

***Budwin v. American Psychological Association (1994)***

**Nature:** Professional associations' authority to discipline a member for performance related to litigation.

**Facts:** Dr. Howard Budwin, a licensed psychologist, was appointed by the Sacramento Superior Court to serve as a neutral expert in a 1987 child custody proceeding. In that proceeding, Dr. Budwin submitted a written report and testified regarding his custody recommendation; which the court followed (to separate the two children, with the mother retaining custody of only the older child). The mother, Ms. Janh, filed a complaint against Dr. Budwin with the state Board of Medical Quality Assurance and the American Psychological Association (APA). The complaints alleged, that Dr. Budwin made false statements in the custody proceeding (about conducting one-hour interactive "play" interviews between the mothers and each daughter, when in fact he had not done so) and withheld certain documents from the mother and her attorney. The Board of Medical Quality Assurance denied the complaint, finding no violation of the California Business and Professions Code/Medical Practice Act. The APA sustained Ms. Jahn's complaint, finding that Dr. Budwin violated certain principles of the "Ethical Principles of Psychologists" by failing to honor his commitment to produce records and by failing to address the limits of his interaction and observations in both his court report and testimony. Based on these findings, the APA censured Dr. Budwin. Meaning he retained all the rights and privileges of APA membership but was required to complete further training or other appropriate steps.

**Proceedings:** In November of 1991, Dr. Budwin filed a petition for a writ of mandate, seeking to overturn the APA's censure, claiming that his conduct (including court report and testimony) were protected by both the litigation privilege for communications made in judicial proceedings and by the doctrine of quasi-judicial immunity. In early 1993, Dr. Budwin successfully moved for summary judgment and the court ruled that such testimony is privileged under California law from disciplinary action by a private association. The APA then pursued an appeal.

**Issue:** Does a professional association's discipline of a member violate the litigation privilege (which protects people who testify in trial from liability) or reach of quasi-judicial immunity (which bars civil actions for acts performed during trial)?

**Holding/Rationale:** No. The litigation privilege has not been extended to preclude professional disciplinary liability by associations, such as the APA. Further, quasi-judicial immunity is extended to third parties, but does NOT include disciplinary liability by a private association; this immunity only speaks to prevention of civil suits. The court's only function is to determine whether such associations acted within its powers and good faith, in accordance with its laws and the law of the land. The Court of Appeals determined that that trial court erred in granting summary judgment in favor of the psychologist on the grounds that the proceeding was privileged from disciplinary action by the private association. The judgment was therefore reversed and remanded back to the trial court.