

**BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY**

In the Matter of
Robert G. Neal, Ph.D., L.P.
License No. LP0301

STIPULATION AND
CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Robert G. Neal, Ph.D., L.P. (Licensee) and the Minnesota Board of Psychology (Board) as follows:

1. During all times herein, Licensee has been and now is subject to the jurisdiction of the Board from which he holds a license to practice psychology in the state of Minnesota.

FACTS

2. For the purpose of this stipulation, the Board may consider the following facts as true:

Background

a. Since at least 1987, Licensee's psychology practice has involved visiting various board and care facilities for the mentally ill in the Minneapolis area to provide psychotherapy to Medicaid recipients on the facility premises.

b. In 1996, Licensee began bringing these clients to his home for the purported purpose of treating them there. At the same time, Licensee's wife decided to set up a transportation service company, Special Care Transportation, Inc. (SCT), for the sole purpose of transporting Licensee's Medicaid clients from the facilities to Licensee's home; payment for the service would come from Medicaid. Licensee's wife established herself as the incorporator, owner, and president of the transportation company, Special Care Transportation, Inc. In addition, Licensee initially financed SCT, and both Licensee and his wife were signatories on the SCT checking account.

Exhibit A

c. In order to receive reimbursement from Medicaid for the transportation service, SCT first had to be enrolled as a Medicaid provider. Licensee's wife, however, was not eligible to participate as a Medicaid provider, because she had been convicted of felony theft of Medicaid funds in 1986. Thus, despite the fact that Licensee and his wife controlled SCT, they submitted the Medicaid provider enrollment application and the provider agreement to the Department of Human Services (DHS) under the signature of the husband of their office manager/secretary. They did not reveal to DHS that Licensee's wife was the owner of SCT. Effective January 31, 1996, SCT was enrolled as a service provider in the state Medicaid program.

d. Licensee's conduct in providing therapy to these mentally ill, Medicaid-covered clients, as well as his involvement in SCT violated numerous laws and rules governing the practice of psychology and ultimately led to a felony conviction, as described more fully below.

Client #1

e. From approximately 1986 to February 14, 1996, client #1, age 59, was admitted to a nursing home with a diagnosis of chronic schizophrenia and borderline intellectual functioning. Client #1 previously had been living at a board and care facility, but he was transferred to the nursing home when his functioning deteriorated to the point of his being incontinent and otherwise unable to maintain basic hygiene. Licensee had been providing psychological services to client #1 for the past ten years, and arrangements were made by the nursing home staff for client #1 to continue seeing Licensee on an outpatient basis. With respect to client #1 the following occurred:

1) Licensee would contact the nursing home to set up appointments for client #1 and Licensee or his wife would arrange transportation of client #1 to Licensee's home or office, billing Medicaid for the service. Client #1 had such sessions with Licensee on at least the following dates: 4/25/96; 4/30/96; 5/1/96; 5/3/96; 5/7/96; 5/8/96; 5/14/96; and 5/15/96.

2) Each time Licensee sought to take client #1 off the nursing home premises, nursing home staff filled out a referral form that was sent to Licensee with instructions that he complete the section for provider's notes and orders and return it to the nursing home. The purpose of completing and returning the form was to keep client #1's care providers informed of his status and to coordinate his care. Licensee failed to return the referral forms, despite nursing home staff making several phone calls to his office requesting the necessary treatment information.

3) Licensee's failure to provide any information to the nursing home staff and client #1's other care providers about the therapy he was providing to client #1 and his treatment plan/goals created obstacles for client #1's care team in deciding how best to treat him. Finally, in an attempt to obtain some information in this regard, the medical records director, at the direction of client #1's primary physician and nurse practitioner, spoke with Licensee and asked for clarification of his services to client #1. Licensee told the director that client #1 was transported to Licensee's home for "yard therapy." Licensee was unwilling to provide any further information.

4) Client #1 continued to decline in functioning and was hospitalized at Hennepin County Medical Center for psychiatric care from June 10 to June 20, 1996. The HCMC staff performed a psychometric examination and determined that client #1 had Alzheimer's type dementia underlying his preexisting schizophrenia. During this hospitalization, the psychiatric team noted the need for and continued absence of information from Licensee regarding his treatment goals and plans for client #1.

5) Also during client #1's hospitalization from June 10 to June 20, 1996, client #1's psychiatrist, primary care physician, nurse practitioner, and the psychologist who examined client #1 at HCMC concluded that client #1 was no longer an appropriate candidate for psychotherapy.

6) On June 17, 1996, in an effort to obtain the missing information about Licensee's treatment of client #1, the nursing home's consulting psychologist wrote to

Licensee, requesting clarification of Licensee's services to client #1, especially with respect to his "yard therapy." After receiving the psychologist's letter, Licensee requested that the facility send releases to obtain the information. The facility obtained the releases, and on July 22, 1996, the consulting psychologist renewed his request for information to Licensee, enclosing the releases with his letter. Licensee did not respond. On September 24, 1996, the consulting psychologist wrote a third time to Licensee, asking for information about his care of client #1.

7) After receipt of the third letter, Licensee and his wife appeared unannounced at the nursing home and met with the administrator, director of nursing, and director of social services. At the meeting, Licensee admitted he had not sent client #1's completed referral forms back to the nursing home.

8) Approximately a week after the meeting with the nursing home's administrative staff, Licensee sent a batch of the missing referral forms for client #1 to the nursing home. Some were filled out in handwriting other than Licensee's, but signed with his name. The referral forms were for appointments dated five months earlier.

9) Licensee's treatment plan for client #1 was undated and was not signed by either Licensee or client #1.

10) On October 8, 1996, Licensee finally sent the nursing home administrator a written description of his treatment of client #1. Licensee maintained that telling the facility's medical records administrator that client #1 was receiving "yard therapy" was "meant merely as a tactful reply, which did not breach confidentiality . . ." Licensee's primary therapeutic objective was to keep client #1 out of the hospital or higher level of care. One of Licensee's treatment goals was to eventually return client #1 to the board and care facility, which Licensee described as a less restrictive board and lodging facility. One of Licensee's treatment modalities for client #1 was "operant conditioning," which Licensee described as a treatment based upon a token economy which rewards a pattern of good behavior and reinforces more appropriate behaviors. Licensee stated that typical tokens

include cigarettes, non-alcoholic beverages, and snacks. Licensee questioned client #1's recent diagnosis of "Alzheimer's Dementia" and instead believed that client #1 was exhibiting schizophrenic decompensation.

11) Licensee disregarded the opinions of client #1's other treating professionals that client #1 was moderately to severely impaired, was experiencing progressive dementia superimposed on his preexisting dysfunction from schizophrenia, would not benefit from psychotherapy, and needed to be placed in a supervised living environment. Licensee continued to attempt to provide psychotherapy services to client #1 and recommended that client #1 be returned to live at the board and lodge facility, despite the nursing home staff's opinion that the placement was inappropriate and would endanger the safety of client #1.

Criminal Action and General Misconduct

f. On June 10, 1997, a Summons and Complaint was filed in Ramsey County District Court charging Licensee with eight counts of Theft by Swindle - Aiding and Abetting, in violation of Minn. Stat. §§ 609.52, subs. 2(4), 3(2) and 609.05; and two counts of Theft by Swindle, in violation of Minn. Stat. §§ 609.52, subs. 2(4), 3(1) and 609.05. The first eight counts related to Licensee's use of SCT, owned and operated by his wife, to swindle DHS of public funds from Medicaid for special transportation services. The last two counts related to evidence that Licensee swindled DHS of Medicaid funds through fraudulent claims for psychotherapy and psychological testing. On October 7, 1997, an Amended Complaint was filed, amending certain underlying facts related to claims submitted for psychotherapy and psychological testing and the dollar amounts related to those claims in Counts IX and X. The criminal action was based on the following conduct by Licensee:

1) Licensee and his wife misrepresented the transportation services they provided as being medically necessary, as required for Medicaid reimbursement. For example, a review of the DHS claims and payment histories of Medicaid recipients transported by SCT from one of the board and care facilities to Licensee revealed that the special transportation was not medically necessary. Specifically, twenty-five out of twenty-eight of

those residents who received special transportation services from SCT to see Licensee from February 1996 through June 1996, also received medical services from other providers. These clients, however, did not receive special transportation to obtain the other medical services.

2) Licensee and his wife submitted inaccurate claims to Medicaid for the transportation services provided by SCT, and the inaccurate submissions benefited them financially. Each claim submitted for transportation service reimbursement to SCT was for individual transportation, even though the SCT driver often transported more than one client at a time. Medicaid pays one rate for an individual transportation, but it will only pay a portion of that rate for each additional person being transported simultaneously with the first individual.

3) Licensee and his wife swindled DHS of Medicaid funds by creating and fraudulently enrolling SCT in the Medicaid program and using SCT to falsely represent that all the special transportation services provided by SCT to Medicaid recipients were medically necessary and were individual transportations. From approximately February 1996 through June 1996, Licensee and his wife d/b/a/ SCT, aided and abetted one another in causing false claims for special transportation services to be submitted to DHS on 89 different dates. This resulted in DHS being swindled into issuing eight separate payments to SCT during that same period for a total of \$44,632.85.

4) Licensee, his wife, or members of their staff regularly appeared at board and care facilities to "round up" residents to be transported by SCT for therapy with Licensee. This process included walking down the halls of the facilities and knocking on doors to see if any of the residents would agree to come for a therapy session. Recruitment efforts included inducing the residents with meals, pop, and cigarettes to get them to agree to come to the psychotherapy sessions.

5) Licensee and his wife regularly gave lunches and cigarettes to those Medicaid recipients who agreed to come to therapy. SCT business records included receipts and canceled SCT business checks covering lunch and cigarette expenses.

6) Psychotherapy sessions at Licensee's residence involved the clients sitting around the backyard deck and pool. In a conversation with the staff of a nursing facility where one of his clients resides, Licensee referred to these psychotherapy sessions as "yard therapy."

7) Licensee failed to maintain even the most minimal records on his clients and the psychotherapy services he allegedly provided them as required by Board rules, as well as Medicaid regulations and rules. Medicaid regulations and rules require signed and dated documentation of diagnostic assessments, treatment plans, progress notes and psychological testing, whenever such services are provided and billed to the Medicaid program. Licensee failed to meet these requirements. For example:

a) One facility made numerous requests to Licensee for documentation of services he had provided to clients in his home. Receiving no response, the facility ultimately threatened to terminate Licensee's contract to provide services at the facility. Licensee then, on April 26, 1996, sent handwritten notes to the facility, purportedly documenting services to clients from October 1995 through April 1996.

b) A records review of services provided to 61 clients between approximately January 2, 1996 through July 2, 1996, revealed that none of Licensee's treatment plans were dated and none were signed either by Licensee or the client. In most instances there were multiple copies of the same plan in the file and all were generated from a computer which utilized a similar format for all plans. The plans did not incorporate the results of tests or assessments or treatment information from progress notes from therapy sessions. In almost every file the plan did not change for the clients after the first plan was printed.

c) For the same 61 clients, claims were submitted to Medicaid representing that Licensee had provided 572 individual and group therapy sessions. Licensee's records contain only 17 separate progress notes relating to the 572 sessions, and none of the

17 therapy notes are dated or signed. DHS paid Licensee \$30,080.76 for these psychotherapy claims.

8) During the same six-month period, Licensee also submitted claims to Medicaid representing that he conducted 45 separate diagnostic assessments of clients. Medicaid paid Licensee \$4,170.43 for the assessments. There was documentation for only one diagnostic assessment in all of the 61 client files.

9) During the same time period, Licensee submitted 40 claims to Medicaid for providing explanations of his findings to clients or responsible parties. Licensee received \$2,279.68 from these claims. Licensee had no documentation whatsoever of his provision of this service.

10) Licensee employed others to conduct psychotherapy sessions with his clients and then falsely represented to DHS that he personally provided the psychotherapy. Medicaid rules and regulations require that psychotherapy only be provided by a licensed mental health professional. One of Licensee's employees held a Ph.D. in Education, but was not qualified to be a licensed mental health professional. Licensee told the employee that the employee could provide psychotherapy to Licensee's clients so long as Licensee supervised the employee and co-signed the therapy notes. In May 1996, the employee provided psychotherapy and related diagnostic assessments to 27 separate Medicaid recipients. The claims submitted to DHS for reimbursement for the services provided by the employee represented that Licensee provided all the services. DHS paid \$757.60 in Medicaid funds to Licensee for these claims.

11) Licensee allowed unqualified individuals to conduct psychological testing with his clients and submitted claims to DHS for this testing in violation of DHS rules and regulations. Licensee knew that he could not submit claims to DHS for payment for psychological testing conducted by someone other than Licensee. Nevertheless, Licensee allowed at least five employees to conduct psychological testing. Two of the employees, Licensee's housekeeper and the office manager of his psychology practice and SCT, had no

training and no license that qualified them to conduct psychological testing. Both individuals administered psychological tests to Licensee's Medicaid clients at Licensee's direction.

12) From approximately January 2, 1996, through July 2, 1996, 214 claims for psychological testing services were submitted for Medicaid reimbursement, and all of the claims represented that Licensee personally conducted the testing. Licensee was paid \$9,167.80 in Medicaid funds for these services. There are records for only 178 of the 214 tests billed. The employee with the Ph.D. in Education conducted 117 tests. Of the 61 tests that this employee did not conduct, 59 do not indicate who conducted them. Of those 59 tests, 57 were incomplete, unscored, or unreported. Only two of the 178 tests indicated that Licensee had conducted them, but one test was incomplete and the other unscored.

13) From approximately January 1996 through June 1996, Licensee and his wife submitted 1,040 false claims to DHS for psychological testing and psychotherapy services, which resulted in DHS being swindled into paying Licensee \$45,698.67.

g. On January 20, 1998, following settlement discussions between Licensee's attorney and the state's attorneys, a Second Amended Complaint was filed in Ramsey County District Court charging Licensee with one felony count of Theft by Swindle. On the same date, Licensee signed a Petition to Enter Plea of Guilty in Felony Case and it was filed with the court. Licensee pled guilty to a felony offense of Theft by Swindle, in violation of Minn. Stat. §§ 609.52, subs. 2(4), 3(2) and 609.05 as follows:

In that the defendant, ROBERT GORDON NEAL, being aided and abetted by [wife] and aiding and abetting [wife], during the period of about January 1, 1996 through June 30, 1996, in Ramsey County, Minnesota, wrongfully and unlawfully swindled the Minnesota Department of Human Services, whether by artifice, trick, device or other means, into paying public funds for fraudulent claims for psychological testing, psychotherapy, and related special transportation services in an amount exceeding \$2500, namely approximately \$19,925.80, and that the defendant thereby obtained that amount of money for himself or others.

h. Licensee admitted to the following during his plea hearing on January 20, 1998:

1) Licensee admitted that many of the psychological tests were not completed and scored, and that he did not prepare an interpretation of findings and report for the individual tests administered.

2) Licensee admitted he was aware that incomplete or unreported psychological testing is not a covered service for which Medicaid will pay, and that he was aware that his wife used his program provider numbers to bill Medicaid for the incomplete and unreported testing. Licensee further admitted that Medicaid paid over \$9,000 for the psychological testing billed.

3) Licensee admitted hiring an unlicensed professional to conduct psychotherapy sessions with some of his chronically mentally ill Medicaid clients, and he was aware that psychotherapy provided to Medicaid recipients by an unlicensed mental health professional is not a covered service for which Medicaid will pay.

4) Licensee admitted he was aware that his wife used his provider number to bill Medicaid for the psychotherapy sessions conducted by the unlicensed person, and that Medicaid paid over \$500 for these services.

5) Licensee admitted he was aware that his wife also submitted claims to Medicaid and was paid by Medicaid for providing clients transportation for the psychological testing and for psychotherapy sessions with the unlicensed person, and that Medicaid will only pay for transportation for covered services.

6) Licensee knew that Medicaid paid approximately \$10,000 for transportation services related to the psychotherapy and psychological testing the unlicensed person performed.

7) Licensee agreed that the amount of restitution the Department of Human Services was claiming for the psychological testing Licensee was pleading guilty to was \$9,167.80.

i. Licensee's January 20, 1998, Plea of Guilty also provided that Licensee agreed that DHS could make an administrative recovery of \$36,530.97 paid to Licensee for psychotherapy claims for the time period of January 1996 through June 1996.

j. On April 1, 1998, Licensee was sentenced in Ramsey County District Court. The judge ordered that imposition of sentence be stayed and that Licensee be placed on probation for a period of up to ten years. Licensee was ordered to serve 60 days in the Ramsey County Correctional Facility with credit for one day served. Licensee was advised that he was eligible for home confinement or work release and was instructed to turn himself into the workhouse in the next two weeks. Second, Licensee was ordered to make restitution payments in the total amount of \$49,198.77, according to the restitution repayment plan on file. Third, Licensee was ordered to perform 200 hours of community service. Fourth, Licensee was ordered to comply with the usual conditions of probation and to remain law abiding. The judge directed the probation officer present to include in his report the judge's recommendation that the community service unit look seriously at allowing Licensee to perform his 200 hours of community service at the board and care facility at which Licensee had previously provided services.

k. In addition to the items to which he pled guilty in his criminal case, Licensee failed to safeguard the private information of his clients. When Licensee met with the Committee on July 26, 1998, he stated that he had kept client records in an unsecured manner in his home and that his wife, having full access to them, had taken them from the home without Licensee's knowledge.

REGULATIONS

3. The Board views Licensee's practices as described in paragraph 2 above to be in violation of statutes and rules enforced by the Board. Licensee agrees that the conduct cited above constitutes a violation of Minn. Stat. § 148.941, subd. 2(a)(1) (violation of statute or rule enforced by Board); Minn. Stat. § 148.941, subd. 2(a)(2) (fraudulent, deceptive or dishonest conduct); Minn. Stat. § 148.941, subd. 2(a)(3) and Minn. R. 7200.5700

(unprofessional conduct); Minn. Stat. § 148.941, subd. 2(a)(4) (criminal conviction); Minn. Stat. § 148.941, subd. 2(a)(10) (fee splitting); Minn. Stat. § 148.98 (1996) (code of conduct violation); Minn. R. 7200.4700 (failure to safeguard private information); Minn. R. 7200.4810, subp. 1 (impaired objectivity); Minn. R. 7200.4810, subp. 3 (failure to terminate services when objectivity impaired); Minn. R. 7200.4900, subp. 6 (failure to terminate services when client not likely to benefit from continued services); Minn. R. 7200.4900, subp. 7a (exploitation of clients); Minn. R. 7200.4900, subp. 9 (failure to coordinate client services with other professionals); Minn. R. 7200.5200, subp. 3 (billing misrepresentations); Minn. R. 7200.5200, subp. 4 (claiming fees for services when not the direct service provider); Minn. R. 7200.5300 (aiding and abetting unlicensed individuals in the independent practice of psychology); Minn. R. 7200.5500 (violation of law related to provision of psychological services); Minn. R. 7200.5600 (engaging in conduct likely to deceive or defraud the public or the Board), and constitutes a reasonable basis in law and fact to justify the disciplinary action provided for in the order.

REMEDY

4. Licensee and the Committee hereby agree that upon this stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, the Board may make and enter an order as follows:

a. Licensee shall **SURRENDER HIS LICENSE** to the Board within three days of receipt of this Order by mailing it to Pauline Walker-Singleton, Board of Psychology, Suite 320, University Park Place, 2829 University Avenue SE, Minneapolis, Minnesota 55414-3237.

b. Licensee shall not practice psychology in Minnesota.

c. Licensee shall immediately cease to advertise or otherwise hold himself out in any manner as being a licensee in this state.

d. Upon Licensee's surrender of his license to practice psychology in Minnesota, the Board agrees to close its files in this matter.

5. Licensee shall have sixty (60) days from the date of this order to conclude his practice. During these sixty days, the only psychological service that Licensee may perform is to secure appropriate referrals for existing clients and conclude the administrative details necessary to close his practice.

6. This stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Licensee justifying disciplinary action which occurred before or after the date of this stipulation and which is not directly related to the specific facts and circumstances set forth herein.

7. In the event the Board at its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, then, and in that event, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party to this stipulation, except that Licensee agrees that should the Board reject this stipulation and this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating to this matter.

8. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board.

9. Licensee has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Although aware of his right to representation by counsel, Licensee has knowingly and expressly waived that right.

10. Licensee waives all formal hearings on this matter and all other procedures before the Board to which Licensee may be entitled under the Minnesota or United States constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

11. Licensee hereby acknowledges that he has read, understands, and agrees to this stipulation and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation,

Licensee acknowledges that he is fully aware that the stipulation shall be approved by the Board. The Board may either approve the Stipulation and Order as proposed, approve the Stipulation and Order subject to specified change, or reject it. If the changes are acceptable to Licensee, the stipulation will then take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the stipulation, it will be of no effect except as specified herein.

12. This Stipulation and Consent Order constitutes a disciplinary action against the Licensee.

13. This Stipulation and Consent Order is a public document and will be sent to all appropriate data banks.

14. This stipulation contains the entire agreement between the parties there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

BOARD OF PSYCHOLOGY

COMPLAINT RESOLUTION
COMMITTEE

Robert G. Neal, Ph.D., L.P.
ROBERT G. NEAL, Ph.D., L.P.

Licensee

Dated: 8 September, 1998

Gerald T. Kaplan
GERALD T. KAPLAN, M.A., L.P.

Dated: Sept. 18, 1998

Jane Hovland
JANE HOVLAND, Ph.D., L.P.

Dated: 18 Sept., 1998

Sharon Andrews
SHARON ANDREWS

Dated: Sept 18, 1998

Ramona I. Advani
RAMONA I. ADVANI

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St. Paul, MN 55103-2106
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Attorney for Committee

Dated: Sept. 18, 1998

ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,
IT IS HEREBY ORDERED that the Board approves, adopts and implements the terms
of the stipulation and accepts the permanent SURRENDER of Licensee's license to practice
psychology in the State of Minnesota effective this 18th day of Sept, 1998.

MINNESOTA BOARD

OF PSYCHOLOGY


PAULINE WALKER-SINGLETON
Executive Director

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