

NO. 048 228282 08

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

V.

DEBORAH MOORE; JORGE
MEDINA-GUTIERREZ; ALICE
BAKER; LINDA BALEY; SEAN
BRAUN; JEFFERY CLARK;
LAWRIN DEAN; JAMES GUTHRIE;
WILLIAM KANTZ; EZIO LEITE;
JOHN LOGGINS; DEBRA
MCSHERRY; HEATHER RENEE
SHAHAN; MICHAEL STRAIN;
STEPHANIE THURSTON; JAMES
VARANDO, JR.; JAMES WILLIAMS;
MICHAEL CHIMARYS; ERIC
HOLDEN; 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 BRUMLEE

IN THE DISTRICT COURT

COPY

____ JUDICIAL DISTRICT

FILED
TARRANT COUNTY
08 JAN 16 AM 11:12
THOMAS A. WILDER
DISTRICT CLERK

OF TARRANT COUNTY, TEXAS

ORIGINAL PETITION FOR DECLARATORY JUDGMENT; APPLICATION FOR
TEMPORARY RESTRAINING ORDER; AND APPLICATION FOR INJUNCTION

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 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

Plaintiff intends that discovery be conducted under Discovery Level 2.

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 and may be served with process at her place of business, located at 1160 Country Club Lane, Fort Worth, Tarrant County, Texas 76112 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

C. Defendant Jorge Medina-Gutierrez is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 401 Riverside, Fort Worth, Tarrant County, Texas 76111 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

D. Defendant Alice Baker is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at her place of business, located at 3611-D West Pioneer Parkway, Arlington, Tarrant County, Texas 76013 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

E. Defendant Linda Baley is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at her place of business, located at 3212 Collingsworth, Suite 7, Fort Worth, Tarrant County, Texas 76107 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

F. Defendant Sean Braun is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 1200 6th Avenue, Fort Worth, Tarrant County, Texas 76104 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

G. Defendant Jeffery Clark is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at his place of business, located at 3611-D West Pioneer Parkway, Arlington, Tarrant County, Texas 76013 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

H. Defendant Lawrin Dean is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at her place of business, located at 1200 6th Avenue, Fort Worth, Tarrant County, Texas 76104 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

I. Defendant James Guthrie is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at

2929 Forest Avenue, 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.

J. Defendant William Kantz is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 3863 SW Loop 820, Suite 118, Fort Worth, Tarrant County, Texas 76133 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

K. Defendant Ezio Leite is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 1200 6th Avenue, Fort Worth, Tarrant County, Texas 76104 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

L. Defendant John Loggins is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 4700 Bryant Irvin Court, Suite 205, Fort Worth, Tarrant County, Texas 76013 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

M. Defendant Debra McSherry is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at her place of business, located at 3131 Sanguinet Street, Fort Worth, Tarrant County, Texas 76107 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

N. Defendant Heather Renee Shahan is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at her place of business,

located at 1200 6th Avenue, Fort Worth, Tarrant County, Texas 76104 or wherever she may be found. Service of said Defendant as described above can be effected by personal service.

O. Defendant Michael Strain is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 401 Riverside, Fort Worth, Tarrant County, Texas 76111 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

P. 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.

Q. Defendant James Varnado, Jr. is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 4313 Marsarie Street, Fort Worth, Tarrant County, Texas 76137 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

R. Defendant James Williams is an individual doing business in Fort Worth, Tarrant County, Texas and may be served with process at his place of business, located at 2516 Oakland Blvd., Suite 5, Fort Worth, Tarrant County, Texas 76103 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

S. Defendant Michael Chimarys is an individual doing business in Denton, Denton County, Texas and may be served with process at his place of business, located at 2436 S. IH-35 East, Suite 376-209, Denton, Denton County, Texas 76205 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

T. Defendant Eric Holden is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

U. Defendant Eric "Jay" Holden is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

V. Defendant Michael Holden is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

W. Defendant William Parker is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

X. Defendant Charles Speagle is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

Y. Defendant John Coughlin is an individual doing business in Dallas, Dallas County, Texas and may be served with process at his place of business, located at 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

Z. Defendant Bobby Jones is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at his place of business, located at 2303B Roosevelt Drive, Arlington, Tarrant County, Texas 76016 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

AA. Defendant Clayton Wood is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at his place of business, located at 2303B Roosevelt Drive, Arlington, Tarrant County, Texas 76016 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

BB. Defendant Richard Wood ("Wood") is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at his place of business, located at 2303B Roosevelt Drive, Arlington, Tarrant County, Texas 76016 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

CC. Defendant Bryan Perot is an individual doing business in Arlington, Tarrant County, Texas and may be served with process at his place of business, located at 2303B Roosevelt Drive, Arlington, Tarrant County, Texas 76016 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

DD. 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.

EE. 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.

FF. Defendant Raymond Lee is an individual doing business in Duncanville, Dallas County, Texas and may be served with process at his place of business, located at 407 N. Cedar Ridge, Suite 210, Duncanville, Dallas County, Texas 75116 or wherever he may be found. Service of said Defendant as described above can be effected by personal service.

GG. 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.

HH. Defendant Behavioral Measures & Forensic Services Southwest ("Behavioral") is a corporation duly organized under the laws of the State of Texas. Service of said Defendant may be effected by personal service through it's registered agent for service of process, William M. Parker, Jr., 1720 Regal Row, Suite 120, Dallas, Dallas County, Texas 75235 or wherever he may be found.

II. Defendant R. Lee and Associates Polygraph Services is an assumed business name duly organized under the laws of the State of Texas. Service of said Defendant may be effected by personal service through it's registered agent for service of process, Raymond C. Lee, Jr., 407 North Cedar Ridge, Suite 210, Duncanville, Dallas County, Texas 75116 or wherever he may be found.

JJ. Defendant Texas Association of Polygraph Examiners is an exempt corporation duly organized under the laws of the State of Texas. Service of said Defendant may be effected by personal service through it's registered agent for service of process, Marvin Nowell, 136 Channelview, Mabank, Henderson County, Texas 75156 or wherever he may be found.

KK. Defendant David Kilpatrick is an individual who is employed in Tarrant County, Texas. Service of said Defendant may be effected by personal service at 200 West Belknap, Fort Worth, Tarrant County, Texas 76196 or wherever he may be found.

LL. Defendant Tom Plumlee is an individual who is employed in Tarrant County, Texas. Service of said Defendant may be effected by personal service at 200 West Belknap, Fort Worth, Tarrant County, Texas 76196 or wherever he may be found.

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

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 sex offender on deferred adjudication or probation receives, 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 two polygraph examinations for sex offenders on probation or deferred adjudication. One was a Tarrant County probationer and one was a Dallas County probationer. 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 ("CRRC") 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*.

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*.

There is a meeting of the CRRC that is scheduled for the end of January or the first part of February. At that meeting, it is to be decided whether or not a sex offender who is on deferred adjudication or probation shall or shall not go to the polygraph examiner of his

or her choice with no outside interference from the sex offender therapist or the Tarrant County Community Supervision and Corrections Department. Fenian cannot wait until the CRRC meets to discuss this issue.

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. The only plausible explanation for this is that the sex offender therapists in Tarrant County, Texas are diverting business away from Fenian in clear violation of the current policies of Tarrant County, Texas.

The diversion of business has harmed Fenian financially. A test was canceled for \$175.00 and Fenian incurred legal expenses in excess of \$5,000.00 by the time this petition is filed.

The diversion of business also creates a monopoly of Wood and Behavioral. 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 or a market with no free choice should not survive in a country such as ours that is based on free will.

V. REQUEST FOR A TEMPORARY RESTRAINING ORDER

ORIGINAL PETITION FOR DECLARATORY JUDGMENT; APPLICATION FOR TEMPORARY RESTRAINING ORDER; AND APPLICATION FOR INJUNCTION

Cause Number _____; Joseph Lawrence McCarthy, Individually and Doing Business As Fenian Polygraph Services
vs. Deborah Moore et al. Page 12 of 16

Plaintiff requests the Court to dispense with the issuance of a bond, and Plaintiff requests that Defendants be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

1. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

2. Destroying, disposing of, or altering any e-mail or other electronic data, whether stored on a hard drive or on a diskette or other electronic storage device.

3. Threatening their client's with retaliation if the client wishes to have a polygraph examination performed by the polygraph examiner of his or her choice.

4. Taking any type of retaliatory action against any probationer in Tarrant County, Texas if the probationer wants to have a polygraph examination by the polygraph examiner of his or her choosing.

5. Slandering Joseph Lawrence McCarthy; Fenian Polygraph Services; Hollie Vesla Greene; Bob Leonard; or Law Offices of Bob Leonard, Jr., PLLC.

6. Causing pecuniary harm to Joseph Lawrence McCarthy, Individually and Doing Business as Fenian Polygraph Services.

7. Diverting probationers from Joseph Lawrence McCarthy, Individually and Doing Business as Fenian Polygraph Services.

8. Suggesting, insinuating, insisting, or demanding that a probationer must choose to have his or her polygraph examination performed by a polygraph examiner that the sex offender therapist approves.

9. Forcing or coercing any self-pay polygraph examinee into having a polygraph examination performed by the polygraph examiner who is the choice of the sex offender therapist or a representative of the Tarrant County Probation Department.

10. Destroying, disposing of, secreting, or altering any polygraph records as defined in Texas Occupations Code.

11. CRRC is enjoined from making a decision on the issue of whether or not a sex offender who is on deferred adjudication or probation shall or shall not go to the polygraph examiner of his or her choice with no outside interference from the sex offender therapist or the Tarrant County Community Supervision and Corrections Department.

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. A sex offender who is on deferred adjudication or probation shall go to the polygraph examiner of his or her choice with no outside interference from the sex offender therapist or the Tarrant County Community Supervision and Corrections Department.
2. Any service provider doing business with the Tarrant County Community Supervision and Corrections Department who violates the

above rule shall be prohibited from doing business with the Tarrant County Community Supervision and Corrections Department for a period of one year.

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 citation and notice issue as required by law.

Plaintiff prays that the Court immediately grant a temporary restraining order restraining Defendants, in conformity with the allegations of this petition, from the acts set forth above, and Plaintiff prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

Plaintiff prays that Defendants be cited to appear and answer herein, and 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,

Law Offices of Bob Leonard, Jr., P.L.L.C.

By: Hollie Vesla Greene

Hollie Vesla Greene

Texas Bar No. 24006564

2800 South Hulen, Suite 210

Fort Worth, Texas 76109

Telephone: (817) 336-8500

Facsimile: (817) 336-8511

Attorney for Plaintiff

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

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 **** BOTH CLIENT-PAY and CSCD-FUNDED ****

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:

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse | <input type="checkbox"/> Employment |
| <input type="checkbox"/> Financial Management | <input type="checkbox"/> Theft |
| <input type="checkbox"/> Anger/BIPP | <input type="checkbox"/> Parenting Skills |
| <input type="checkbox"/> Other : X | |

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

Exhibit E

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 statutes 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