

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF PSYCHOLOGY

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NO.: 2002-28696

DONALD JEFFERY JOHNSON, Ph.D.,

Respondent.

**ORDER REJECTING STIPULATION AND
OFFERING COUNTER TERMS**

Respondent, Donald Jeffery Johnson, is a licensed psychologist in the State of Florida, license number PY 4853. Petitioner filed an Administrative Complaint against Respondent on or about May 25, 2004, a copy of which is attached hereto as Exhibit "A" and incorporated by reference into this Order, and the parties entered into a stipulated disposition. On October 15, 2004, the Board of Psychology (hereinafter the "Board"), at its meeting in Ft. Lauderdale, Florida, voted to reject the stipulation, a copy of which is attached as Exhibit "B" and incorporated by reference into this Order, as an inadequate disposition in this case. Respondent was present at the meeting and was not represented by counsel. Petitioner was represented by Richard J. Shoop, Prosecuting Attorney. The Board was represented by Mary Ellen Clark, Assistant Attorney General.

Upon consideration of the Administrative Complaint and the proposed Settlement Stipulation in this matter and being otherwise fully advised in the premises, the Board voted to REJECT the stipulation as an acceptable disposition of this case. The Board voted to offer Respondent a Counterstipulation. The terms of the Counterstipulation are embodied in this

Order and consist of all the terms in the original stipulation, except where modified below:

1. Paragraph 2 of the Stipulated Disposition FINE is modified to provide that payment of the Fine shall be received by the Board no later than December 31, 2005.

2. Paragraph 3 of the Stipulated Disposition REIMBURSEMENT OF COSTS is modified to provide that payment of the Costs shall be received by the Board no later than December 31, 2005.

3. Paragraph 4 of the Stipulated Disposition is replaced in its entirety as follows:

COMPENSATION. In addition to the amount of any fine and or costs noted above, Respondent shall pay two thousand four hundred dollars (\$2,400.00) in compensation to Patient, D.Q., and present proof of having done so, satisfactory to the Board, no later than December 31, 2005.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COMPENSATION IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COMPENSATION IS NOT PAID AS AGREED HEREIN, SPECIFICALLY: IF RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION FROM THE BOARD ACKNOWLEDGING RECEIPT OF PROOF SATISFACTORY TO THE BOARD THAT THE FULL AMOUNT OF THE COMPENSATION NOTED ABOVE HAS BEEN PAID TO PATIENT, D.Q., BY DECEMBER 31, 2005, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD . (SEE EXHIBIT A OF THE CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.)

4. Paragraph 14 of the Stipulated Disposition is added as follows:

EVALUATION AND SUPERVISION. For one year following the entry of the Final Order in this matter, Respondent shall be required to practice under the indirect supervision of a licensed

psychologist, who practices neuropsychology within twenty (20) miles of Respondent's practice and is approved by the Board. The Board hereby delegates the selection of the supervisor to the Board Chair, pending ratification by the full Board. Respondent shall submit the resumes of three potential supervisors to the Board within 30 days of the entry of this Final Order. The supervisor shall review monthly twenty-five percent (25%) of Respondent's records and provide quarterly written reports to the Board beginning three months after the entry of the Final Order in this matter.

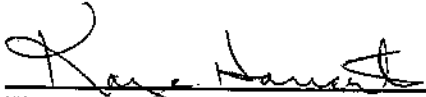
Respondent accepted the Counterstipulation at the meeting. Wherefore, it is hereby

ORDERED AND ADJUDGED:

1. The Counterstipulation is hereby approved and adopted in toto and incorporated herein by reference.
2. Respondent will adhere to and abide by all of the terms and conditions of the Counterstipulation.
3. This Order shall be placed in and become a part of Respondent's official records and shall become effective upon filing with the agency Clerk for the Department of Health.

DONE AND ORDERED this 15th day of November,
2004.

BOARD OF PSYCHOLOGY


Kaye Howerton, Executive Director
for Amy Swan, Psy.D., Chair

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by United States Mail to Donald J. Johnson, Ph.D., 5051 Castello Drive, Suite 213, Naples, FL 34103; and by interoffice mail to Richard Shoop, Esquire, Department of Health, Prosecutorial Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, FL 32399-3265 and Mary Ellen Clark, Assistant Attorney General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050 this 3 day of November, 2004.

Erica Milam
Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Exhibit A

PETITIONER,

v.

CASE NO. 2002-28696

DONALD JEFFERY JOHNSON, Ph.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Psychology against Respondent, Donald Jeffery Johnson, Ph.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of psychology pursuant to Section 20.43, Florida Statutes, and Chapters 456 and 490, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed psychologist within the state of Florida, having been issued license number PY 004853 on January 22, 1993.

3. Respondent's address of record is 5051 Castello Drive, Suite 213, Naples, Florida 34103.

4. On or about September 14, 2000, Respondent began treating Patient D.Q., a 48 year-old female, for depression and anxiety, secondary to a closed head injury that the patient had sustained in a motor vehicle accident some years ago.

5. Patient D.Q. had also hired an attorney who was pursuing a disability determination on the patient's behalf.

6. In order to make a disability determination, the Division of Disability Determinations (hereinafter "DDD") requested Respondent's records for Patient D.Q.

7. On or about March 27, 2001, DDD wrote a letter to Patient D.Q. stating that Respondent never responded to DDD's records request.

8. On or about August 15, 2002, the Administrative Law Judge (hereinafter "ALJ") assigned to hear Patient D.Q.'s disability case sent a letter to Respondent asking him to turn over the patient's records so that a disability determination could be made.

9. On or about October 9, 2002, the ALJ sent a subpoena by certified mail to Respondent at his address of record, asking him to turn over a copy of Patient D.Q.'s records within 20 days. The subpoena was signed for by the Respondent on October 11, 2002.

10. On or about October 15, 2002, Patient D.Q.'s attorney sent a certified letter to Respondent at his address of record, along with a Authorization to Release or Obtain Information signed by Patient D.Q., asking Respondent for a copy of Patient D.Q.'s records. This letter was received and signed for by the Respondent on or about October 17, 2002.

11. Respondent failed to timely respond to any of the records requests made by DDD, Patient D.Q.'s attorney, or the ALJ.

12. Respondent's failure to respond to the records request from DDD, Patient D.Q.'s attorney, and the ALJ resulted in Patient D.Q. being unable to obtain disability benefits for nearly two years.

13. Respondent's billing records indicated individual psychotherapy sessions with Patient D.Q. on 9/29/00, 10/10/00, 12/01/00, 12/13/00, 12/21/00, 12/28/00, 1/05/01, and 1/09/01.

14. Respondent's treatment records do not reflect that psychotherapy sessions took place on those dates.

COUNT ONE

15. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14) as if fully set forth herein.

16. Section 490.009(1)(w), Florida Statutes (2000) (2001) (2002), provides that violating any provision of Chapter 490 or Chapter 456, or any rules adopted pursuant thereto, constitutes grounds for disciplinary action by the Board of Psychology.

17. Section 456.057(4), Florida Statutes (2000) (2001) (2002), requires any licensed health care practitioner who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person, to, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, Chapter 490 psychological, or Chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records.

18. Section 456.057(5)(a)3, Florida Statutes (2002), provides that, in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records, a health care practitioner shall furnish a copy of a patient's medical records to the party that issued the subpoena.

19. Respondent violated Section 456.057(4), Florida Statutes (2000) (2001) (2002), by failing to furnish, upon request by DDD, Patient D.Q.'s attorney, and the ALJ, in a timely manner, copies of all reports and records relating to his treatment of Patient D.Q., or a report of such treatment in lieu of the records.

20. Respondent violated Section 456.057(5)(a)3, Florida Statutes (2002), by failing to turn over the medical records to the ALJ in compliance with the subpoena issued on or about October 9, 2002.

21. Based on the foregoing, Respondent has violated Section 490.009(1)(w), Florida Statutes (2000) (2001) (2002), by violating a provision of Chapter 490 or Chapter 456, or any rules adopted pursuant thereto.

COUNT TWO

22. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14) as if fully set forth herein.

23. Section 490.009(1)(h), Florida Statutes (2000) (2001) (2002), provides that failing to perform any statutory or legal obligation placed upon a person licensed under Chapter 490 constitutes grounds for disciplinary action by the Board of Psychology.

24. Respondent failed to perform a statutory or legal obligation placed upon him as a licensed psychologist in that he failed to timely respond to records requests by DDD, Patient D.Q.'s attorney, and the ALJ in violation of Section 456.057(4), Florida Statutes (2000) (2001) (2002), and failed to turn over Patient D.Q.'s records to the ALJ upon receipt of the subpoena on or about October 9, 2002, in violation of Section 456.057(5)(a)3, Florida Statutes (2002).

25. Based on the foregoing, Respondent has violated Section 490.009(1)(h), Florida Statutes (2000) (2001) (2002), by failing to perform a statutory or legal obligation placed upon a person licensed under Chapter 490.

Count Three

26. Petitioner realleges and incorporates paragraphs one (1) through fourteen (14) as if fully set forth herein.

27. Section 490.009(1)(r), Florida Statutes (2000), provides that failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience, constitutes grounds for disciplinary action by the Board of Psychology.

28. Respondent failed to meet the minimum standards of performance in professional activities by failing to keep treatment records for the individual psychotherapy sessions with Patient D.Q. on 9/29/00, 10/10/00, 12/01/00, 12/13/00, 12/21/00, 12/28/00, 1/05/01, and 1/09/01 that were referenced in Respondent's billing records for Patient D.Q.

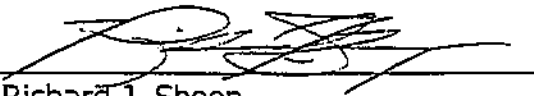
29. Based on the foregoing, Respondent has violated Section 490.009(1)(r), Florida Statutes (2000), by failing to meet the minimum standards of performance in professional activities.

WHEREFORE, the Petitioner respectfully requests that the Board of Psychology enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation; corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 25th day of May, 2004.

John O. Agwunobi, M.D., M.B.A.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
Neather Coleman
DATE 5-25-04


Richard J. Shoop
Assistant General Counsel
Florida Bar # 0389234
DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Tel.: (850) 414-8126
Fax: (850) 488-1855

RJS/rs

Reviewed and approved by: Ja (initials) 4/9/04 (date)

PCP Date: May 25, 2004
PCP Members: Hoffman + Lewis

Donald Jeffery Johnson, Ph.D., DOH case no. 2002-28696

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

Donald Jeffery Johnson, Ph.D., DOH case no. 2002-28696

PRACTITIONER REGULATION
LEGAL
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**STATE OF FLORIDA
BOARD OF PSYCHOLOGY**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case Number 2002-28696

DONALD JEFFERY JOHNSON, Ph.D.,

Respondent.

Exhibit B

STIPULATION

Donald Jeffery Johnson, Ph.D., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Stipulation and to the entry of a Final Order of the Board of Psychology, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed psychologist in the State of Florida having been issued license number PY 4853.
2. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for the purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed psychologist, he is subject to the provisions of Chapters 456 and 490, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 490, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. FUTURE CONDUCT: Respondent shall not in the future violate Chapters 456 and 490, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, Respondent will read Chapters 456 and 490, Florida Statutes, and the Rules of the Board of Psychology, at Section 64B-19, Florida Administrative Code.

2. FINE. The Board shall impose an administrative fine in the amount of three thousand dollars (\$3,000.00) against the Respondent. The Respondent shall pay the fine to the Board of Psychology within **SIX (6)** months of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 6 MONTHS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY**

THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT A OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. REIMBURSEMENT OF COSTS. In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Psychology office. The agreed upon Department costs to be reimbursed in this case is not to exceed two thousand five hundred dollars (\$2,500). The costs in this case are currently one thousand five hundred thirty-three dollars and ninety cents (**\$1,533.90**). The Respondent shall pay the costs to the Board of Psychology within **SIX (6)** months of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN 6 MONTHS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT A OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS.**

4. CONTINUING EDUCATION. Respondent shall complete Board-approved continuing education courses in the areas of Laws and Rules and Records Keeping within one (1) year of the Final Order of the Board. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as recognition awards, documenting completion of these continuing education courses within one (1) year of the filing of the Final Order incorporating this Stipulation. All such documentation shall be sent to the Board of Psychology, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing education courses shall consist of a live, lecture format.

5. REPRIMAND. Respondent shall receive a public reprimand from the Board of Psychology.

6. MITIGATING FACTORS: In arriving at this disposition the parties considered the following mitigating factors: Respondent has been licensed in Florida as a psychologist for over 11 years and has no prior discipline.

7. It is expressly understood that this Stipulation is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Stipulation.

8. **Respondent shall appear before the Board at the meeting of the Board where this Stipulation is considered.** Respondent, in conjunction with the consideration of this Stipulation by the Board, shall respond to questions under oath from the Board, Board Staff or Department Staff. Respondent shall be prepared to explain the circumstances involved in this matter and what measures have been taken to prevent a recurrence.

9. Should this Stipulation be rejected, no statement made in furtherance of this Stipulation by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

10. Respondent and the Department fully understand that this joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not related to the facts set forth in the Administrative Complaint.

11. Upon the Board's adoption of this Stipulation, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Stipulation and the Final Order of the Board incorporating said Stipulation.

12. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

13. This Stipulation is executed by the Respondent for the purpose of avoiding

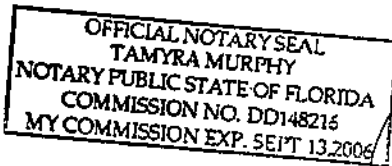
further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning this cause prior to or in conjunction with consideration of the Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that presentation to and consideration of this Stipulation and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 24th day of June, 2004.

Donald Jeffrey Johnson Ph.D.
Donald Jeffrey Johnson, Ph.D.

Before me, personally appeared Donald Jeffery Johnson, Ph.D., whose identity is known to me by Donald Johnson (type of identification) and who, under oath, Fl. dl. lic 1525190 064090 acknowledges that his signature appears above.

Sworn to and subscribed before me this 24th day of June, 2004.



Tamyra Murphy
NOTARY PUBLIC

My Commission Expires:

APPROVED this 12th day of July, 2004.

John O. Agwunobi, M.D., M.B.A., M.P.H.
Secretary, Department of Health

Wings S. Benton
By: Wings S. Benton
Deputy General Counsel
Prosecution Services Unit

EXHIBIT A

STANDARD TERMS APPLICABLE TO STIPULATIONS

The following are the standard terms applicable to all stipulations, including supervision and monitoring provisions applicable to licensees on probation.

A. PAYMENT OF FINES. Unless otherwise directed by the stipulation, all fines shall be paid by check or money order and sent to the Board address set forth in paragraph E, below. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

B. COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS. Unless otherwise directed by the stipulation, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to the Board of Psychology at the address set forth below in paragraph E, **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, if the Respondent's license is on probation, the Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of psychology in Florida.

D. COSTS. Pursuant to Section 456.072(4), Florida Statutes, the Respondent shall pay all costs necessary to comply with the terms of this Stipulation. Such costs include, but are not limited to, the costs of preparation of Investigative Reports detailing

compliance with the terms of the Stipulation, obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative costs directly associated with Respondent's probation.

E. BOARD ADDRESS. Unless otherwise directed by the Board office, all fines and costs shall be sent to: **Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attn.: Psychology Compliance Officer.** Unless otherwise directed by the Board office, all other correspondence shall be sent to: **Department of Health, HMQAMS/Client Services/Bin #C01, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3251, Attn.: Psychology Compliance Officer.**