

JOSEPH LAWRENCE MCCARTHY,
INDIVIDUALLY AND DOING
BUSINESS AS FENIAN
POLYGRAPH SERVICES

V.

DEBORAH MOORE; JORGE
MEDINA-GUTIERREZ; ALICE
BAKER; SEAN BRAUN; JEFFERY
CLARK; LAWRIN DEAN; JAMES
GUTHRIE; EZIO LEITE; HEATHER
RENEE SHAHAN; MICHAEL
STRAIN; STEPHANIE THURSTON
JAMES WILLIAMS; MICHAEL
CHIMARYS; ERIC HOLDEN; ERIC
ERIC "JAY" HOLDEN; MICHAEL
HOLDEN; WILLIAM PARKER;
CHARLES SPEAGLE; JOHN
COUGHLIN; BOBBY JONES;
CLAYTON WOOD; RICHARD
WOOD; BRYAN PEROT; DON
MARSH; JOHN SWARTZ;
RAYMOND LEE; MICHAEL
BARTON; BEHAVIORAL
MEASURES & FORENSIC
SERVICES SOUTHWEST; R. LEE
AND ASSOCIATES POLYGRAPH
SERVICES; TEXAS ASSOCIATION
OF POLYGRAPH EXAMINERS;
DAVID KILPATRICK; AND TOM
PLUMLEE

IN THE DISTRICT COURT

48TH JUDICIAL DISTRICT

OF TARRANT COUNTY, TEXAS

FILED
TARRANT COUNTY
2007 FEB 22 A 10:00
THOMAS A. WILDT
DISTRICT CLERK

COPY

SECOND AMENDED PETITION FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff Joseph Lawrence McCarthy, Individually and Doing Business as Fenian Polygraph Services (hereinafter known as "Fenian"), filing this Second Amended

Petition for Declaratory Judgment, pursuant to the Texas Uniform Declaratory Judgments Act in Chapter 37 of the Texas Civil Practice and Remedies Code, and would show the Court the following:

I. DISCOVERY CONTROL PLAN LEVEL

Pursuant to a Court Order, this case will be conducted under discovery level 3.

II. PARTIES AND SERVICE

A. Plaintiff Joseph Lawrence McCarthy brings this action individually and doing business as Fenian Polygraph Services. Plaintiff resides in Dallas County, Texas. However, his business, Fenian Polygraph Services, is located at 2100 North Highway 360, Suite 500A, Grand Prairie, Tarrant County, Texas 75050.

B. Defendant Deborah Moore is an individual doing business in Fort Worth, Tarrant County, Texas which was served with process on or about January 22, 2008. She attended the hearings on January 31, 2008 and February 1, 2008, but has not filed an answer with this Court.

C. Defendant Jorge Medina-Gutierrez is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 13, 2008.

D. Defendant Alice Baker is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about February 15, 2008.

E. Defendant Sean Braun is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 8, 2008.

F. Defendant Jeffery Clark is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about February 15, 2008.

G. Defendant Lawrin Dean is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 8, 2008.

H. Defendant James Guthrie is an individual doing business in Fort Worth, Tarrant County, Texas who was served with service of process on or about January 28, 2008 and has not filed an answer with this Court.

I. Defendant Ezio Leite is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 8, 2008.

J. Defendant Heather Renee Shahan is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 8, 2008.

K. Defendant Michael Strain is an individual doing business in Fort Worth, Tarrant County, Texas who filed an answer on or about February 8, 2008.

L. Defendant Stephanie Thurston is an individual doing business in Grapevine, Tarrant County, Texas and may be served with process at her place of business, located at 2051 Hughes Road, Suite B, Grapevine, Tarrant County, Texas 76051 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

M. Defendant James Williams is an individual doing business in Fort Worth, Tarrant County, Texas who was served with process on or about January 22, 2008 and has not filed an answer with this Court.

N. Defendant Michael Chimarys is an individual doing business in Denton, Denton County, Texas who filed an answer on or about January 31, 2008.

O. Defendant Eric Holden is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

P. Defendant Eric "Jay" Holden is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

Q. Defendant Michael Holden is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

R. Defendant William Parker is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

S. Defendant Charles Speagle is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

T. Defendant John Coughlin is an individual doing business in Dallas, Dallas County, Texas who filed an answer on or about February 12, 2008.

U. Defendant Bobby Jones is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about January 31, 2008.

V. Defendant Clayton Wood is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about January 31, 2008.

W. Defendant Richard Wood ("Wood") is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about January 31, 2008.

X. Defendant Bryan Perot is an individual doing business in Arlington, Tarrant County, Texas who filed an answer on or about January 31, 2008.

Y. Defendant Don Marsh is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 5109

Brentwood Stair Road, Fort Worth, Tarrant County, Texas 76112 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

Z. Defendant John Swartz is an individual doing business in Addison, Dallas County, Texas and may be served with process at his place of business, located at 14275 Midway Road, Suite 220, Addison, Dallas County, Texas 75001 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

AA. Defendant Raymond Lee is an individual doing business in Duncanville, Dallas County, Texas who filed an answer on or about January 29, 2008.

BB. Defendant Michael Barton is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 6750 Hillcrest Drive, Suite 304, Dallas, Dallas County, Texas 75230 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

CC. Defendant Behavioral Measures & Forensic Services Southwest ("Behavioral") is a corporation duly organized under the laws of the State of Texas who filed an answer on or about February 12, 2008.

DD. Defendant R. Lee and Associates Polygraph Services is an assumed business name duly organized under the laws of the State of Texas who was served on or about January 22, 2008 and has not filed an answer with this Court.

EE. Defendant Texas Association of Polygraph Examiners is an exempt corporation duly organized under the laws of the State of Texas who filed an answer on or about February 12, 2008.

FF. Defendant David Kilpatrick ("Kilpatrick") in his individual capacity is an individual who is employed in Tarrant County, Texas who filed an answer on or about February 5, 2008.

GG. Defendant Tom Plumlee ("Plumlee") in his individual capacity is an individual who is employed in Tarrant County, Texas who filed an answer on or about January 29, 2008.

III. JURISDICTION AND VENUE

- A. The subject matter in controversy is within the jurisdictional limits of this Court.
- B. This Court has jurisdiction over the parties because all of the parties are Texas residents.
- C. Venue in Tarrant County is proper in this cause.

IV. FACTS

All attached exhibits in the recitation of facts, along with Plaintiff's Supporting Affidavit, are attached to Plaintiff's First Original Petition for Declaratory Judgment; Application for Temporary Restraining Order; and Application for Injunction and are incorporated fully herein, along with all of the attached exhibits and recitation of facts in Plaintiff's First Amended Petition for Declaratory Judgment and Application for Expedited Injunction.

On or about August 20, 2007, Fenian began operating in Tarrant County, Texas. On or about November 8, 2007, Fenian was placed on the approved list of polygraph examiners in Tarrant County, Texas. *See Attached Exhibit A.* The top of the document, which every

which every sex offender on deferred adjudication or probation is supposed to receive, clearly states that the probationer has the choice of who he or she wants to perform the polygraph examination.

Since November 8, 2007, Fenian has only performed three polygraph examinations for sex offenders on probation or deferred adjudication. One was a Tarrant County probationer and the other two were probationers from Dallas County. On or about December 13, 2007, a polygraph examination was scheduled by Doug _____. This polygraph examination was to be performed by Fenian on December 29, 2007. On Friday, December 28, 2007, Doug _____ called Fenian and canceled the appointment. When Fenian asked Doug _____ why he cancelled the appointment, Fenian was told that Deborah Moore, Doug _____'s therapist told him that he had to have a polygraph examination performed by Wood or Behavioral as they were the only two polygraph examiners that she allowed her patient's to use. If Doug _____ did not have his polygraph examination performed by Wood or Behavioral, then Ms. Moore would drop him as a client.

On or about December 28, 2007, a message was left with Ms. Moore's office, which was not returned until January 3, 2008. Ms. Moore admitted that she instructed her patient's to go to Wood or Behavioral as they were the only two names on her list. She stated that she was not familiar with Fenian and needed to see examples of the types of tests that he ran before she would do business with Fenian.

On or about January 3, 2008, an email was sent to David Kilpatrick, chairperson of the Community Resources Review Committee ("CRR") with Tarrant County Community

Supervision and Corrections Department. He responded that "Yes, the P gets to choose, and both the treatment provider nor the officer can insist on one over another, period." See *Attached Exhibit B*.

On or about January 3, 2008, a cease and desist letter was mailed to Deborah Moore, which was received on or about January 4, 2008. See *Attached Exhibit C*. There was no response to that letter.

On or about January 3, 2008, there was further clarification with David Kilpatrick, wherein he stated that "The rule dealing with this in the MOU basically states that one provider (of any kind) cannot refer a probationer to another provider (of any kind) unless this is approved by the officer beforehand." See *Attached Exhibit D* and *Attached Exhibit E*.

Prior to the opening of Fenian, Joseph Lawrence McCarthy performed approximately five polygraph examinations per day with Dalhousie Polygraph Services in Richardson, Texas. There are only sixteen polygraph examiners in the Metroplex, including Mr. McCarthy, who are certified to perform polygraph examinations on sex offenders under the Joint Polygraph Committee on Offender Testing ("JPCOT"). With several hundred sex offenders in the Metroplex, it is inconceivable that Fenian would only have one Tarrant County probationer in two months. Meanwhile, Behavioral and Wood are booked solid for sex offender polygraph examinations over a month in advance. This is because the sex offender therapists and probation officers of CSCD in Tarrant County, Texas are diverting business away from Fenian in clear violation of various state and federal laws.

Fenian can overcome the claim of immunity from Kilpatrick and Plumlee. CSCD is clearly a governmental agency after the 2005 amendments to Section 76 of the Texas Government Code. Prior to that, the exact capacity of CSCDs across Texas was unclear. See *Santiago vs. West Texas Community Supervision & Corrections Department* 203 S.W.3d 387 (Tex.App.-El Paso 2006, no pet.) Nowhere in the statutes of the State of Texas is the term "hybrid" used to describe a form of government. On or about February 1, 2008, this Court asked for an opinion on which branch of government CSCDs fall. Instead of a response, the term "hybrid" is used then to add insult to injury. In this case, the Attorney General's Office asserts on page 11 of their Plea to the Jurisdiction "however, the precise definition of a CSCD is unimportant".

The American Heritage dictionary defines "hybrid" as-

- "1. The offspring of two animals or plants of different breeds, varieties, species, or genera, esp. as produced through *human manipulation* for specific genetic characteristics.
2. A person or group of persons produced by the interaction or crossbreeding of two unlike cultures, traditions, etc.
3. Anything derived from heterogeneous sources, or composed of elements of different or incongruous kinds: *a hybrid of the academic and business worlds.*
4. A word composed of elements originally drawn from different languages, as *television*, whose components come from Greek and Latin.
5. Bred from two distinct races, breeds, varieties, species, or genera.
6. Composite; formed or composed of heterogeneous elements.
7. Composed of elements originally drawn from different languages, as a word."

It seems as if the Attorney General's Office is of the opinion that they can nurture their own definitions of what a CSCD is as they would grow a mushroom. Furthermore, the clear definition of a CSCD is important. Otherwise, the Court would not have asked for the definition. This Court and the plaintiff are entitled to a clear definition, not political double talk used to manipulate the Court or express their lack of understanding as to the Court's instructions. Asserting the CSCD is a "hybrid" of two or all branches of government and then informing the Court that the Court's request is not important is nothing less than arrogant of the part of the Attorney General's Office and an affront to the constitutionality of the separation of powers. CSCD is either of the Executive, Legislative, or Judicial branches. Because of the constitutional separation of powers, the Attorney General's Office can't have it both or all ways. They should not be able to have their cake and eat it too. However a famous French Queen said it best when she said "Let them eat cake". Fenian does not wish to buy this brand of snake oil and it would hope that the Court would not either.

The Attorney General's Office also asserts in their plea to the jurisdiction on page 11 that "for the purposes of this suit, adult probation departments have been to be parts of state government sufficient to invoke Eleventh Amendment immunity". Given this assertion it is clear the Attorney General's Office wants the term "hybrid" to stick so they can change the skin of this governmental animal as if it were a chameleon, but at a closer look it appears that a leopard can not change its spots.

By Kilpatrick and Plumlee insisting on the use of the MOU, they are acting outside of their authority under Section 76.017 of the Texas Government Code. CSCD has no

authority to refer any probationer to any treatment provider other than a treatment provider for drug or alcohol treatment. By CSCD insisting that their sex offender probationers go to a polygraph examiner on their approved list who signed a MOU is in direct violation of that section.

The only statutory authority that can be found anywhere in Texas law in regards to post conviction sex offender treatment or testing is found in Title 22 Chapter 810 of the Texas Administrative Code. Title 22 Chapter 810.2(b)(23) of The Texas Administrative Code clearly defines what qualifications a polygraph examiner shall possess to perform polygraph examinations in this specialized area of expertise:

"Polygraph Examiner--A person with a current license approved by the Texas Polygraph Examiners Board and who meets minimum criteria to be listed by the Joint Committee on Offender Testing (JPCOT) for polygraphing adult sex offenders and juveniles with sexual behavior problems."

"In this case what is, is."

This is why the JPCOT list is present. It is present so that every sex offender therapist; sex offender probationer; and probation officer knows who are the qualified polygraph examiners. It's clear that law already exists in the regulation of polygraph examiners in the area of post conviction sex offender testing. For any CSCD to pass additional rules or regulations is redundant and unauthorized. The MOU and list system violates the spirit of JPCOT, Chapter 810 of the Administrative Code, and Chapter 76 of the Government Code.

Fenian is well aware that Texas is an employment at will state. However, neither Joseph McCarthy nor Fenian is an employee of CSCD. It is merely a small business trying to break through the low glass ceiling that years of favoritism have built.

Joseph McCarthy and Fenian is aware that they are not "entitled to receive polygraph referral from CSCD" Page 3 of the plea to jurisdiction. However, if David Kilpatrick or Tom Plumlee were acting within a statutory authority to enact this MOU, Joseph McCarthy and Fenian is entitled to equal protection.

In this cause of action, Fenian is not asking for monetary damages from CSCD, Kilpatrick, and Plumlee. It is simply requesting that this Court declare that the MOU is not valid and that the approved list of polygraph examiners that Kilpatrick and Plumlee keeps is outside of their scope of authority. It is proper to keep Plumlee and Kilpatrick as parties to this lawsuit for declaratory judgment relief as Fenian is not attempting to extend the trial court's jurisdiction. Fenian is seeking declaratory relief against Kilpatrick and Plumlee who acted without legal or statutory authority. This is not a suit against the State. Fenian is asking that the Court compel Kilpatrick and Plumlee to act within their official capacity and not go outside of their official capacity.

The diversion of business has harmed Fenian financially. Defendants Deborah Moore, Behavioral, Wood, and others who are unknown at this time, have created a monopoly on the polygraph market in Tarrant County, in violation of a multitude of state and federal laws. By those two companies performing almost all of the polygraph examinations of sex offenders on probation or deferred adjudication, it negates the free choice that the sex offender probations have when it is time for their polygraph examinations. A monopoly

examinations. A monopoly or a market with no free choice should not survive in a country such as ours that is based on free will.

Joseph McCarthy and Fenian are not trying to be a thorn in the side of anyone nor are they pursuing this case in bad faith. They are just acting where others were unable or afraid to act. It's the belief of Joseph McCarthy and Fenian that those who do not act are in a constant state of ethical indecision.

VI. REQUEST FOR DECLARATORY JUDGMENT

There exists a genuine controversy between the parties herein that would be terminated by the granting of declaratory judgment. Plaintiff therefore requests that declaratory judgment be entered as follows:

1. The MOU as it pertains to polygraph examiners is not valid.
2. The list of approved polygraph examiners for sex offenders that is currently held by Plumlee and Kilpatrick is not valid.
3. The sex offender shall select a polygraph examiner from the JPCOT list with no outside influence.

VII. REQUEST FOR ATTORNEY'S FEES

Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, request is made for all costs and reasonable and necessary attorney's fees incurred by Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that on final trial hereof, declaratory judgment be granted as requested herein and Plaintiff be awarded costs and reasonable and necessary attorney's fees, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

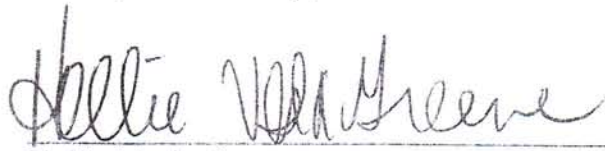
Hollie Vesla Greene, P.C.
P.O. Box 540218
Grand Prairie, Texas 75054
Tel: (214) 228-2858
Fax: (972) 522-0952

By: 
Hollie Vesla Greene
Texas Bar No. 24006564

Attorney for Plaintiff
Joseph Lawrence McCarthy, Individually and
Doing Business As Fenian Polygraph Services

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded to all pro se parties and attorneys of record pursuant to the Texas Rules of Civil Procedure on the 22nd day of February, 2008.


Hollie Vesla Greene

NAME:

CASE #:

COURT: Choose court from list

POLYGRAPH EXAMINERS

Your conditions of supervision require you to complete **CLINICAL POLYGRAPH EXAMS**. Select the provider of your choice from the list below. You are expected to attend appointments as scheduled and complete testing in a timely manner. You are responsible for full payment of all examiner fees.

| | |
|--|---|
| <input type="checkbox"/> BARTON, MICHAEL Contact: Michael Barton 6750 Hillcrest Plaza Drive # 304 Dallas, TX 75230 512.251.3884 | <input type="checkbox"/> LEE, RAYMOND Contact: Raymond Lee 407 N. Cedar Ridge, Suite 210 Duncanville, TX 972.572.2224 |
| <input type="checkbox"/> BEHAVIORAL MEASURES & FORENSIC SERVICES, INC. Contact: Eric Holden 1720 Regal Row, Suite 20 Dallas, TX 75235 972.437.4597 | <input type="checkbox"/> SOUTHWEST POLYGRAPH SERVICES Contact: Don Marsh 5109 Brentwood Stair Rd. Fort Worth, TX 76112 817-451-1122 |
| <input type="checkbox"/> CHIMARYS, MICHAEL POLYGRAPH SERVICE Contact: Michael Chimarys 225 W. 103 South Woodrow St. #5 Denton, TX 76201 817-909-3411 | <input type="checkbox"/> JOHN SWARTZ POLYGRAPH SERVICES Contact: John Swartz 14275 Midway Road, Suite 220 Dallas, TX 75001 1.800.296.7172 |
| <input type="checkbox"/> FINIAN POLYGRAPH SERVICES Contact: Joey McCarthy 2100 North Hwy 360, Suite 500A Grand Prairie, TX 75050 (Tarrant County side) 214.499.7622 | <input type="checkbox"/> WOOD & ASSOCIATES Contact: Rhonda 2305 D Roosevelt Drive Arlington, TX 76016 817.275.0447 <p style="text-align: center;">**** BOTH CLIENT-PAY and CSCD-FUNDED ****</p> |

Please take \$ _____ for appointment.

APPOINTMENT DATE:

APPOINTMENT TIME:

_____/_____/_____

Supervision Officer's Signature Probationer's Signature Date

DATE REFERRED:

CID#:

Updated by DKILPATR 11/8/2007 2:20 PM

Exhibit A

YAHOO! SMALL BUSINESS
CLASSIC

Print - Close Window

Subject: RE: polygraph examiners
Date: Thu, 3 Jan 2008 10:35:48 -0600
From: "David L. Kilpatrick" <DLKilpatrick@TarrantCounty.com>
To: "Joey McCarthy" <joe@fenianpolygraph.com>

please give me the name of the probationer and the provider involved. We've just dealt with one of the providers on this issue and I need to know if it's the same one, same issue or a new one. Yes, the P gets to choose, and both the treatment provider nor the officer can insist on one over another, period.

From: Joey McCarthy [mailto:joe@fenianpolygraph.com]
Sent: Thursday, January 03, 2008 10:21 AM
To: David L. Kilpatrick
Subject: polygraph examiners

Hi Mr. Kilparick,

I hope you had a good holiday. I have a question for you. It appears from the approved polygraph examiners list that the probationer has the choice of who to pick for a polygraph exam. What is the penalty for a sex offender therapist in Tarrant County telling a probationer that he has to go to one of two people instead of Joey or she will kick him out of group therapy? Please call me on my cell at 214-228-2858.

Thank you,
Hollie Greene

Exhibit B

LAW OFFICE OF
BOB LEONARD, JR., PLLC

2800 SOUTH HULEN, SUITE 210
FORT WORTH, TEXAS 76109
(817) 336-8500
FAX (817) 336-8511
www.bobleonard.com

BOB LEONARD, JR.

HOLLIE VESLA GREENE

January 3, 2008

VIA CMRRR 7160 3901 9845 1407 7127 ONLY

Deborah Moore
1160 Country Club Lane
Fort Worth, Texas 76112

Re: Fenian Polygraph Services

Dear Ms. Moore:

Please be advised that I represent Joseph L. McCarthy and Fenian Polygraph Services. Based on our conversation today, along with further research and correspondence with Tarrant County, it is reprehensible that you, as a listed co-chairperson of the JPCOT guidelines, would consistently violate the policies of Tarrant County and the Texas Department of Health and Human Services by insisting that your clients only receive polygraph examinations from Richard Wood or Eric Holden. Ironically, these two gentlemen are some of the polygraph examiners listed on the JPCOT guidelines.

Because of your unethical behavior in not fully disclosing to your clients that they do have the final say as to who performs their polygraph examinations, my client has lost money due to a cancelled test. Because this probationer fears repercussions from you, he wishes to remain anonymous.

You have ten days from the receipt of this letter to submit a cashier's check to my client for \$175.00, which is the cost of the test that was cancelled, and a cashier's check for \$500.00 made payable to the Law Offices of Bob Leonard for attorney's fees.

If you do not immediately cease and desist from violating known policies of Tarrant County and Texas Department of Health and Human Services and harming my client financially, then I shall be forced to pursue further action.

Should you have any questions, please do not hesitate to call.

Sincerely,


Hollie Vesla Greene

/hvg

Exhibit C

YAHOO! SMALL BUSINESS
CLASSIC

Print - Close Window

Subject: RE: polygraph examiners
Date: Thu, 3 Jan 2008 11:27:20 -0600
From: "David L. Kilpatrick" <DLKilpatrick@TarrantCounty.com>
To: "Joey McCarthy" <joe@fenianpolygraph.com>

Great. Yeah, we can do that. We just sent such a letter to one provider. It's a warning letter stating that continuing to do this will lead to suspension of referrals to them. The rule dealing with this in the MOU basically states that one provider (of any kind) cannot refer a probationer to another provider (of any kind) unless this is approved by the officer beforehand. This was put in mainly to deal with substance abuse providers kicking someone out and sending them to another provider w/o the officer's knowledge, which was a common issue. The strange symbiotic relationship between sex offender providers and polygraphers hasn't been addressed to clarify this doctrine with them, but it is overdue. The problem I can see arising from this is twofold:

- 1) the officer will agree with the provider and confirm to the probationer that they are to go to XYZ polygrapher as instructed by the provider
- 2) This will negate the "free choice" of the probationer to choose, but the comeback from the providers & polygraphers will be to say they have a partnership of some sort and that it is their professional judgement that they only use one provider

This will ultimately have to be settled by the department and/or the courts.

From: Joey McCarthy [mailto:joe@fenianpolygraph.com]
Sent: Thursday, January 03, 2008 11:20 AM
To: David L. Kilpatrick
Subject: RE: polygraph examiners

I will get that information out to you ASAP. Joey is checking his voicemail to confirm the probationer's last name. Is there any way that Tarrant County can send a letter to the sex offender therapists to reiterate to them that the polygraph examiner is the choice of the probationer and no one else?

"David L. Kilpatrick" <DLKilpatrick@TarrantCounty.com> wrote:

please give me the name of the probationer and the provider involved. We've just dealt with one of the providers on this issue and I need to know if it's the same one, same issue or a new one. Yes, the P gets to choose, and both the treatment provider nor the officer can insist on one over another, period.

From: Joey McCarthy [mailto:joe@fenianpolygraph.com]
Sent: Thursday, January 03, 2008 10:21 AM
To: David L. Kilpatrick
Subject: polygraph examiners

Exhibit D

Hi Mr. Kilparick,

I hope you had a good holiday. I have a question for you. It appears from the approved polygraph examiners list that the probationer has the choice of who to pick for a polygraph exam. What is the penalty for a sex offender therapist in Tarrant County telling a probationer that he has to go to one of two people instead of Joey or she will kick him out of group therapy? Please call me on my cell at 214-228-2858.

Thank you,
Hollie Greene

Exhibit D



Judicial District of Tarrant County, Texas
COMMUNITY SUPERVISION & CORRECTIONS DEPARTMENT
200 West Belknap, Fort Worth, Texas 76196-0255 817-884-1600

TOM PLUMLEE
DIRECTOR

INTERAGENCY MEMORANDUM OF UNDERSTANDING

This Memorandum includes the following type(s) of services:

- Substance Abuse**
- Financial Management**
- Anger/BIPP**
- Other : X**
- Employment**
- Theft**
- Parenting Skills**

I. PARTIES TO THE MEMORANDUM OF UNDERSTANDING

This Interagency Memorandum of Understanding (MOU) is entered into this **January 15, 2008** by and between the Community Supervision and Corrections Department of Tarrant County (hereafter referred to as the CSCD), political entity of the Judicial District of Tarrant County, and **x** (hereafter referred to as the Service Provider).

II. PURPOSE

To encourage and promote cooperation and coordination of efforts to provide education/ counseling/treatment and other services, and appropriate criminal justice services (e.g., supervision, monitoring, and rehabilitation) to offenders under CSCD supervision;

To clarify the roles and responsibilities of the respective parties with regard to the provision of collaborative and coordinated services to offenders; and

To ensure that each offender receives the appropriate level, modality, and intensity of services to address his/her individual needs and court-ordered requirements.

III. DEFINITIONS

Completion

Offender's fulfillment of all requirements of program as stated at intake, and no further services required by the current program.

CSCD

Community Supervision and Corrections Department of Tarrant County, Texas

License

License(s) (or certifications) from appropriate legal entities required for the provision of certain services, e.g., Texas Commission on Alcohol and Drug Abuse, Texas Certification Board of Alcoholism and Drug Abuse

Counselors, and the Texas Board of Examiners.

- Service Provider** Any agency or individual (public, private, for profit or non-profit organization) providing education/counseling, treatment, and other services, support or assistance to persons under CSCD supervision.
- Supervision Officer** CSCD staff actively supervising the status and progress of a person placed under CSCD supervision by a county or district court of Texas or the equivalent in another state.
- Termination** The cessation of services and removal of an individual from active status for any reason other than completion.

IV. TERM

Upon execution by all parties, this MOU shall commence on the date indicated above, and shall remain in effect through **January 31, 2008**, unless terminated or modified sooner. This MOU shall be subject to renewal thereafter every two years or upon renewal of any required license, following an appropriate review of the outcomes resulting from the services provided under this MOU.

V. NO PAYMENT BY CSCD

Service Provider agrees that it does not expect to receive, will not request, and will not receive, any payment from CSCD for services rendered to offenders as a result of any referral by CSCD under the terms of this Memorandum of Understanding. Any other Memorandum of Understanding(s) between CSCD and Service Provider which provide(s) for payments by CSCD for services rendered, will remain in full force and effect, separate and apart from this Memorandum of Understanding.

VI. COLLABORATIVE REVIEW, EVALUATION, AND MODIFICATION OF THIS MOU

All parties to this MOU shall participate in a collaborative review of this MOU and its subsequent outcomes, no fewer than 90 days prior to the expiration of the term of this MOU and subsequent modifications to the MOU.

The term and provisions of this MOU, as set forth herein, shall remain in effect unless and until modifications, amendments or addenda to the MOU have been mutually agreed to by both parties in writing. In the event that either party desires to terminate, modify, amend, add to, or otherwise alter the term or provisions of this MOU, written notice to this effect must be made and delivered to the other party no fewer than 30 days prior to the intended, effective date of the proposed change(s). In the event the other party requests the opportunity to discuss the proposed termination or modification(s) to the MOU, the party proposing the modification(s) shall provide for such an opportunity prior to the intended, effective date of the proposed changes.

No Service Provider shall be allowed to enter into this MOU without previously having submitted an application to CSCD, with all required information, and without having been approved by the CSCD, through background investigations or otherwise. The Service Provider will provide all required documentation for each program and each employee.

VII. SCOPE OF THE MOU

A. CSCD:

1. Shall identify and refer offenders indicating a need for education/counseling/treatment or other services or assistance;

2. Shall provide the Service Provider with copies of a signed consent form, referral form, any assessment instruments used, and any other appropriate and relevant documentation
3. Is not obligated to refer any probationer to any service provider. Probationers will be referred to service providers at the sole discretion of CSCD.
4. Shall determine if agencies, their programs and employees are appropriate for contact and/or service to Tarrant County CSCD probationers. Individual programs and employees within an agency may be determined to be inappropriate. CSCD reserves the right to suspend referrals to such a program, to the agency employee, or to the entire agency.

B. Service Provider:

1. The Service Provider agrees to comply with the "Performance Standards" outlined in this Memorandum of Understanding.
2. Individuals determined by the Service Provider to be inappropriate for the modality for which they were referred shall be referred back to the referring CSCD supervision officer or counselor within three workdays and staffed (via phone or person) to determine a more appropriate referral/disposition. **No offender referred by a CSCD staff person shall be transferred to another Service Provider, agency, or treatment modality.** The offender shall be referred back to the referring SO who will be responsible for making any additional referrals.
3. Conflicts of Interest: No Service Provider providing services to CSCD shall employ or engage CSCD staff for any purpose. However, CSCD staff may engage in the staffing of cases directly related to case management including treatment, supervision and formulation of recommendations to the Court(s) when appropriate.
4. Service provider will supply to CSCD required documentation for any employee who joins their employ after the effective date of this MOU for background investigation within 30 days of their employment start date. This includes but is not limited to a signed Consent for Computerized Criminal History form and any licenses required for the job.
5. Service provider shall not use employees who possess a serious criminal history, as determined by CSCD, for contact with or service to a CSCD probationer.
6. Service provider shall not use employees who have been determined by the department to be inappropriate for any contact and/or service provided to a CSCD probationer. Use of such employees after being notified of them is grounds for suspension or termination of the MOU with CSCD. CSCD is not required to inform service providers of the reasons said employee was deemed inappropriate.
7. Service provider shall follow CSCD policy and chain of command regarding problems encountered with CSCD staff.

VIII. PERFORMANCE STANDARDS

The CSCD Supervision Officer (SO) assigned to supervise the offender shall retain responsibility for decisions affecting the offender's status. If the officer is not available, contact may also be made with his/her unit supervisor or duty officer. The Service Provider is responsible for all notifications to the SO, and for compliance with any Performance Standards included as attachments to this MOU and incorporated by reference herein.

The Service Provider agrees to provide regular, ongoing updates of offender information to the

Supervision Officer (SO), at least once per month. Notifications shall be completed in a timely manner as indicated below:

A. **Intakes:**

1. **Intake Completions**

Notification of intake each week by mail to the assigned SO.

2. **Intake No Shows**

If an offender fails to keep his/her intake appointment, the Service Provider shall attempt to contact the offender within three (3) workdays and then notify the SO immediately by phone. The Service Provider must follow-up any phone notification with written notification within five workdays of the verbal notice.

3. **Rescheduled Intakes**

If contact is made and an intake is rescheduled, the Service Provider shall use his/her judgment as to whether special notification should be made to the SO.

B. **Program Plans:**

The Service Provider must provide the supervising SO a copy of the initial program plan signed by the offender and the Service Provider. Those programs not required to develop a plan must provide documentation of the Service Provider's contractual expectations of the offender. The program plan must include an outline, expectations, and requirements for completion (including payment and time frames). Any modifications to the plan that extends the length of program or changes requirements or modality of services, must be staffed with the SO in advance.

C. **Violations:**

The Service Provider shall notify the supervision officer by mail of any and all program non-compliance violations, e.g., failure to complete course requirements, missed appointments, failure to participate, or incidents occurring during the course of the program, within three working days of the occurrence, along with written notification of any sanctions imposed, **prior to termination**.

The SO shall report to the Service Provider any information or behavior (such as positive urinalysis results or any violations of conditions of community supervision) or any other activity or situation that may impact the services rendered by the Service Provider, if a release of information signed by the offender is on file.

D. **Terminations From Services/Programs:**

The Service Provider shall not terminate an offender from a program (for non-compliance reasons) without utilizing the staffing process by phone or in person. The Service Provider shall notify the SO (by use of the "Progress Report") within one week of any termination for non-compliance after completing the staffing process with the SO via phone, person, or mail. Service Providers must use the Progress Report to notify the supervision officer by the end of the month of all program completions.

E. **Progress Updates / Correspondence:**

Service Provider shall:

1. Respond to all SO requests for reports for the courts within five workdays, unless requested sooner by the court.
2. Provide the offender with the appropriate documentation upon completion of the program. If any fee balance remains due, an administrative letter indicating the amount due and any relevant information will be considered appropriate.
3. Testify in court when requested by the court, CSCD, or the District Attorney's office.
4. Participate in any jointly approved surveys, exit surveys, studies, or evaluations developed for the purpose of program evaluation.
5. Provide to CSCD annually, or as they occur, updated licenses/certifications, or licenses/certifications of new employees providing services (as applicable), topical curriculum outlines, and any modifications to programs and/or agency operations which may materially affect service delivery.

IX. QUALITY ASSURANCE

To ensure that quality services are being provided and the Service Providers are supplying required information to effectively and efficiently track offenders and their movement through programs, all parties agree to the following requirements:

A. **Officer Updates:**

The Service Provider shall provide a monthly update ("Progress Summary Report") to the SO by the 10th day of the following month. Officers shall file the "Progress Summary Report" in accordance with the Department's Policy and Procedures. The unit supervisors will document all reported discrepancies, including any reports not received in accordance with this MOU, and notify CSCD management through the chain of command and the Community Resources Review Committee (CRRRC). The CRRRC may resolve the situation at the request of CSCD Management.

B. **Quality Casework:**

Each Service Provider shall provide to CSCD a "Quality Control Plan" to assure quality casework and documentation.

C. **Case Reviews:**

The CSCD shall have the right to perform case reviews on Service Provider case files pertaining to offenders referred by CSCD to the Service Provider, to verify appropriate documentation and compliance with offender needs. Service Provider shall assure that all appropriate releases of information have been executed and shall allow CSCD access to these documents upon reasonable notice.

D. **License:**

This MOU does not affect the responsibilities or authority of licensing and regulatory authorities.

E. **Site Visits:**

Service Provider shall permit CSCD employees so authorized by the Director, CSCD, to visit

without advance notice and observe programs of the Service Provider. Such visits/observations may be performed for group education, counseling, and treatment sessions only. Individual education, counseling, treatment sessions are not subject to unannounced visits/observations. It shall be the responsibility of the Service Provider to inform non-CSCD-referred group clients that such visits/observations may occur, and to secure from these clients appropriate releases of information.

F. **Use of Non-Licensed Personnel:**

The Service Provider shall use non-licensed personnel (paid or unpaid) for direct therapeutic interaction with offenders only if such personnel are currently active in a certified scholastic or state-sanctioned certification or licensing program which requires such interaction as part of the certification/licensure program. These non-licensed personnel must conform to all state and school guidelines for supervision by the mentoring agency (Service Provider) at the time they are providing interaction with the offender.

G. **CSCD Administrative Action:**

An agency which has been approved as a service provider for CSCD is subject to CSCD administrative action for any deficiencies in performance or engagement in inappropriate conduct. The following is a partial list of occurrences which may result in administrative action:

- Breach of any term of the Interagency Memorandum of Understanding
- Offensive conduct toward a probationer, CSCD employee, or any member of the public
- Failure to report the commission of a crime by a service provider employee as defined by the laws of this State, any other State, or the United States, to CSCD staff
- Violation of the Code of Ethics for their respective state licensure agency,
- Falsification of service provider records and/or records provided to CSCD
- False statements to CSCD employees and/or the Courts
- Unauthorized possession of CSCD property
- Interfering with the performance of CSCD staff
- Maintaining an unsafe environment for CSCD staff or probationers
- Other conduct inconsistent with the interests of the department and/or the Criminal Courts of Tarrant County.

This list is intended to be representative of the types of activities which may result in administrative action. It is not intended to be comprehensive.

X. **NONDISCRIMINATION**

The parties to this MOU shall develop, implement, and provide the services described herein without regard to the race, ethnic origin, creed, gender, or disability of the recipients or providers of those services.

XI. CONFIDENTIALITY

The CSCD and participating Service Providers agree to abide by all applicable federal and Texas statues and regulations pertaining to the confidentiality of the records of clients/patients and of persons under the supervision of the Community Supervision and Corrections Department.

NOT OFFICIAL - DO NOT COMPLETE

X. APPROVAL AND AUTHORIZATION

The terms and conditions of this document are hereby approved and adopted on this the _____ day of _____, 2006.

CSCD:

SERVICE PROVIDER:

Tom Plumlee, Director

(Name)

CSCD of Tarrant County, Texas
200 W. Belknap
Fort Worth, TX 76196-0255

x

Date

Date

NOT OFFICIAL - DO NOT COMPLETE