

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:

Application Serial no. 85095429

Published in the *Official Gazette*

January 11th, 2011

PSYBAR LLC)

Opposer)

Opposition No. 91198483

v.)

David Mahony, Ph.D., ABPP)

**APPLICANT'S STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF ITS
COMBINED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO THE
MOTION FOR SUMMARY JUDGMENT OF OPPOSER**

INTRODUCTION

This is a trademark case involving the Applicant, PSYBARI, and Opposer Psybar. The Applicant, Dr. David Mahony, is a Bariatric Psychologist that evaluates and treats obese patients that are seeking bariatric surgery (i.e., weight loss surgery). These patients are required to receive pre-surgical psychological clearance to ensure that they are not at risk of post-surgical complications such as suicide, substance/alcohol abuse, weight re-gain and a host of other psychosocial complications. In 2002, Dr. David Mahony began the development of a psychological test to standardize these evaluations and named it the PSYBARI, since it is a



psychological test for *bariatric* surgery patients. Since it's inception, the PSYBARI test has been scientifically validated and successfully used by Dr. David Mahony to evaluate patients seeking bariatric surgery. The PSYBARI test has also been used in scientific research efforts involved in addressing the obesity epidemic and the results have been published in scientific journals and presented at national obesity conferences. Over the past, ten years, the PSYBARI test and the mark, PSYBARI, have become intimately and inseparably related to the author of the test and Applicant, Dr. David Mahony.

In July of 2010, eight years after the PSYBARI was created, the Opposer, Psybar (Dr. Fisher), contacted Dr. David Mahony and stated that his attorney recently discovered the PSYBARI test via its web page, www.psybari.com. He stated that the Applicant could use the PSYBARI mark as long as the Applicant paid a "licensing fee" (A) to the Opposer and his attorney. When asked why this request was being made, he denied that any confusion had occurred between the two services and was unable to give a reason for his request other than saying that the names were similar and he was acting on the advice of his attorney. The Applicant refused to pay the Opposer and his attorney since the Opposer did not have any legal rights on the mark PSYBARI and no confusion had occurred. In response, the Opposer threatened legal action. In an effort to protect the PSYBARI name, and the intricately connected career of Dr. David Mahony, the Applicant filed for Trademark status. The Opposer immediately opposed the mark based on misleading accusations of "overlap," "false suggestion of connection," the "likelihood of confusion of the two marks by relevant consumers," the "misleading nature of Applicant's mark" and the "likely dilution" of Opposer's mark without offering any evidence of established facts. The Opposer has now filed a motion of summary judgment.

The lack of credibility in the Opposer's claims can clearly be seen on their website, www.psybar.com (B). On their website, the Opposer, Psybar, clearly describes themselves as a "network" of "forensic psychologists and psychiatrists" that offer "Psychological and Vocational Assessment Services" as well as "psychological and psychiatric opinions." Their services do not

involve evaluations for patients seeking bariatric surgery and entities that use their services are not the same ones that use the PSYBARI test. The Opposer's company conducts evaluations called Independent Medical Examinations (IME's). IME's involve mental health professionals that evaluate individuals that are involved in legal and/or insurance disputes or require diagnostic verification. The Opposer's clients are "attorneys, employee assistance professionals, employers, insurance companies, mediators, occupational health professionals, safety experts and unions."

(B) A typical client would be a disability insurance company that needs to verify psychological diagnoses before paying benefits. As can be seen on the Opposer's website, www.psybar.com, and in their discovery documents, the Opposer has never offered services related to weight loss surgery or obesity and they do not conduct scientific research or create psychological tests. As such, the Opposer's repeated claims of "overlap," "false suggestion of connection," the "likelihood of confusion of the two marks by relevant consumers," the "misleading nature of Applicant's mark" and the "likely dilution" of the two services are false.

The dispute between the two marks, PSYBARI and PSYBAR is due to the fact that they both have the same generic prefix, "PSY". The term "PSY" is a generic term, as seen in dictionary definitions for "something to do with psychology" (C) and has been used as the prefix of the names of a wide variety of products and services related to psychology including famous names like PSYOPs, the U.S. military's Psychological Operations Unit. The prefix "PSY" is also included in at least 39 previously trademarked names. (D) The term "BARI" is short for Bariatrics, "a branch of medicine that deals with the causes, prevention and treatment of obesity" (E) and is used in a wide variety of products and services related to obesity, weight loss and bariatric surgery. It is used in at least 50 previously registered trademark names. (F)

The Applicant and the Opposer offer different services. The Applicant has *created* a psychological test that is used by clinical psychologists that conduct evaluations for obese patients seeking bariatric surgery. The Opposer's Psybar "network" does not create psychological tests. The Opposer's Psybar "network" is a network of mental health professionals that evaluate

individuals for forensic reasons (e.g., diagnostic verification). The Opposer's Psybar "network" does not evaluate obese patients seeking bariatric surgery. The Opposer's Psybar "network" is not involved in obesity research. The Opposer's Psybar "network" does not conduct scientific research. The Opposer's Psybar "network" does not create psychological tests. The only overlap between the two entities is that they are both in the mental health industry.

Consumers of the Applicant's PSYBARI test and the Opposer's Psybar "network" are not the same entities. The consumers of the Applicant's PSYBARI test are *bariatric psychologists* that evaluate obese patients seeking bariatric surgery. The consumers of the Opposer's Psybar "network" are "attorneys, employee assistance professionals, employers, insurance companies, mediators, occupational health professionals, safety experts and unions," (B) not bariatric psychologists. The Opposer's consumers are seeking services such as diagnostic verification, not evaluations of obese individuals seeking bariatric surgery. The consumers of both entities are sophisticated consumers of mental health services and establish relationships with the entities thereby eliminating the possibility of confusion between the products. Additionally, the consumers of the Applicant's PSYBARI test are not consumers of the Opposer's Psybar "network" and the consumers of the Opposer's Psybar "network" are not the consumers of the Applicant's PSYBARI test.

Even though both organizations conduct psychological evaluations, their services are not related, do not overlap in any way, and consumers do not confuse their services. Consumers of mental health services are accustomed to entities that begin with the prefix "PSY." This is helpful to them as it informs them that the product relates to psychological services while the rest of the name gives them the *specific* service. In this way, using names that begin with "PSY," but have different endings, does not confuse consumers, but allows them to differentiate amongst a myriad of psychological services that are available. In fact, in the ten years that the Applicant's PSYBARI test has been used, the Opposer has been unable to offer any evidence that the names have been confused, that there is a false suggestion of connection, or that dilution has occurred.

Summary of Facts In Dispute

- 1 The Opposer claims but offers no evidence on “overlap” in services.
- 2 The Opposer claims but offers no evidence of “false suggestion of connection.”
- 3 The Opposer claims but offers no evidence of the “likelihood of confusion of the two marks by relevant consumers.”
- 4 The Opposer claims but offers no evidence of the “misleading nature of Applicant’s mark.”
- 5 The Opposer claims but offers no evidence of “likely dilution.”

Summary of Facts Not In Dispute

- 1 The Applicant’s PSYBARI test and the Opposer’s Psybar “network” have co-existed for the past ten years with no reports of consumer “confusion” between the names or services.
- 2 The Applicant’s PSYBARI test and the Opposer’s Psybar “network” have co-existed for the past ten years with no reports, or evidence of, “false suggestion of connection,” “misleading nature of Applicant’s mark” or “dilution.”
- 2 Opposer, Psybar, acquiesced to the Applicant using the PSYBARI mark, as long as the Applicant paid a “licensing fee.” (A)
- 3 The phrase “PSY” is a standard prefix used in names of entities in and outside of the mental health industry, for entities related to psychology. (D) The prefix identifies the product as being related to psychology while the rest of the name clarifies the specific service. The common use of these types of names within the field of psychology does not confuse consumers but helps them to differentiate amongst the many services available.
- 4 Dictionaries define “PSY” as “something to do with psychology.” (C)

5 The phrase “BARI” is short for Bariatrics, “a branch of medicine that deals with the causes, prevention and treatment of obesity” (E) and is used in the names of a wide variety of products and services related to obesity and bariatric surgery. (F)

6 The Applicant’s PSYBARI test is a *psychological* test used to evaluate obese patients seeking *bariatric* surgery.

7 The Opposer’s Psybar “network” does not evaluate obese patients seeking bariatric surgery. (B)

8 The Opposer’s Psybar “network” conducts forensic evaluations. (B)

9 The Applicant’s PSYBARI test is not used for forensic purposes.

10 Consumers of the Applicant’s PSYBARI test are bariatric psychologists conducting evaluations on obese patients seeking bariatric surgery.

11 Consumers of the Opposer’s Psybar “network” services are attorneys, employee assistance professionals, employers, insurance companies, mediators, occupational health professionals, safety experts and unions,” (B) not bariatric psychologists conducting evaluations on obese patients seeking bariatric surgery.

12 Consumers of the the Opposer’s Psybar “network” do not use the Applicant’s PSYBARI test.

13 Consumers of the Applicant’s PSYBARI test do no use the Opposer’s Psybar “network.”

14 Consumers of both services are sophisticated and establish long-term relationships with the respective organizations (i.e., they are not impulsive).

Given the multiple deficiencies in proof, it is clear that the Opposer has not satisfied its heavy burden for summary judgment. The Applicant’s opposition and request for summary judgment does not rest solely on the fact that the Opposer has not demonstrated any genuine issues of fact. Rather, the Applicant offers evidence that the Opposer acquiesced to the

Applicant's use of the mark PSYBARI. Additionally, the Opposer has refused to engage in negotiations with the Applicant to draw up guarantees that both parties will restrict their activities to their respective expertise. Accordingly, the Applicant, respectfully requests that summary judgment be denied to the Opposer and entered for the Applicant.

STATEMENT OF FACTS

I. PSYBARI'S SERVICES

In 1991, the National Institutes of Mental Health released a statement proposing that obese patients seeking bariatric surgery complete a series of pre-surgical tests. This included the suggestion that patients receive psychological clearance. Although little was known about how psychological factors influence surgical outcomes the existence of published reports on post-surgical depression, suicide, substance/alcohol abuse, and marital conflicts the NIH felt that pre-surgical psychological evaluations should be standard for bariatric surgery patients. Since then, most health insurance companies have adopted this suggestion and required patients to receive pre-surgical psychosocial clearance. In the United States alone, approximately 250,000 obese individuals receive bariatric surgery. In spite of this, there were no standards in the way that pre-surgical psychological evaluations were conducted. This led to the development of the Applicant's PSYBARI test, *a test designed exclusively for bariatric surgery patients*. By using the Applicant's PSYBARI test, psychologists have access to standardized data to compare and contrast results amongst patients and to determine whether or not psychological evaluations are effective in detecting patients at risk for post-surgical problems.

Since its inception in 2002, the Applicant's PSYBARI test has been used successfully by the Applicant, Dr. David Mahony, as well as other several other bariatric psychologists throughout the world. The test has been incorporated in research projects and the results are regularly presented at bariatric surgery conferences. Given the investment of time that the

Applicant has put into the PSYBARI test, the names Dr. David Mahony and PSYBARI have become synonymous in the field of bariatrics (G). As an independent bariatric psychologist, Dr. David Mahony's career has become intricately linked to the mark PSYBARI. The PSYBARI mark has been published extensively in international scientific journals, used research grant applications to agencies such as the National Institutes of Mental Health and presented regularly in scientific conferences. The loss of this mark would create undue hardships on Dr. Mahony as he would have to create a new name for the PSYBARI test and spend an extensive amount of time educating the professional bariatric community about the change. Additionally, given that the PSYBARI mark has been published in scientific journals, a complete eradication of the name would not be possible and attempts at doing so would only create chronic confusion.

II. PSYBAR'S "NETWORK" AND SERVICES

The Opposer, Psybar, operates a "network" of mental health professionals that conduct forensic evaluations. These evaluations generally consist of Independent Medical Examinations (IME's). IME's are routinely requested by insurance companies to verify psychological diagnoses. For example, when individuals develop psychological problems that impair their ability to function at work they often apply for disability insurance benefits. Since the insurance companies are not experts in psychological problems they refer the individuals for IME's to confirm that they in fact are psychologically impaired.

The Opposer asserts that since the Applicant Dr. David Mahony completed a request to be a part of the Opposer's "network," the Applicant was aware of the fact that the Opposer was using the mark Psybar. The request was dated 11/14/2003 almost two years after the initial development of the Applicant's PSYBARI test. Additionally, the Opposer's statement on the Affidavit by Dr. David Fisher (pg 2, 2nd paragraph) falsely implies that Applicant was a member of the Opposer's network. Although a request was sent by the Applicant to the Opposer the

request was never responded to. Additionally, the Opposer's website states clearly that professionals in their network:

- Have 5 or more years of experience performing examinations.
- Receive excellent ratings on the last 4 Independent Medical Evaluations.
- Have specialty training in forensics.
- Obtain a high score on PsyBar on-line test materials.

The Applicant, Dr. David Mahony, did not have any of these qualifications in 2003.

The Opposer did not supply any probative facts in discovery regarding their allegations of use of the Applicant's mark PSYBARI.

ARGUMENT

I. OPPOSER FACES A "STRINGENT STANDARD" IN ASKING FOR SUMMARY JUDGMENT IN ITS FAVOR.

Summary judgment is only appropriate where there are *no genuine issues of material fact in dispute*, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). The Opposer, Psybar, as the party moving for summary judgment, has the burden of demonstrating the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-37 (1986). The Opposer, Psybar, in order to prevail on its motion, must establish by *clear and convincing evidence* that there is no genuine issue of fact regarding the genus of the goods or services at issue and that the relevant consumers do not understand that the Applicant's PSYBARI proposed mark refers primarily to psychological evaluations for obese patients seeking bariatric surgery. *See H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986); *Interpayment Servs. Ltd. v. Doctors & Thiede*, Opp'n No. 91119852, 2002 WL 140168, at *3 (T.T.A.B. Jan. 31, 2002) (non-

precedential); *Lockermate Corp. v. Curtis*, Opp'n No. 91115439, 2002 WL 834492, at *3 (T.T.A.B. Apr. 30, 2002) (non-precedential).

Opposer, Psybar, is held to a “stringent standard,” and summary judgment is “not a substitute for the trial of disputed issues of fact.” *Walters Gardens, Inc. v. Pride Of Place Plants, Inc.*, Opp'n No. 911537 55, 2004 WL 1149499, at *6 (T.T.A.B. May 4, 2004) (non-precedential). The Applicant, PSYBARI, in order to have the opportunity to submit proofs at trial, need only show that, on the evidence of record, a reasonable fact finder could resolve the matter in its favor. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 850, 23 U.S.P.Q.2d 1471, 1472-73 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 202, 22 U.S.P.Q.2d 1542, 1544 (Fed. Cir. 1992); *see also Visa Int'l Serv. Ass'n v. Life-Code Sys., Inc.*, 220 U.S.P.Q. 740, 742 (T.T.A.B. 1983) (on a summary judgment motion, “[t]he nonmoving party is not required to adduce evidence sufficient to prove its case . . .”; it need only show “*that there is a genuine issue as to a material fact and that, therefore, there is a need for a trial.*”) (emphasis added).

The Board does not resolve issues of fact on summary judgment; it only determines whether a genuine issue exists. *Meyers v. Brooks Shoe Inc.*, 912 F.2d 1459, 1461, 16 U.S.P.Q.2d 1055, 1056 (Fed. Cir. 1990), *overruled on other grounds by A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1038-39, 22 U.S.P.Q.2d 1321, 1333 (Fed. Cir. 1992). The evidence should be viewed in a light most favorable to the Applicant, PSYBARI, as the nonmovant, and all justifiable inferences should be drawn in the Applicant, PSYBARI's favor. *See Lloyd's Food Prods. Inc. v. Eli's Inc.*, 987 F.2d 766, 767, 25 U.S.P.Q.2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA*, 970 F.2d at 850, 23 U.S.P.Q.2d at 1472.

In spite of their false claims, the Opposer has offered no proof of “overlap,” “false suggestion of connection,” the “likelihood of confusion of the two marks by relevant consumers,” the “misleading nature of Applicant's mark” or “likely dilution.” The term “PSY” is defined in the dictionary as “something to do with psychology.” It is used as a prefix by hundreds of entities

in the field of mental health and at least forty entities that have received trademark status including, but not limited to:

PSY DRINK

PSY

PSY-OPS

PSY-QI

PSY-PHI

PSY WEAR

PSY HERBAL HEALTH TOME

PSY-COMPANY

PSY CO.

PSYNOTE

PSY-COMM

PSYVIEW

PSY-FIDELITY

PSY COLOR

PSY HEALTH

PSY-FIGHTER

PSYDATA

PSYQUEST

PSYCAL

Similarly, the term “BARI” refers to bariatric medicine or “the branch of medicine that deals with the causes, prevention, and treatment of obesity.” It has been used by at least 50 names

that have already received trademark status is used by dozens of companies in the business of weight loss including, but not limited to:

BariMate www.barimate.com

Bariform www.bariform.com

Bariware www.bariware.com

Bariathletes www.bariathletes.com

Bari Metabolic Institute www.americanbariatricconsultants.com

Bari Coach www.baricoach.com

BariWise www.bariatricchoice.com

Bari-BITES www.clevelandclinic.org

STAT Bari www.recoverycare.com

Bari Drop-Arm Commode www.size-wise.net

As can be seen, many entities use names that include the prefix “PSY” and the phrase “BARI.” They are able to do so without any confusion amongst consumers since the consumer of these services are sophisticated. Further, the terms are helpful to consumers since they allow consumers to accurately differentiate amongst a myriad of services available in these fields.

Given the lack of evidence of the Opposer’s allegations of “overlap,” “false suggestion of connection,” the “likelihood of confusion of the two marks by relevant consumers,” the “misleading nature of Applicant’s mark” or “likely dilution” the Applicant respectfully requests that the Opposer’s motion for summary judgment be denied.

II. Response to Affidavit by Dr. Fisher.

In the affidavit by Dr. Fisher, the Opposer makes repeated statements in an attempt to mislead the reader into thinking the the Opposer and the Applicant offer similar services. These

ingenious attempts to mislead the reader are currently being reviewed for the possibility that Dr. Fisher has violated his ethical responsibilities as a clinical psychologist. Additionally, for Dr. Fisher to suggest that his customers are not intelligent enough to differentiate the PSYBARI test and the Psybar “network” indicates that he has little regard for the intelligence of his customers.

In the affidavit, the Opposer repeatedly claims that there is “overlap” between the services of the Opposer and the Applicant’s PSYBARI test. The Opposer’s motion and affidavit repeatedly state and imply that the Applicant’s PSYBARI test and Opposer’s Psybar are similar simply because the two organizations conduct psychological evaluations. This is an ingenious attempt to confuse the reader into thinking the two services are similar. In fact, the Opposer conducts “forensic” evaluations while the Applicants’ PSYBARI test is used exclusively with obese patients seeking bariatric surgery. The Opposer does not evaluate obese patients seeking bariatric surgery and the Applicant’s PSYBARI test is not used in forensic evaluations. The Opposer’s website makes not mention of evaluations of obese patients seeking bariatric surgery and they offered no evidence of overlap in discovery. The Opposer’s own Affidavit includes a statement (#5) of the services that they provide and does not mention obesity or bariatric surgery:

“Psybar provides scientific consultation, including litigation strategy and expert witness testimony, to forensic psychologists and psychiatrists, health, disability, and workers’ compensations insurers, attorneys, employers and employee assistance programs, and other member of the forensic and legal communities.”

As can be seen in this statement, the Opposer is in no way involved with patients seeking bariatric surgery.

In the Opposer’s affidavit (#16), the Opposer ingeniously attempts to confuse the reader on the issue of psychological assessments of sexual abuse/attack. The Applicant’s work on this issue, including a paper entitled “Assessing Sexual Abuse/Attack Histories with Bariatric Surgery

Patients” and a scientific presentation entitled “Validity of Sexual Abuse Assessments Using the PSYBARI” are *validation studies*. Validation studies are studies that all psychological tests have to undergo to determine how accurately they measure what they claim to measure. Since obese individuals seeking bariatric surgery often have a history of sexual abuse/attack, the PSYBARI test attempts to assess this variable. The studies involved determined whether or not the patients were honest in their claims, or denials, of sexual abuse/attack. The Opposer’s “network” does not create or validate psychological tests, they do not conduct validation studies (in fact, they have never published any scientific work) and they offered no evidence in discovery that they even evaluate sexual abuse/attack. Additionally, the Applicant’s validation studies have been publically available for over three years and the Opposer offers no evidence that the consumers of the research have “confused” the Applicant’s PSYBARI test with Opposer’s Psybar “network” as the Opposer claims.

In the Opposer’s affidavit (#17), the Opposer ingeniously attempts to confuse the reader on the issue of overlap of services. “Psybar is a nationally known psychological specialty provider of fitness for duty examinations. Some of these forensic assessments and evaluation include bariatric patients who are ideal candidates for the PSYBARI test.” This statement is a typical attempt by Dr. Fischer, the Opposer, to mislead the reader. As the Opposer states, they conduct “fitness for duty examinations.” These are examinations to determine if an individual can function in an occupational setting and has nothing to do with evaluating an obese patient seeking bariatric surgery.

In the Opposer’s affidavit (#18), the Opposer ingeniously attempts to confuse the reader on the issue of consumers of the two services being the same. “Employers and Employee Assistance Programs consistently rely on results of objective psychological tests such as the PSYBARI to aide them in making employment-related decisions.” This again, is a clear attempt to mislead the reader. The PSYBARI test has never and will never be used by employers or

employee assistance programs. The PSYBARI test is not a test used for these purposes and using the PSYBARI test for this purpose would be unethical.

In the Opposer's affidavit (#19), the Opposer ingeniously attempts to confuse the reader on the issue of confusion between the two services. The Opposer claims that the Applicant's PSYBARI test will be confused with the Opposer's Psybar "network" within the "forensic and litigation industry." The Applicant's PSYBARI test is not used in the "forensic and litigation industry" so confusing the two would not be possible. The Opposer makes additional misleading statements including: "Because these [consumers] do not engage in independent investigation regarding the source of these various objective tests, it will be assumed that the PSYBARI is either a product of or affiliated with Psybar". This statement is extremely misleading because the consumers of the Opposer's Psybar "network" are not even consumers of psychological tests. The Opposer's Psybar "network" includes clinical psychologists that use psychological test but the Opposer's consumers do not have direct access to these tests. In order to gain access to a psychological test, a purchaser has to demonstrate to the company that sells the test that they are in fact a psychologist. This means they have to contact the test publisher and complete a form to verify their credentials. Even for the psychologist, it is not an impulsive purchase. Given this process, the user of any psychological test would be well aware of the source of the tests.

In the Opposer's affidavit (#23), the Opposer ingeniously attempts to confuse the reader on the issue of false connection. The Opposer states that the Applicant is attempting to "capture and capitalize on the established goodwill and reputation of the Psybar mark." Again, this is a very disingenuous attempt to mislead the reader. Assuming that the Opposer has "goodwill" and a good "reputation," there is no way that the Applicant would benefit from them since the consumers of the prospective services are entirely different. Users of both the Applicant's PSYBARI test and the Opposer's Psybar "network" have to establish an account, or relationships, with the respective organizations before using their services. This requires contact with the organization, verification of services, establishing financial accounts, etc. Since the consumers of

the respective products are different, there is no way for the Applicant to benefit from Opposer's "goodwill and reputation."

III. Motion for Summary Judgment in Favor of the Applicant.

In the writings above, the Applicant has demonstrated that no evidence exists to support the Opposer's claims of "overlap," "false suggestion of connection," the "likelihood of confusion of the two marks by relevant consumers," the "misleading nature of Applicant's mark" and the "likely dilution." In spite of the fact that the marks PSYBARI and Psybar have co-existed for the past ten years, the Opposer has been unable to offer any evidence that the two services overlap in anyway or that a connection between the two marks exists, that anyone has ever confused the two, that the Applicant's PSYBARI test has mislead anyone, that the Applicant's PSYBARI test has ever benefited from the Opposer's mark Psybar, or that the Applicant's PSYBARI test has diluted the Opposer's mark Psybar.

Given the lack of any evidence of "overlap," "false suggestion of connection," the "likelihood of confusion of the two marks by relevant consumers," the "misleading nature of the Applicant's mark" or "dilution," the Applicant moves that the Opposer's motion to deny approval of the Applicant's mark PSYBARI, be denied.

Review of DuPont Factors To Determine Whether Two Trademarks are Confusingly Similar.

1-- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression.

While the Applicant agrees that the the mark PSYBARI and Psybar are similar in appearance and sound, they are not similar in connotation or commercial impressions. As argued

above, consumers of the respective services are sophisticated, they are accustomed to similar names of products and services in the field of psychology and able to differentiate amongst the products and services involved.

2-- The similarity or dissimilarity and nature of the goods . . . described in an application or registration or in connection with which a prior mark is in use.

While both the Applicant's PSYBARI test and the Opposer's Psybar "network" involve psychological evaluations, no other similarities exist. The Applicant's PSYBARI test is a test used with obese individual seeking bariatric surgery. The Applicant's PSYBARI test is not used for "forensic" purposes. The Opposer's Psybar "network" conducts "forensic" evaluations. The Opposer's Psybar "network" does not evaluate obese patients seeking bariatric surgery.

3-- The similarity or dissimilarity of established, likely-to-continue trade channels.

The Applicant's PSYBARI test is used by bariatric psychologists that are affiliated with bariatric surgery programs. The Opposer's Psybar "network" is used by "attorneys, employee assistance professionals, employers, insurance companies, mediators, occupational health professionals, safety experts and unions." The Psybar "network" is not used by bariatric psychologists and the Applicant's PSYBARI test is not used by "attorneys, employee assistance professionals, employers, insurance companies, mediators, occupational health professionals, safety experts or unions."

4-- The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.

Both the Applicant's PSYBARI test and the Opposer's Psybar "network" are used by consumers that establish long-term relationships or accounts. Users of the Applicant's PSYBARI test have to demonstrate with documented evidence that they are in fact bariatric psychologists. Consumers of the Opposer's Psybar "network" will also have to establish accounts to determine matters such as payment, place of service, type of service, etc. Neither of these services can be requested impulsively. Although the Opposer, Dr. Fisher does not believe his customers are intelligent enough to differentiate between the two services, given the processes involved in establishing an account, even individuals with limited intelligence would be able to differentiate between the two services.

5-- The fame of the prior mark

The Applicant's PSYBARI mark has been published in scientific journals that will be available to the scientific community forever. The PSYBARI test has been featured on the front cover of trade magazines and is regularly presented at scientific conferences. Additionally, the PSYBARI owns the domain www.psybari.com.

The Opposer's Psybar "network" has a web page. They have never published or presented scientific work in spite of their claims of offering "scientific consulting." They have no presence outside of the field of forensic psychology and they presented no evidence that they have a presence inside the field of forensic psychology.

6-- The number and nature of similar marks in use on similar goods.

As presented above, the prefix "PSY" is widely used in names of organizations that offer psychological services including at least 50 trademarked names. The term "BARI" is used extensively in products and services that involve obesity, weight loss, and/or bariatric surgery,

including at least 40 names that are trademarked. The field of mental health and bariatrics are “crowded” with names that include the prefix “PSY” and the phrase “BARI.”

7-- The nature and extent of any actual confusion.

In spite of the Applicant’s PSYBARI test and the Opposer’s Psybar “network” co-existing for the past ten years, the Opposer was unable to document any evidence of actual confusion.

8-- The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion.

The Applicant’s PSYBARI test and the Psybar “network” have co-existed for ten years without and documented evidence of actual confusion.

9-- The variety of goods on which a mark is or is not used .

The Applicant’s PSYBARI test is only used with obese individuals seeking bariatric surgery and is not applicable to any other population. The Opposer’s Psybar “network” conducts forensic evaluations and does not work with patients seeking bariatric surgery.

10-- The market interface between the applicant and the owner of a prior mark .

There is no interface between the Applicant and Opposer. The Applicant works in the field of bariatric psychology. The Applicant’s PSYBARI test is only used by bariatric psychologists that are affiliated with bariatric surgery centers. The Applicant’s PSYBARI is in no

way involved with forensic psychology. The Opposer's Psybar "network" conducts forensic evaluations and is in no way involved in clinical or scientific work with obese individuals or individuals seeking bariatric surgery.

The Opposer, Psybar, has previously acquiesced to the Applicant's use of the mark PSYBARI. Additionally, the Applicant's PSYBARI test is only used with obese patients seeking bariatric surgery and can not be used with forensic or other populations.

11-- The extent to which applicant has a right to exclude others from use of its mark on its goods.

The Applicant, PSYBARI, has used the mark PSYBARI for the past ten years and will be able to protect the trademark when granted.

12-- The extent of potential confusion .

There is no way to confuse the Applicant's PSYBARI test with the Opposer's Psybar "network." They are involved in entirely different specialties with no crossover. Consumers have to go through an elaborate process to gain access to the service and are not impulsive.

13-- Any other established fact probative of the effect of use.

No probative facts were supplied by the Opposer in discover to back up their claims.

Respectfully submitted,

PsyBari

By: David Mahony Ph.D.

David Mahony, Ph.D., ABPP

PsyBari

30 Bayard St., Suite 1F

Brooklyn, NY, 11211

(718) 668-1919

Date: May 27, 2012



Exhibit A

David Mahony <drdavidmahony@gmail.com>

FW: Psybari

1 message

David Fisher <fisher@psybar.com>

Wed, Jul 28, 2010 at 4:38 PM

To: "drdavidmahony@gmail.com" <drdavidmahony@gmail.com>, David Fisher <fisher@psybar.com>

Cc: James Kretsch <jkretsch@kretschgust.com>

Dr. Mahoney: Have you reached a decision on this? -David Fisher

From: dcfisher1@aol.com [mailto:dcfisher1@aol.com]

Sent: Wednesday, June 16, 2010 2:05 PM

To: David Fisher

Subject: Fwd: Psybari

Dr. Mahony:

I spoke with our law firm about this matter yesterday. They confirmed that if I let this go, it would "dilute" the protection we have for our company name. The easiest solution, which would allow you to keep the name "Psybari" for your test, would be for both of us to sign a licensing agreement. Here's how it might work: For \$1 per year you could use the name for a time period we would specify. There would be a protect/indemnification clause, in the extremely remote chance you got sued for the test and somebody tried to come after PsyBar. The only significant fee, of at most \$500 (your expense), would be for our attorneys to draft the agreement.

As I said, I'm very sorry about this and am trying to work it out in the way that causes you the least expense and headache.

-Dave Fisher

Exhibit A

David C. Fisher, Ph.D., LP, ABPP

President, PsyBar LLC

5151 Edina Industrial Boulevard

#675

Minneapolis MN 55439

Phone: 952-285-9000 x 11

Fax: 952-848-1798

www.psybar.com

From: dcfisher1@aol.com [<mailto:dcfisher1@aol.com>]

Sent: Thursday, June 03, 2010 11:48 PM

To: drdavidmahony@gmail.com

Subject: Psybari

Dr. Mahoney: I wonder if you could call me to discuss PsyBari. Thanks very much. -David Fisher
952.285.9000 x 11

Exhibit B

PSYBAR®

Objective Opinions / Confident Decisions

Who We Are:

PsyBar, LLC, is a national professional services company offering vocational, psychological/psychiatric consultation and evaluation to:

- Attorneys
- Employee Assistance Professionals
- Employers
- Insurance Companies
- Mediators
- Occupational Health Professionals
- Safety Experts
- Unions

← No Bariatric Psychologists

We can serve as a consultant on your case or assist in locating the appropriate experts.

No Obesity or Weight Loss Services

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012, All rights reserved. | [Privacy Policy](#)

PSYBAR®

Objective Opinions / Confident Decisions

User Agreement

Technical Support

Logon

You Need Information:

No Services for Obesity or weight loss

- **Managing Psychiatric and Psychological Disability and Workers Compensation Claims With an Independent Medical Examination Facilitator**

This link describes the nation's only accredited on-line training program for professionals managing claims with psychological/psychiatric Independent Medical Examinations. This program has been approved for three continuing education credits by the Commission for Case Manager Certification. This program is offered at no charge.

- **Psychological and Psychiatric Assessment of Individuals for Disability Insurers**

This link will take you to an outline of the nation's first on-line training program for psychologists and psychiatrists performing disability Independent Medical Examinations. PsyBar is approved by the American Psychological Association to sponsor continuing education for psychologists. PsyBar maintains responsibility for this program and its content. This program is offered at no charge.

- **Psychological Fitness for Duty Evaluations: Best Practices for the Employer and the EAP**

This is the only advanced and accredited on-line training for employers and EAP professionals describing the new "Fitness for Duty Evaluation Facilitator" methods. This program is offered at no charge.

• **PsyBar is approved by the American Psychological Association to sponsor continuing education for psychologists. PsyBar maintains responsibility for this program and its content.**

Approval of Professional Development Hours (PDHs)

The *Employee Assistance Certification Commission* (EACC) has approved your application for PDH award, applicable to the following course, training

session or professional development activity:
Psychological Fitness for Duty Evaluations: Best Practices for the Employer and the EAP
Sponsored by

PsyBar

EACC Approval Number	# of PDHs Awarded	Domain	Date(s) of Training
SSPBONLN07-L54	3	II	Online-various

American Psychological Association
Approved Continuing Education Sponsor
In the interest of assuring quality education for psychologists.

PsyBar LLC
has been awarded APA approval.

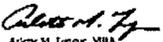
The APA Office of CE Sponsor Approval is designed to facilitate psychologists' access to continuing education that meets APA standards

The APA approval is in effect

Beginning 5.1.2010

Ending 3.31.2012




Ariene M. Tengue, MBA
Director, CE Sponsor Approval System

Continuing Education Sponsor Approval System

PSYBAR®

Objective Opinions / Confident Decisions

Services for Employers

PsyBar STEP Management program

For Employers

First, you collect information and evaluate the facts.

First, you collect information and evaluate the facts. You must determine what is needed for management and resolution. But complex psychological problems can prevent this from happening, costing time and money. With difficult psychiatric matters, our experts can help you clear the path. These are not just any experts. They have an extraordinarily high level of sophistication in psychiatry and psychology, and work with local doctors and treatment providers. As collaborative partners with the insurer, employer, individual, and treatment team, we will help you to objectively assess functional capacity and manage return-to-work needs.

STEP Management (Support and Treatment for Effective Psychological Management) Highlights:

- A program model shown to substantially reduce disability duration and accelerate return-to-work.
- Regionally-based psychiatric case management professionals throughout the US specializing in psychology, psychiatry and vocational rehabilitation.
- Access to PsyBar's proprietary network, established in 1995, of 1200 seasoned psychologists and psychiatrists throughout the United States. Using their knowledge of treatment practices and local resources, they assist STEP case managers in identifying treatment and rehabilitation needs, moving from recommendations to results. In many cases they are available to provide direct psychiatric/psychological treatment.

Intervention: We can provide:

- Telephonic and onsite case management assessment and services
- Peer to peer telephone calls with treatment providers, employment personnel, HR staff and others
- File reviews to establish initial liability, disability duration, and IME recommendations
- Return-to-work planning

Assessment: Refer to us when you need to know:

- The cause and duration of psychological impairment
- Whether the impairment prohibits competitive work
- Appropriate treatment goals
- Symptom validity
- Reasonable accommodations
- The interaction between physical injury and psychological problems (e.g. with severe burns, industrial accidents, multiple fractures)
- Diagnoses such as PTSD, depression, anxiety, substance abuse
- The extent of cognitive problems resulting from brain injury and medical illnesses
- Issues surrounding subjective medical conditions (e.g. fibromyalgia, chronic fatigue, multiple chemical sensitivities, chronic pain)

Referrals

Help is one STEP away. Using our simplified referral process, PsyBar is available by telephone, fax, or website.

- Phone: 952-285-9000
- Fax: 952-848-1798

No obesity or weight
loss services

Expertise

PsyBar's 1200 doctors compose our panel of forensic psychologists and psychiatrists. We believe that their many years of training and experience, and the unique educational opportunities PsyBar offers to these doctors, make them the USA's leading psychological/psychiatric forensic network.

About PsyBar

PsyBar awards specialty credentials to doctors who have outstanding skills. "Certified PsyBar Disability Examiner" credentials are given to doctors who:

- Have 5 or more years of experience performing examinations.
- Receive excellent ratings on the last 4 Independent Medical Evaluations.
- Have no history of damaging ethical violations.
- Have specialty training in forensics.
- Obtain a high score on PsyBar on-line test materials.

This certification is available to doctors on an invitation-only basis, and is given to a highly select group of doctors within our network.

Dr Mahony did not qualify

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012. All rights reserved. | [Privacy Policy](#)

PSYBAR®

Objective Opinions / Confident Decisions

You Need Information:

For Insurers

For Insurers and ERGs

The nation's largest specialty provider of psychological, neuropsychological and psychiatric Independent Medical Evaluations, Fitness for Duty Evaluations &

Vocational Assessments with over 1,000 doctors across the country.

In 2009 PsyBar's president was awarded a Presidential Citation by the President of the American Psychological Association, in recognition of the innovations in forensic assessment and education at PsyBar. And PsyBar alone can pass all of those innovations on to its clients.

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012. All rights reserved. | [Privacy Policy](#)

PSYBAR®

Objective Opinions / Confident Decisions

For Insurers***For Insurers: Psychological and Vocational Assessment Services***

As an insurer, your job involves making decisions. These decisions can profoundly affect people's lives. You want to be confident that the decisions you make are the right ones.

Money and liability are at stake.

You need to apply scientific knowledge to legal and insurance issues. A simple diagnosis isn't enough. You need to understand the insured's ability to function.

When entering this territory, information can be elusive, abstract and difficult to access. You need expert guides to clear the path.

Specialists in information.

We are specialists in objectivity and scientific defensibility; decisions previously entrusted to opinion alone can now be made from a position of knowledge. We guide you to effective decision-making clearly, objectively and consistently.

Clearly, objectively and consistently.

PsyBar is a provider of Psychological and Vocational Assessment Services offering objective psychological and psychiatric opinions that assist you in making the right decisions for everyone involved.

The right decisions.

Our network of psychologists, psychiatrists and vocational experts, with a common core of forensic knowledge, is nationwide.

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012, All rights reserved. | [Privacy Policy](#)

No Obesity or Weight Loss Services!!

PSYBAR®

Objective Opinions / Confident Decisions

No Obesity or weight loss services

For Insurers

For Insurers:

Section 1: Services Related to Insurance Claims

**CLICK HERE
to download
10 reasons to use
PsyBar for IMEs**

Obtain psychological or psychiatric reports, and/or raw psychological test data from treating doctors.

To save you time and frustration, PsyBar will attempt to obtain psychological/psychiatric reports and raw psychological test scores.

File review, written by a psychologist or psychiatrist.

PsyBar can provide these both for claimants with psychiatric/ psychological problems only, and for "co-morbid" cases involving medical problems such as fibromyalgia and orthopedic injuries.

Independent Psychiatric, Psychological or Neuropsychological Evaluation

Performed by a doctoral level psychologist, neuropsychologist, or a psychiatrist.

Our staff can work with you to help determine the proper professional areas of expertise (e.g. clinical psychologist Ph.D. versus MD versus neuropsychologist expert) to perform the evaluation. In most cases objective psychological testing is performed to support the doctors' conclusions with objective data. PsyBar staff also take steps to ensure that reports are done in a consistent format, with the appropriate topics covered during the examinations.

All reports are reviewed by doctors for clarity and completeness.

Typically, independent evaluations take place within two to three weeks of the date of referral, with a final report delivered ten business days thereafter. Our doctors generally follow our comprehensive report format. () This outline can be customized according to individual customer needs.

Neuropsychological Screening

This relatively short evaluation is designed to determine whether there is evidence of cognitive problems that can be detected with just a few neuropsychological tests. It provides a provisional diagnosis, description of cognitive deficits, treatment recommendations, and a brief discussion of claimant limitations.

Brief Psychological or Psychiatric Evaluation designed for STD claimants.

These brief assessments are designed solely to determine claimant diagnosis, prognosis, and to give suggestions about how treatment might better facilitate return to work. These assessments are not designed to evaluate employee functionality and do not include a neuropsychological assessment. They include a review of up to 20 pages of medical records.

Brief Employability Assessment

Used to match claimant abilities to jobs and occupations. This is written by a master's level Vocational Rehabilitation Specialist to complement your IME report. This very short addendum to an IME will include an opinion about the claimant's ability to transfer their skills to potential jobs/occupations. Because this opinion is based solely upon the IME doctor's report and a functional capacities form filled out at the treating and/or IME doctor's office, cost is much lower than that of a Full Employability Assessment.

Full Employability Assessment

Used to match claimant abilities to jobs and occupations. This is a thorough analysis conducted by a master's level Vocational Rehabilitation Specialist. The report will include an overview of relevant portions of the file, education and work history, current medical status, functional abilities and restrictions, the work tolerance level and functional abilities/limitations, a transferable skills analysis and , if identified, appropriate jobs/occupations for the employee.

Labor Market Survey

Written by a Vocational Rehabilitation Specialist. If it has been determined that an individual can perform one or more jobs/occupations, a Labor Market Survey may be conducted to determine whether jobs/occupations identified through an Employability Assessment (above) exist within the claimant's geographic area. The LMS will provide details about whether the specific job(s) reside, how many of them exist, if special training, licensure or education is required, what work experience is needed, and the potential salary range and benefits. Additionally, it will include the type of work environment, physical demands and general schedules that the employee would be expected to tolerate.

Critique of a psychological or psychiatric evaluation/peer review written by a doctoral level expert.

Click [here](#) to see more information on our critique services.

If you receive a report conducted by a treating or other doctor that is difficult to interpret or of questionable quality, PsyBar can review it to help facilitate your claim decision. We can help you

decipher the doctor's statements, and determine whether the doctor's opinions are supportable.

Section 2: For Insurers - Educational Services

Education for Claims Professionals

The Commission for Case Manager Certification has approved PsyBar's on-line training program for those managing psychological/psychiatric claims. This program (approved for 3 continuing education credits) will help insurance professionals resolve claim issues quickly by effectively understanding the complexities of psychological and psychiatric Independent Medical Evaluations.

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012, All rights reserved. | [Privacy Policy](#)

PSYBAR®

Objective Opinions / Confident Decisions

Services for Employers

For Employers

Section 1: Services for HR Personnel with employees that show worrisome behaviors at the workplace:

Fitness for Duty Evaluation – Click [here](#) for more information about FFD evaluations.

A Fitness for Duty Evaluation can provide concrete information about psychological problems such as depression, anxiety and confusion, that affect your employees' workplace behavior. After the evaluation takes place, a preliminary report will be delivered to you by telephone, followed by a written report from a psychologist or psychiatrist within five days of the exam. Urgent evaluations can sometimes be scheduled to take place in fewer than five business days after you've returned the Service Agreement.

Threat/Risk Assessment (Employee potential for violence and making dangerous errors)

After an evaluation, psychologists and psychiatrists can give you information regarding employees' risk factors and, when possible, assist in planning for their return to work.

Section 2: Services Related to Employee Insurance Claims

Obtain psychological or psychiatric reports, and/or raw psychological test data from treating doctors.

To save you time and frustration, PsyBar will attempt to obtain psychological/psychiatric reports and raw psychological test scores.

File review, written by a psychologist, psychiatrist or physician with another medical specialty.

PsyBar can provide these both for employees with psychiatric/psychological problems only, and for "co-morbid" cases involving medical problems such as fibromyalgia and other orthopedic injuries.

Full Independent Psychiatric, Psychological or Neuropsychological Evaluation

Performed by a doctoral level psychologist, neuropsychologist, or a psychiatrist.

Neuropsychological Screening

This relatively short evaluation is designed to determine whether there is evidence of cognitive problems that can be detected with just a few neuropsychological tests. It provides a provisional diagnosis, description of cognitive deficits, treatment recommendations, and a brief discussion of employee limitations.

Brief Psychological or Psychiatric Evaluation designed for STD employee claimants.

These brief assessments are designed solely to determine employee diagnosis, prognosis, and to give suggestions about how treatment might better facilitate return to work. These assessments are not designed to evaluate employee functionality and do not include a neuropsychological assessment. They include a review of up to 20 pages of medical records.

Brief Employability Assessment

Used to match employee abilities to jobs and occupations. This is written by a master's level Vocational Rehabilitation Specialist to complement your IME report. This very short addendum to an IME will include an opinion about the employee's ability to transfer their skills to potential jobs/occupations. Because this opinion is based solely upon the IME doctor's report and a functional capacities form filled out at the treating and/or IME doctor's office, cost is much lower than that of a Full Employability Assessment.

Full Employability Assessment

Used to match employee abilities to jobs and occupations. This is a thorough analysis conducted by a master's level Vocational Rehabilitation Specialist. The report will include an overview of relevant

portions of the file, education and work history, current medical status, functional abilities and restrictions, the work tolerance level and functional abilities/limitations, a transferable skills analysis and, if identified, appropriate jobs/occupations for the employee. With your referral, please include the employee's prior job description, prior work history and education, and information as to whether this is an any or own occupation claim.

Labor Market Survey

Written by a Vocational Rehabilitation Specialist. If it has been determined that an individual can perform one or more jobs/occupations, a Labor Market Survey may be conducted to determine whether jobs/occupations identified through an Employability Assessment (above) exist within the employee's geographic area. The LMS will provide details about whether the specific job(s) reside, how many of them exist, if special training, licensure or education is required, what work experience is needed, and the potential salary range and benefits. Additionally, it will include the type of work environment, physical demands and general schedules that the employee would be expected to tolerate. Please let us know if there are special policy requirements for us to consider when preparing your report.

Critique of a psychological or psychiatric evaluation/peer review written by a doctoral level expert.

If you receive a report conducted by a treating or other doctor that is difficult to interpret or of questionable quality, PsyBar can review it to help facilitate your claim decision. We can help you decipher the doctor's statements, and determine whether the doctor's opinions are supportable.

Section 3: Case Claims: Educational Services

Education for HR Personnel

PsyBar offers a free internet-based educational course designed to help HR professionals learn about evaluating employees who have psychological problems that may affect their workplace performance or present a danger to co-workers. The Employee Assistance Certification Commission has approved this unique program for 2 continuing education credits.

Education for Employer Claims Professionals

The Commission for Case Manager Certification has approved PsyBar's on-line training program for those managing psychological/psychiatric claims. This program (approved for 3 continuing education credits) will help insurance professionals resolve claim issues quickly by effectively understanding the complexities of psychological and psychiatric Independent Medical Evaluations.

Section 4: Pre-Employment Evaluations

Entry Level Screening Assessments

It is important to understand employee personality, work attitudes and compatibility with company values. A PsyBar Screening Assessment is a set of on-line personality and problem solving tests that provide general information about candidates' capacity for teamwork, openness to feedback, interpersonal style, achievement drive, and orientation to work responsibility. The Screening Assessment is quick to administer and easy for candidates to complete. Our psychologists interpret the Screening Assessment data and promptly deliver summary reports that highlight main employee traits. These reports also raise questions and present hypotheses about employee characteristics that can be explored in follow-up interviews. Turnaround time on Screening Assessment reports is typically 48 hours or less.

Comprehensive Pre-Employment Assessments

Key Employee Characteristics identified by most companies include integrity, work ethic, conscientiousness, interpersonal effectiveness and commitment to professional growth. Organizations are also interested in leadership potential, problem solving style, analytical and social flexibility, capacity to manage stress and both organizing and planning skills.

At PsyBar our Comprehensive Pre-Employment Assessments give employers data on all of these and more. Our psychologists start by talking with your human resources professionals and hiring managers to find out exactly what you want for each job category. In addition to completing a comprehensive online assessment battery, each candidate will participate in a 60-90 minute phone interview with a doctoral level psychologist. Interview data and test results are then combined, and within 24 hours verbal feedback will be given to your organization. Detailed and timely written reports follow these feedback discussions.

Executive Senior-Manager Assessments Pre-Hire or Promotion

The most significant personnel decisions a company makes are those that place individuals in



For Employers: Employee Assessment and Intervention

For Employers

As an employer or Employee Assistance Program professional, your job involves making decisions. These decisions can profoundly affect people's lives. You want to be confident that the decisions you make are the right ones.

Your employees' well-being is at stake.

You need to apply scientific knowledge to legal and employment issues. A simple diagnosis is not enough. You need to understand the troubled employee's ability to work effectively and safely.

When entering this territory information can be elusive, abstract and difficult to access. You need expert guides to clear the path.

Specialists in information.

We are specialists in objectivity and scientific defensibility; decisions previously entrusted to opinion alone can now be made from a position of knowledge. We guide you to effective decision-making clearly, objectively and consistently.

Clearly, objectively and consistently.

PsyBar is a provider of Fitness for Duty Evaluations, Risk Assessments, Insurance Claim Evaluations, and Critical Incident Response Services. We offer objective psychological and psychiatric opinions that assist you in making the right decisions for everyone involved.

The right decisions.

Our comprehensive network of psychologists and psychiatrists, with a common core of forensic knowledge, is nationwide.

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012, All rights reserved. | [Privacy Policy](#)

PSYBAR®

Objective Opinions / Confident Decisions

For Insurers

Training for Doctors & Insurance Professionals

Section 1: Training for Insurance Professionals

(Approved by the Commission for Case Manager Certification)

To help our clients manage psychological/psychiatric claims, PsyBar has developed the nation's only on-line advanced IME training program for insurance professionals. Among its goals are to help insurers:

- Develop appropriate, file specific referral questions
- Understand the IME Facilitator's role
- Select the proper professional to perform the IME
- Understand tests of validity and effort
- Learn when to request neuropsychological evaluations
- Understand "Cognitive Impairment" and neuropsychology
- Recognize problems diagnosing subjective illness

PsyBar offers this training program to clarify important issues and to help us consistently deliver clear and objective independent evaluations. PsyBar is approved by the American Psychological Association to sponsor continuing education for psychologists. PsyBar maintains responsibility for this program and its content.

Click [here](#) to go to our on-line training.

If you have any other questions, please feel free to call or write us, and we would be happy to discuss this program and perhaps arrange a seminar for your company.

Section 2: Training for Independent Examining Doctors

To improve the quality of psychological and psychiatric disability IMEs, PsyBar has developed the nation's only on-line advanced IME training program for psychologists and psychiatrists. Highlights of this training include instructing doctors to:

- Concentrate on functionality (i.e. what the claimant can do)
- Support their opinions with objective test results
- Express opinions clearly, in lay terms
- Avoid offering opinions about limitations in functioning caused by physical problems
- Support their opinions with examples of behavior
- Document the sources of their information
- Not assume the role of a treating doctor

PsyBar offers this training program to all of its doctors, to help us deliver clear and objective IMEs. It requires doctors to pass an examination testing their knowledge on a variety of insurance-related topics. PsyBar LLC is approved by the American Psychological Association to sponsor continuing education for psychologists. PsyBar LLC maintains responsibility for this program and its content.

Click [here](#) to go to our on-line training.

If you have questions, please feel free to call or write us, and we would be happy to discuss this program, and how it improves the quality of evaluations our doctors provide to you.

Clarity. Objectivity. Consistency.

©Copyright PsyBar LLC 2005-2012. All rights reserved. | [Privacy Policy](#)

Psy

From Wikipedia, the free encyclopedia

Exhibit C

Psy may mean:

- Something to do with psychology
- A commonly used term for psychedelic trance (psytrance), a sub-genre of modern electronic dance music
- Something to do with psionics (although usually psi- is used instead)
- Something to do with psychics and psychic powers
- "Psy", a rapper from the Oddities, and The Nope
- PSY (Korean: 싸이), a Korean hip hop singer

In film

- *Psy* (film), (or *Dogs*) a 1992 film directed by Wladyslaw Pasikowski
- *Psi* (french film) a 1992 film directed by Philippe de Broca

See also

- Psi (disambiguation)

Retrieved from "http://en.wikipedia.org/w/index.php?title=Psy&oldid=479824393"

Categories: Disambiguation pages

- This page was last modified on 2 March 2012 at 14:43.
- Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. See Terms of use for details.

Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.



Trademarks > Trademark Electronic Search System (TESS)

Exhibit D

TESS was last updated on Sat May 26 04:35:46 EDT 2012

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG PREVIOUS RESULTS IMAGE LIST BOTTOM

HELP

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record:

39 Records(s) found (This page: 1 ~ 39)

Refine Search (psy)[COMB] Submit

Current Search: (psy)[COMB] docs: 39 occ: 92

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	79069568		PSY DRINK PSY! UP YOUR LIFE MIT MACA UND GINSENG MACHT MUNTER UND REGT AN...	TARR	DEAD
2	79057161		PSY	TARR	DEAD
3	78857310	3500214	PSY-OPS	TARR	LIVE
4	78842863		PSY-QI (PSY-CHI)	TARR	DEAD
5	78793808		PSY-PHI	TARR	DEAD
6	78653665		PSY WEAR	TARR	DEAD
7	78144902		PSY HERBAL HEALTH TOWN	TARR	DEAD
8	78055408		PSY-COMPANY	TARR	DEAD
9	78053897	2799092	PSY CO.	TARR	DEAD
10	77756321	3926414	PSYNOTE	TARR	LIVE
11	77461355		PSY-COMM	TARR	DEAD
12	77244707	3408695	PSY-COMM	TARR	LIVE
13	76329797		PSYVIEW	TARR	DEAD
14	76150094		PSY-FIDELITY	TARR	DEAD
15	75808346	2467168	PSY	TARR	DEAD
16	75663917		.PSY	TARR	DEAD
17	75365743	2369077	PSY COLOR GY	TARR	DEAD
18	75229134		PSYHEALTH	TARR	DEAD
19	75061195		PSY-FIGHTER	TARR	DEAD
20	75052825		PSYFIGHTER	TARR	DEAD
21	75042960	2116765	PSYDATA	TARR	DEAD

22	75042959	2146667	PSYDATA	TARR	DEAD
23	74178244	1690683	PSYQUEST	TARR	LIVE
24	74736852	2006044	P PSY OPS	TARR	DEAD
25	74692506		PSY-4	TARR	DEAD
26	74692505		PSY-4	TARR	DEAD
27	74692501		PSY-4	TARR	DEAD
28	74639167	2005218	PSY-DYE	TARR	DEAD
29	74517845		PSY-CROW	TARR	DEAD
30	73769795	1552682	PSY-TECH	TARR	DEAD
31	73740572		PSY TECH SYSTEMS	TARR	DEAD
32	73699820	1499372	PSYCAL	TARR	DEAD
33	73507918	1427729	PSYQ SYSTEMS	TARR	DEAD
34	73507912	1396523	PSYQ PRACTICE PARTNER	TARR	DEAD
35	73420321	1293836	PSY 9	TARR	DEAD
36	73338836		PSY-DX	TARR	DEAD
37	73326311		PSY-KE-NOME	TARR	DEAD
38	73222679	1218413	PSY-CLONE	TARR	DEAD
39	73185948	1144361	PSY-CLONE	TARR	DEAD

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[Browse Dict](#)
[SEARCH OG](#)
[IMAGES](#)
[IMAGES](#)
[IMAGE LIST](#)
[TOP](#)

[HELP](#)

[HOME](#) |
 [SITE INDEX](#) |
 [SEARCH](#) |
 [eBUSINESS](#) |
 [HELP](#) |
 [PRIVACY POLICY](#)

Exhibit 11

• TheFreeDictionary Google Bing

bariatric

Search ?

3,899,051,963 visitors served.

• Word / Article Starts with Ends with Text

Medical dictionary Legal dictionary Financial dictionary Acronyms Idioms Encyclopedia Wikipedia encyclopedia ?

bariatrics

(redirected from *bariatric*)

Also found in: [Medical](#), [Encyclopedia](#), [Wikipedia](#)

0.01 sec.

This site:

Like 101k

5.4k

Follow:

Share:

This page:

Like 0

0

Share:

[Word Browser](#)

Ads
by
Google
B
a
r
i
a
t
r
i
c
s
N
e
w
y
o
r
k
v

Exhibit 5E

bar-i-at-rics (bā'ē-ā'rĭks)
n. (used with a *sing. verb*)

The branch of medicine that deals with the causes, prevention, and treatment of obesity.

[bar(o)- + -iatrics.]

bar'i-at'ric *adj.*

bar'i-a-tri'cian (-trīsh'ən) *n.*

The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by [Houghton Mifflin Company](#). All rights reserved.

bariatrics (bā'ē-ā'rĭks)

The branch of medicine that deals with the causes, prevention, and treatment of obesity.

The American Heritage® Science Dictionary Copyright © 2005 by Houghton Mifflin Company. Published by [Houghton Mifflin Company](#). All rights reserved.

Want to thank TFD for its existence? [Tell a friend about us](#), add a link to this page, [add the site to iGoogle](#), or visit [the webmaster's page for free fun content](#).

Link to this page: bariatrics

Please bookmark with social media, your votes are noticed and appreciated:

Like Be the first of your friends to like this. 0

Advertisement



Do not buy until you read this 4 week study on the results of using the E-Cigarette to quit smoking.



Learn to make a fortune by trading penny stocks online. You can live your dream from home.

Advertisement (Bad banner? Please let us know)



Nature's defense against unhappiness...



New York: Shocking report on e-cigarettes as the break through device for better living in 2012...



Feed a hungry child - do school feeding program

Advertisement (Bad banner? Please let us know)

[Printer friendly](#) [Feedback](#)
[Cite / link](#) [Add defini](#)

Gastric Banding Info
Discover Your Gastric Banding Options. A Seminar Now!
[LomatIndaHealth.org](#)

Gastric Sleeve Bariatric
Learn More About this Alternative to Gastric Bypass
Dr Ariel Ortiz
[ObesityControlCenter.com/DiscussNow](#)

Mini Gastric Bypass® \$480
Official Site: No Surgery Solution! Reduce Size & Lose Weight.
[www.Rocal.abs.com/en/](#)

Advertisement (Bad banner? Please let us know)

- [bariatric Weight](#)
- [bariatric Surgery](#)
- [bariatric Doctor](#)
- [bariatric Beds](#)
- [bariatric](#)
- [bariatric S](#)
- [bariatric I](#)
- [bariatric C](#)
- [bariatric I](#)
- [bariatric S](#)

[Add current page to the list](#)



Trademarks > Trademark Electronic Search System (TESS)

EXHIBIT F

TESS was last updated on Sat May 26 04:35:46 EDT 2012

- [TESS HOME](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE DICT](#)
- [SEARCH QG](#)
- [NEXT LIST](#)
- [IMAGE LIST](#)
- [BOTTOM](#)
- [HELP](#)

Please logout when you are done to release system resources allocated for you.

List At: to record:

96 Records(s) found (This page: 1 ~ 50)

Refine Search (bari)[COMB]

Current Search: (bari)[COMB] docs: 96 occ: 220

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85518540		BARIBEST	TARR	LIVE
2	85602417		BLUE BARI	TARR	LIVE
3	85458047		BARI H · O · M · E PRODUCTS	TARR	LIVE
4	85456339		BARI HOME PRODUCTS	TARR	LIVE
5	85570980		BÁRI	TARR	LIVE
6	85485915		BARISTRONG F I T N E S S	TARR	LIVE
7	85385991	4108873	BARIWISE	TARR	LIVE
8	85547675		BARI	TARR	LIVE
9	85544690		PRIMAGUARD BARI-MATT MAX	TARR	LIVE
10	85324392	4083211	BARI-BABE FEEL LIKE A STAR!	TARR	LIVE
11	85182756		BARI PRO	TARR	LIVE
12	85191577	4046889	BARIMETABOLIC	TARR	LIVE
13	85417554		BARI	TARR	LIVE
14	85169513	3977820	BARI	TARR	LIVE
15	79071372	3767712	OUZO SANS RIVAL	TARR	LIVE
16	79022706	3348720	AEROPORTI DI PUGLIA BARI BRINDISI FOGGIA TARANTO	TARR	LIVE
17	78844635	3212914	BARI INVESTMENT SERVICES	TARR	LIVE
18	78580702	3128988	BARI INVESTMENT SERVICES	TARR	LIVE
19	78580627	3087385	BARI	TARR	LIVE
20	78957558	3407306	BARI-MILL	TARR	LIVE
21	78876889		BARIPARTNERS	TARR	DEAD

22	78789100		P BARI DESIGNS WHERE EVERY DESIGN IS 1! OF A KIND	TARR	DEAD
23	78532175		BARILITE	TARR	DEAD
24	78278256		BARI-MED	TARR	DEAD
25	78271075		BARI BITES	TARR	DEAD
26	78184583	2836428	BARI	TARR	DEAD
27	78168148		LEMONCELLO DI BARI	TARR	DEAD
28	77609098		BARI BUS	TARR	LIVE
29	77861563		MY BARI PAL	TARR	LIVE
30	77943617		A.J. BARI	TARR	DEAD
31	77953687		BARI OLIVE OIL COMPANY	TARR	DEAD
32	77783453		BISCOTTI BARI	TARR	DEAD
33	77485889	3648612	BARICARE	TARR	LIVE
34	77458999	3723178	MY BARI GOOD LIFE	TARR	LIVE
35	77299828	3444810	BARI-BUDDY	TARR	LIVE
36	77283766	3435166	BARIPARTNER	TARR	LIVE
37	77165530		BARI ITALIAN FOODS	TARR	DEAD
38	77165471	3456527	BARI ITALIAN FOODS	TARR	LIVE
39	77008354	3568853	BARI	TARR	LIVE
40	76701744		BARI BEEF	TARR	DEAD
41	76701743		BARI BEEF	TARR	DEAD
42	76365616	2944315	BARI GELATO	TARR	DEAD
43	76331943	2929220	BARI-KAD	TARR	DEAD
44	76136696	2548606	BARI PORK STORE	TARR	LIVE
45	76178390	2529623	BARI JAY	TARR	LIVE
46	76701746	3949636	BARI BEEF	TARR	LIVE
47	76701745	3939365	BARI BEEF	TARR	LIVE
48	76659987		BARI'S PASTA & PIZZA	TARR	DEAD
49	76623044		BARITOWN	TARR	DEAD
50	76597450	3182197	BARI-BALANCE	TARR	LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE LIST](#)
[SEARCH OG](#)
[PREVIOUS](#)
[NEXT LIST](#)
[IMAGE LIST](#)
[TOP](#)

[HELP](#)

[| HOME](#)
[| SITE INDEX](#)
[| SEARCH](#)
[| eBUSINESS](#)
[| HELP](#)
[| PRIVACY POLICY](#)

EXHIBIT F

"david mahony Ph.D." psybari

google search
Exhibit
6

Search input fields and buttons

Search

About 220 results (0.12 seconds)

Everything

David Mahony, Ph.D., ABPP | LinkedIn

www.linkedin.com/pub/david-mahony-ph-d-abpp/3/189/709
Brooklyn, New York - Obesity Research Consultant at Ethicon Endo Surgery, Inc.
Team Members: **David Mahony, Ph.D.**, ABPP. The **PsyBar**i Project's mission statement is to create a psychological instrument that will accurately predict the post ...

Images

Maps

Videos

News

Shopping

More

David Mahony profiles | LinkedIn

www.linkedin.com/pub/dir/David/Mahony
David Mahony, Ph.D., ABPP ... Inc., Scientific Reviewer at Obesity Surgery, Chief Scientific Officer at **PsyBar**i; Education: St. John's University, State University of ...

New York, NY
Change location

David Mahony, Ph.D.

www.connect2be.net/obesityppm/.../PsyBar%20Instrument.doc
File Format: Microsoft Word - Quick View
2011 **David Mahony, Ph.D.** To score this test goto WWW.PSYBARI.COM. **PSYBARI** 2.1. Abilify. Ambien. Ativan. Buspar. Celexa. Cymbalta ...

Show search tools

PSYBARI - Reviews & Brand Information - David Mahony, Ph.D.

www.trademarkia.com > ... > Medical, Beauty & Agricultural Services
PSYBARI - write and read reviews and find brand information for products and services associated with the **PSYBARI** trademark. Free information and contacts ...

PSYBARI Brand - FindOwnerSearch

www.findownersearch.com/psybari-9070775-brand.html
PSYBARI Personality testing for psychological purposes; Providing ... "**PSYBARI**" is believed to be currently owned by "**David Mahony, Ph.D.**, ABPP".

PSYBARI - Trademarks411. Trademark Search Made Simple

www.trademarks411.com/marks/85095429-psybari
The trademark **PSYBARI** was filed on 2010-07-28 and assigned serial number 85095429. ... **David Mahony, Ph.D.**, ABPP owns about 0 other trademark(s) ...

RESUME - SlideShare

www.slideshare.net/yashika54/resume-5990331
Dec 1, 2010 - **DAVID MAHONY, Ph.D.**, ABPP
30 Bayard St., Apt 1F
Brooklyn, NY ... Psychological Evaluations with the **PsyBar**i Psychological Test.

David Mahony Facebook, Twitter & MySpace on PeekYou

www.peakyou.com/david_mahony
David Mahony (**PsyBar**i) on Twitter ... David Mahony; Dave Mahony Oakton Va; Dave Mahony Psychologist; Marissa Ruth Australia; **David Mahony Ph.d.**

PSYBARI - Latest Status Info

tarr.uspto.gov/serMet/tarr?regser=serial&entry=85095429
(words only): **PSYBARI** Standard Character claim: Yes Current Status: An ... **David Mahony, Ph.D.**, ABPP Address: **David Mahony, Ph.D.**, ABPP 30 Bayard St. Apt ...

David Mahony, Ph.D., ABPP Trademarks :: Justia Trademarks

trademarks.justia.com > Trademarks
David Mahony, Ph.D., ABPP. NEW - Receive Justia's FREE Daily Newsletters of Opinion Summaries for the US Supreme Court, all US Federal Appellate Courts ...