



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Jack M. Reiter, MD  
Docket No.: 98-02-A-1037MD  
Document: Statement of Charges

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

The identity of the complainant if the person is a consumer, health care provider, or employee, pursuant to RCW 43.70.075 (Identity of Whistleblower Protected) and/or the identity of a patient, pursuant to RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

Information regarding an individual's health care, including where they received health care services, their medical condition, care provided, etc., pursuant to RCW 42.17.312 (Public Records Disclosure) and RCW 70.02.020 (Medical Records - Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center  
P.O. Box 47865  
Olympia, WA 98504-7865  
Phone: (360) 236-4700  
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION

|                              |   |                      |
|------------------------------|---|----------------------|
| In the Matter of the License | ) |                      |
| to Practice Medicine of      | ) | No. 91-11-0010MD     |
|                              | ) | 92-04-0070MD         |
|                              | ) | 92-07-0012MD         |
| JACK M. REITER, M.D.,        | ) |                      |
|                              | ) | STATEMENT OF CHARGES |
|                              | ) |                      |
| Respondent.                  | ) |                      |
| _____                        | ) |                      |

The Program Manager of the State of Washington Department of Health upon designation by the disciplining authority states and alleges as follows:

Sections 1: LICENSE STATUS

1.1 At all times materials to this Statement of Charges Respondent has been licensed to practice medicine by the State of Washington.

Section 2: CONFIDENTIAL SCHEDULE

2.1 The patients referred to in this Statement of Charges are identified in the attached Confidential Schedule.

Section 3: FACTUAL ALLEGATIONS

Case No. 91-11-0010MD

3.1 A husband and wife dissolved their marriage in 1989. A court awarded custody of their two children to the mother.

3.2 The father's attorney hired Respondent to perform an evaluation of the father. The mother's attorney agreed to have Respondent evaluate the mother and the children, ages ■ and ■ as well. Respondent's report was favorable to the mother and not favorable to the father.

3.3 Despite the fact that he had issued a report unfavorable to one parent, Respondent accepted an appointment by a King County Superior Court judge that he act as a mediator for visitation issues.

3.4 By letter of March 22, 1990, Respondent told the attorneys for the mother and the father that the father's visitation would be expanded by one day per month only if the mother and the



father participated in joint counseling. Respondent based this decision on an interview with the mother. Respondent did not interview the father or the children to verify the accuracy of the statements made by the mother.

3.5 By letter of March 30, 1990, Respondent provided to the father's attorney the names of three therapists Respondent recommended to perform the joint counseling. Despite the fact that he had already acted as an evaluator for the family, Respondent suggested in the letter that he could conduct the joint counseling himself, since he was familiar with the case.

3.6 By letter of April 9, 1990, Respondent recommended to the court that his visitation plan, as set forth in his March 22, 1990 letter, be adopted. The mother decided to permit the father the extra day of visitation.

3.7 In May or June of 1990, Respondent began providing joint counseling to the mother and the father. When the father later refused to continue in counseling with Respondent, Respondent determined in his court-appointed mediator role to revoke the father's additional visitation. Respondent continued to provide counseling to the mother.

3.8 In August 1990, the mother asked Respondent to provide therapy to the two children, one of whom had sexually abused the other. Despite the fact that Respondent had evaluated the entire family, acted as mediator for visitation issues, provided joint counseling to the mother and the father, provided individual counseling for the mother, Respondent began providing individual therapy to both children on September 13, 1990.

3.9 Despite the fact that Respondent knew that one child had sexually abused the other child, he provided counseling to both children and permitted them to live in the same household.

Case No. 92-04-0070MD

3.10 A husband and wife dissolved their marriage in 1986. A court awarded custody of their three children to the mother and awarded visitation rights to the father.

3.11 In 1988, the mother took her three children to [REDACTED] for five months. During the time the mother was in [REDACTED] the father hired Respondent to provide individual therapy to him. When the mother returned to the United States, she was arrested and charged with custodial interference.

3.12 Shortly after the mother returned to the United States, the father's attorney hired Respondent to evaluate the entire family. Despite the fact Respondent was the father's therapist, Respondent evaluated the father, the mother and the three children. Respondent reported that the mother had a "circumscribed, isolated delusion" about the father. Despite finding that the three children were more closely allied with the mother than with the father, Respondent concluded that the father would be a better parent to the children than the mother.

3.13 In January 1989, a King County Superior Court judge awarded custody of the three children to the father and awarded supervised visitation rights to the mother. Based upon Respondent's

REDACTED

recommendation, the court ordered the mother into therapy. Despite the fact Respondent had counseled the father, evaluated the entire family, and made recommendations to the judge that were unfavorable to the mother, Respondent accepted the judge's recommendation that he evaluate the appropriateness of the mother's therapy.

3.14 A short time later, despite the fact Respondent provided therapy to the father, and evaluated the entire family, Respondent began providing therapy to each of the three children.

3.15 By letter of March 31, 1989, to both attorneys and to the court, Respondent recommended that the mother not be allowed to see her children until she is in appropriate therapy.

3.16 In April, despite the fact Respondent provided therapy to the father, evaluated the entire family, made recommendations to the court that the mother was not fit to care for the children, and was providing therapy to the children, Respondent began supervising the mother's therapy by communicating regularly with the mother's therapist.

3.17 In May 1989, Respondent told the mother's therapist what issues to work on with the mother, and that the mother could not visit her children until she made progress on those issues.

3.18 Respondent continued to supervise the mother's therapy and communicate with the mother's therapist, despite an August 21, 1989, report from the therapist explaining that it is difficult to establish a trusting and therapeutic relationship when the therapist is in constant communication with the Respondent and the Respondent is setting the goals of the therapy.

3.19 On April 10, 1990, Respondent submitted a declaration to the court recommending that the mother have no contact, even by telephone, with the children, despite the fact Respondent made no finding of maternal incompetence, and despite the fact that the mother's therapist was unable to find that the mother had a "delusion" concerning the father.

Case No. 92-07-0012MD

3.20 In March 1987, a husband and wife separated. The mother retained custody of their 22-month old daughter, but permitted the father visitation.

3.21 In July 1988, the daughter told her mother that the father had molested her. Pursuant to court order, psychologist [REDACTED] evaluated the father, the mother, and the child, and concluded there was a good likelihood the child had been sexually abused by the father. [REDACTED] recommended that the father have no unsupervised visitation with the child until he completed an approved sexual deviancy treatment program.

3.22 In November 1988, psychologist [REDACTED] evaluated the father and reported that the MCMI-II and MMPI profiles were similar to people who have been incarcerated in Western State Hospital's sexual deviancy program.



3.23 In January 1989, [REDACTED] M.Ed., evaluated the child and concluded there was a high probability that the child was sexually abused by the father. She also recommended that the father undergo a complete sexual offender evaluation.

3.24 In March or April 1989, the father hired Respondent to perform a sexual deviancy evaluation on him and to testify on his behalf at the divorce trial. Respondent's evaluation consisted of a single interview with the father, a plethysmograph of the father, psychological testing of the mother, and a single interview with the mother which lasted less than one hour. Respondent was not successful in getting the child to talk to him. Based on this incomplete evaluation, and despite the conclusions of three other professionals, and the fact that the father failed a polygraph test concerning the allegations of sexual abuse, Respondent recommended that the father not enter a sexual deviancy treatment program. Respondent based this recommendation largely on the results of a plethysmograph test.

3.25 As part of his evaluation of the father, Respondent administered the MCMI-II, a psychological test to the mother. Respondent is not trained in the use of the MCMI-II, does not own the manual and cannot interpret the computer-generated graphics.

3.26 In May 1989, at the conclusion of the divorce trial, the court did not make a ruling on the issue of the alleged sexual abuse and granted supervised visitation to the father of two hours every week. The court appointed Respondent as the evaluating psychiatrist for visitation issues and ordered both the mother and the father to undergo therapy with Respondent. Respondent declined to provide therapy to the mother. However, Respondent agreed to act as supervising psychiatrist and offered to choose a therapist for the mother, despite the fact that he was hired to perform a sexual deviancy evaluation of the father, evaluated the mother, and testified against the mother during the divorce trial.

3.27 In May or June of 1989, Respondent began providing therapy to the father. At about the same time, Respondent recommended a supervisor for the father's visitation with the child and a therapist for the mother. The court adopted Respondent's recommendations. Respondent stated his intention was to work with the supervisor to re-establish visitation between the child and the father, and to work with the mother's therapist to help her implement the visitation plan and change her perception about the father.

3.28 By letter of October 13, 1989, Respondent informed the court that the mother was not cooperating with him because she was seeing her own therapist rather than seeing the therapist he chose for her, and that she had not allowed visitation by the father. Respondent stated the mother was "emotionally disturbed" and recommended that the court remove the child from the mother and place the child in a foster home or with the father.

3.29 On November 1, 1989, the court ordered the mother to cease her and the child's therapy with their current therapist and begin seeing the therapist recommended by Respondent.

3.30 By letter of December 19, 1989, Respondent named a new supervisor of visitation.

3.31 By letter of January 3, 1990, Respondent told the mother and child's therapist that despite the therapist's belief that the child had been sexually abused by the father, that she was not to



deal with that issue during therapy, since any meaningful determination of abuse was precluded. Rather, Respondent told the therapist that the sole purpose of the therapy was to implement supervised visitation as soon as safely possible.

3.32 By letter of February 8, 1990, Respondent appointed another professional as supervisor of visitation.

3.33 By letter of April 8, 1991, Respondent told the court that visitation had not occurred and recommended the court choose one of three options: order immediate supervision, retain the services on another professional to prepare the child for visitation, or change custody of the child from the mother to the father.

#### Section 4: ALLEGED VIOLATIONS

4.1 The facts alleged in paragraphs 3.1 through 3.33, if proved, constitute a violation of RCW 18.130.180(4), which defines as unprofessional conduct:

Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed.

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It is further alleged that the allegations specified and conduct referred to in this Statement of Charges affect the public health, safety and welfare, and the Medical Quality Assurance Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against the accusations of the Statement of Charges. If Respondent fails to defend against these allegations, Respondent shall be subject to such discipline as is appropriate under RCW 18 130 160.

DATED this 16<sup>th</sup> day of May, 1995.

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION

By: Beverly A. Teeter  
Beverly A. Teeter  
Program Manager

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STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Jack M. Reiter, MD  
Docket No.: 98-02-A-1037MD  
Document: Final Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

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**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION**

|                                 |   |   |
|---------------------------------|---|---|
| In the Matter of the License to | ) | OPS No. 95-07-18-011 MD                 |
| Practice as a Physician and     | ) | Prog. No. 91-11-0010 MD; 92-04-0070 MD; |
| Surgeon of:                     | ) | 92-07-0012 MD                           |
|                                 | ) |   |
| JACK M. REITER, M.D.,           | ) | FINDINGS OF FACT,                       |
|                                 | ) | CONCLUSIONS OF LAW                      |
| Respondent.                     | ) | AND FINAL ORDER                         |
| <hr/>                           |   |   |

A hearing was held before the Medical Quality Assurance Commission (Commission), and Health Law Judge Arthur E. DeBusschere, Presiding Officer for the Commission, on October 2, 3, 4, and 8, 1996, at the Sea Tac Airport Hilton, Sea Tac, Washington. Members of the Commission present and considering the matter were: John F. Kemman, M.D., panel chair; Stanley Tuell, M.D.; Marilyn Ward, Public Member; and Glenn O. Knight, PA-C. Suzanne C. Johnson, Health Law Judge, assisted at the hearing. The Washington State Department of Health (the Department) was represented by Andrew A. Fitz, Assistant Attorney General. The Respondent, Jack M. Reiter, M.D., was present and represented by Ronald J. Meltzer, Attorney at Law. Robert Lewis, court reporter, recorded the proceedings.

Based on consideration of the evidence presented at the hearing and the files and records herein, the Commission hereby issues the following:

**ORIGINAL**

12/23/96

REDACTED

## I. PROCEDURAL HISTORY

1.1 On May 16, 1995, the Commission issued a Statement of Charges and alleged that the Respondent violated RCW 18.130.180(4). It was charged that the Respondent violated the standard of care in each of three separate dissolution cases when he assumed multiple roles as a forensic psychiatrist for the court and as a therapist for one or more of the family members.

1.2 The Respondent answered, and then filed an amended answer on August 2, 1995. On July 11, 1995, a Scheduling Order was issued, scheduling a prehearing conference for January 10, 1996, and the hearing for March 7, 8, and/or 9, 1996.

1.3 On December 20, 1995, the Respondent filed a Motion to Dismiss Complaint. The Department's motion to extend time to respond was granted. Prehearing Order No. 1. After the Department filed its response, a prehearing conference was conducted on January 10, 1996, to hear oral argument on the Respondent's Motion to Dismiss. On February 14, 1996, the Presiding Officer denied the Respondent's Motion to Dismiss. The Presiding Officer allowed Respondent to renew his motion related to the Commission's reopening of the cases and/or its timing in issuing the Statement of Charges. Prehearing Order No. 2.

1.4 The Presiding Officer granted a joint motion continuing the hearing to October 3, 1996, extending the discovery completion date and setting a prehearing conference for August 27, 1996. Prehearing Order No. 3.

1.5 Prehearing conferences were held on August 27, 1996 and September 26, 1996, during which time the Presiding Officer reviewed prehearing

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL ORDER - Page 2

REDACTED

matters including the identification of witnesses, filing of exhibits and preparing a joint statement of the facts. The Presiding Officer ordered that Exhibits 1 through 97 offered by the Department and Exhibits 100 through 145 offered by Respondent were deemed authentic and admitted unless timely objections were made. Prehearing Order No. 4; Prehearing Order No. 5.

1.6 A prehearing conference was held on October 1, 1996, to address the Department's objections to Respondent's Exhibit No. 109 (six pages) and Respondent's Exhibit No. 142 (three pages). The Presiding Officer found the documents relevant to counter the testimony of the Department's expert, Dr. Corwin. In the context of the other documents already admitted, there was sufficient foundation and the parties could argue any inference made in the reports. WAC 246-11-490; RCW 34.05.452. The Presiding Officer denied the Department's objections thereby admitting Respondent's Exhibits No. 109 and 142. After making this ruling, the Presiding Officer identified the documents that would be provided to the Commission members along with the admitted exhibits. A Joint Statement of Facts was filed on October 1, 1996.

1.7 A prehearing was held immediate before the hearing on October 2, 1996. The Respondent moved to exclude any reference to statements made by the Respondent in a deposition dated July 11, 1989, in a civil lawsuit in which the Respondent was called as a witness. The Respondent argued that all the documents used for this disciplinary proceeding were already made exhibits and now the Department cannot refer to any additional documents. After hearing argument of counsel, the Presiding Officer ruled on the Respondent's motion. During the prehearing conferences, the Presiding Officer had ordered that all the exhibits were to be admitted



before the hearing so that there would not be any delay during the hearing due to the extensive number of documents being offered. This ruling did not preclude any party from cross-examining a witness concerning a prior statement made under oath and did not preclude an expert from basing his opinion on documents not admitted at the hearing. Based upon this ruling and for reasons stated at the October 2, 1996 prehearing conference, the Presiding Officer denied the Respondent's motion.

## **II. HEARING**

2.1 In support of its case in chief, the Department called the following witnesses: Jack M. Reiter, M.D. (Respondent); David L. Corwin, M.D.; Judy Eekoff, Ph.D.; and Judith Cantor, MSW.

2.2 In support of its case in chief, the Respondent called the following witnesses: Jack M. Reiter, M.D. (Respondent); Claudia Konker, MSW, MA; William T. Lawrie, Attorney at Law; Peter W. Mogren, Attorney at Law; and the Honorable Jim Bates, King County Superior Court Judge.

2.3 The Department filed Exhibits number 1 through 97 and *Index of Department's Exhibits*. The Respondent filed Exhibits number 100 through 145 and *Index to Respondent's Exhibits*.

2.4 In addition to the above referenced witnesses and exhibits, the Commission members were provided the following documents: Statement of Charges dated May 16, 1996; Answer to Statement of Charges (undated); Amended Answer to Statement of Charges dated July 25, 1996; Schedule A - Issues for Hearing; and the Joint Statement of the Facts dated October 1, 1996. In Schedule A - Issues for

Hearing, the parties listed seven issues for the Commission members to consider.

2.5 At the beginning of the hearing the Presiding Officer granted the Department's motion for a protective order to preserve the confidentiality of healthcare information. The three dissolution cases in this matter contained therapy and treatment records for spouses and family members. WAC 246-11-400.

### **III. FINDINGS OF FACT**

Based on review of the exhibits admitted, the testimony presented at the hearing, and argument of counsel, the Commission hereby makes the following Findings of Fact:

3.1 At all times material to this action, Jack M. Reiter, M.D., Respondent, has been licensed to practice medicine by the State of Washington.

3.2 The Joint Statement of Facts, submitted to the Commission by the Parties is accepted by the Commission, attached hereto and incorporated herein as Findings of Fact.

3.3 The Department alleged the following in each of the three cases in this matter: (a) Respondent's mixing of forensic and psychotherapeutic roles in child custody disputes constituted negligence, malpractice or incompetence by creating conflicts of interest that kept Respondent from functioning effectively in the various roles and caused harm or unreasonable risk of harm to the family members involved; (b) the mixing of forensic and psychotherapeutic roles led Respondent to make professional opinions and recommendations based on incomplete or flawed information; (c) the Respondent became allied with one parent with whom he continued

to communicate as he made custody recommendations, and he became biased against the other parent with whom he had little or no contact; and (d) the Respondent's conduct caused harm or an unreasonable risk of harm by excluding one parent in both forensic and treatment situations where both parents should have been involved, by escalating the family conflict, and thereby failing to serve the best interests of the children.

3.4 The Respondent testified that his conduct was within the standard of care. The Respondent maintained that although he performed both forensic and therapeutic roles in each of the cases, he was able to keep each role separate from the others. He did state, however, that he used information received in one role to influence his actions in other roles within each case. Respondent testified that about fifteen percent of his practice is forensic psychiatry and asserted that there are only a few psychiatrists willing to become involved in custody disputes. According to Respondent, families involved in complex custody disputes are often in a financial crisis and need to conserve funds by using one professional to fulfill several roles. Therefore, he contended, it is more efficient and cost effective for a forensic psychiatrist who is familiar with a case to take on more than one role.

3.5 The Respondent stated that he generally follows the court's order, although he does have the ability to decline the court's request to participate. Most often, in his forensic work the Respondent is not in a position to make custody decisions. Rather, he makes recommendations which the court may accept or reject. When making a decision, the court often hears other expert opinions. The Respondent further testified that it is not unusual in the King County Court system for a forensic



psychiatrist to be asked to perform more than one role in a child custody case.

3.6 David L. Corwin, M.D., is an expert in the area of child forensic psychiatry, particularly in the area of child custody matters. He is the Director of Child Forensic Psychiatry, Department of Psychiatry, University of Cincinnati. Dr. Corwin's Curriculum Vita, Exhibit 93. Dr. Corwin testified regarding his opinion on the standard of care for a forensic psychiatrist in child custody matters and described the conflicts of interest that arise when the psychiatrist becomes both a forensic custody evaluator and a psychotherapist for one or more of the family members. In addition to the records from the three cases under review for this matter, Dr. Corwin relied upon literature in the area of psychiatry in child custody cases. The Commission finds Dr. Corwin's testimony instructive and adopts his basic tenets regarding forensic psychiatry in child custody cases.

3.7 Dr. Corwin described the role of a forensic psychiatrist in court proceedings. Forensic psychiatry applies psychiatric knowledge to help the court answer specific legal questions at issue. The forensic psychiatrist may be appointed by the court or by agreement of the parties. This method of selecting the forensic psychiatrist dispels any notion that communication with the psychiatrist is confidential. The very nature of the forensic psychiatrist's role is to disclose the information that forms the basis for his/her opinions and recommendations to the court.

3.8 In child custody matters, the forensic psychiatrist is expected to make recommendations in the best interest of the children. Also, in evaluating child custody issues, the standard of care requires that the forensic psychiatrist evaluate both parents as well as other relevant persons including the children. A custody evaluation that

involves contact with only one parent results in an inadequate clinical evaluation and makes it difficult to accurately determine custody in the best interest of the children.

3.9 The forensic psychiatrist, when assisting the court in resolving child custody issues, has a duty to act impartially and to maintain the appearance of impartiality. This impartiality is important because, following an evaluation and recommendation regarding custody by a forensic psychiatrist, at least one parent is disappointed and perceives himself or herself as "losing." Those feelings are likely to be exacerbated if the forensic evaluator, by mixing roles, gives the appearance of bias in favor of the other parent. By failing to fulfill this duty, the forensic psychiatrist creates a risk that the best interests of children will not be met and that family members will be harmed.

3.10 In contrast to forensic psychiatry where the focus is to assist the court, the psychiatrist performing psychotherapy is directed at providing a therapeutic benefit or relief to the patient. An integral component of the psychotherapeutic relationship is the confidentiality that builds a trust between the patient and the therapist. In conducting psychotherapy, the psychiatrist loses a certain degree of objectivity, because the patient's needs become foremost and because the psychiatrist is likely to be optimistic about the efficacy of therapy and his or her therapeutic skills. In child psychotherapy, the psychiatrist must involve both parents in the treatment and failure to do so undermines the success of the treatment.

3.11 Dr. Corwin stated that in psychiatry, "the wearing two hats" - that of forensic psychiatrist and that of psychotherapist - is below the standard of care because it creates conflicts of interest, undermines the psychiatrist's effectiveness and causes

harm. When the psychiatrist mixes his or her roles and creates a conflict of interest, a "Double Agency" occurs. Exhibit No. 96, page 43. For example, conflicts in confidentiality issues occur when the psychiatrist has a therapeutic relationship with one of the parents and at the same time has the role of child custody evaluator. Confidentiality becomes confused because there is no expectation of confidentiality in the forensic consultation, but confidentiality is an integral component of the psychotherapeutic relationship. As a result, the confidentiality required in the psychotherapeutic relationship is violated and the impartiality in forensic psychiatry is impaired.

3.12 When the psychiatrist loses his or her impartiality and becomes biased, the role as custody evaluator is compromised. In becoming biased, the forensic psychiatrist may inappropriately become an advocate for one parent in the custody dispute. The psychiatrist may show cognitive rigidity, convinced of the accuracy of his or her own findings and unwilling to consider other explanations for a patient's behavior or to alter his or her opinion in the face of new or contradictory information. Such consequences create a risk in child custody disputes that one parent will be left out, that opinions and recommendations will be made based on insufficient information, and that the conflict between parents will be escalated to the detriment of the children's best interests.

3.13 Dr. Corwin testified that it is in most cases the accepted standard of practice for the psychiatrist, who has treated a family member or has had other ties with a family member, to decline a request to perform a forensic custody evaluation, because prior professional contact with one family member makes objectivity by the



forensic psychiatrist virtually impossible. The family member who has not had prior contact with the forensic psychiatrist is likely to view that psychiatrist as partial to the family member who has had previous contact with the custody evaluator. Likewise, a psychiatrist, who has performed a forensic custody evaluation, should decline a request to treat a child or family member involved in the custody dispute. The psychiatrist will be unable to develop a therapeutic relationship with the family members in a treatment setting, because of the inevitable feeling by one or both parents that he or she "lost" the custody battle. In summary, when a psychiatrist is concurrently treating one or more family members and also making recommendations about custody as a forensic psychiatrist, the psychiatrist's effectiveness in both arenas is impaired, and both forensic and treatment processes are impeded.

3.14 Dr. Corwin reviewed the files and records for the three cases referenced in the Statement of Charges and opined that the Respondent's actions in each of the three cases fell below the standard of care. He opined that the Respondent mixed his roles as forensic child custody evaluator and as psychotherapist, thereby creating an unreasonable risk that a patient may be harmed. In one or all of the three cases in this matter, there were varied examples of unprofessional conduct. The Respondent accepted the role as forensic custody evaluator when he had already had a prior professional contact with one of the parents. The Respondent agreed to treat family members after having accepted the role as the forensic custody evaluator. The Respondent made custody evaluations based upon his contact with only one parent or with limited contact with the child resulting in making custody decisions on insufficient information. As a forensic evaluator, the Respondent lost his impartiality because of his

previous contact with one of the parents. There were instances when the Respondent became biased and inappropriately aligned with the interest of one parent escalating the conflict of the parents to the detriment of the child. The Commission finds Dr. Corwin's testimony and opinions persuasive.

Case One: Case No. 91-11-0010 MD

3.15 This case arose out of Respondent's treatment of and forensic psychiatric involvement with a family ("Family One") made up of members ("Father One", "Mother One", "Son One", "Daughter One") during and after dissolution of the parents' marriage.

3.16 At the request of Father One's attorney, Respondent performed a psychiatric evaluation of Father One on October 4, 1988, for the purpose of assessing Father One's emotional state, evaluating his parenting capabilities, ascertaining his proclivity toward abuse of alcohol, drugs, or domestic violence, and making pertinent recommendations. Respondent performed an updated assessment of Father One on May 9, 1989.

3.17 In November 1989, through a parenting plan and by agreement of Mother One and Father One, Respondent was appointed by the court as "chief mediator and arbitrator" for differences of opinion between the parents regarding major decisions for the children. Respondent was specifically requested to determine whether Father One should have additional visitation with the children. Respondent determined that the additional visitation should occur on a trial basis. Respondent made the determination without interviewing the children or talking further with Father One. Respondent conditioned the additional visitation on Mother One and Father One engaging in joint



counseling to improve their communication.

3.18 Respondent informed Father One's attorney of the names of two counselors and also informed the attorney that Mother One thought Respondent himself would be an appropriate choice for the joint therapist. Respondent began joint therapy with Father One and Mother One in the Spring of 1990. In October 1990, Father One stated that such joint counseling was unacceptable to him. Subsequently, acting in his court-appointed mediator role, the Respondent determined that the additional day of visitation should not occur because Father One refused to participate in the joint counseling.

3.19 In August 1990, Mother One asked the Respondent to provide therapy to Son One and Daughter One. In the Fall of 1990, Respondent began joint therapy with both children regarding their feelings about their father and regarding Son One's sexual abuse of other children, including Daughter One. Respondent recommended that both children reside with Mother One.

3.20 In October 1990, Father One requested in a letter to his attorney to have Respondent removed as mediator because of Respondent's failure to communicate with him, including failure to inform him of the sexual abuse that had occurred between his children and failure to talk with him before making decisions regarding visitation, custody, and treatment of the children. Father One believed that Respondent, in his role as mediator, was biased in favor of Mother One, with whom he had ongoing communication. Father One complained that Respondent "wears too many hats and cannot function as a mediator, a counselor ...[for the parents]...as well as a sexual abuse counselor for ...[the children]."



3.21 The Respondent testified that he attempted to communicate with and involve Father One, but that Father One did not return phone calls, canceled visitations with his children, canceled appointments and was generally uncooperative. The Respondent stated that he did not solicit the additional roles; rather the parties agreed or the court ordered him to accept these roles. In each instance, when he took on a new role, the Respondent maintained that the previous role had ended and the family members would not be confused by his role changes. This was a "no win" situation where there was no custody decision that would "do no harm" and to the extent possible his actions were taken in the best interest of the children.

3.22 Regarding Case One, the Commission finds that Respondent's assumption of multiple forensic and therapeutic roles was negligent. Conflicts of interest were created when Respondent took on the roles of joint therapist to Father One and Mother One and subsequently, when he took on the role as therapist to Son One and Daughter One while he was making recommendations about custody in his forensic role. This resulted in Father One's alienation from the forensic process and from the children's treatment. The Respondent became more emotionally invested in Mother One, with whom he maintained communication, and he took on the role of advocate for Mother One, when he should have remained impartial. The negligence caused harm to family members by escalating an already conflicted family situation, to the detriment of the children's best interest. It precluded the possibility of engaging Father One in a collaborative manner in the children's therapy. It also diminished the possibility of helping the parents find an amicable resolution and was detrimental to Father One's relationship with his children.

Case Two: Case No. 92-04-0070 MD

3.23 This case arose out of Respondent's treatment of and forensic involvement with a family ("Family Two") made up of parents and three minor daughters ("Father Two", "Mother Two", and "Daughters Two"), following dissolution of the parents' marriage on May 21, 1986.

3.24 In the Summer of 1988, the Respondent evaluated Father Two, concluding that his stress was the result of a legal problem arising out of Mother Two having illegally removed Daughters Two from the country.

3.25 Father Two later requested that the Respondent evaluate the family and requested that Mother Two also participate. During November 1988, Respondent performed forensic evaluations on each member of Family Two. Mother Two's evaluation included psychological testing: the Minnesota Multiphasic Personality Inventory (MMPI) and the Millon Clinical Multi—axial Inventory (MCMI). Father Two's evaluation included the MMPI. Respondent did not inform Mother Two at the time of the evaluation that he had previous professional contact with Father Two.

3.26 The Respondent's evaluation of Mother Two included a review of the computer printout portion of the results of the MMPI and the MCMI. The Respondent concluded that Mother Two had a circumscribed, isolated, fixed delusion regarding Father Two, falsely believing that he was a physical threat to the family and that he had sexually abused one or more of their daughters. Respondent further concluded that the prognosis for Mother Two to resolve her delusion was poor, even given appropriate therapy.



3.27 On December 28, 1988, [REDACTED], performed a psychiatric evaluation of Mother Two. He found no evidence of diagnosable mental condition and disagreed with Respondent's conclusions and his reliance on the computer printout portion of the psychological tests. [REDACTED] believed the psychological tests of the parents were comparable, yet Respondent applied the psycho-pathology language from the computer printout to Mother Two, but did not apply it to Father Two.

3.28 On February 10, 1989, the court adopted Respondent's opinion regarding Mother Two's psychological condition and his recommendations regarding custody. The court transferred physical custody of the children to Father Two, allowed Mother Two supervised visitation, and recommended that two of the Daughters Two remain in counseling. Mother Two was ordered to obtain therapy and Respondent was appointed by the court to oversee her psychotherapy. Further, Respondent was given authority by the court, along with Mother Two's therapist, to determine when Mother Two's visitation with Daughters Two no longer needed to be supervised.

3.29 From approximately March 1989 through Spring 1990, Respondent provided psychotherapy to Daughters Two. In this regard, Respondent maintained contact with Father Two, who at times attended the psychotherapy sessions. Respondent did not involve Mother Two in his therapy with the daughters.

3.30 On March 31, 1989, the Respondent recommended to the court that all contact between Mother Two and Daughters Two cease, because Mother Two had not entered therapy as ordered by the court and because she was influencing the daughters against Father Two. The visitation supervisor had reported that Mother Two was whispering to the daughters during the visits; Respondent believed Mother Two



was denigrating Father Two to the daughters. Father Two's attorney informed Mother Two's attorney that the supervised visits would be suspended.

3.31 In a letter dated May 18, 1989, Respondent approved Mother Two's therapist. He informed the therapist that contact between Mother Two and the Daughters Two could not be resumed until Mother Two addressed the issue of her negative feelings towards Father Two. In a letter to Respondent dated August 21, 1989, [REDACTED] Mother Two's therapist, stated that she found it unusual that such a drastic measure as cutting off all contact, including supervised visitation, had been taken. In her experience, such a drastic step was taken only in cases of extreme physical or sexual abuse. In September 1989, Respondent suggested reinitiating visitation on two conditions: one, that Mother Two continue therapy, and two, that she provide an acceptable visitation schedule and supervisor.

3.32 In the Spring of 1990, supervised visitation had not occurred and Mother Two began having unauthorized telephone contact with Daughters Two. Around that time, Daughters Two refused to continue in therapy with Respondent. Daughters Two blamed Respondent for prohibiting contact with their mother.

3.33 In a declaration dated April 10, 1990, Respondent recommended to the court, in his role as the therapist for the Daughters Two, that future contact between Mother Two and her daughters be terminated. Even though Respondent believed the consequences of such action would be severe on the emotional well-being of the children, he felt that contact with Mother Two would be more damaging, because Mother Two tried to alienate the daughters against Father Two. He further stated that he had hoped that Mother Two would "learn her lesson" and now believed that Mother

Two had no compunction whatsoever in disobeying court orders and refused to follow them unless it pleased her. On April 3, 1991, Mother Two was restrained from contacting her daughters through third parties.

3.34 Respondent testified that Mother Two's disregard of court orders required a firm approach and he took a firm stance on visitation to get her attention. She was not complying with the court order regarding her therapy and her contact with Daughters Two. Respondent testified that Mother Two ultimately had control of initiating visitation by complying with court orders. It was unusual to recommend that all contact between Mother Two and Daughters Two be terminated, but contact with Mother Two was detrimental to the daughters.

3.35 The Respondent testified that he accepted the additional roles, because of its complexity and because his participation would enhance efficiency. He testified that his prior professional contact with Father Two did not cause him to be biased. He maintained that his role as supervisor of Mother Two's therapy gave him the information he needed to make decisions and recommendations about the daughters' contact with their mother. The Respondent stated he is not trained to interpret either the MMPI or the MCMI, but he was aware of the tests' limitations and used only the relevant portions. Further, the court ordered the Respondent to supervise the therapy of Daughter's Two and he began providing therapy for Daughters Two at Father Two's request.

3.36 Regarding Case Two, the Commission finds that Respondent's assumption of multiple forensic and therapeutic roles was negligent. Conflicts of interest were created when Respondent agreed to perform a forensic evaluation of

Family Two after having professional contact with Father Two some months earlier. Next, conflicts were created when Respondent took on the roles of therapist for Daughters Two at the same time he was making custody decisions in his forensic capacity.

3.37 The Commission finds that these conflicts resulted in Respondent being biased in favor of Father Two to the point where Respondent over-emphasized the computer printout pathologic test results of Mother Two and de-emphasized pathologic test results of Father Two. Respondent's bias against Mother Two escalated into a power struggle over the issue of Mother Two's resolution of her negative attitude towards Father Two, in spite of Respondent's evaluation that such a resolution was unlikely, even with appropriate therapy. This also resulted in cognitive rigidity with Respondent convinced of the accuracy of his opinions regarding Mother Two and apparently unwilling to consider other explanations.

3.38 Regarding Case Two, the Commission finds that Respondent's negligence caused harm to family members. The therapy of Daughters Two's was compromised by this conduct. This conduct also escalated the family conflict by exacerbating Mother Two's negative feelings about Father Two, by increasing Mother's Two desperation to have contact with her daughters, and by contributing to her distrust and unwillingness to cooperate.

#### Case Three: Case No. 92-07-0012MD

3.39 This case arose out of Respondent's treatment of and forensic psychiatric involvement with a family ("Family Three") made up of parents and one minor daughter



("Father Three", "Mother Three", and "Daughter Three"), during and after dissolution of the parents' marriage.

3.40 The parents in Family Three were legally separated in August 1987. In February 1988, Mother Three filed for modification of visitation when she became concerned that two-year-old Daughter Three had been sexually abused by Father Three.

3.41 In July 1988, the court referred matters pertaining to custody, visitation and sex abuse to [REDACTED] asking her to perform a forensic evaluation and to make recommendations. [REDACTED] evaluated each family member and concluded that there was a strong likelihood that Daughter Three had been sexually abused by Father Three. She stated that prior to the sexual abuse concern, Mother Three had encouraged Father Three's involvement with their daughter. [REDACTED] recommended, among other things, that if Father Three did not acknowledge the abuse and successfully complete an approved sexual deviancy treatment program, visitation should be reduced to two hours of supervised visitation a month.

3.42 In January 1989, [REDACTED] Daughter Three's therapist, documented her opinion that there was a high probability that Daughter Three had been sexually abused by Father Three. She stated that Mother Three saw Father Three's relationship with Daughter Three as important if Daughter Three's safety could be ensured. She recommended that Father Three undergo a sexual offender deviancy evaluation and that visitation between Father Three and Daughter Three cease pending recommendations of the sex offender evaluator.

3.43 At the request of Father Three's attorney, Respondent conducted a psychiatric evaluation of Father Three on March 10, 1989. Respondent initially concluded that Father Three did not appear to have significant problems in the sexual arena. After reading the other evaluator's reports, Respondent acknowledged that the psychological tests were important to the evaluation and they showed Father Three to have extreme emotional problems, but that no definite conclusions could be made from either report regarding sexual abuse. In his evaluation report, the Respondent noted that Father Three had taken a polygraph exam which showed that Father Three was attempting to be deceptive. The Respondent stated to Father Three's attorney that in order to more clearly understand the case he would like to interview Daughter Three and Mother Three.

3.44 On May 13, 1989, Respondent saw Mother Three and Daughter Three for evaluation. Respondent was unable to evaluate Daughter Three because she refused to separate from her mother to go alone with Respondent. Mother Three commented to Respondent that Daughter Three is "scared of men." Respondent opined that such a comment in front of Daughter Three was inappropriate and could create or reinforce such a fear. Respondent performed a psychiatric evaluation of Mother Three, which was "shortened" because he felt additional time would not be productive. The Respondent also thought it would make more sense to use Father Three's money to have him take a penile plethysmograph than to spend it on further interviewing Mother Three.

3.45 Respondent concluded that Father Three had significant emotional problems and recommended ongoing counseling. Following the plethysmograph

results, Respondent concluded that Father Three did not need to be in a sexual deviancy treatment program. He recommended visitation between Daughter Three and Father Three two hours every other week to be supervised by someone neutral other than Daughter Three's therapist. Respondent recommended [REDACTED] as a neutral supervisor.

3.46 In July 1989, the parents' dissolution was finalized. The court ordered immediate visitation for Father Three with Daughter Three for two hours every other week, to be professionally supervised by [REDACTED]. The court appointed Respondent "psychiatrist for evaluation purposes." Also, both parents were ordered to undergo counseling in good faith with Respondent.

3.47 Mother Three moved for reconsideration of the order, alleging, in part, that Respondent was biased and should not act as the court appointed evaluator. At the request of Mother Three's attorney, [REDACTED] reviewed the evaluation reports by [REDACTED] and Respondent. [REDACTED] found Respondent's sexual deviancy evaluation of Father Three to be deficient in the following crucial areas: Respondent's failure to describe statements made by Daughter Three regarding details of sexual abuse; Respondent's failure to acknowledge that young children rarely fabricate stories of sexual abuse, while sex offenders have a high rate of fabrication; Respondent's failure to consider the importance of Father Three failing the first polygraph exam; Respondent's unreasonable reliance on the plethysmograph results; and Respondent's failure to fully consider Father Three's MMPI results, the significance of findings regarding Father Three's personality traits, and the history of physical/marital abuse.



3.48 Prior to the reconsideration of the court order, Mother Three's attorney received another opinion critical of the Respondent's evaluation. On October 31, 1989, [REDACTED] wrote a letter concluding that the Respondent's assessment, evaluation and recommendations failed to follow accepted practice in the field of psychiatry in a number of respects. These included failure to mention Father Three's failing the first polygraph; the extent of Respondent's reliance on the plethysmograph results, which [REDACTED] stated was a research instrument not generally accepted in the scientific community at that time; failure to thoroughly analyze Mother Three's psychological test results; and failure to perform a thorough evaluation of Mother Three prior to making recommendations.

3.49 On August 4, 1989, [REDACTED] stated that the court's ruling that Respondent function as Mother Three's psychotherapist may be negatively impacting Mother Three's willingness to cooperate with the court, because Respondent served also as an evaluator and a critical witness in court proceedings. On November 2, 1989, [REDACTED] withdrew as supervisor of visitation because she believed her continued involvement would be unproductive, given Mother Three's distrust of her. She stated her opinion that both parents are very emotionally dysfunctional and that Father Three's problems are equal to or greater than those overtly manifested by Mother Three.

3.50 Respondent began therapy with Father Three, but decided not to become the psychotherapist for Mother Three because he believed, given her attitude toward him, it would not be in her best interest. Respondent asked to have input as to who Mother Three's therapist would be. On August 28, 1989, Mother Three's attorney wrote a letter to Respondent asking him to select a therapist for Mother Three from a list of

five names provided. Respondent did not respond to that request. This resulted in a dispute when Mother Three selected a therapist from her list whom Respondent did not approve.

3.51 By letter to the court dated October 13, 1989, Respondent expressed severe concerns that visitation between Father Three and Daughter Three had not occurred. Respondent stated that Mother Three appeared to be a very emotionally disturbed individual who was clearly attempting to obstruct and prevent contact between Father Three and Daughter Three and that Mother Three's problems were having an adverse impact on Daughter Three. Respondent recommended that Daughter Three be placed in a foster home.

3.52 In a court order dated November 22, 1989, Mother Three's motion to disqualify Respondent was denied. The court appointed Respondent to be the "evaluator" with authority to determine questions or disputes on procedure of visitation or counseling of the parents and their daughter. Mother Three and Daughter Three were to immediately begin therapeutic contact with [REDACTED]

3.53 On January 3, 1990, Respondent wrote a letter to [REDACTED] therapist for Mother Three and Daughter Three instructing her that, "[d]etermining whether or not [Daughter Three] has been sexually abused is not part of the therapy." Department's Exhibit No. 76, page 1. He stated his opinion that Daughter Three's fears about visitation with Father Three were generated by Mother Three. Respondent stated his belief that the visits should start immediately and the repercussions could be dealt with later. In a letter dated May 22, 1990, [REDACTED] stated her opinion that Daughter Three's fears about seeing her father were spontaneous and unrehearsed

and that Daughter Three did not want to see her father. [REDACTED] stated her concern that Daughter Three not be further traumatized. It was [REDACTED] hope to respect Daughter Three's fear as well as to gradually move towards supervised visits.

3.54 In a letter to the court dated August 16, 1990, Respondent expressed his concern that visitation had not occurred, that Mother Three was undermining the visits and that Mother Three was increasing her daughter's fear of contact with Father Three. Further, Respondent stated that as a result of his therapy with Father Three, Father Three had resolved all issues that led to his therapy except the frustrations of not seeing Daughter Three.

3.55 By letter dated February 18, 1991, to Respondent, [REDACTED] expressed her opinions that Mother Three was not sabotaging the visitation; that Mother Three sought [REDACTED] assistance in responding to Daughter Three's fears about seeing her father; that Daughter Three continues to be afraid of Father Three, although she no longer refuses to talk with him on the phone; and that contact with Father Three would be harmful to Daughter Three.

3.56 By letter dated April 8, 1991, to the court, Respondent stated his belief that Daughter Three's therapy with [REDACTED] had been successful, except that her fears about Father Three could not be resolved, because Mother Three had a negative influence and continued to obstruct visitation. Respondent recommended three options: immediate supervised visitation; retaining a new professional to prepare Daughter Three for visitation; or immediate change in custody. He felt that Father Three was capable of meeting Daughter Three's needs. He stated that there was insufficient data to support the allegation of sexual abuse by Father Three, but



considerable data to indicate that Mother Three's obstruction of father-child relationship was detrimental to Daughter Three's best interests.

3.57 By letter dated July 29, 1991, to the court, Respondent stated that Mother Three had taken her daughter to Utah shortly before the first visitation was to occur. Respondent stated that he would testify within a medical certainty that Father Three was in no way a danger to his daughter and that Mother Three represents a threat to her daughter.

3.58 Respondent testified that from the time immediate visitation was ordered, Mother Three did everything in her power to keep the visits from occurring and alienated Daughter Three from Father Three. Respondent testified that although he did not have direct contact with Mother Three or Daughter Three when making custody recommendations, he relied on contacts other professionals had with them in forming his opinions. At the time Respondent began treating Father Three, the custody issue had been resolved. In March 1989, Respondent believed that the evidence regarding sexual abuse by Father Three was inconclusive, but by April 1991, he was willing to testify with medical certainty that Father Three was not a danger to his daughter. Respondent testified that his opinion changed as a result of the intervening events of the case.

3.59 Regarding Case Three, the Commission finds that Respondent's assumption of multiple forensic and therapeutic roles was negligent. Conflicts of interest were created when Respondent agreed to take on the role of forensic psychiatrist after performing an evaluation of Father Three and testifying as an expert witness on behalf of Father Three, both at the request of Father Three's attorney.

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Further conflicts were created when Respondent took on the role of therapist to Father Three at the same time he was making recommendations regarding custody. Under such circumstances, Respondent continued in his forensic appointment in spite of Mother Three's concern about the conflicts and her growing distrust. In his forensic role, Respondent made recommendations regarding visitation and custody at the same time he had a therapeutic relationship with Father Three, had no clinical contact with Daughter Three and no contact with Mother Three beyond a "shortened" initial evaluation. Thus, the recommendations were based on inadequate information.

3.60 These conflicts of interest caused Respondent to be increasingly biased in favor of Father Three, and increasingly biased against Mother Three, to the point where he became an advocate for Father Three. Respondent developed cognitive rigidity, apparently unwilling to consider the opinions of other professionals regarding the thoroughness of his evaluations of Father Three and Mother Three, the likelihood of Father Three's having abused Daughter Three and the harmful effect of immediate visitation on Daughter Three. Respondent's negligence caused harm to Family Three by escalating the family conflict, exacerbating Mother Three's distrust and her unwillingness to cooperate with the legal system, and exacerbating her fears for her daughter's safety.

#### No Unreasonable Delay in Issuing Statement of Charges

3.61 The Respondent argued that the Commission had already determined that the complaints in the Statement of Charges did not warrant disciplinary action such that the matter could not now be reopened. This issue was raised, because, the



Program Manager for the Commission in February 1993 had notified the Respondent and the complainants that the cases had been considered and were closed. Exhibits 108, 126, and 143. In a corollary issue, the Respondent argued that the Commission had unreasonably delayed in issuing the Statement of Charges in this case.

3.62 The Commission determined to bring charges against the Respondent concerning the three cases referenced in the Statement of Charges on January 27, 1995. Exhibit 97, page 130. Previous to this date, the Commission had not made any determination regarding these cases. The Commission had Case One, No. 91-11-0010MD, on its agenda for case review on May 15, 1992, December 18, 1992, January 25, 1993, February 19, 1993, but each time Case One was held over to be presented at the next Commission meeting. Exhibit 97, pages 11, 38, 55, and 75. The Commission had Case Two, No. 92-04-0070MD, on its agenda for case review December 18, 1992, January 25, 1993, February 19, 1993, May 27, 1994, but each time Case Two was held over to be presented at the next Commission meeting. Exhibit 97, pages 38, 55, 75, and 161. The Commission had Case Three, No. 92-07-0012MD, on its agenda for case review on December 18, 1992, January 25, 1993, February 19, 1993, May 27, 1994, but each time Case Three was held over to be presented at the next Commission meeting. Exhibit 97, pages 38, 55, 76, and 162.

3.63 From May 15, 1992 through January 27, 1995, the Commission considered three other complaints concerning the Respondent, Case numbers 92-03-0052, 92-06-0026MD and 93-06-0056MD. Case No. 92-03-0052 was reviewed on May 15, 1992, and the Commission determined that there was no cause for action. Exhibit 97, page 11. Case No. 92-06-0026MD was on the Commission's agenda to be



reviewed on December 18, 1992, January 25, 1993; February 19, 1993 and May 27, 1994, but each time this case was held over the next Commission meeting. Exhibit 97, pages 38, 55, 75, and 162. Case No. 93-06-0056MD was on the Commission's agenda on May 27, 1994, but each time this case was held over to be presented at the next Commission meeting. Exhibit 97, page 162. On January 27, 1995, Case Numbers 92-06-0026MD and 93-06-0056MD were reviewed by the Commission and determined that there was no cause for action. Exhibit 97, page 132.

3.64 The Program Manager for the Commission notified the Respondent in a letter dated February 24, 1993, and stated that the Commission had considered the complaint concerning Case One and

"[a]t this time, there does not appear to be sufficient evidence to substantiate a violation of law . . . and the case has been closed. However, if additional complaints are subsequently received, this case may be reopened and considered together with the new cases."

Exhibit 108. This letter was in error. The Commission had this case on its agenda, had not yet reviewed it, and held it over for the next Commission meeting.

3.65 Further, on February 22, 1993, a letter went to the complainant in Case Three, Exhibit 126, and in Case Two, Exhibit 143. These letters informed the complainants that their cases had been reviewed by the Commission; that it had been determined that there was insufficient cause for further action or investigation at that time; and that their cases had been closed. These letters were also in error. When they were issued on February 22, 1993, the Commission had not made any determination whether to issue charges, but held the cases over for the next Commission meeting.

3.66 The Commission finds that Cases One, Two, and Three had not been reviewed and determined that there was no cause for action prior to January 27, 1995, when the Commission did meet and decided to issue the charges initiating these proceedings.

3.67 Further, there was no evidence showing prejudice to the Respondent in defending against the three cases. From May 1992 through January 1995, the Commission had six complaints concerning the Respondent, three complaints referenced in the Statement of Charges and three other complaints which the Commission determined that there was no cause for action. The Commission investigated, reviewed, and considered these six complaints in a timely manner. There is no evidence of unreasonable delay in issuing the Statement of Charges.

#### **IV. CONCLUSIONS OF LAW**

4.1 At all times material to the Statement of Charges, the Respondent has been licensed to practice medicine by the State of Washington. The Commission has jurisdiction to hear this matter, pursuant to chapter 18.71 RCW, and the Uniform Disciplinary Act, chapter 18.130 RCW.

4.2 The Department must prove by a preponderance of the evidence that the Respondent committed acts in violation of the Uniform Disciplinary Act, chapter 18.130 RCW. WAC 246-11-520.

4.3 The Commission used its experience, competency and specialized knowledge to evaluate the evidence presented in this case. RCW 34.05.461.

4.4 Unprofessional conduct under RCW 18.130.180(4) is defined in part as

follows: "Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed." As a forensic psychiatrist, Respondent had a duty to remain impartial and to maintain the appearance of impartiality. Based on Findings of Fact 3.1 through 3.60, the Respondent's mixing of forensic and therapeutic roles in Cases One, Two, and Three was negligent and caused harm to family members in each case. The harm caused was reasonably foreseeable by Respondent. Therefore, the Commission concludes that the Respondent's conduct was unprofessional in violation of RCW 18.130.180(4).

4.5 The parties offered a list of issues for the Commission to consider. Some of the issues requested the Commission to describe the standard of care and the scope of a psychiatrist's duties to family members under a court order in a dissolution proceeding. This description could provide guidelines for forensic psychiatrists in future situations. In concluding that unprofessional conduct occurred, the Commission has made conclusions regarding the Respondent's failure to comply with the standard of care. The Commission declines to expand its conclusions beyond the factual determinations presented by these cases in this hearing.

4.6 Upon a finding of unprofessional conduct, the Commission has the authority to order appropriate sanctions. RCW 18.130.160. The Commission concludes this violation was moderate in nature and that the Respondent should be allowed to continue to practice with restrictions. Based on the evidence presented, the Commission believes the public can be protected from recurrence of Respondent's inappropriate conduct if the Respondent complies with the restrictions and conditions



imposed. The Department of Health Disciplinary Guidelines were used to guide the Commission's decision regarding sanctions.

4.7 Further, the Commission makes the following conclusions. Based upon Findings of Fact 3.61 through 3.67, the Commission upon investigation had reason to believe a violation of RCW 18.130.180 had occurred, and a Statement of Charges was prepared and served upon the Respondent at the earliest practical time and without prejudice to him. RCW 18.130.090. The Commission did not unreasonably delay in issuing the Statement of Charges.

## V. ORDER

Based on the foregoing Procedural History, the Hearing, the Findings of Fact, and Conclusions of Law, the Commission hereby issues the following ORDERS:

5.1 Restriction. The Respondent's license to practice as a physician and surgeon is RESTRICTED for at least two (2) years from the effective date of this Order, during which the Respondent must comply with the terms and conditions in this Order.

5.2 Private Practice Restriction. Where Respondent is engaged in a consultative or therapeutic role outside of the court's jurisdiction, he may testify as a treatment provider, but shall not accept an appointment from the court or by agreement of the parties to appear in a forensic capacity.

5.3 Forensic Practice Restriction. The Respondent shall not accept or undertake multiple roles in a case under the jurisdiction of a court which mixes forensic and therapeutic roles. This means that Respondent shall decline to participate in any forensic capacity where the Respondent has previously seen a patient in consultation

or in treatment in his private practice. Further, if the Respondent initially appears in a case under a court's jurisdiction in a forensic capacity, then he shall not provide treatment or therapy to any of the parties or their family members in the case. An evaluation may be part of a forensic role, but the Respondent shall not undertake or initiate a therapy role.

5.4 Whenever he is asked, in a matter under a court's jurisdiction, to perform multiple tasks within the forensic process (such as evaluator and mediator or arbitrator), Respondent shall inform the court and all parties in writing of any potential conflicts of interest and attendant risks of harm from bias. Prior to accepting an additional forensic task, Respondent shall obtain from all parties a written agreement allowing the Respondent to accept the additional role. The Respondent shall submit copies of all such written agreements with the quarterly declarations of compliance required under Section 5.6 below.

5.5 Professional Consultation. Within one year from the effective date of this order, the Respondent shall consult with [REDACTED] from the University of Washington. Prior to the consultation, Respondent shall provide [REDACTED] with a copy of this Order and any other information about Cases One, Two, and Three that [REDACTED] deems appropriate. The Respondent shall meet and discuss with [REDACTED] professional conduct for a forensic psychiatrist including such issues as conflicts of interest, boundaries, and role limitations. [REDACTED] shall determine the number of times the Respondent shall consult with him. The Respondent shall have [REDACTED] submit a written report to the Commission verifying that the Respondent has sufficient understanding and insight to conduct his forensic practice in a professionally appropriate manner. The



Respondent shall complete any training [REDACTED] recommends in the area of boundary issues, conflicts of interest and role limitations of a forensic psychiatrist. If [REDACTED] is not available, then the Respondent shall meet with a professional consultant approved by the Commission's medical consultant and the Respondent shall follow the same procedures as those established in this paragraph for the consultation with [REDACTED]

5.6 Quarterly Declaration of Compliance. Within four months from the effective date of this Order and thereafter quarterly on the first day of each fourth month as follows: January 1, April 1, July 1, and October 1, the Respondent shall submit a declaration to the Commission verifying that he is in compliance with this Order. He shall also identify the court cases in which he has testified or has been assigned a specific role or responsibility, and describe for each of these cases the role and responsibility he has taken. The Respondent is hereby placed on notice that it is the responsibility of the Respondent to ensure that all quarterly declarations or other required reports are submitted to the Commission in a timely manner.

5.7 Compliance Investigations. Investigations will occur to verify that Respondent is in compliance with this Order. In addition to any other inspections that the Department of Health may make, the Respondent shall permit an investigator of the Department of Health to audit records at the licensee's place of employment or practice on an unannounced basis as long as the Commission's jurisdiction over Respondent, pursuant to this Order, continues.

5.8 Appearance at Compliance Hearings. The Respondent shall appear before the Commission one year after the effective date of this Order, or as soon thereafter as the Commission's schedule permits, and present proof that he is



complying with this Order. He shall continue to make such compliance appearances annually, or as frequently as the Commission otherwise requires, until the period of restriction is terminated by the Commission. The Respondent shall be given notice of the compliance hearing, and if he fails to comply with this Order, the Commission may take action, in the manner described below in paragraph 5.14 of this Order.

5.9 Compliance with Laws and Rules. The Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine and surgery in Washington State.

5.10 Reporting Requirements. This Order will be subject to the reporting requirement of RCW 18.130.110.

5.11 Responsibility for Providing Current Address. The Respondent shall ensure that the Commission has his current practice and residence addresses and telephone numbers. The Respondent shall notify the Commission in writing of any address change within twenty (20) days after the change.

5.12 Costs. The Respondent shall be responsible and shall pay for any and all costs involved in his compliance with this Order.

5.13 Termination of Order. The Respondent may petition the Commission for modification and/or termination of this Order no sooner than two (2) years from the effective date of this Order. Upon notice duly given by the Commission, the Respondent shall appear personally before the Commission to present evidence in support of the petition. Evidence in opposition to the petition may also be presented for the Commission's consideration. The Commission has sole discretion to grant or deny Respondent's petition and has the authority to impose restrictions and/or conditions on

Respondent's license to practice as long as the Commission's jurisdiction over Respondent, pursuant to this Order, continues.

5.14 Violation of Order. If the Respondent violates any provision of this Order, the Commission, after giving the Respondent notice and the opportunity to be heard, may impose any sanction as it finds appropriate under RCW 18.130.160, or may take emergency action ordering summary suspension restriction or limitation of the Respondent's practice as authorized by RCW 18.130.050.

**THE PARTIES ARE FURTHER ADVISED:**

As provided in RCW 34.05.461(3), 34.05.470, and WAC 246-11-580, either party may file a petition for reconsideration. The petition must be filed within ten days of service of this Order with the Medical Quality Assurance Commission, Department of Health, 1300 SE Quince, PO Box 47866, Olympia, WA 98504-7866, and a copy sent to the Office of Professional Standards, 2413 Pacific Avenue, PO Box 47872, Olympia WA 98504-7872. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration shall not stay the effectiveness of this Order. The petition for reconsideration is deemed to have been denied 20 days after the petition is filed if the Commission has not acted on the petition or served written notice of the date by which action will be taken on the petition.


"Filing" means actual receipt of the document by the Commission.

RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(18).

Proceedings for judicial review may be instituted by filing a petition in superior court in accordance with the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within 30 days after service of this Order, as provided in RCW 34.05.542.

DATED THIS 23<sup>rd</sup> DAY OF DECEMBER, 1996.

***Medical Quality Assurance Commission***

  
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JOHN F. KEMMAN, M.D., Panel Chair





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
Olympia, Washington 98504

RE: Jack M. Reiter, MD  
Docket No.: 98-02-A-1037MD  
Document: Order of Release

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld:

Information regarding an individual's health care, including where they received health care services, their medical condition, care provided, etc., pursuant to RCW 42.17.312 (Public Records Disclosure) and RCW 70.02.020 (Medical Records – Health Care Information Access and Disclosure)

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center  
P.O. Box 47865  
Olympia, WA 98504-7865  
Phone: (360) 236-4700  
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE COMMISSION**

|  |                            |
|--|----------------------------|
| In the Matter of the License to Practice ) |                            |
| as a Physician and Surgeon of: )           | Docket No. 98-02-A-1037MD  |
|  | )                          |
| JACK M. REITER, M.D., )                    | ORDER ON COMPLIANCE REVIEW |
| License No. MD10990, )                     | AND REQUEST FOR RELEASE    |
|  | FROM COMMISSION ORDER      |
| Respondent. )                              |                            |
| _____ )                                    |                            |

This matter came before the Medical Quality Assurance Commission (the Commission) and Health Law Judge Michael T. Concannon, Presiding Officer for the Commission, on January 21, 1999, at the Seattle Airport Hilton Hotel in SeaTac, Washington. Members of the Commission present and considering the matter were: Everado Espinosa, M.D.; Hampton Irwin, M.D.; Randi Leggett, M.D.; William Marineau, M.D., Panel Chair; Mark Vollrath, PA-C; and Juanita Wagner, Ph.D., J.D., Public Member. Michael Farrell, Staff Attorney, appeared on behalf of the Department of Health (the Department). Jack M. Reiter, M.D. (the Respondent) appeared on his own behalf, and was not represented by counsel. The proceedings were recorded by Jean M. Ericksen, court reporter. Based on consideration of the evidence presented at the hearing and the files and records herein, the Commission hereby issues the following:

**I. PROCEDURAL HISTORY**

1.1 On May 16, 1995, the Commission issued a Statement of Charges (SOC) alleging that the Respondent had committed unprofessional conduct under

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RCW 18.130.180(4). A hearing was held on the SOC which resulted in the Commission issuing its Findings of Fact, Conclusions of Law and Final Order, dated December 23, 1996, (the Prior Order).

1.2 The Prior Order placed limitations and restrictions on the Respondent's license to practice medicine for a period of at least two years. During the period of restriction, the Respondent was required, inter alia, to refuse court appointments in any case where a forensic role would conflict with a prior therapeutic role without prior agreement among the affected parties of a potential conflict; to meet with [REDACTED] on conflict, boundary and role limitations in therapeutic and forensic psychiatry; to submit a report to the Commission on the knowledge and understanding the Respondent gained from such counseling; and appear before the Commission for periodic compliance reports. The Prior Order provided the Respondent could petition for a modification or termination of the Prior Order no sooner than two years after its effective date.

1.3 The Respondent was found in compliance with the Prior Order in his first compliance appearance before the Commission in January 1998.

1.4 In a letter from the Respondent, (the Reinstatement Request) dated September 30, 1998, the Respondent asked the Commission to consider terminating the Prior Order, thereby providing the Respondent an unrestricted license to practice medicine in the state of Washington. On December 21, 1998, the Commission issued the Respondent a Notice to Appear on the Reinstatement Request, setting the hearing for January 21, 1999.



1.5 At the hearing, the Department and the Respondent set forth their respective arguments. The Respondent testified on his own behalf, and the Department offered the Reviewing Commission Member's opinion on the Reinstatement Request. The Commission considered the Respondent's compliance with the Prior Order and the Reinstatement Request.

## II. FINDINGS OF FACT

2.1 The Respondent is a physician duly licensed to practice medicine in the state of Washington, and his practice has been subject to the continuing discipline of the Prior Order.

2.2 The Respondent testified concerning the nature of his psychiatric practice. He acknowledged that, after the two-year period of restriction, reflection and his attendance at a 15 hour ProBE ethics course in May 1998, he understood the absolute need not to mix roles in his psychiatric practice when a therapeutic responsibility to a patient comes into possible conflict with a forensic role in a court proceeding. As part of the record, the executive director of the ProBE program (The Ethics Group, LLC) provided the Commission a written opinion that, as a result of the course, the Respondent has acquired considerable self-understanding and growth, and that based on his analysis of the Respondent's participation he gave the Respondent an "unconditional" approval rating.

2.3 Neither the Department nor the Reviewing Commission Member had any objection to the Reinstatement Request, or any question that the Respondent was in

compliance with the Prior Order.

2.4 Based on the record as a whole, including the testimony at the hearing, the Commission finds the Reinstatement Request should be granted.

### **III. CONCLUSIONS OF LAW**

3.1 The Commission has jurisdiction over the Respondent and over the subject matter herein. As provided by chapter 18.71 RCW, and the Uniform Disciplinary Act (UDA), Chapter 18.130 RCW governs the discipline of physician licensees by the Commission.

3.2 RCW 18.130.160 in the UDA permits the Commission to fashion appropriate remedies in disciplining the Respondent including, without limitation, imposing restrictions or limitations on the Respondent's practice. The Prior Order provides for restrictions and/or limitations on the Respondent's practice, and the Commission must consider what is necessary to protect the public in imposing (or continuing) sanctions. RCW 18.130.160.

3.3 Based on the Findings of Fact, the Commission concludes that an order should be entered granting the Reinstatement Request, and therefore a release from the constraints of the Prior Order.

### **IV. ORDER**

Based on the foregoing Procedural History, Findings of Fact, and Conclusions of Law, the Commission issues the following ORDER:

4.1 The Respondent, Jack M. Reiter, M.D., is in compliance with the Prior

Order.

4.2 The Reinstatement Request is GRANTED. The Prior Order is terminated and the Respondent is hereby granted an UNRESTRICTED LICENSE. As announced on the record at the conclusion of the Respondent's January 21, 1999, appearance before the Commission, the effective date of the restoration of the Respondent's unconditional license to practice medicine in the state of Washington is January 21, 1999.

As provided in RCW 34.05.461(3) and RCW 34.05.470, and WAC 246-11-580 either party may file a petition for reconsideration. The petition must be filed within ten (10) days of service of this Order with the Adjudicative Clerk Office, 1107 Eastside Street , P.O. BOX 47879, Olympia, WA 98504-7879. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration shall not stay the effectiveness of this Order. The petition for reconsideration is deemed to have been denied twenty (20) days after the petition is filed if the Adjudicative Clerk Office has not acted on the petition or served written notice of the date by which action will be taken on the petition.

Proceedings for judicial review may be instituted by filing a petition in the Superior Court in accord with the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after service of this Order, as provided in RCW 34.05.542.

"Filing" means actual receipt of the document by the Adjudicative Clerk Office.


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RCW 34.05 010(6). This Order was "served" upon Respondent on the day it was deposited in the United States mail. RCW 34.05.010(18).

DATED THIS 10th DAY OF FEBRUARY, 1999.

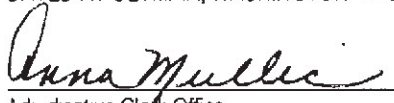
**Medical Quality Assurance Commission**

  
WILLIAM MARINEAU, M.D.,  
Panel Chair

DECLARATION OF SERVICE BY MAIL

I declare that today I served a copy of this document upon the following parties of record:  
**JACK M. REITER, M.D.** by mailing a copy properly addressed with postage prepaid

DATED AT OLYMPIA, WASHINGTON THIS 12 DAY OF FEBRUARY, 1999

  
Adjudicative Clerk Office

cc **MARYELLA JANSEN**  
**MICHAEL FARRELL**

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|--|
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