

**BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD**  
712 S. Kansas Avenue  
Topeka, Kansas 66603

In the Matter	)	
	)	
of	)	Case No. 03-LC-03
	)	
Linda M. Suderman, Ph.D.	)	
LCPC # 097	)	
_____	)	

**FINAL ORDER**

Now on this 25<sup>th</sup> day of September, 2006, the above referenced matter comes on for hearing before the Behavioral Sciences Regulatory Board's Hearing Panel comprised of Board members Gary Price, Sharon Stuewe and Bill Meredith, assisted by Assistant Attorney General (Legal Opinions and Government Counsel Division) and general counsel Camille Nohe. Petitioner appears by Marty Snyder, Assistant Attorney General (Civil Litigation Division). Respondent Linda M. Suderman appears in person and by counsel Steve Schwarm.

As a preliminary matter, the parties stipulate to the jurisdictional statements set forth in the Petition, with some minor alterations as agreed to by the parties.

Additionally, as a preliminary matter, the parties stipulate to certain factual matters which are incorporated in the below Findings of Fact.

Petitioner presents an opening statement, followed by testimony of complainant Teresa Murrell and of Respondent. Petitioner rests.

Respondent makes an oral motion and arguments in support of dismissal of Counts (a), (b), (c) and (d) of the Allegations of Violations based on a lack of evidence presented

to support Petitioner's claims. Petitioner makes arguments in support of denial of each part of Respondent's motion.

The Hearing Panel then deliberates in private.

The Hearing Panel then returns to open session of the administrative proceeding and through its general counsel announces its decisions as follows:

(1) Count (a) charging violation of K.A.R. 102-3-12a(b)(14) is dismissed for lack of supporting evidence, *except* for the portion that charges failing to reasonably comply with Respondent's description of what the client could expect in the way of a report.

(2) Count (b) charging violation of K.A.R. 102-3-12a(b)(23), as narrowed by the parties, charging engaging in professional activities, including billing practices involving dishonesty, deceit or misrepresentation, is dismissed for lack of supporting evidence.

(3) Count (c) charging violation of K.A.R. 102-3-12a(b)(27), as narrowed by the parties, charging exercising undue influence on any client, including promoting sales of services or goods, in a manner that will exploit the client for the financial gain of the professional counselor, is dismissed for lack of supporting evidence.

(4) Count (d) charging violation of K.A.R. 102-3-12a(b)(34), as narrowed by the parties, charging continuing or ordering tests or services not warranted by the condition of the client, is dismissed for lack of supporting evidence.

Respondent then waives presentation of an opening statement and presents testimony of Respondent. Respondent rests.

During the course of the proceeding the following exhibits are admitted:

(1) Petitioner's exhibits numbers: A through Z, except for Exhibit X; and AA, BB, and CC.

(2) Respondent's exhibits numbers: 1, 2, 4, 5, 6, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 50, and 137

The parties each present closing arguments.

The Hearing Panel then retires to deliberate, and following deliberations makes the following Findings of Fact, Conclusions of Law and Proposed Discipline.

#### Findings of Fact

1. In July 2001, [REDACTED] had become concerned about her son, [REDACTED] apparent learning difficulties in school and wanted to obtain a professional opinion regarding the nature of [REDACTED] learning problems and possibly a diagnosis that would enable [REDACTED] to obtain special accommodations at school.

2. After making various inquiries, [REDACTED] contacted Respondent and made an appointment for Respondent to administer a series of tests to [REDACTED] on August 8 and 9.

3. Respondent was retained for the specific purpose of conducting learning disability testing on [REDACTED] then a minor who would be entering his junior year of high school.

4. On the day of the first appointment, [REDACTED] was given a document of "Services available at Dyslexia Center," the practice operated by Respondent and her husband.

5. This services-available document indicated that an "intake interview and assessment" of various learning disabilities would be provided.

6. The services-available document specifically indicated the following would be provided: "a consultation and confidential written report on assessment results and recommendations for learning, school/college, and/or work."

7. The services-available document also stated: "(Approximately 15 hours assessment and 1 hour consultation plus written report on accommodations.)"

8. Based on the services-available document, [REDACTED] expected to receive a written report containing Respondent's assessment results and recommendations regarding [REDACTED]

9. Respondent administered various tests to [REDACTED] on August 8 and 9.

10. Following the August 8 and 9 testing regimen, Respondent indicated that she was unable to make a definitive diagnosis of [REDACTED] learning problems.

11. Based on Mrs. Murrell's desire to obtain clarity regarding her son's problems and Respondent's indication that further testing could be helpful towards this goal, Respondent with [REDACTED] permission administered additional extensive testing on August 15, August 21 and August 23, for a total of twenty-two separate tests or questionnaires.

12. On August 28, Respondent met with [REDACTED] and [REDACTED] for the consultation and review of testing results.

13. By August, 28, [REDACTED] had paid the full amount of fees, \$2,730.00, computed on an hourly rate per "hour" of testing and consultation, for the testing, consultation and a written report of Respondent's assessment and recommendations.

14. On August 28, at [REDACTED] insistence, Respondent provided her with a "Draft Confidential Report" [emphasis original], consisting of pages 1-5, 18-23, 25-27, 29-30, and 33-34.

15. Neither Respondent nor ██████████ considered the "Draft Confidential Report" to be Respondent's final written report of Respondent's assessment of and recommendations for ██████████

16. ██████████ definitely anticipated receiving a non-draft, final written report.

17. ██████████ thought she would receive the written report by mid-October, in time to support a request for special accommodations for ██████████ in taking college entry examinations, such as the PSAT.

18. In order to complete the final written report, Respondent requested additional information concerning ██████████; during September and up to mid-October ██████████ supplied additional background information on ██████████ and provided school records that were available to her.

19. On October 10, by a faxed letter to Respondent, ██████████ expressed dismay to Respondent that "we still do not have a report to go to the school with."

20. Respondent's handwritten notes from a follow-up phone call with ██████████ about this fax confirm that ██████████ made a "complaint on not getting rept;" that Respondent "was waiting for her [██████████] info before being able to complete the report;" that Respondent would "try to have done for next week;" and that Respondent wanted ██████████ "progress reports on his failing math to add to rept."

21. On October 17, ██████████ faxed ██████████ grades to Respondent with a handwritten note stating, "This should be all the info you need," and "Just need . . . your report . . . ."

22. ██████████ requested the written report from Respondent a half-dozen to a dozen times.

23. Respondent never told [REDACTED] that a final report would not be forthcoming.

24. Following a letter faxed to Respondent from Mrs. [REDACTED] dated October 30, a phone conversation ensued between them that evening.

25. Based on that letter and phone conversation, Respondent testified that she believed that [REDACTED] had terminated her services, and thus Respondent did not think she needed to provide a final written report to [REDACTED].

26. However, Respondent's belief that she was terminated does not appear to be grounded on a well-founded basis:

(a) [REDACTED] faxed Respondent again the next day, October 31, again indicating her expectation that a written report would be forthcoming, stating, "[REDACTED] [the school psychologist] asked me to set up a date for our screening. I told her I did not want to do this until I received your report."

(b) Respondent's handwritten notes on the October 30 fax do not express that Mrs. [REDACTED] terminated her professional services.

(c) Respondent's handwritten notes on the October 30 fax reflecting Respondent's question to [REDACTED] "What do you want me to do?" and [REDACTED] response, "Just send CTONI [a type of test]" do not provide a credible understanding or verification of a termination of Respondent's professional relationship with [REDACTED] and her son [REDACTED].

(d) [REDACTED] did not testify that she terminated the relationship during that phone call.

27. Additionally, Respondent's explanation that she could not complete the final written report in the absence of some school records not provided by [REDACTED] is self-

serving, disingenuous and not credible.

28. Even if the professional relationship had been terminated on October 30, in no way does this mitigate Respondent's professional responsibility to provide a final and complete written report of her assessment results and recommendations.

29. Respondent never provided [REDACTED] with a final and complete written report of her assessment results and recommendations.<sup>1</sup>

### Conclusions of Law

1. K.S.A. 2005 Supp. 65-5809(n) authorizes the Board to suspend, limit, condition or revoke any license granted under the professional counselors licensure act for unprofessional conduct as defined by rules and regulations adopted by the board.

2. K.A.R. 102-2-12a(b)(14), in pertinent part, defines unprofessional conduct as failing to reasonably comply with the professional counselor's description of what the client could expect in the way of a report.

3. Respondent failed to comply with her own description of what [REDACTED] could expect in the way of a report, as Respondent's services-available document presented to [REDACTED] at the first appointment clearly stated that a confidential written report on assessment results and recommendations would be provided.

4. Respondent's failure to comply with providing a written report on assessment results and recommendations was unreasonable because:

(a) One reason Respondent put forth for not providing a written report was that Mrs.

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<sup>1</sup>After the complaint herein was filed by [REDACTED] as a part of her response Respondent prepared and submitted a complete written report, Petitioner's Exhibit BB.

██████ did not provide Respondent with complete school records for ██████; however, ██████ was clearly attempting to provide Respondent with the records and did provide Respondent with all the records she could obtain. Additionally, Respondent's services-available document did *not* state that a written report on assessment results and recommendations was conditioned on Respondent's receipt of ██████ complete school records.

(b) Another reason Respondent put forth for not providing a written report was that ██████ terminated her services by fax and phone on October 30. However, as indicated in the Findings of Fact, this "understanding" by Respondent is not credible. Additionally, whether Respondent was terminated or not, Respondent had a responsibility to provide ██████ with a written report on assessment results and recommendations concerning ██████.

(c) ██████ clearly wanted and needed a written report on assessment results and recommendations concerning ██████ and was never told by Respondent that such a report would *not* be forthcoming.

(d) ██████ paid for a written report on assessment results and recommendations concerning ██████, even if Respondent understood the October 30 communications as terminating her services, Respondent did not offer to refund the portion of her fees paid by ██████ covering the written report.

(e) Respondent, herself, set several deadlines by which a report would be forthcoming.

(f) ██████ was persistent in communicating to Respondent that she wanted and needed a complete written report; when it became clear to ██████ that a complete

written report would not be available for several weeks, she insisted on having a copy of the incomplete draft version on August 28.

5. By describing a written report of assessment results and recommendations as part of what [REDACTED] could expect and then unreasonably failing to provide such a report, Respondent violated K.A.R. 102-3-12a(b)(14).

6. Petitioner established by a preponderance of the evidence that is clear and convincing that Respondent violated K.A.R. 102-3-12a(b)(14).

#### Disciplinary Order

IT IS THEREFORE ORDERED THAT Respondent's clinical professional counselor license be and hereby is conditioned in the following manner:

1. Respondent's practice shall be supervised for a minimum of one year following notification of Board approval of a practice supervisor.

(a) The focus of supervision shall be providing written reports in a timely and professional manner, clear communication with clients regarding client expectations and regarding termination with clients.

(b) The supervisor need not approved any instrument, test, or tool selection or diagnosis made by Respondent.

(b) Within 15 days from the date indicated in the below Certificate of Service, Respondent shall submit to the Board's Executive Director the names of at least two persons who are licensed at the clinical level by the Behavioral Sciences Regulatory Board, whose clinical practice includes assessment of learning difficulties, and who are not in a subordinate, familial or other dual relationship to Respondent.

(c) Board approval of a practice supervisor shall be approved by the Board's Executive Director following consultation with the Professional Counselor Advisory Committee.

(d) Supervision shall occur at the rate of one hour for each 40 hours of clinical service, with a minimum of at least one hour per month.

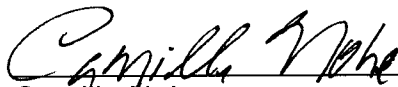
(e) Respondent shall provide her supervisor with a copy of the Final Order issued in this matter.

(f) Respondent shall bear the expense, if any, of the supervision.

(g) Respondent shall assume the responsibility of arranging with the supervisor to provide the Board with written reports at the end of each three month period of supervision.

(h) At the conclusion of the one-year conditional licensure period and upon Board receipt of an acceptable final evaluation from Respondent's practice supervisor regarding the focus area, Respondent shall be licensed unconditionally as a clinical professional counselor. In the absence of an acceptable final evaluation from Respondent's practice supervisor, Respondent's license shall continue to be conditioned on the same terms as provided herein until such time as the Board receives an acceptable final evaluation from Respondent's practice supervisor.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Camille Nohe  
Assistant Attorney General & General  
Counsel to the Hearing Panel  
On behalf of and as authorized by the  
Hearing Panel

**NOTICE OF RELIEF FROM THIS ORDER**

Pursuant to K.S.A. 77-514(g) this is a Final Order. It is effective upon the date indicated in the below Certificate of Service unless a stay is granted pursuant to K.S.A. 77-528. Within 15 days after service of the Final Order, any party may file a petition for reconsideration with the Behavioral Sciences Regulatory Board. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. Judicial review may be had by filing a petition for judicial review with the appropriate district court as provided in the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.* The agency officer who may receive service of a petition for judicial review on behalf of the agency is Phyllis Gilmore, Executive Director, Kansas Behavioral Sciences Regulatory Board.

**Certificate of Service**


This is to certify that on the 22<sup>nd</sup> day of November 2006, a true and correct copy of the above PROPOSED FINAL ORDER was deposited in the U.S. mail, first class postage prepaid, addressed to:

Steve Schwarm  
Attorney at Law  
Goodell Stratton Edmonds and Palmer  
515 S Kansas Avenue  
Topeka, Kansas 66603<sup>2</sup>

and by facsimile to 233-1939

and a copy placed in interoffice mail addressed to:

Marty Snyder  
Assistant Attorney General  
Civil Litigation Division  
Office of the Attorney General  
120 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

  
\_\_\_\_\_  
Camille Nohe  
On behalf of the Hearing Panel

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<sup>2</sup>Near the close of the hearing, Dr. Suderman through counsel waived personal service of the Final Order.

BEFORE THE KANSAS  
BEHAVIORAL SCIENCES REGULATORY BOARD

101-57447-10

IN THE MATTER OF )  
)  
)  
LINDA M. SUDERMAN, Ph.D., )  
LCPC#097, )  
)  
Respondent, )  
)

Case No. 03-LC-03

\_\_\_\_\_  
Pursuant to K.S.A. Chapter 77

NOTIFICATION OF MODIFICATION AND CHANGE OF FINAL ORDER  
AND  
JOINT MOTION FOR CLARIFICATION OF FINAL ORDER

COMES NOW the parties, Kansas Behavioral Sciences Regulatory Board (BSRB and/or Board) and Linda M. Suderman, Ph.D. (Dr. Suderman) by and through their respective counsel and advise the agency that the November 22, 2006, Final Order as issued by the BSRB has been modified by agreement of the parties. The modified Final Order shall stand as the official Final Order of the BSRB and shall supersede and replace the November 22, 2006, Final Order. The modification and change is as reflected below:

The Disciplinary Order on pages 9 and 10 is deleted in its entirety and substituted with the following:

IT IS THEREFORE ORDERED THAT Respondent's clinical professional counselor license be and hereby is conditioned in the following manner:

1. Respondent's practice shall be monitored for a minimum of one year following notification of Board approval of a practice monitor.

(a) The focus of monitoring shall be providing written reports in a timely and professional manner, clear communication with clients regarding client expectations and regarding termination with clients.

(b) The monitor need not approve any instrument, test, or tool selection or diagnosis made by Respondent.

(c) [formerly (b)] Within 15 days from the date indicated in the below Certificate of Service, Respondent shall submit to the Board's Executive Director the names of at least two persons who are licensed at the clinical level by the Behavioral Sciences Regulatory Board, whose clinical practice includes assessment of learning difficulties, and who are not in a subordinate, familial or other dual relationship to Respondent.

(d) Board approval of a practice monitor shall be approved by the Board's Executive Director following consultation with the Professional Counselor Advisory Committee.

(e) Monitoring shall occur at the rate of one hour of each 40 hours of clinical service, with a minimum of at least one hour per month.

(f) Respondent shall provide her monitor with a copy of the Final Order issued in this matter.

(g) Respondent shall bear the expense, if any, of the monitoring.

(h) respondent shall assume the responsibility of arranging with the monitor to provide the Board with written reports at the end of each three-month period of monitoring.

(i) At the conclusion of the one-year conditional licensure period and upon Board receipt of an acceptable final evaluation from Respondent's practice monitor regarding the focus area, Respondent shall be licensed unconditionally as a clinical professional counselor. In the absence of an acceptable final evaluation from Respondent's practice monitor, Respondent's license shall continue to be conditioned on the same terms as provided herein until such time as the Board received an acceptable final evaluation from Respondent's practice monitor.

IT IS SO ORDERED.

## **JOINT MOTION FOR CLARIFICATION OF FINAL ORDER**

The agreed to, modified Final Order states on page 10, paragraph 1(e) (formerly (d)) that monitoring shall occur at the rate of one hour for each hour of clinical service, with a minimum of at least one hour per month. The original Final Order did not define the term “clinical service.” The parties desire to seek guidance and clarification as to “clinical service” so that computation of 40 hours of clinical service can be calculated in order to trigger the one hour of monitoring for each 40 hours of clinical service.

The Kansas statute relating to licensed clinical professional counselors pertaining to definitions states in part that the practice of professional counseling means assisting an individual or group for a fee, monetary or otherwise, through counseling, assessment, consultation and referral and includes the diagnosis and treatment of mental disorders as authorized under the Professional Counselors Licensure Act. Additionally, “professional counseling” means to assist an individual or group to develop understanding of personal strengths and weaknesses, to restructure concepts and feelings, to define goals and to plan actions as these are related to personal, social, educational and career development and adjustment. Further, the word “assessment” means selecting, administering, scoring and interpreting instruments designed to describe an individual’s aptitudes, abilities, achievements, interests and personal characteristics. The word “consultation” means the application of principles, methods and techniques of the practice of counseling to assist in solving current or potential problems of individuals or groups in relation to a third party. K.S.A. 65-5802(b), (c), (d), and (e).

The Kansas administrative regulation pertaining to definitions relative to a professional counselor states in part in K.A.R. 102-3-1a(d) that:

client contact means face-to-face interaction between the counselor and client or clients. Additionally, (e) states that “clinical professional counselor practice” means the professional application of professional counseling theory and methods to the treatment and prevention of psychosocial dysfunction, disability, or impairment, including behavioral, emotional, and mental disorders. Clinical professional counseling shall include the following:

- (1) assessment;
- (2) diagnosis of mental disorder;
- (3) planning and treatment, which may include psychotherapy and counseling;
- (4) treatment intervention directed to interpersonal interactions, intrapsychic dynamics and life management issues;
- (5) consultation; and
- (6) evaluation, referral and collaboration.

Neither the above statute nor administrative regulation define “clinical services.”

Applying the above statutory definitions and above administrative regulation definitions parties concur that “clinical services” as that term is used in the modified Final Order includes the following:

1. Counseling—client intake interview (face-to-face); and embedded counseling during evaluation process;
2. Evaluation and assessment (face-to-face interactions) and scoring of assessment;
3. Consultation on assessment results and preliminary or provisional diagnostic information;
4. Recording and dating of appropriate referrals of client(s) to professionals (in the consultation notes, phone log or written report);
5. Recording of phone messages/contacts (date and nature of service) with Dr., Suderman’s client(s) [once the individual(s) come to the intake interview and after the individual(s) have decided to become client(s)];


6. Recording of date of completion of and mailing of Dr. Suderman's client's written report (date and delivery service used) or client's signed statement declining a written report;
7. Follow-up client counseling services, if requested after termination of evaluation and report;
8. Client counseling services (with evaluation);
9. Drafting and writing of any evaluation or report relating to client contact, assessment of client, evaluation and scoring of instruments, and preparation of any outline, interim report and/or final report wherein the professional counselor's opinions are recorded and substantive diagnostic information, assessment, and evaluation information is recorded, but does not include any non-substantive review or editing of the final report that is limited solely to grammatical and the spelling review.

The parties respectfully request the Board and/or hearing panel provide guidance as to interpretation of the term "clinical services" as it now appears in the modified Final Order or delegate such definition and application of the definition to the practice monitor for independent determination.

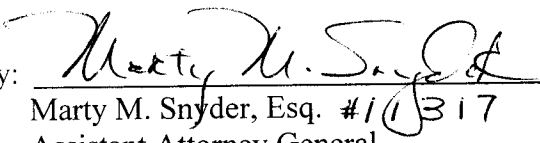
WHEREFORE, the parties respectfully request that the Board provide such guidance for definition of the term "clinical services" and/or delegate such definition / application of that term under the modified Final Order as otherwise noted above.

Respectfully submitted,

POLSINELLI SHALTON WELTE  
SUELTHAUS PC

By:   
Steve A. Schwarn, Esq. (#13232)  
555 South Kansas Avenue, Suite 301  
Topeka, KS 66603-3443  
Telephone: (785) 233-1446

ATTORNEYS FOR RESPONDENT  
LINDA M. SUDERMAN, PH.D.

By:   
Marty M. Snyder, Esq. #11317  
Assistant Attorney General  
120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, KS 66612  
Telephone: (785) 296-2215

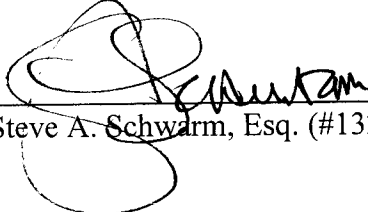
ATTORNEYS FOR PETITIONER, KANSAS  
BEHAVIORAL SCIENCES REGULATORY  
BOARD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing has been served by regular U.S. mail, postage prepaid, this 26 day of January, 2007, upon:

Camille Nohe, Esq.  
State of Kansas  
Office of the Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka KS 66612-1597  
Telephone: (785) 296-2215

The original has been filed with the Behavioral Sciences Regulatory Board.

  
\_\_\_\_\_  
Steve A. Schwarm, Esq. (#13232)

029562 / 062871  
SASCH 1473345

**FILED**

FEB 12 2007

**BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD**

712 S. Kansas Avenue  
Topeka, Kansas 66603

In the Matter )

of )

Linda M. Suderman, Ph.D. )

LCPC # 097 )

Case No. 03-LC-03

**CLARIFICATION OF MODIFIED FINAL ORDER**

Now on this 7<sup>th</sup> day of February, 2007, the above-referenced matter comes before the Hearing Panel on a joint motion for clarification of the term "clinical services" as that term is used in the Modified Final Order.

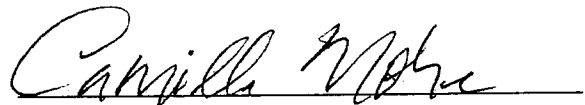
The Hearing Panel adopts the definition proposed by the parties and thus clarifies that the term "clinical services" as that term is used in the Modified Final Order means:

1. Counseling—client intake interview (face-to-face); and embedded counseling during evaluation process;
2. Evaluation and assessment (face-to-face interactions) and scoring of assessment;
3. Consultation on assessment results and preliminary or provisional diagnostic information;
4. Recording and dating of appropriate referrals of client(s) to professionals (in the consultation note, phone log or written report);
5. Recording of phone messages/contacts (date and nature of service) with Dr.

Suderman's client(s) [once the individual(s) come to the intake interview and after the individual(s) have decided to become client(s)];

6. Recording of date of completion of and mailing of Dr. Suderman's client's written report (date and delivery service use) or client's signed statement declining a written report;
7. Follow-up client counseling services, if requested after termination of evaluation and report;
8. Client counseling services (with evaluation);
9. Drafting and writing of any evaluation or report relating to client contact, assessment of client, evaluation and scoring of instruments, and preparation of any outline, interim report and/or final report wherein the professional counselor's opinions are recorded and substantive diagnostic information, assessment, and evaluation information is recorded, but does not include any no-substantive review or editing of the final report that is limited solely to grammatical and the spelling review.

IT IS SO ORDERED.



Camille Nohe  
Assistant Attorney General & General  
Counsel to the Hearing Panel  
On behalf of and as authorized by the  
Hearing Panel

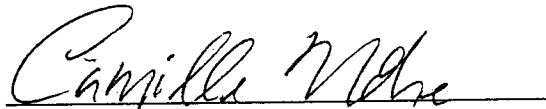
Certificate of Service

This is to certify that on the 8<sup>th</sup> day of February 2007, a true and correct copy of the above CLARIFICATION OF FINAL ORDER was deposited in the U.S. mail, first class postage prepaid, addressed to:

Steve Schwarm  
Attorney at Law  
515 S Kansas Avenue, Suite 301  
Topeka, Kansas 66603

and a copy placed in interoffice mail addressed to:

Marty Snyder  
Assistant Attorney General  
Civil Litigation Division  
Office of the Attorney General  
120 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612



Camille Nohe  
On behalf of the Hearing Panel