Cigna/United Healthcare, and subsequently received payment for June, 2007. The Eskridges continue to be responsible from July, 2007 forward. A copy of the corrected "Statement of Balance Due is enclosed".

Written Information: One problem which appears to be present consistently in the Eskridge case is the clinical observation revealing that Mr. Eskridge appears to be a functional illiterate. Over the course of treatment, a number of issues arose when it appeared that he could not read, although both he and Ms. Eskridge protest that he can. His history includes statements of his mother "tutoring" him in reading for many years and his paying for tuition and expenses of his college roommate who assisted him in obtaining his college degree. It would appear that many aspects of this Complaint arise due to his inability to read and comprehend written communication combined with the symptoms of his BPD-Narcissistic (see description below). Instead of him responding to verbal and written requests for communication, his only response was to refuse all contact and insist that his brother act in his stead. For example, the Eskridges state that T sent a copy of the "Fee Schedule" to his brother. T has never been given proper authorization to communicate with the brother, therefore has had absolutely no contact with him, much less having sent him a "Fee Schedule". Given the personal intimacy of this case information; the fractious history of personal relationship between the brothers and Ms. Eskridge and her brother-in-law; and the fragility of Mr. Eskridge's BPD diagnosis; there are serious ethical and HIPAA concerns regarding communicating with Mr. Eskridge's brother.

There is absolutely no question but what the James Eskridges are entitled to copies of their files. First: the request must be made in a correct manner: a witnessed, signed "Release" which states beginning and ending dates of communication as well as the specific types of information to be released and specifically to whom (see enclosed samples of HIPAA-compliant releases). Second: payment must be made for the copies prior to their preparation. As a usual and customary business policy, the Phoenix Institute does not continue to provide ongoing services to patients with outstanding balances. The Eskridges were informed that once their account is paid in full, additional charges may be incurred for their file copies after an appropriate Release is submitted. See file copies of correspondence which carefully explained to the Eskridges the processes by which they may obtain copies of their files.

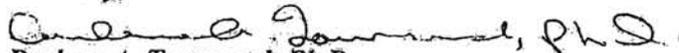
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Borderline Personality Disorder: Persons with BPD generally live behind an "emotional facade" which appears to their "outside world" i.e. people who only see them from a workplace, brief, casual or superficial perspective as "wonderful"; "competent"; "caring"; "cooperative"; "convincing/persuasive;" (hence the term "con man") etc. This is one part of their presentation. They most fear "abandonment" and "loss of control" of aspects of their personal environment. Persons close to them develop a pattern known as "walking on eggshells" so as to not cause them to become enraged, vindictive, rejective, battering, threatening suicide, etc. etc. in a process called "splitting". (See enclosed DSM-IV-R descriptions)

Persons with BPD often have additional "features" such as Narcissistic, Histrionic, Obsessive-Compulsive, etc. Clinically it is very common to see addicts who are BPD and both addicts and persons with BPDs have patterns of "reconstructing their reality" utilizing such coping mechanisms as minimizing, denying, blaming, lying, accusing, fabricating, manipulating, etc.etc. Almost without fail, a person with a BPD-Narcissistic diagnosis who incurs a financial responsibility for services rendered will refuse to pay and will engage in every "creative" vindictive, punitive endeavor they can possibly initiate to discredit the professional who has rendered the services. Medical insurance company personnel are very familiar with these tactics and at meetings of mental health professionals nation-wide a common topic of conversation is about the number of "finance-avoidant" complaints made by BPDs to Quality Assurance/Ethics etc. oversight Boards and Agencies. It is a major "professional hazard". Skilled clinicians are trained to detect the very clear symptoms of BPD, but counselors from less demanding training programs are often unskilled in detecting the condition with its various "features" and are damaged by the lies and manipulations of these patients.

Years ago, my Supervising Psychiatrist, in reviewing a case with me stated that "Borderlines wreak more havoc in the world than all the other mental health diagnoses combined!" As I progressed with licensing and my career, I clearly saw the wisdom of his words. Mr. Eskridge is a classic example of the damage done to a family and the cost to social and public resources inflicted by these types of cases. Thank you for the opportunity to respond to the Eskridge's allegations. If additional information is required, I will be pleased to provide it.

Cordially,


Darlene A. Townsend, Ph.D.

* Definition: SEXUAL ADDICTION: "A multifaceted co-occurring obsessive-compulsive spectrum disorder with varying degrees of obsessive compulsive and impulse-control disorders, as well as significant disruption to: mood, arousal, affect regulation, attachment, executive function".

encl.

From: "Heagle, Alan" <AHeagle@spokanecounty.org>
To: "dtownsend@iglide.net" <dtownsend@iglide.net>
Date: Wed, 2 Apr 2008 16:08:31 -0700
Subject: Rpt given email-040208
Thread-Topic: Rpt given email-040208
Thread-Index: AciVFneXUkfkCwH4TiS8C6IEjhyqWA==
Accept-Language: en-US
acceptlanguage: en-US
X-Rcpt-To: <dtownsend@iglide.net>
X-Country: CA



Spokane Crime Reporting Center has received and processed your information.

Your police report number is 08-92771

If you would like to add information to this report, please call Spokane Crime Reporting Center at 532-9266.

If you would like to check the status of a report, please check the link for the appropriate Case-Screening telephone number that services your jurisdiction. You will need this report number to reference.

[View other Frequently Asked Questions.](#)

Thank you for filing your report online with Spokane Crime Reporting Center.

Spokane Crime Reporting Center

<http://www.spokanecrimereportingcenter.org>
(509) 532-9266

By # 82

Content-Type: image/gif; name="image001.gif"

Content-Description: image001.gif
Content-Disposition: inline; filename="image001.gif"; size=3271;
creation-date="Wed, 02 Apr 2008 16:08:30 GMT";
modification-date="Wed, 02 Apr 2008 16:08:30 GMT"
Content-ID: <image001.gif@01C894DB.CABA6120>

Content-Type: application/octet-stream; name="oledata.mso"
Content-Description: oledata.mso
Content-Disposition: inline; filename="oledata.mso"; size=6205;
creation-date="Wed, 02 Apr 2008 16:08:30 GMT";
modification-date="Wed, 02 Apr 2008 16:08:30 GMT"
Content-ID: <oledata.mso>

The following document was sent as an embedded object but not referenced by the email above:

 oledata.mso

Address		City	State	Zip
3425 South Sundown		Spokane	WA	99206
Phone	Date of Birth	or Age	Gender	
(509)464-161	7/12/1973	33	Male	
Ethnicity		Race		
Non-Hispanic/Spanish		White/Caucasian		
Height	Weight	Hair Color	Eye Color	
more than 6'	approx 240 lb	brwn	?	

*Describe the suspect in detail including any scars, tattoos, piercings or other distinguishing features.

Large, imposing, white, angry, alcoholic male; crew haircut; athletic physical condition; his Social Security number is 534-80-2639.

Suspect Vehicle Information

*Do you have any suspect vehicle information? no

Witnesses Information

*Have you spoken with neighbors or others to ask them if they saw or heard anything? yes--1 witness

Witness 1

*Name	*Address	*Phone
Kathy, Caseworker	WA, State Child Pro	(509)568-3063

Related Report

Child Protective S

***Narrative example**

Explain, in chronological order, what happened. Who, What, Where, When, Why and How.

As a psychotherapist, I am a Mandated Reporter of Child Abuse. My client, Mr. James Eskridge, an alcoholic sex addict with severe anger management problems had described to me his sexual abuse of his two sons, Taylor age 9 yrs. and Jordan 4 yrs. On August 28, 2007 I reported that abuse to CPS. At approximately 6:10 p.m. that evening, Mr. Eskridge arrived at the location of my home-based business and began pounding on the locked door loudly yelling over and over in a threatening manner: "Dr. Townsend, open this door." Since I am an elderly, disabled female here alone, obviously I did not open the door but felt very threatened. Subsequently I received a

The Crime Reporting Center will email a response to you unless you specifically request a phone call and provide a valid phone number. This may take up to 72 hours. If you have not received a response after 72 hours, please call the Crime Reporting Center to determine the status of your information.

Use the Reset button to start over....when the report is completed click on the Submit button.

Reset

Submit



Spokane Crime Reporting Center Online Crime Report Form

Crime Reporting Center

*Who is the victim *Type of report *Was a vehicle affected

Your Personal Information

*First Name *Middle Initial *Last Name

*Address *City *State *Zip

*Contact Phone *Type of Phone Alternate Daytime Phone Type of Phone

*Is your phone a hard of hearing device?

E-mail Address *Contact Preference

*Date of Birth *Gender *Ethnicity

*Race

Business Information

*Business Name *Business Address *Business Phone

Location Where Incident Occurred

*Do you have video or other evidence of the suspect and/or incident?

*Describe the video and/or other evidence.

*Address *City State Zip

This Incident Occurred Between

*Date *Time *AM/PM To

Suspect Information

*Do you have any suspect information?

Suspect 1

First Name Middle Initial Last Name

Eskridge Police Report Narrative continued:

threatening letter from Mr. James Eskridge dated August 29, 2007 demanding that I not report him to CPS. I have received two additional threatening letters, and refused postal delivery of a third, from his brother, Perry Eskridge, acting as his attorney. Mr. James Eskridge has also made a complaint against me to the State Department of Health. His threatening statements and on-going actions combined with his known alcohol and anger management problems and his clinical diagnoses of Narcissistic Borderline Personality Disorder create a situation of continuing threat of harm to me and my business practice.

GRIEVANCE AGAINST A LAWYER

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Return your completed form to:

Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

GENERAL INSTRUCTIONS

- Read our Information sheet *Lawyer Discipline in Washington* before you complete this form, particularly the section about waiving confidentiality.
- Type or write legibly but do not use the back of any page.
- Do not fax your form to us or send your form to us via the Internet.
- If you have a disability or need assistance with filling a grievance, call us at (206) 727-8207. We will take reasonable steps to accommodate you.

INFORMATION ABOUT YOU

Last Name, First Name DR. DARLENE A. TOWNSEND
 Address PHOENIX INSTITUTE
FOR HUMAN DEVELOPMENT
2803 EAST 11TH AVE, (509) 536-0843
SPOKANE, WA 99202-4308
 City, State, and Zip Code /
 Telephone Number (Day/Evening)

INFORMATION ABOUT THE LAWYER

Last Name, First Name Eskridge Robert Perry
 Address 6087 Church Road
 City, State, and Zip Code Ferndale WA 98248-9676
 Telephone Number 360-389071

Alternate address/phone where we can reach you

INFORMATION ABOUT YOUR GRIEVANCE

Describe your relationship to the lawyer who is the subject of your grievance by checking the box that best describes you:

- Client
- Former Client
- Opposing Party

- Opposing Counsel
- Judicial
- Other: Victim

Is there a court case related to your grievance? Not that I am aware of, although YES NO
 If yes, what is the case name and file number, and who is the lawyer representing you? I have received elements of a lawsuit.

Eskridge v. Townsend
Cause No. 09-2-02494-9

Explain your grievance in your own words. Give all important dates, times, places, and court file numbers. Attach additional pages, if necessary. Attach copies (not your originals) of any relevant documents.

Please see attached

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AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge.

Signature: Quince, J. [Signature], Date: June 28, 2008

PHOENIX INSTITUTE
for
HUMAN DEVELOPMENT
EAST 2803 ELEVENTH AVENUE
SPOKANE, WASHINGTON 99202-4306
TELEPHONE (509) 536-0843
e-mail: dtownsend@iglide.net

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June 28, 2008

GRIEVANCE AGAINST LAWYER COMPLAINT FORM
PAGE TWO

From August, 2006-August 2007, I provided professional services as a Licensed Marriage and Family Therapist to James and Amy Eskridge, brother and sister in law of Perry Eskridge, attorney at law, Bar #29063. In August, 2007, as a Mandated Reporter, I was required to report to DSHS Child Protective Services the fact that Mr. James Eskridge had described to me in clear detail, the methods by which he was sexually molesting the two young sons of Amy and James. Soon afterwards, the James Eskridges failed to pay their account balance for the professional services I had rendered.

In October, 2007, I received correspondence from Mr. Perry Eskridge stating that his brother had "retained" him "to represent" him regarding my professional services and apparently expecting me to fully communicate with him regarding all aspects of their confidential file. I have never received from James and Amy Eskridge a signed "Release of Information" form acceptable under the Washington State laws protecting confidentiality of medical records or HIPPA regulations permitting me to discuss their case with anyone, much less Mr. Perry Eskridge. Such a form was requested multiple times. I also raised the question of the ethical issue in having a family member providing legal representation in a potentially sensitive issue, as this would appear to me to be a "Conflict of Interest". Mr. James Eskridge wrote a letter threatening to destroy my practice; came to my home behaving in a threatening, assaultive manner resulting in a police report; failed to pay the balance on their bill for services rendered and, apparently under the tutelage of Perry Eskridge, made complaints to state and federal agencies in an attempt to destroy my practice.

Failing receipt of an appropriate "Release of Information", I have refused all contact and communication with Mr. Perry Eskridge and have made my reasons clear to Mr. and Mrs. James Eskridge. Nonetheless, I have been subjected to repeated harassment by continued correspondence from Perry Eskridge which I have consistently refused. In addition, on June 26, 2008, I received a disturbing telephone message from Mr. Perry Eskridge left on my telephone on the evening of June 25, 2008. Let me here briefly describe that message: he stated that he was filing lawsuits against me for such things as "medical malpractice", failing to abide by some law regarding requiring mediation and other matters. He demanded that I "answer the door" so that sheriff deputies could serve me with a subpoena and he mentioned several other matters. Since I was not at home when the call came in, I am unaware of anyone

GRIEVANCE FORM: PAGE THREE

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trying to serve a subpoena. I did save the voice mail message on my telephone system. My feeling about the Perry Eskridge message was that it's tone was intended to be intimidating, threatening, abusive and assaultive. In that intent, it was successful.

I would ask that you consider Discipline for attorney Perry Eskridge on the basis of his continued Harassment and Intimidation, without proper authorization, of me as a professional; and his Unethical Behavior as an attorney on the basis of Conflict of Interest in a sensitive matter. As you can see, I am quite concerned over the involvement of Mr. Perry Eskridge in this matter. The James Eskridge family files contain a great deal of personal, explicit, intimate information not only involving Mr. and Mrs. Eskridge and their abuse and neglect of their sons, ~~but including the specific details of Mr. Eskridge's sexual molestation of his sons.~~ In addition, the files contain Mr. and Mrs. Eskridge's report of their feelings about, opinions of, attitudes toward and perceptions about the members of their individual Families of Origin as well as various extended family members. The psycho-social damage which would result from the release of this information to a family member is precisely what the Washington State confidentiality laws and the HIPPA regulations are designed to prevent. Placing this information in Mr. Perry Eskridge's hands would create a potential tragedy due to his Conflict of Interest.

In order for the public to retain any respect for the legal profession, I believe it is important for each and every attorney admitted to the Bar to avoid conflicts of interest and to strive for the highest ethical legal standards. Mr. Perry Eskridge is currently failing on both these counts. I would appreciate your taking action to bring him to accountability.

Thank you for your kind attention to my request. I am available to cooperate and provide any additional information you might find helpful.

AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge and belief.

Date: June 28, 2008

Signed: Darlene A. Townsend, Ph.D.

PHOENIX INSTITUTE
for
HUMAN DEVELOPMENT
EAST 2803 ELEVENTH AVENUE
SPOKANE, WASHINGTON 99202-4306
TELEPHONE (509) 536-0843
e-mail: dtownsend@iglide.net
July 26, 2008

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*Felice P. Congalton, Senior Disciplinary Counsel
Washington State Bar Association
Office of Disciplinary Counsel
1325 Fourth Avenue, Suite 600
Seattle WA 98101-2573*

*RE: WSBA File 08-01036
Grievance against R. Perry Eskridge*

Dear Felice Congalton,

Thank you for providing a copy of Mr. Eskridge's response to my Grievance. May I ask that you review my original Grievance which is based solely on inappropriate, harassing communications from Mr. Perry Eskridge. His response contains a great deal of information regarding the case of Mr. and Mrs. James Eskridge.

1) Based on the fact that Mr. and Mrs. James Eskridge consistently refused to provide me with a HIPAA-compliant "Consent for Release of Information" permitting me to discuss any information regarding their treatment, I have NO professional relationship with Mr. Perry Eskridge. Under both Washington State and Federal law, as a licensed Marriage and Family Therapist, I cannot even acknowledge the presence of a patient in my caseload without an appropriately detailed and signed "Release of Information Consent". Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not understand this point of Washington State law. He has provided you with a copy of the only document ever received from Mr. and Mrs. James Eskridge regarding his status as "their attorney" dated September 7, 2007. You will see that it does not specifically identify patient(s) by date of birth; describe specific types of information to be released; specify/restrict the beginning/ending dates for types of information to be released; state Purpose of Disclosure; provide restriction/revocation policy; and it is not "witnessed". Mr. and Mrs. James Eskridge were very familiar with the "Release" form I use (see enclosed sample) as their files each contain several of these signed forms permitting me to communicate with other professionals on

*Eskridge v. Townsend
Cause No. 09-2-02494-9*

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their behalf and the issue of "Confidentiality" was repeatedly discussed with them. Their September 7, 2007 letter is simply a "talk to my attorney" letter. Incidentally, "my attorney" in this case is also the brother of Mr. James Eskridge about whom the files referenced in the letter contain a great deal of intimate personal information. It is my belief that it is an ethical violation for an attorney to assume a professional legal representation role in a case which personally involves him, whether or not he is informed as to the specific details of his involvement.

The ONLY document I have ever received/accepted from Mr. Perry Eskridge is a letter dated October 9, 2007 which he has copied to you and which contains no appropriate "consent to release" information. Subsequent to receipt of that letter, an additional written request was sent to Mr. and Mrs. James Eskridge detailing the type of "Release/Consent" form required by law. NO response to that request was ever received from Mr. and Mrs. James Eskridge, therefore, EVERY subsequent piece of correspondence sent to my address from Mr. Perry Eskridge's address was "refused" and "returned to sender". Again, other than being victimized by his repeated attempts to circumvent my efforts to carry out my understanding regarding my legal responsibilities as a Marriage and Family Therapist, I have NO professional relationship with Mr. Perry Eskridge and, based on his lack of authorization, I believe his continued correspondence was harassment.

Mr. and Mrs. James Eskridge signed and received a written copy of my Counseling Contract (see sample enclosed); were repeatedly informed of the Phoenix Institute business policies and the State RCW and supporting WAC regulations regarding their right to obtain a copy of their files; and were assured that, with their compliance, they would be able to receive those copies. Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not understand this point of Washington State law. Instead it would appear that he has materially and substantially interfered with what should have been a relatively clear and simple process by which the James Eskridges would have received their desired information.

In his response to my Grievance, Mr. Perry Eskridge attempts to influence you to think that I am somehow unethical in my billing practices and instead simply reveals his ignorance regarding the intricacies of Medical Billing practices. I am very careful in following General and Accepted Business Practices and have been meticulous in doing so in this case. Mr. Perry Eskridge's counsel to the James Eskridges that they refuse to communicate with me resulted in their account falling into arrears and, after repeated written warnings, being assigned to Collection. Again, his unauthorized involvement resulted in material and substantial interference.

2) I have an earned Doctorate (see enclosed) and therefore own both the privilege and the obligations of the honorific "Dr." This term, along with the designation Ph.D. is legally required and used on all my professional documents and correspondence. Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not

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understand this point of Washington State law. Never in my entire life have I ever claimed or used the term M.D.! It puzzles me as to any possible reason Mr. Perry Eskridge might have to make such an allegation in his response to my Grievance against him.

3) I am licensed by Washington State as a Marriage and Family Therapist and there, as previously described, required to follow the laws regarding confidentiality. One very specific responsibility I am required to carry out is that of being a "Mandated Reporter" of child abuse. Child Abuse and Neglect not only are specifically exempted from the privilege of confidentiality in Washington State but, "reason to believe that a child ... is being abused or neglected" is mandated to be reported. Our society believes it has a responsibility to protect its children. There is NO right of confidentiality when child abuse is involved! Mr. and Mrs. James Eskridge were advised of this verbally and in writing at their very first appointment with me. See enclosed document "Information Regarding Practice" which they signed and of which they were given a copy to keep. This protocol is followed with every client of the Phoenix Institute. ~~When, in August, 2007, a client communicated to me that he was sexually abusing his sons, that client lost the right of confidentiality on that issue and I was mandated to report it.~~ Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not understand this point of Washington State law.

3) In his response, Mr. Perry Eskridge has acknowledged that it is under his tutelage that Mr. and Mrs. James Eskridge have made complaints of professional misconduct against me. I have cooperated with the Department of Health in their investigation and, when I read their report, I felt very sad for Mr. and Mrs. James Eskridge because their allegations were so blatantly false and seriously in contradiction to the written record. I am quite meticulous in my record keeping. While I acknowledge the possibility that I may have erred in some procedures and I am sure that the Health Department Board will carefully examine the entire Complaint, I believe the majority, if not all, of the Eskridge claims will be exposed as being clearly untrue with their falsehood being supported by the multiple sources contained in the files.

4) Until I received Mr. Perry Eskridge's threatening voice mail message left at 6:29 p.m. on June 25, 2008, I was unaware that he was attempting to serve a subpoena and, as previously stated in my Grievance, I was not in residence that entire evening. He presents to you two "Declarations of Diligence" neither of which is dated June 25th. One ludicrously states that "an older woman ... hit the floor and crawled away and come to the door". First of all, at my stage of life ("an older woman") and physical condition, it would not be possible for me to "hit the floor and crawl away". Secondly, if indeed such an activity had occurred, given the design structure of my home/office, it would not be possible for a person to observe such physical activity from outside the structure.

My home/office is located in a very secluded isolated area and I am often here alone. It is my understanding that, in this country, "a person's home is their castle" and I know of no law which requires a person to open their home to strangers. Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not understand this

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point of Washington State law. When someone I do not know knocks at the door, I do not know if they are religious missionaries; someone wanting to re-roof my house; someone wanting to landscape my yard; or someone wanting to commit a home invasion burglary, and I am not desirous of admitting any of those persons to "my castle". I simple do not open the door to strangers! I do recall one evening a few weeks ago when my dogs were highly upset and barking. I went to the doorway of the waiting room and observed an ill-kempt, very casually dressed middle aged male wildly gesticulating in front of the building. He then began pounding on the front door. I picked up the phone ready to call 9-1-1, but he did go away and I thought nothing more of it. Perhaps that was a person attempting to serve a subpoena, but perhaps not—who knows. I do provide mental health services in this building and must always be quite observant of safety issues. Mr. Perry Eskridge apparently believes that his intention and "thought waves" are so powerful that he can use them to communicate to people three hundred miles away that he is attempting to provide them with a subpoena and that they then use that information to avoid "service". With apologies for bursting the bubble of his ego, but he simply does not have that power and I did not use my energies on that regard.

5) Mr. Perry Eskridge appears to allege inappropriate behavior on my part in that I am not yet represented by Counsel. I do not believe there is any law which requires me to be represented at this time. When I received the Complaint from the Department of Health, it included the suggestion that I could be represented by legal counsel. I discussed this with the carrier of my professional insurance and, because a) I believe that I have acted in accordance with the law; and b) ~~I believe that the Complaint was based on the mental illness characteristics of the perpetrator whom I had reported to the authorities as having admitted to me the sexual abuse of his children; and~~ c) I trust in the Law which requires me to perform as a Mandated Reporter, although I am all too aware of the lack of resources of the Child Protective Services Division of DSHS, I chose not to have legal representation at this time. I have carried out my responsibilities with integrity, honesty and in accordance with the Best Practices of my profession. I have nothing to hide; my records are available to the Department of Health; and I cooperate fully with that Department. ~~It is completely characteristic of the mental health status of this perpetrator that he will deny and blame others; he will refuse to accept responsibility for his actions; and as long as he is protected by his victims, his family, his socioeconomic status, his free attorney, etc., he will avoid detection and consequences. However based on his diagnosis, he is highly likely to continue to abuse any victims he can access and as a skilled professional, I firmly believe that someday, unfortunately, these actions and their damages will become apparent to society.~~ You will note that the Complaint was made prior to any of the financial problems which later arose due to the refusal of the James Eskridges to provide me with accurate information regarding their medical insurance. As Ms. Eskridge discovered almost a year later, that whole portion of their concerns could have been completely avoided had not Mr. Perry Eskridge become involved and prevented the James Eskridges' communication with me.

I tolerated Mr. Perry continued inappropriate attempts to contact me by mail even though Mr. and Mrs. James Eskridge had been notified of the inappropriateness of those actions without

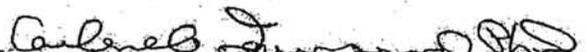
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their legal consent. However, when I received the hostile, threatening phone message, I came to the point of refusal to tolerate any further harassment and prepared the Grievance. Subsequent to the phone message and after I had written the Grievance, another letter was sent from Mr. Perry Eskridge's address and again it was "refused" and "returned to sender". I cannot acknowledge Mr. Perry Eskridge's claim of legal representation of Mr. and Mrs. James Eskridge without proper Consent. Mr. Perry Eskridge has apparently been admitted to the Bar in Washington State, but apparently does not understand this point of Washington State law.

Thank you for your kind attention to my Grievance. Again, I am available to cooperate and provide any additional information you might find helpful.

AFFIRMATION

I affirm that the information I am providing is true and accurate to the best of my knowledge and belief.


Signed: Darlene A. Townsend, Ph.D.

Date: July 26, 2008

From: Nathan Weinbender [mailto:NathanW@SPOKESMAN.com]
Sent: Wednesday, June 27, 2012 4:18 PM
To: Robin Balow
Subject: Bill strengthens SLAPP suit law

Bill strengthens SLAPP suit law

Council members seek more protection against litigation
Richard Roesler Staff writer

Publication Date: February 1, 2002 Page: B1 Section: THE REGION Edition: SPOKANE

Citing their own experience as defendants in a lawsuit, three Spokane City Council members on Thursday urged a Senate panel to strengthen the protections of citizens publicly speaking out against "deep-pocket special interests."

"I think our founding fathers were clear that they wanted public officials to speak on controversial issues," Councilman Steve Corker told the Senate Judiciary Committee.

The bill, SB 6522, would give people immunity from civil lawsuits over what they tell a government agency. The law now requires that such information be communicated "in good faith," typically meaning the person believes the information is true.

Corker, Steve Eugster and Cherie Rodgers were named last June, along with former Mayor John Talbott, in a lawsuit by the developers of the River Park Square shopping mall in downtown Spokane. The developers alleged that the four colluded to thwart the mall project, and that comments made about the project and its developers are part of a larger pattern of action to ruin the mall.

An attorney for the plaintiff said in a telephone interview the change would allow people to lie with impunity to government agencies.

"I think it's an atrocious amendment," Duane Swinton said.

The council members, citing the fact that the lawsuit named their spouses, contend it is a "SLAPP suit," intended to intimidate and discourage public criticism of the controversial project. SLAPP stands for Strategic Litigation Against Public Participation. Washington passed a law in 1989 affording some protection from SLAPP suits.

The new bill would broaden protections from such lawsuits and allow successful defendants to recover court and attorney's costs, as well as \$10,000 in statutory damages.

In the council members' case, a Superior Court judge dismissed the suit, but Swinton confirmed that the developers intend to re-file.

"Obviously, our experience is an indication that the legislation has to be made much stronger," Eugster said after the hearing. "People who would squelch political speech have to be told they cannot do so." Rodgers told the committee that she has spent \$80,000 - mostly from a second mortgage on her home - fighting the lawsuit.

"I don't care if the pope himself owned River Park Square - and I'm Catholic - I would still question public/private partnerships," she said. She said she's likely to start public fund-raisers if her legal costs mount.

Swinton said the criticism is a small element of the case, which revolves mainly around the mayor and council members' vote against a loan of parking meter revenue early last year.

"We didn't sue them for defamation," he said.

Spouses were named in the civil suit because Washington is a community property state, he said.

If the bill passes, he said, people would have carte blanche to lie about anyone to government, such as knowingly making false statements to police about neighbors.

"They're asking for complete immunity for a citizen to make false statements to a government agency,

in bad faith," Swinton said. "I've never seen anything like it."

River Park Square LLC and RPS II are affiliates of Cowles Publishing, which owns The Spokesman-Review.

The committee seemed sympathetic to the bill and the council members.

"This isn't just Spokane where this is occurring," said Sen. Pam Roach, R-Auburn.

"All this does is stymie public debate and it's grossly unfair," said Sen. Bob McCaslin, R-Veradale.

"And it should be illegal."

The bill's prime sponsor, Sen. Adam Kline, D-Seattle, said it's likely to be approved by the committee, which would move it closer to a vote in the full Senate.

YES, DataTimesMEMO: Richard Roesler can be reached at (360) 664-2598 or by e-mail at srwestside@attbi.com

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 2nd day of July, 2012, the foregoing APPELLANT'S APPENDIX was caused to be filed with the following Court:

Court of Appeals of the
State of Washington,
Division III
500 N Cedar St
Spokane, WA 99201-1905

- By Hand Delivery
- By U.S. Mail
- By Overnight Mail
- By Facsimile Transmission
- By Email to

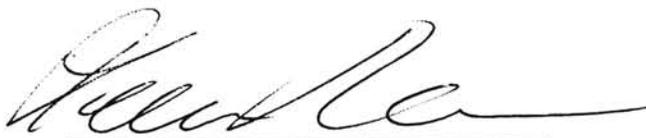
*1 Original, plus 1 Copy

Also, Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 2nd day of July, 2012, the foregoing APPELLANT'S APPENDIX was caused to be served to the following:

John Allison
Eymann, Allison, Hunter &
Jones
2208 West Second Avenue
Spokane, WA 99201
(509) 747-0101

- By Hand Delivery
- By U.S. Mail
- By Overnight Mail
- By Facsimile Transmission
- By Email to

*Attorney for James Henry and
Amy Dawn Eskridge*



Lennie M. Rasmussen