

Oregon Board of Psychologist Examiners

Non-Licensed Disciplines

Last	First	Type	Date of Board Action
Correa	Joseph L.	Non-licensed	12/13/1999
Dodson	James M.	Applicant	7/12/2008
Kahn	Stephen	Non-licensed	11/17/2006
Koralek	Leslie	Non-licensed	9/26/2006
Lane	Gary	Applicant	10/30/1990
Levitt	Brad	Applicant	10/15/2004
McLittle	Emanuel	Non-licensed	9/12/2003
Mitchel	Ralph D.	Non-licensed	9/26/2007
Neely	Tracy	Non-licensed	1/7/2002
O'Neal	Scott	Non-licensed	3/24/2006
Reid	William H.	Non-licensed	8/27/2006

*Refer to the orders below for details about the violation and action taken by the Board.

COPY

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of:

CASE NO. 99-02

JOSEPH L. CORREA, SR., Ph.D.

FINAL ORDER BY DEFAULT

THIS MATTER came before the Board of Psychologist Examiners (Board), the state agency responsible for licensing, disciplining and regulating psychologist in the State of Oregon, to consider whether or not Joseph L. Correa, Sr., Ph.D. (Dr. Correa) should be sanctioned for representing himself to be a psychologist in Oregon. Dr. Correa is not licensed by the Board to practice psychology in Oregon.

1.

On October 26, 1999, the Board served Dr. Correa with a Notice of Proposed Disciplinary Action proposing to assess a \$1,000 civil penalty against him. The notice granted Dr. Correa an opportunity to have a formal contested case hearing before the Board and to be represented by an attorney.

2.

Based upon the evidence produced by the records and files of the Board relating to this matter, the Board finds as a preliminary matter that Dr. Correa did have adequate prior notice to request a hearing and file a written answer to the charges contained in the notice, and that Dr. Correa failed to do so. Therefore, the Board does hereby make the following Findings of Fact, Opinion, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On January 12, 1999, the Board received a copy of a business card that Dr. Correa was distributing at a conference or seminar he attended. A copy of the business card is attached hereto and marked Exhibit A and made a part hereof.

2. The Board began its investigation and discovered that Dr. Correa is not licensed in Oregon. The Board then drafted a cease and desist letter which was mailed to Dr. Correa on January 13, 1999. The cease and desist letter was returned unclaimed and the Board sent it again both certified and regular mail. Dr. Correa did not respond.

3. Over the next several months, the Board made several attempts to make contact with Dr. Correa by telephone and leaving messages on his answering service. Dr. Correa did not respond.

4. In May, 1999, the Board visited his office in Portland, Oregon and Dr. Correa was not in. Further messages were left on his answering service. Dr. Correa did not respond.

5. On August 5, 1999, the Board wrote another letter to Dr. Correa summarizing its efforts to contact him and advised him that absent a response, the Board would propose to assess a \$1000 civil penalty against him, petition for an injunction and possibly refer the matter for criminal prosecution for alleged unlicensed practice of psychology.

6. On August 18, 1999, the Board received a response from Dr. Correa explaining that he moved to Portland, Oregon to care for his dying mother, and that after she died, he has been taking care of personal business. He also leased an office space to provide guidance to families, not as a licensed psychologist, but as an advisor, utilizing his vast experience in mental health and working with the Hispanic community in Oregon, before he relocates to Florida.

7. On August 18, 1999, the Board replied to Dr. Correa's letter and advised him that the Board was concerned that he had represented himself to be a psychologist, making reference to his advertisement of "psychological health and consultation". The Board advised Dr. Correa that, were he to offer the Board assurances he would discontinue the misrepresentation, the Board would not be inclined to press the issue any further. To-date, Dr. Correa has not responded.

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OPINION

2 The Board gave Dr. Correa several opportunities to respond to the allegations that he
3 misrepresented himself to be a psychologist in Oregon. The only response the Board has
4 received from Dr. Correa is a letter dated August 17, 1999, where Dr. Correa thanks the Board
5 for its interest in his personal private life, stating it would not be practical for him so seek
6 licensure by the Board's elite organization based on his age and relocation plans to Florida.
7 Although Dr. Correa agrees with the Board that this matter could be resolved amicably and in
8 short order, Dr. Correa did not respond to the Notice of Proposed Disciplinary Action; he does
9 not admit he has misrepresented himself to be a psychologist in Oregon; and he has not offered
10 the Board assurances that he would discontinue the misrepresentation. For these reasons, the
11 Board has elected to sanction Dr. Correa and assess a civil penalty of \$1,000.

CONCLUSIONS OF LAW

13 By using the phrase "psychological" on his business card, Dr. Correa has misrepresented
14 himself to be a psychologist in Oregon, without first being licensed, and is in violation of
15 ORS 675.020(1)(b).

FINAL ORDER

17 IT IS HEREBY ORDERED that Joseph L. Correa, Sr., Ph.D., is ordered to pay a civil
18 penalty of \$1,000. The \$1,000 civil penalty is to be paid on or before March 31, 2000.

19 IT IS FURTHER ORDERED that if the \$1,000 civil penalty is not paid by March 31,
20 2000, the Board will report Dr. Correa's non-compliance to the Department of Revenue.

21 DATED this 13th day of December, 1999.

22 BOARD OF PSYCHOLOGIST EXAMINERS
23 State of Oregon

24 By: BethAnne Darby
BethAnne Darby, Executive Director

25 **NOTICE:** You are entitled to judicial review of this order pursuant to the provisions of
26 ORS 183.480. Judicial Review may be obtained by filing a petition in the Oregon Court of
Appeals. The petition must be filed within 60 days from the date of service of this order.

COPY

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

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In the Matter of:)
JOSEPH L. CORREA, SR., Ph.D.)
CASE NO. 99-02
NOTICE OF PROPOSED
DISCIPLINARY ACTION
TO: JOSEPH L. CORREA, SR., Ph.D.

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing, disciplining and regulating psychologists in the State of Oregon. Joseph L. Correa, Sr., Ph.D. (Dr. Correa), is a doctor of philosophy practicing in the field of mental health care, and is not licensed by the Board to practice as a psychologist in Oregon.

1.

The Board proposes to sanction Dr. Correa with a \$1,000 civil penalty for representing himself to be a psychologist in Oregon, without first being licensed, pursuant to ORS 675.020, and the Ethical Principles of Psychologists and Code of Conduct promulgated by the American Psychological Association, which has been adopted by the Board pursuant to ORS 675.020(2)(i) and ORS 675.110(12). The alleged violations are described as follows:

1.1 On January 12, 1999, the Board received a copy of a business card that Dr. Correa was distributing at a conference or seminar he attended. A copy of the business card is attached hereto and marked Exhibit A and made a part hereof.

1.2 The Board began its investigation and discovered that Dr. Correa is not licensed in Oregon. The Board then drafted a cease and desist letter which was mailed to Dr. Correa on January 13, 1999. The cease and desist letter was returned unclaimed and the Board sent it again both certified and regular mail. Dr. Correa did not respond.

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1 1.3 Over the next several months, the Board made several attempts to make contact
2 with Dr. Correa by telephone and leaving messages on his answering service. Dr. Correa did not
3 respond.

4 1.4 In May, 1999, the Board visited his office in Portland, Oregon and Dr. Correa was
5 not in. Further messages were left on his answering service. Dr. Correa did not respond.

6 1.5 On August 5, 1999, the Board wrote another letter to Dr. Correa summarizing its
7 efforts to contact him and advised him that absent a response, the Board would propose to assess
8 a \$1000 civil penalty against him, petition for an injunction and possibly refer the matter for
9 criminal prosecution for alleged unlicensed practice of psychology.

10 1.6 On August 18, 1999, the Board received a response from Dr. Correa explaining
11 that he moved to Portland, Oregon to care for his dying mother, and that after she died, he has
12 been taking care of personal business. He also leased an office space to provide guidance to
13 families, not as a licensed psychologist, but as an advisor, utilizing his vast experience in mental
14 health and working with the Hispanic community in Oregon, before he relocates to Florida.

15 1.7 On August 18, 1999, the Board replied to Dr. Correa's letter and advised him that
16 the Board was concerned that he had represented himself to be a psychologist, making reference
17 to his advertisement of "psychological health and consultation". The Board advised Dr. Correa
18 that, were he to offer the Board assurances he would discontinue the misrepresentation, the
19 Board would not be inclined to press the issue any further. To-date, Dr. Correa has not
20 responded.

21 2.

22 The Board alleges that by using the phrase "psychological" on his business card, Dr.
23 Correa is in violation of ORS 675.020(1)(b). Therefore, the Board proposes to assess a civil
24 penalty of \$1,000 against Dr. Correa.

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3.

2 Dr. Correa has the right, if Dr. Correa requests, to have a formal contested case hearing
3 before the Board or its hearings officer to contest the matter set out above, as provided by the
4 Administrative Procedures Act (chapter 183), Oregon Revised Statutes. At the hearing, Dr.
5 Correa may be represented by an attorney and subpoena and cross-examine witnesses. That
6 request for hearing must be made in writing to the Board, must be received by the Board, within
7 thirty (30) days from the mailing of this notice (or if not mailed, the date of personal service),
8 and must be accompanied by a written answer to the charges contained in this notice.

9 4.

10 The answer shall be made in writing to the Board and shall include an admission or
11 denial of each factual matter alleged in this notice, and a short plain statement of each relevant
12 affirmative defense Dr. Correa may have. Except for good cause, factual matters alleged in this
13 notice and not denied in the answer shall be presumed admitted; failure to raise a particular
14 defense in the answer will be considered a waiver of such defense; new matters alleged in the
15 answer (affirmative defenses) shall be presumed to be denied by the agency and evidence shall
16 not be taken on any issue not raised in the notice and answer.

17 5.

18 If Dr. Correa requests a hearing, before commencement of that hearing, Dr. Correa will
19 be given information on the procedures, right of representation, and other rights of parties
20 relating to the conduct of the hearing as required under ORS 183.413 to ORS 183.415, before
21 commencement of the hearing.

22 6.

23 If Dr. Correa fails to request a hearing within 30 days, or fails to appear at the hearing as
24 scheduled, the Board may issue a final order by default and impose the above sanctions against
25 Dr. Correa. Dr. Correa's submissions to the Board to-date regarding the subject of this
26 disciplinary case and all information in the Board's files relevant to the subject of this case

1 automatically become part of the evidentiary record of this disciplinary action upon default for
2 the purpose of proving a *prima facie* case. ORS 183.415(6).

3 DATED this 26th day of October, 1999.

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5 BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon

6 By: Beth Anne Darby
7 Beth Anne Darby, Executive Director
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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the Conduct of) AGENCY NO: OBPE #2007-028
JAMES M. DODSON, PsyD,)
Respondent) NOTICE OF PROPOSED DENIAL OF
LICENSE

TO: James M. Dodson, Psy.D

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists, and for regulating the practice of psychology in the State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed practice of psychology in the State of Oregon.

1.

The Board proposes to deny the license of James M. Dodson, PsyD (Respondent) pursuant to ORS 675.020(1), ORS 675.070(1)(a) and ORS 675.070 (2)(i)-(j). Respondent's violation of this statute is more particularly described below.

2.

2.1 Respondent applied for licensure as a psychologist in Oregon on November 30, 2006 and was required to be in a Board pre-approved supervision contract while providing psychological services (OAR 858-010-0036(3)).

2.2 In January 2007, Respondent moved to Oregon and began to work at St. Charles Medical Center. Respondent initially began to work under the supervision of Dr. Leah Schock. Respondent performed psychological services for various clients without a Board-approved, written resident contract with Dr. Schock, as required by OAR 858-010-0036(3). Respondent engaged in the unlicensed practice of psychology in Oregon

1 for at least four months, beginning in January 2007. After being contacted by Board
2 staff in April 2007, Respondent entered into a supervision contract with Dr. Schock. Dr.
3 Schock terminated the supervision relationship in July 2007.

4 2.3 In March 2007, Respondent also arranged to have Dr. Elizabeth Leeberg provide him
5 with supervision without a Board-approved written resident contract, and began seeing
6 private clients. In July 2007, Dr. Leeberg terminated the supervisory relationship when
7 Respondent arranged to have Dr. Kristine Falco provide him with supervision, also
8 without a Board-approved, written resident contract.

9 2.4 After the termination of the supervision relationship with Dr. Leeberg, Respondent
10 continued to bill clients under Dr. Leeberg's name without the knowledge of either Dr.
11 Falco or Dr. Leeberg.

12 2.5 Respondent saw clients while supposedly under the supervision of Drs. Schock,
13 Leeberg, and Falco without consistently designating himself with the title "psychologist
14 resident" on the documents Respondent signed.

15 2.6 Between March and July of 2007, Respondent represented in various advertisements, e-
16 mails, and letters to area physicians, that he was on staff with the High Desert Sleep
17 Disorder Center and that he provided "psychological services" to clients, with a
18 specialty in "Behavioral Sleep Medicine."

19 2.7 Respondent has been licensed in Tennessee as a psychologist since 1995.

20 3.

21 3.1 The Board alleges that Respondent's acts and conduct described in paragraphs 2.2 and
22 2.3 above constitutes the unlicensed practice of psychology, in violation of ORS
23 675.020(1)(a) as the practice of psychology is defined under ORS 675.010(4) and OAR
24 858-010-0001.

25 3.2 The Board alleges Respondent's acts and conduct described in paragraphs 2.2, 2.3, 2.4,
26 2.5 and 2.6 violated ORS 675.070(2)(i)-(j) and OAR 858-010-0036(3)-(4).

1 3.3 The Board alleges Respondent's acts and conduct described in paragraphs, 2.4 violated
2 ORS 675.070(2)(j) and OAR 858-010-0036(3)-(4).

3 4.

4 The Board has authority to deny the license of Respondent pursuant to ORS
5 675.020(1)(a), ORS 675.070(1)(a), ORS 675.070 (2)(A) and ORS 675.070 (2)(j).

6 5.

7 Respondent has the right, if Respondent requests, to have a formal contested case hearing
8 before an administrative law judge to contest the matter set out above, as provided by ORS
9 183.310 to 183.690. At the hearing, Respondent may be represented by an attorney and
10 subpoena and cross-examine witnesses.

11 6.

12 If Respondent requests a hearing, the request must be made in writing to the Board, must be
13 received by the Board within thirty (30) days from the mailing of this notice, and must be
14 accompanied by a written answer to the charges contained in this notice. Before commencement of
15 the hearing, Respondent will be given information on the procedures, right of representation, and
16 other rights of parties relating to the conduct of the hearing as required under ORS 183.413-415.

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7.

If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as scheduled, the Board may issue a final order by default and impose the above sanctions against Respondent. Respondent's submissions to the Board regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie* case. ORS 183.415(6).

IT IS SO ORDERED this 21 day of July 2008.

BOARD OF PSYCHOLOGISTS



DEBRA ORMAN MCHUGH
Executive Director

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

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In the Matter of the conduct of)
STEPHEN KAHN, PhD)
Respondent.)

AGENCY NO: OBPE #2005-049
DEFAULT ORDER

TO: Stephen Kahn, PhD

1.

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists, and for regulating the practice of psychology in the State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed practice of psychology in the State of Oregon.

2.

On October 6, 2006, the Board issued a Notice of Proposed Civil Penalty in regard to certain alleged conduct by Respondent. The Board proposed to impose civil penalties totaling \$1000.00 against Respondent pursuant to ORS 675.020(1). This Notice designated the Board's file on this matter as the record for purposes of a default order and granted Respondent an opportunity for a hearing, if requested in writing within 30 days of service of the Notice. Respondent did not submit a request for hearing. As a result, the requisite 30 days have lapsed and Respondent stands in default. The Board elects in this case to designate the record of proceeding to date, which would include any response by Respondent to the Board, if any, regarding his case and all information in the Board's files relevant to this case, as the record for purposes of proving a prima facie case.

1 3.

2 NOW THEREFORE, after considering the Board's file relating to this matter, the Board
3 enters the following Order.

4 FINDINGS OF FACT

5 The evidence of record establishes the following findings of fact:

6 3.1 Beginning in 1992 and continuing into 2006, Respondent provided therapy
7 services to inmates (to include therapeutic services to sex offenders) while under contract
8 with the Washington County Department of Community Corrections as an independent
9 contractor. Under the terms of his personal services contract with the county,
10 Respondent was to provide sex offender treatment or batterer treatment to inmates. In do
11 doing, Respondent provided therapy services to inmates.

12 3.2 Respondent received a doctorate degree from Portland University in psychology
13 in 1974, but is not licensed in this state as a psychologist.

14 4.

15 CONCLUSIONS OF LAW

16 The Board finds based upon reliable, probative and substantial evidence, as described in
17 paragraphs 3.1 and 3.2, that Respondent engaged in the unlicensed practice of psychology, in
18 violation of ORS 675.020(1)(a), as the practice of psychology is defined under ORS 675.010(4)
19 and OAR 858-010-0001.

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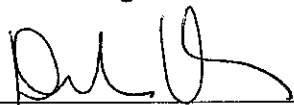
5.

ORDER

IT IS HEREBY ORDERED THAT Stephen Kahn, PhD, Respondent, pay the assessed \$1,000 civil penalty within 30 days from the date this Order is signed by the Executive Director.

DATED this 4 day of December, 2006.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon



DEBRA ORMAN
EXECUTIVE DIRECTOR

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Right to Judicial Review

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days time period, you will lose your right to appeal.

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the conduct of
STEPHEN KAHN, PhD
Respondent.

AGENCY NO: OBPE #2005-049
NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

TO: Stephen Kahn, PhD

11 The Board of Psychologist Examiners (Board) is the state agency responsible for
12 licensing and disciplining psychologists, and for regulating the practice of psychology in the
13 State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed
14 practice of psychology in the State of Oregon.

15 1.

16 The Board proposes to impose civil penalties totaling \$1,000.00 against Stephen Kahn
17 (Respondent) pursuant to ORS 675.020(1). Respondent's violation of the preceding statute is
18 more particularly described as follows:

19 2.

20 2.1 Beginning in 1992 and continuing into 2006, Respondent provided therapy
21 services to inmates (to include therapeutic services to sex offenders) while under
22 contract with the Washington County Department of Community Corrections as
23 an independent contractor. Under the terms of his personal services contract with
24 the county, Respondent was to provide sex offender treatment or batterer
25 treatment to inmates.
26

1 2.2 Respondent received a doctorate degree from Portland University in psychology
2 in 1974, but is not licensed in this state as a psychologist.

3 3.

4 3.1 The Board alleges that Respondent's acts and conduct described in paragraphs 2.1
5 to 2.2, constitutes the unlicensed practice of psychology, in violation of ORS
6 675.020(1)(a) as the practice of psychology is defined under ORS 675.010(4) and
7 OAR 858-010-0001.

8 3.2 The Board alleges Respondent's acts and conduct described in paragraphs 2.1 and
9 2.2 constitutes the unlicensed practice of psychology, in violation of ORS
10 675.020(1)(a).

11 4.

12 The Board has authority to impose civil penalties against Respondent pursuant to ORS
13 675.070(1)(g) and ORS 675.020(2)(i).

14 5.

15 Respondent has the right, if Respondent requests, to have a formal contested case hearing
16 before an administrative law judge to contest the matter set out above, as provided by ORS
17 183.310 to 183.690. At the hearing, Respondent may be represented by an attorney and
18 subpoena and cross-examine witnesses.

19 6.

20 If Respondent requests a hearing, the request must be made in writing to the Board, must be
21 received by the Board within thirty (30) days from the mailing of this notice, and must be
22 accompanied by a written answer to the charges contained in this notice. Before commencement of
23 the hearing, Respondent will be given information on the procedures, right of representation, and
24 other rights of parties relating to the conduct of the hearing as required under ORS 183.413-415.
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If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as scheduled, the Board may issue a final order by default and impose the above sanctions against Respondent. Respondent's submissions to the Board regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie* case. ORS 183.415(6).

DATED this 6th day of October, 2006.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon



Debra Orman, Executive Director
Oregon Board of Psychologist Examiners

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

4	In the Matter of:)	AGENCY NO: OBPE #2005-046
5	LESLIE KORALEK, Ph.D,)	DEFAULT ORDER
6	Respondent)	

1.

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists, and for regulating the practice of psychology in the State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed practice of psychology in the State of Oregon.

2.

On May 12, 2006, the Board issued a Notice of Proposed Civil Penalty in regard to certain alleged conduct by Respondent. The Board proposed to impose civil penalties totaling \$1000.00 against Respondent pursuant to ORS 675.020(1)(a) and (b); and OAR 858-010-0001. This Notice designated the Board's file on this matter as the record for purposes of a default order and granted Respondent an opportunity for a hearing, if requested in writing within 30 days of service of the Notice. Respondent did not submit a request for hearing. As a result, the requisite 30 days have lapsed and Respondent stands in default. The Board elects in this case to designate the record of proceeding to date, which consists of Respondent's submissions to the Board regarding his case and all information in the Board's files relevant to this case, as the record for purposes of proving a prima facie case.

3.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following Order.

1 FINDINGS OF FACT

2 The evidence of record establishes the following findings of fact:

3 3.1 On and between July 27, 2004 and April 20, 2005, Respondent provided therapy
4 services to patient B for emotional disturbances and difficulties, including depression, and
5 behavioral patterns within personal relationships, including compulsive sexual behavior.

6 3.2 Respondent saw patient B a total of 29 times, provided referrals to attorneys and
7 other service providers, and discussed strategies regarding her divorce, her personal
8 relationships, and her outside therapy.

9 3.3 The services offered and rendered to patient B are services that are included in the
10 practice of psychology.

11 3.4 During the time in which Respondent was providing therapy services to Patient
12 B, Respondent was not licensed in this state to practice psychology and did not hold any status
13 described in ORS 675.090 that would exempt him from this licensure requirement.

14 4.

15 CONCLUSIONS OF LAW

16 Respondent engaged in the unlicensed practice of psychology in violation of ORS
17 675.020(1)(a) and (b); and OAR 858-010-0001. This conclusion is supported by reliable,
18 probative and substantial evidence, as described in paragraph 3.

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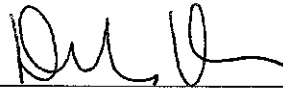
5.

ORDER

IT IS HEREBY ORDERED THAT Leslie Koralek, PhD, Respondent, pay the assessed \$1,000 civil penalty within 30 days from the date this Order is signed by the Executive Director.

DATED this 6th day of October, 2006.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon



Debra Orman
Executive Director

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Right to Judicial Review

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days time period, you will lose your right to appeal.

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the conduct of:)
LESLIE KORALEK, Ph.D,)
Respondent.)
TO: LESLIE KORALEK, Ph.D)

AGENCY NO: OBPE #2005-046
NOTICE OF PROPOSED CIVIL
PENALTY

9 The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and
10 disciplining psychologists, and for regulating the practice of psychology in the State of Oregon.
11 The Board is also responsible for enforcing the laws against the unlicensed practice of
12 psychology in the State of Oregon. Respondent is not licensed to practice psychology in the State
13 of Oregon.
14

15 1.

16 The Board under its authority granted by ORS 675.110 proposes to impose civil penalties
17 against Respondent totaling \$1000.00 as authorized by ORS 675.070. Civil penalties against
18 Respondent are assessed for violations of ORS 675.020(1)(a) and (b). Respondent's violation of
19 the preceding statutes is more particularly described as follows:
20

21 2.

22 2.1 Between July 27, 2004 and April 20, 2005, Respondent provided therapy services
23 to patient B for emotional disturbances and difficulties, including depression, and
24 behavioral patterns within personal relationships, including compulsive behavior.
25
26

1 2.2 Respondent saw patient B a total of 29 times, provided referrals to attorneys and
2 other service providers, and discussed strategies regarding her divorce, her
3 personal relationships, and her outside therapy.

4 2.3 The services offered and rendered to patient B are services that are included in the
5 practice of psychology.

6 3.

7
8 The Board alleges that Respondent's acts and conduct described in paragraphs 2.1 to 2.3,
9 individually or collectively, constitute the unlicensed practice of psychology as defined under
10 ORS 675.010(4) and OAR 858-010-0001, and violate ORS 675.020(1)(b) and ORS 675.020(2).

11 4.

12 The Board has authority to impose civil penalties against Respondent pursuant to ORS
13 675.110(5) and ORS 675.070(1)(g).

14 5.

15 Respondent has the right, if Respondent requests, to have a formal contested case hearing
16 before a hearings officer to contest the matter set out above, as provided by ORS 183.310 to
17 183.540. At the hearing, Respondent may be represented by an attorney and subpoena and cross-
18 examine witnesses.
19

20 6.

21 If Respondent requests a hearing, the request must be made in writing to the Board, must
22 be received by the Board within thirty (30) days from the mailing of this notice, and must be
23 accompanied by a written answer to the charges contained in this notice. Before commencement
24 of the hearing, Respondent will be given information on the procedures, right of representation,
25
26


1 and other rights of parties relating to the conduct of the hearing as required under ORS 183.413-
2 415.

3 7.

4 If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as
5 scheduled, the Board may issue a final order by default and impose the above sanctions against
6 the Respondent. Respondent's submissions to the Board regarding the subject of this disciplinary
7 case and all the information in the Board's files relevant to the subject of this case automatically
8 become part of the evidentiary record of this disciplinary action upon default for the purpose of
9 proving a *prima facie* case. ORS 183.415(6).
10

11 DATED this 12th day of May, 2006.

12 BOARD OF PSYCHOLOGIST EXAMINERS
13 State of Oregon

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16 Martin Pittioni, Executive Director
17 Oregon Board of Psychologist Examiners
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1 BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

2 OF THE STATE OF OREGON

3 In the Matter of the Proposed)
Denial of Psychologist's License)
4 to GARY LANE, Psy.D.) SETTLEMENT AGREEMENT

5 This Settlement Agreement is entered into by and between
6 Gary Lane ("Applicant") and the Oregon State Board of
7 Psychologist Examiners ("Board"), through its attorney, W.
8 Benny Won, Assistant Attorney General.

9 I.

10 On or about January 29, 1990, the Board served upon
11 Applicant a Notice of Proposed Denial of License as a
12 Psychologist in Oregon ("the Notice"). A copy of the Notice is
13 attached hereto as "Attachment A" and, by this reference, is
14 incorporated herein.

15 II.

16 This Settlement Agreement is made to resolve the charges
17 against Applicant alleged in the Notice ("the charges"). In
18 consideration of the resolution of the charges, and for other
19 good and valuable consideration, Applicant and the Board hereby
20 agree as follows:

21 A. Applicant waives his right to a hearing on the
22 charges, and the Board agrees not to conduct a hearing on the
23 charges at this time. However, the Board is free to examine
24 and consider the charges in connection with any application for
25 a psychologist's license that Applicant may file with the Board
26 in the future.

1 B. Applicant admits that he violated the Ethical
2 Principles of the American Psychological Association, the
3 Board's rules, and the Oregon laws as alleged in the Notice,
4 and he consents to findings by the Board that he committed said
5 violations, and to the Board's denial of his application for a
6 psychologist's license.

7 C. The Board finds, based on this Settlement Agreement
8 and information in the Board's files concerning the charges,
9 that Applicant violated the Ethical Principles of the American
10 Psychological Association, the Board's rules, and the Oregon
11 laws as alleged in the Notice. Accordingly, pursuant to ORS
12 675.070(1) and (2), the Board hereby denies Applicant's
13 application for a psychologist's license.

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1 D. This Settlement Agreement does not bar Applicant from
2 reapplying to the Board in the future for a psychologist's
3 license. See, e.g., ORS 675.070(4).

4 Dated this 17th day of October, 1990.

5
6 DAVE FROHNMAYER
Attorney General

7
8 *W. Benny Won*

9 W. BENNY WON, #76385
Assistant Attorney General
Oregon Department of Justice
10 100 Justice Building
Salem, Oregon 97310
11 Telephone: (503) 378-6986
Of Attorneys for the Oregon
12 State Board of Psychologist
Examiners

13
14 Dated this 30 day of October, 1990.

15
16 *Gary Lane, Psy.D.*

17 GARY LANE, Psy.D.
Applicant
18 3824 Partridge Lane, N.E.
Salem, OR 97303
19 Telephone: (503) 393-0499

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26 WBW:smi/8651G

Page 3 - SETTLEMENT AGREEMENT

1 BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS
2 OF THE STATE OF OREGON

3 In the Matter of
4 GARY LANE, Psy.D.

) NOTICE OF PROPOSED
) DENIAL OF LICENSE AS A
) PSYCHOLOGIST IN OREGON

5 Pursuant to ORS 675.070(1)(a), 675.070(2)(e) and (j) and
6 675.110(12), the Oregon State Board of Psychologist Examiners
7 ("Board"), by action at its meeting on December 1, 1989, hereby
8 gives you written notice of proposed denial of your license as a
9 psychologist for the following conduct in your practice of
10 psychology:

11 1. You engaged in a dual relationship with Ms. Carol Lynn
12 Arce which impaired your professional judgment and increased the
13 risk of exploitation to her. Specifically, you engaged in a sexual
14 relationship with her during the period in which she was your client
15 (1976-1980). This conduct was a violation of Ethical Principal 6a
16 of the Ethical Principles of the American Psychological Association,
17 the Board's rule 858-10-075, and ORS 675.070(2)(d)(A) and
18 675.070(2)(i).

19 2. You engaged in a dual relationship with Ms. Cheryl Zentz
20 which impaired your professional judgment and increased the risk of
21 exploitation to her. Specifically, you engaged in a sexual
22 relationship with her during the period in which she was your client
23 (September 1988 through March 1989). This conduct was a violation
24 of Ethical Principal 6a of the Ethical Principles of the American
25 Psychological Association, the Board's rule 858-10-075, and ORS
26 675.070(2)(d)(A) and 675.070(2)(i).

) Page 1 - NOTICE OF PROPOSED DENIAL OF LICENSE

1 The above violations constitute unprofessional conduct under
2 ORS 675.070(2)(d) and (i), the American Psychological Association's
3 Ethical Principles, and the Board's rules.

4 You are entitled to a hearing as provided by the Administrative
5 Procedure Act (ORS chapter 183). You may be represented by legal
6 counsel at the hearing. If you desire a hearing, you must notify
7 the Board in writing that you request a hearing within sixty (60)
8 days of the date of the mailing of this notice to you. If a request
9 for hearing is not received within this 60-day period, your right to
10 a hearing shall be considered waived unless excused for mistake,
11 inadvertence, surprise or excusable neglect. Upon receipt of your
12 request, the Board will notify you of the time and place of the
13 hearing.

14 If you request a hearing, you will be given information on the
15 procedures, right of representation, and the rights of parties
16 relating to the conduct of the hearing as required under ORS
17 183.413(2) before commencement of the hearing.

18 If you fail to request a hearing within 60 days, or if you fail
19 to appear at a scheduled hearing, the Board may issue an order
20 denying you a license as a psychologist in the State of Oregon.

21 Your license application and submissions to the Board to date,
22 and all information in the Board's files pertinent to your
23 application for a license as a psychologist in the State of Oregon,

24 ///

25 ///

26 ///

) Page 2 - NOTICE OF PROPOSED DENIAL OF LICENSE

1 automatically become part of the evidentiary record of the case if a
2 hearing is not requested.

3 Dated this 29th day of January, 1990.

4
5 Don F. Pagano Ph.D.
6 Don F. Pagano, Ph.D.
7 Board Chair
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21 W. Benny Won
22 Assistant Attorney General
23 Of Attorneys for Board of
24 Psychologist Examiners
25 100 Justice Building
26 Salem, OR 97310
Telephone: (503) 378-6986

26 WBW:smi/2379G

Page 3 - NOTICE OF PROPOSED DENIAL OF LICENSE

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the Imposition of
a Civil Penalty Against:

BRAD LEVITT, Psy.D.

Applicant.

AGENCY NO: OBPE #03-54

FINAL ORDER BY DEFAULT

On July 29, 2004, the Board of Psychologist Examiners (Board) properly served notice on Brad Levitt, Psy.D., that it intended to impose a civil penalty pursuant to ORS 675.110(5); ORS 675.070(1)(g) in the amount of \$500 for violation of the Board statutes and rules. The Notice offered Brad Levitt, Psy.D., an opportunity for hearing, if requested within 30 days of the service of the notice. The Notice designated that the applicant's submissions to the Board regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case would automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie* case. ORS 183.415(6). Applicant Brad Levitt, Psy.D., did not respond to the Notice and did not request a hearing.

NOW THEREFORE, after considering the Board's records in this matter, the Board enters the following:

FINDINGS OF FACT

1. On or about June 23, 2004, Applicant submitted a Contract for Supervision to the Board, proposing to receive post-doctoral supervision from Dwight Mowry, Ph.D, a board licensed psychologist
2. Contracts for Supervision are effective only after they are approved by the Board.

- 1 3. Between June 23, 2003 and March 3, 2004, Applicant practiced psychology as
2 psychology resident under the supervision of Mowry, even though there was no valid
3 supervision contract in place.
- 4 4. Applicant's practice of psychology at Mowry's office included making psychological
5 evaluations of patients, all of which were signed by Applicant.
- 6 5. During the time that Applicant practiced psychology without a valid supervision
7 contract, Applicant identified himself as "psychology resident."
8

9 CONCLUSIONS OF LAW
10

- 11 1. Applicant is in default.
- 12 2. Applicant violated ORS 675.070(2)(i); ORS 675.030(1)(d); ORS 675.030(2), ORS
13 675.090(2); and 675.020(1) and (2); and OAR 858-010-0036(3) in that Applicant
14 practiced psychology without a license or valid supervision contract, and referred to
15 himself as a "psychology resident" while practicing without a valid supervision
16 contract at Mowry's office.

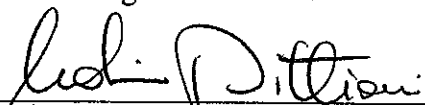
17 ORDER

18 Based on the preceding Findings of Fact and Conclusions of Law, the Board hereby
19 orders that:

- 20 1. Applicant shall pay a civil penalty in the amount of \$500.

21 DATED this 15th day of October, 2004.

22 BOARD OF PSYCHOLOGIST EXAMINERS
23 State of Oregon

24 
25 _____
26 Martin Pittioni, Executive Director
Oregon Board of Psychologist Examiners

1 **Appeal Rights:** You are entitled to judicial review of this order in accordance with ORS
2 183.482. You may request judicial review by filing a petition with the Court of Appeals in
3 Salem, Oregon within 60 days from the date of this order.

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1
2 BEFORE THE
3 BOARD OF PSYCHOLOGIST EXAMINERS
4 STATE OF OREGON

5 In the Matter of the Application for
Licensure as a Psychologist of:

6 BRAD LEVITT, Psy.D.

7 Applicant.
8

AGENCY NO: OBPE #03-54

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

9 TO: BRAD LEVITT, Psy.D.
10

11 The Board of Psychologist Examiners (Board) is the state agency responsible for
12 licensing and disciplining psychologists, and for regulating the practice of psychology in the
13 State of Oregon. Applicant has applied to the Board for a license to practice psychology in the
State of Oregon.

15 1.

16 The Board proposes to impose a civil penalty of \$500 against Applicant pursuant to ORS
17 675.110(5); ORS 675.070(1)(g) for violation of the Board's statutes and rules, as more
18 specifically set forth below.

19 2.

20 2.1 On or about June 23, 2004, Applicant submitted a Contract for Supervision to the
21 Board, proposing to receive post-doctoral supervision from Dwight Mowry, Ph.D,
22 a board licensed psychologist.

23 2.2 Contracts for Supervision are effective only after they are approved by the Board.

24 2.3 Between June 23, 2003 and March 3, 2004, Applicant practiced psychology as
25 psychology resident under the supervision of Mowry, even though there was no
26 valid supervision contract in place.

1 2.4 Applicant's practice of psychology at Mowry's office included making
2 psychological evaluations of patients, all of which were signed by Applicant.

3 2.5 During the time that Applicant practiced psychology without a valid supervision
4 contract, Applicant identified himself as "psychology resident."

5 3.

6 The Board alleges that the acts and conduct of Applicant described above constitute
7 violations of the following statutes and rules:

8 3.1 ORS 675.070(2)(i); ORS 675.030(1)(d); ORS 675.030(2), ORS 675.090(2); and
9 675.020(1) and (2); and OAR 858-010-0036(3) in that Applicant practiced
10 psychology without a license or valid supervision contract, and referred to himself
11 as a "psychology resident" while practicing without a valid supervision contract at
12 Mowry's office.

13 4.

14 The Board has authority to impose a civil penalty against Applicant pursuant to ORS
15 675.070(1)(g) and (2); and ORS 675.110(5). The Board has authority to investigate complaints
16 under ORS 675.110(8).

17 5.

18 Applicant has the right, if Applicant requests, to have a formal contested case hearing
19 before a hearings officer to contest the matter set out above, as provided by ORS 183.310 to
20 183.550. At the hearing, Applicant may be represented by an attorney and subpoena and
21 cross-examine witnesses.

22 6.

23 If Applicant requests a hearing, the request must be made in writing to the Board, must be
24 received by the Board within thirty (30) days from the mailing of this notice, and must be
25 accompanied by a written answer to the charges contained in this notice. Before commencement of
26

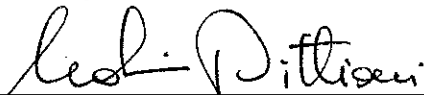
1 the hearing, Applicant will be given information on the procedures, right of representation, and other
2 rights of parties relating to the conduct of the hearing as required under ORS 183.413-415.

3 7.

4 If Applicant fails to request a hearing within 30 days, or fails to appear at the hearing as
5 scheduled, the Board may issue a final order by default and impose the above sanctions against
6 Applicant. Applicant's submissions to the Board regarding the subject of this disciplinary case and
7 all information in the Board's files relevant to the subject of this case automatically become part of
8 the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie*
9 case. ORS 183.415(6).

10
11 DATED this 29th day of July, 2004.

12 BOARD OF PSYCHOLOGIST EXAMINERS
13 State of Oregon

14 
15 _____
16 Martin Pittioni, Executive Director
17 Oregon Board of Psychologist Examiners
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**BEFORE THE OREGON
BOARD OF PSYCHOLOGIST EXAMINERS**

IN THE MATTER OF
RESPONDENT

EMANUEL MCLITTLE

) **FINAL ORDER**
) **IMPOSING CIVIL PENALTIES**
)
) OAH Case No. 103795
) Agency Case No. 2001-052
)
)

This matter came before the Board of Psychologist Examiners (Board) during its regularly scheduled meeting on September 12, 2003, to consider the proposed order issued by Administrative Law Judge (ALJ) Steve Rissberger, following a hearing on March 25, 2003. The parties were allowed time to file exceptions to the proposed order. No exceptions to the proposed order were filed within the specified timelines.

Having considered the findings and recommendations of ALJ Rissberger, and being first fully advised, the Board hereby adopts the proposed as the Final Order, except that non-substantive changes have been made to the body of the proposed order.

HISTORY OF THE CASE

On August 21, 2002, Board of Psychologist Examiners (“the Board” and “PEB”) issued a Notice of Proposed Penalty asserting that Emanuel McLittle (“Respondent” and “McLittle”) had engaged in the unlicensed practice of psychology, and misrepresented himself as a psychologist on two occasions. The Board sought a penalty of \$1,000 for each alleged infraction, or a total of \$3,000. McLittle requested a hearing.

The Board referred the request to the Hearing Officer Panel¹ on October 1, 2002.² A hearing was held on March 25, 2003, at the Board’s primary business location in Salem, Oregon. Administrative Law Judge (ALJ) Steve Rissberger of the Office of Administrative Hearings presided. The respondent appeared and was represented by his attorney, James Leuenberger. The Board was represented by Raul Ramirez, Assistant Attorney General. Respondent testified on his own behalf. Testifying on behalf of the Board was JFS (complainant), GS (complainant’s husband) and Rick Sherbert (Board Investigator). The record remained open following the hearing until May 1, 2003.

ISSUES

The Board adopts the issues as framed by ALJ Rissberger as follows:

¹ The Hearing Officer Panel was renamed the Office of Administrative Hearings pursuant to new legislation that became effective on May 22, 2003.

² The Board’s referral document requests that the Hearing Officer Panel issue a proposed order in this case.

(1) Whether McLittle engaged in the unauthorized practice of psychology in violation of ORS 675.020(1)(a) while providing counseling services for JFS?

(2) Whether McLittle misrepresented himself as a psychologist in violation of ORS 675.0201(1)(b) while providing counseling services for JFS?

(3) Whether McLittle misrepresented himself as a psychologist in violation of ORS 675.0201(1)(b) as a result of materials posted on an Internet website maintained by the Foundation for Human Understanding?

PROCEDURAL RULING

The Board adopts the ALJ Rissberger's procedural ruling denying McLittle's request to reopen the record:

McLittle sent a faxed letter, dated May 30, 2003, indicating that he had dismissed his legal counsel, James Leuenberger, effective on May 30, 2003, due to his assertion that Leuenberger had provided inadequate representation. I treated McLittle's letter as a motion to reopen the record and present additional evidence. I denied the motion for reasons explained in a letter dated, June 3, 2003. (Ex. H-7.) However, I reopened the record as of June 3, 2003, for the purpose of making McLittle's May 30, 2003 letter to me part of the record and to invite additional comments from the parties.

EVIDENTIARY RULING

Exhibits A-1 through A-7, H-1 through H-5 and R-1 were admitted into evidence at the time of the hearing. The record remained open following the hearing for the submission of written concluding arguments from both parties and the submission as evidence of audio tapes from Roy Masters' Advice Line radio program as Ex. R-2. No timely objections were received to Ex. R-2 and it is admitted into evidence. The record closed on May 1, 2003.

ALJ Rissberger reopened the record on June 3, 2003, to admit Exs. H-6, McLittle's letter of May 30, 2003 (received on May 29, 2003), and H-7, ALJ Rissberger's letter of June 3, 2003, as well as Leuenberger's May 29, 2003 letter of withdrawal as Ex. H-8. During an ensuing comment period, claimant offered additional evidence in the form of a cover letter, supportive letters from individuals who McLittle indicated he wished he had called as witnesses at the hearing and check stubs. Ex. R-3. Counsel for the Board indicated he had no objections to this new evidence. Exs. H-9 and H-10. Exhibits H-6 through H-10 and R-3 are admitted into evidence. The record closed a second time on June 19, 2003.

FINDINGS OF FACT

(1) Respondent, Emanuel McLittle, has never been a licensed psychologist in Oregon. He earned a Masters of Arts Degree in counseling psychology from the University of Detroit in 1975. In the past, he has worked as a parole officer for the State of Michigan, and a staff psychologist for a mental health agency in Michigan that provided counseling service to individuals with substance abuse problems. His work duties as staff psychologist involved supervising a group of drug therapists, administering a methadone program and providing direct

counseling services to some clients. He also operated a counseling business known as the anger control center in Lansing, Michigan. (Test. of McLittle.)

(2) While still working as a drug therapist, McLittle became acquainted with the teachings of Roy Masters and the Foundation of Human Understanding and underwent a gradual spiritual and intellectual conversion. He eventually moved to Oregon and began working in affiliation with Masters and the Foundation of Human Understanding. Respondent provides counseling services for individuals with a strong emphasis on morality, self-discipline and spirituality. He believes that his background in counseling and psychology provides him with advantages as compared to religious counselors, though he does not believe that psychology is a valid science or that psychotherapy is useful for most clients. (Test. of McLittle.)

(3) The Foundation for Human Understanding is a Not for Profit Corporation operating in the State of Oregon. Documents on file with the Oregon Secretary of State's Office describe the corporation's activities as religious. Masters and McLittle consider the organization to be a church. Masters "ordained" McLittle as a minister of the church at a ceremony during which he laid his hands on McLittle and prayed with him. (Test. of McLittle.)

(4) JFS is a resident of Sunland, California. She first learned about Respondent and the counseling services he provides through his affiliation with the Foundation of Human Understanding from a radio program entitled "Advice Line Overnight."³ JFS contacted the Foundation of Human Understanding and inquired about Respondent's services in June 2001. She specifically inquired about the cost of McLittle's services and was informed that it was \$120 per hour. JFS was encountering difficulty with depression and coping with the recent death of her brother due to cancer. She eventually made an appointment to receive counseling services from McLittle by telephone. (Test. of JFS.)

(5) McLittle conducted a one-hour counseling session with JFS by telephone on July 3, 2001. McLittle and JFS agreed to meet again two weeks later for a lengthier face-to-face counseling session. (Test. of JFS and McLittle.)

(6) JFS traveled with her husband to the Tall Timber Ranch in Selma, Oregon, on July 16, 2001, to begin a counseling session with McLittle. McLittle held a three-hour counseling session with JFS on July 6, 2001. Claimant's husband, GS, was present only during the opening few minutes of this first three-hour counseling session. They discussed the death of JFS's brother and the difficulties JFS was experiencing with her relationship with her mother during this counseling session. Near the conclusion of the first session, JFS asked McLittle about his credentials. McLittle described himself as a "psychologist." (Test. of JFS.)

(7) McLittle and JFS met for a second three-hour counseling session on the following day, July 17, 2001. This time JFS's husband was present during the entire session. McLittle and JFS discussed the same issues they had discussed on the previous day. Near the conclusion of this second session, JFS told McLittle that she planned to submit a claim to her medical insurer, Blue Cross, to reimburse her for the cost of each session. McLittle stated that there shouldn't be any problem with insurance coverage because he was a "trained psychologist" and was licensed in Michigan. JFS requested that McLittle provide her with a diagnosis code and a license

³ Advertisements for counseling services available through the Foundation of Human Understanding on Advice Line specifically refer to McLittle as a "psychologist." (Ex. R-2.)
In the Matter of Emanuel McLittle,
Page 3 of 12

number so that she could submit it with her claim to Blue Cross. McLittle assured JFS that she would not need a professional license number but promised to mail her an invoice showing the total cost of her counseling sessions along with a diagnosis code. GS made out a personal check to McLittle in the amount of \$720 before he and his wife departed. McLittle did not describe himself as a minister during his dealings with JFS nor did he make any references to the bible or other religious sources during his session with JFS. However, he did discuss meditation. (Test. of JFS and GS.)

(8) McLittle sent an invoice to JFS a short time later. However, the invoice did not mention the \$120 charge for JFS's telephone session with him on July 3 and lacked a diagnosis code. GS telephoned McLittle and asked for an invoice for the July 3 session and a diagnosis code. McLittle responded shortly thereafter. The second invoice included a "Note" stating: "Client suffers from Chronic Depressive Disorder (301.12).⁴ The nature of her distress required three sessions; a one-hour session and two additional sessions which were three (3) hours in duration. Total payments received to date-\$840.00." Just below the note section of the invoice appeared: "Emanuel McLittle, M.A. Psychotherapist." JFS submitted the invoice to Blue Cross along with her claim. (Ex. A4.)

(9) JFS experienced difficulty and delays with her claim with Blue Cross. In September 2001, a Blue Cross representative finally informed her that Blue Cross could not pay the claim because McLittle was not a licensed psychologist in Oregon. McLittle contacted JFS on the same day as the Blue Cross representative and told her that he was angry with her for submitting the claim to Blue Cross. Roy Masters, the Director of the Foundation for Human Understanding, eventually reimbursed JFS the money that she had paid for McLittle's services in early November 2001. (Test. of JFS.)

(10) JFS filed a complaint with the Oregon Board of Psychologist Examiners. She was concerned that McLittle was offering counseling services under false pretenses. Rick Sherbert, an investigator employed by the Board, was assigned the case and opened an investigation.

(11) In early February 2002, Sherbert reviewed written materials provided by JFS and then visited a website maintained by the Foundation of Human Understanding. The website featured a page devoted to "counseling service" which included a photograph of McLittle and a statement attributed to Roy Masters. It began with the sentence: "With a Masters Degree in Counseling Psychology and two decades of experience, Emanuel McLittle is well qualified." Just below McLittle's photograph appeared the line: "For scheduling and fee information call the Foundation at" and then provided a telephone number. (Ex. A5.) The website also included an article entitled "What Mental Health Isn't" under the byline "Emanuel McLittle MA." The article included the statement: "I am a trained psychologist," the phrase "Emanuel's psychology 101" and several references to "common sense psychology." Sherbert also listened to a portion of a tape of the radio show advice line. (Test. of Sherbert.)

(12) Sherbert sent a form letter, known as a "cease and desist" letter to McLittle on February 26, 2002, and requested a response within 30 days. The letter outlined relevant

⁴ The DSM-IV, also known as the Diagnostic and Statistical Manual of Mental Disorders, is a standard reference tool for psychologists in making diagnoses of mental health conditions. It does not contain a specific diagnosis entitled "chronic depressive disorder." Moreover, the code employed by McLittle refers to personality disorders, rather than to depressive or affective disorders.

portions of the Psychology Practice Act and informed McLittle that the Board had received a complaint that he was practicing psychology without a license. McLittle did not respond within the 30-day period stated in the letter. On April 9, 2002, Sherbert spoke with McLittle by telephone and informed him about allegations that he had misrepresented himself as a psychologist. McLittle identified himself as a minister for the Foundation and asserted that he had never attempted to identify himself as a psychologist. Sherbert advised McLittle to respond in writing to the Board regarding allegations that he had misrepresented himself as a psychologist. (Test of Sherbert.)

(13) On April 17, 2002, McLittle sent a letter to the board in which he stated that he “had no knowledge or intent” to practice psychology in the State of Oregon. With regard to the use of the term “psychologist,” McLittle wrote: “If I use the word psychologist at all (you will find on the same website that I am referred to as counselor and other labels), it is to convey the idea that I am not a strict religionist; that my listening and advice is accompanied by some degree of academic skill and extensive experience.” McLittle stated in the letter that he would speak with the webmaster of the Foundation website and because he was not a Foundation employee, it would take “a week or two” before references to McLittle as a psychologist were removed. (Ex. A-7.)

(14) Sherbert later checked the Foundation website on May 31 and no changes had been made. He checked the website again on July 12, an unspecified date in late July 2002, August 15, 2002, and on September 20, 2002. Each time, he found that no changes had been made to the website. The article entitled “What Mental Health Isn’t” was eventually removed from the web site shortly after September 20, 2002. (Test. of Sherbert.)

CONCLUSIONS OF LAW

(1) McLittle purported to diagnose and treat a depressive disorder. His actions constituted the practice of psychology without authorization within the meaning of ORS 675.010(4) and ORS 675.020(1)(a).

(2) McLittle verbally identified himself as a psychologist on two occasions during his counseling session with JFS. Further, he purported to diagnose and treat a depressive disorder. McLittle misrepresented himself as a psychologist in violation of ORS 675.020(1)(b).

(3) McLittle posted an article on a Foundation of Human Understanding Website that referred to him as a psychologist and an individual with expertise in psychology. This amounted to a second violation of ORS 675.020(1)(b).

OPINION

The Board of Psychologist Examiners regulates the practice of psychology in Oregon. The Board’s responsibilities include protecting consumers in the state against the unlicensed practice of psychology. A person who is not licensed by the Board is prohibited from representing that he or she is a psychologist. ORS 675.020(1)(b). The practice of psychology is defined as “rendering or offering to render supervision, consultation, evaluation or therapy

services***for the purpose of diagnosing or treating behavioral, emotional or mental disorders. ORS 675.010(4).

McLittle has never been a licensed psychologist in Oregon. The Board alleges, in this case, that McLittle engaged in the unauthorized practice of psychology in violation of ORS 675.020(1)(a) when he purported to diagnosis JFS as suffering from depression and to treat her for this condition. Further, the Board alleges that McLittle misrepresented himself as a psychologist to JFS, in violation of ORS 675.0201(1)(b), by telling her that he was a psychologist, purporting to render a psychological diagnosis and for using the title psychotherapist on an invoice he issued to JFS. Finally, the Board alleges that McLittle misrepresented himself as a psychologist, committing a second violation of ORS 675.0201(1)(b) by allowing materials to be posted on a Foundation for Human Understanding website that referred to McLittle as a psychologist. This decision will address each of the allegations in turn.

The burden of presenting evidence to support a factual assertion in a contested case proceeding is on the proponent of that assertion. ORS 183.450(2). The standard of proof in an administrative proceeding is by a preponderance of the evidence. *Cook v. Employment Div.*, 47 Or App 437 (1980); *Metcalf v. AFSD*, 65 Or App 761 (1983) rev den 296 Or 411 (1984). Proof by a preponderance of the evidence means that the fact finder must believe that the facts asserted are more probably true than false. *See Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987); *Cook v. Michael*, 204 Or 513 (1958). The Board bears the burden of proof in this case of demonstrating that McLittle committed violations of ORS 675.020(1)(a) and ORS 675.020(1)(b).

1. Whether Respondent engaged in the unauthorized practice of psychology in violation of ORS 675.020(1)(a).

The Board alleges that McLittle engaged in the unauthorized practice of psychology while providing counseling services to JFS. ORS 675.020(1)(a) contains the relevant statutory standard. It provides:

675.020 Practice or representation as psychologist prohibited without license; use of business name or designation. (1) To safeguard the people of the State of Oregon from the dangers of unqualified and improper practice of psychology, no person shall:

(a) Practice psychology in this state without first being licensed under ORS 675.010 to 675.150; or

* * * * *

The printed receipt that McLittle sent to JFS provided the most significant evidence on this issue. McLittle acknowledged at hearing that he was responsible for the contents of this document. It included a "Note" stating: "Client suffers from Chronic Depressive Disorder (301.12)." McLittle acknowledged at hearing that the term Chronic Depressive Disorder was intended as a diagnosis, that he attempted to draw from the DSM-IV, a primary reference tool used by psychologists in rendering and understanding mental health diagnoses. He

acknowledged as well that the number that follows was intended as a diagnosis code, even though it is the incorrect code for the diagnosis given. Indeed, the Board established at hearing that the term Chronic Depressive Disorder does not appear in the DSM-IV as a specific diagnosis, though the DSM-IV contains several similarly worded diagnoses such as major depressive order, dysthymic disorder and depressive disorder not otherwise specified.

ORS 675.010(4) defines the practice of psychology as “rendering or offering to render supervision, consultation, evaluation or therapy services***for the purpose of diagnosing or treating behavioral, emotional or mental disorders.” McLittle knew when he prepared the receipt that JFS needed a diagnosis and a diagnosis code, drawn from the DSM-IV, in order for JFS to obtain coverage for the cost of counseling services from Blue Cross, JFS’s health insurer. Indeed, JFS and McLittle discussed the necessity of a psychological diagnosis code while these services were still ongoing. Based on the evidence presented at hearing, the Board, like ALJ Rissberger, is persuaded that the purpose of the receipt was to render a diagnosis, or at least make it appear that McLittle was rendering a psychological diagnosis, in exchange for reimbursement from JFS’s insurer. Since McLittle purported to diagnose and treat a depressive disorder, his actions constituted the practice of psychology within the meaning of ORS 675.010(4).

McLittle’s receipt contained additional information that supports the conclusion that he engaged in the unauthorized practice of psychology. Below the diagnosis and diagnosis code, McLittle inserted the following title for himself: “Emanuel McLittle, MA, Psychotherapist.” As McLittle’s legal counsel noted at hearing, psychotherapist is not one of those terms explicitly proscribed by ORS 675.020(2) for use by individuals who are not licensed psychologists. However, the related term “psychotherapy” is specifically prohibited by ORS 675.020(2). Reading the title psychotherapist in conjunction with McLittle’s description of services creates the impression that the receipt was not only intended to render a psychological diagnosis, but also to make it appear that McLittle was qualified to render that diagnosis.

McLittle asserted at hearing that he was unfamiliar with the DSM-IV. He stated further that he never intended to make a psychological diagnosis and only included the reference to chronic depression and a diagnosis code in an effort to accommodate JFS’s desire to obtain insurance coverage. Even if these assertions are entirely accurate, they do not provide an effective defense. McLittle’s attempted diagnosis of a psychological condition that he was not qualified to diagnose is exactly the kind of conduct that 657.020(1)(a) was intended to prevent. McLittle’s actions had the effect of misleading both JFS and her medical insurer regarding the kind and quality of services that McLittle had proved to her. The Board has carried its burden of proof on this issue. Based on a preponderance of the evidence presented at hearing, the Board, like ALJ Rissberger, is persuaded that McLittle engaged in the unauthorized practice of psychology within the meaning of ORS 675.020(2).

2. Whether Respondent misrepresented himself as a psychologist to JFS, in violation of ORS 675.020(1)(b).

The Board asserted that McLittle misrepresented himself as a psychologist during his counseling sessions with JFS. ORS 675.020(1)(b) provides in relevant part:

ORS 675.020 Practice or representation as psychologist prohibited without license; use of business name or designation.

(1) To safeguard the people of the State of Oregon from the dangers of unqualified and improper practice of psychology, no person shall:

* * * * *

(b) Represent oneself to be a psychologist without first being licensed under ORS 675.010 to 675.150.

(2) As used in subsection (1)(b) of this section, "represent oneself to be a psychologist" means to use any title or description of services incorporating the words "psychology," "psychological," "psychotherapy" or "psychologist," or to offer or render to individuals or to groups of individuals services included in the practice of psychology.

JFS stated that McLittle referred to himself as a licensed psychologist on at least two occasions during her counseling sessions with him on July 16 and 17, 2001. JFS testified that McLittle first referred to himself as a psychologist when questioned about his qualifications. She testified further that McLittle referred to himself as a psychologist on the second occasion when JFS inquired about obtaining a diagnosis code and a professional license number for purposes of seeking reimbursement for the cost of McLittle's counseling services from JFS's health insurance. JFS's testimony throughout the hearing was reasonably specific, consistent, responsive and delivered in a sincere manner. Further, JFS's husband offered corroborating testimony, stating that he had also heard McLittle refer to himself as a licensed psychologist during his wife's counseling sessions. I generally found JFS's testimony to be reasonably reliable and credible.

JFS's account of events is further supported by the contents of the receipt McLittle sent to her following the counseling sessions on July 16 and 17, 2001. As previously discussed in this decision, McLittle acknowledged that he was responsible for the contents of this document. The receipt contains a psychological diagnosis, a diagnosis code and a description of the fees that McLittle had charged JFS. When viewed in combination with the testimony offered by JFS, GS and McLittle at hearing, this document provides written corroboration of JFS's account of her discussion with McLittle regarding health insurance, and McLittle's representation that there would be no difficulty with insurance coverage because he was a trained psychologist.

McLittle repeatedly challenged the accuracy of JFS's testimony at hearing. He asserted that JFS had accused him of misrepresenting his credentials as a means of forcing him to return the money that she had paid to him. This seems unlikely. Roy Masters refunded JFS's money in November 2001, long before this matter went to hearing.

A final factor to consider here is the content of the Foundation for Human Understanding website prior to September 2002. As will be discussed in greater detail elsewhere in this decision, the Foundation's website featured an article authored by McLittle in which he referred to himself as a trained psychologist. If McLittle had no reservations about describing himself as a trained psychologist on a website accessible to the general public, then it is unlikely that he would have reservations about making similar representations to individual clients. In sum, the Board is persuaded, as was ALJ Rissberger, that McLittle verbally represented himself as a psychologist on two occasions during his counseling session with JFS in July 2001, based on the testimony

from JFS, the corroborating testimony from her husband, the contents of the invoice McLittle forwarded to JFS, and the contents of the Foundation of Human Understanding's website. McLittle's use of the term psychologist to describe himself falls squarely within the definition of misrepresentation contained in 675.020(2). McLittle's representations in the presence of JFS and her husband amounted to a clear violation of ORS 675.020(1)(b).

3. Whether Respondent misrepresented himself as a psychologist on the Foundation of Human Understanding Website in violation of ORS 675.020(1)(b).

Until late September 2002, the Foundation of Human Understanding website contained several references to McLittle which either described him as a psychologist or referred to his experience and expertise with regard to psychology. This included an article authored by McLittle and entitled "What Mental Health Isn't." Although McLittle testified that he wrote this article prior to moving to Oregon, he acknowledged that he had provided it to the Foundation with the knowledge that it would be posted on the Foundation's website. In the article, McLittle states that he is a trained psychologist. He refers as well to "Emanuel's Psychology 101" as a way to rid oneself of confusion. Both of these references violate ORS 675.020 which specifically proscribes individuals who are not licensed psychologists from the use of any title or description of services incorporating the terms "psychologist" or "psychology."

The website also contained information indicating that McLittle has a "Master's Degree in Counseling Psychology." This is an accurate factual representation. McLittle testified at length during the hearing about the course work he completed at the University of Detroit before earning a Masters of Art Degree in counseling psychology. However, the phrase "Masters Degree in Counseling Psychology" also amounts to a title incorporating the term "psychology," and thus constitutes a representation that McLittle is a psychologist within the meaning of ORS 675.020(2). It is important to keep in mind the context in which the reference is made. This reference is made in conjunction with written materials that are intended to promote McLittle's services as a counselor within the State of Oregon and could lead to reasonable confusion about his status as a psychologist in Oregon. Without a disclaimer of some sort, indicating that McLittle is not a licensed psychologist in Oregon, or that McLittle's training is only suitable for licensure in Michigan, and not in Oregon, this reference also amounts to a violation of ORS 675.020(1)(b). The Board notes, like ALJ Rissberger did, that this violation did not appear to be intentional.

As McLittle's legal counsel noted at hearing, references to McLittle as a psychologist were removed from the Foundation of Human Understanding website by the end of September 2002. McLittle understandably argued that he could no longer be deemed in violation of ORS 675.020(1)(b). The problem with this argument is one of timing. The Foundation website still included references to McLittle as a psychologist and a provider of psychological services at the time the Board issued its Notice of Proposed Civil Penalty. Indeed, more than six months passed after date of the Board's initial cease-and-desist letter before these references were removed. References to McLittle as a psychologist, and a provider of psychological services, on the Foundation website amounted to a separate violation of 675.020(1)(b). The fact that the most significant references were eventually removed from the website is a mitigating factor and will be discussed further in the sanctions portion of this decision.

4. Respondent is not exempt from sanctions under ORS 675.090(1)(f).

McLittle asserted at hearing that the counseling services that he provided to JFS, were exempt from regulation by the Board because McLittle was a member of the clergy acting in a ministerial capacity. The relevant statutory standard for this exception to the Board's regulatory authority is contained at ORS 675.090(1)(f). It provides, in relevant part:

675.090 Application of ORS 675.010 to 675.150. (1) ORS 675.010 to 675.150

does not apply to:

* * *

(f) A person who is a recognized member of the clergy, provided that the person is acting in the person's ministerial capacity and does not use the title "psychologist."

There are a number of problems for Respondent in his efforts to invoke this defense. Most significant, is the requirement that McLittle be functioning in a ministerial capacity. Both JFS and her husband testified that McLittle made no references to biblical or religious sources during JFS's two three-hour sessions with McLittle on July 16 and 17, 2001. Indeed, as discussed elsewhere in this decision, McLittle referred to himself on two occasions as a psychologist when questioned by JFS about his credentials, not as a minister. The most telling factor here was McLittle's eventual diagnosis of JFS as suffering from chronic depression. Members of the clergy who are acting in a ministerial capacity do not give psychological diagnoses, nor do they seek payment from health insurance providers or reimbursements on behalf of their clients. McLittle has failed to demonstrate that he was acting in a ministerial capacity during his sessions with JFS on July 17 and 18. Further, McLittle used the title psychologist to describe himself while providing services for JFS. ORS 675.090(1)(f) does not apply here.

The Board's determination that McLittle was not acting in a ministerial capacity, as discussed above, should not be interpreted to mean that the Board found that McLittle was in fact a minister. Ultimately, as ALJ Rissberger stated, the question whether McLittle became a recognized member of the clergy by Roy Masters' "laying on of the hands" need not be reached because McLittle's conduct clearly demonstrated that, even if he was a minister, his conduct was outside his ministerial capacity.

5. Recommended Sanctions.

The Board adopts ALJ Rissberger's recommendations regarding the sanctions to be imposed on McLittle, and that reasoning is incorporated as follows:

The Board has demonstrated that McLittle engaged in the unauthorized practice of psychology in violation of ORS 675.020(1)(a) when he purported to diagnosis JFS as suffering from depression. Further, the Board has demonstrated that McLittle misrepresented himself as a psychologist to JFS, in violation of ORS 675.020(1)(b), by telling her that he was a trained psychologist and, in a separate incident, by allowing materials to be posted on a Foundation for Human Understanding website that referred to McLittle as a psychologist. The primary remaining issue here is the appropriate sanction. In the Board's Notice of Proposed Civil Sanction, the Board sought a \$1,000 sanction for each violation, or a total penalty of \$3,000.

The Board's administrative rules do not contain a list of mitigating factors, or any other objective criteria, for reducing the amount of McLittle's proposed sanction. Indeed, the Board's rules merely refer to a \$1,000 sanction, without any indication that a lesser sum may be appropriate.


McLittle established that references to himself as a psychologist were removed from the Foundation of Human Understanding website prior to the hearing. This voluntary act mitigates the severity of McLittle's violation of ORS 675.020(1)(b) with regard to information posted on the website, even though it took several months to accomplish. Accordingly, I recommend that the sanction for McLittle's violation of 675.020(1)(b) as a result of information posted on the website be reduced to \$700. With regard to the violation of 675.020(1)(a) and the remaining violation of 675.020(1)(b), neither party presented persuasive evidence regarding the existence of significant mitigating factors. Although McLittle argued that any sanction should be reduced based on his financial condition, little in the way of financial evidence was presented at the hearing, beyond McLittle's testimony that he was not a wealthy man. Indeed, the fact that McLittle initially charged JFS at a rate of \$120 per hour for his services belies his assertion at hearing that he gains little monetarily from providing counseling services. I recommend that McLittle be compelled to pay a fine of \$1,000 for each of the two remaining violations.

FINAL ORDER

For the foregoing reasons, the Board hereby orders as follows:

1. The Board imposes a civil penalty of \$1,000 against Respondent for practicing psychology without authorization in violation of ORS 675.020(1)(a).
2. The Board imposes a civil penalty of \$1,000 against Respondent for misrepresenting himself as a psychologist in violation of ORS 675.020(1)(b), while providing counseling services for JFS.
3. The Board imposes a civil penalty of \$700 against Respondent for misrepresenting himself as a psychologist in violation of ORS 675.020(1)(b) in materials posted on a website maintained by the Foundation for Human Understanding.
4. The civil penalties are due and payable 10 days after this order becomes final by operation of law or on appeal, as provided under ORS 183.090.

It is so ordered this 19th day of September, 2003


Martin Pittioni
Executive Director
Oregon Board of Psychologist Examiners

Notice: You are entitled to judicial review of this Final Order pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition in the Oregon Court of Appeals. The petition must be filed within 60 days from the date of service of this Final Order.

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the Unlicensed Practice
as a Psychologist of:

EMANUEL McLITTLE,
Respondent.

AGENCY NO: OBPE #01-52
NOTICE OF PROPOSED CIVIL
PENALTY

TO: EMANUEL McLITTLE

1.

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists and for regulating the practice of psychology in the State of Oregon. The Board is also authorized to investigate and enforce its laws against the unlicensed practice of psychology.

2.

Respondent Emanuel McLittle is not licensed by the Board to practice psychology in the State of Oregon, and is not exempt from the licensure requirement.

3.

The Board proposes to assess civil penalties against Respondent, pursuant to ORS 675.070(2)(i) and ORS 675.070(1) for violating the provisions of ORS 675.020(1)(a) and (b) against the unlicensed practice of psychology and unauthorized representation as a psychologist. The alleged violations are more particularly described as follows:

- 3.1 Respondent is affiliated or is an employee of the Foundation of Human Understanding (FHU), an entity that purports to help people “cope successfully with stress by showing them how to live according to the traditional Judeo-Christian Principles of patience, honesty, courage, self-control, forgiveness, and real love for one's fellow man” through its website, www.fhu.com.

1 3.2 In June of 2001, JFS called the foundation in response to a radio advertisement
2 for counseling services. JFS was interested in counseling services for depression,
3 and to cope with the death of her brother.

4 3.3 On July 3, 2001, JFS had a telephone counseling session with respondent and was
5 charged \$120.

6 3.4 JFS scheduled and attended two in-person counseling sessions with respondent on
7 July 16, and July 17, 2001. Each session lasted three hours, and took place at the
8 Tall Timber Ranch in Selma, Oregon.

9 3.5 During the course of the July 16 and/or the July 17 sessions, respondent
10 represented to JFS and her husband that he was a "licensed psychologist"; and he
11 didn't think JFS would have a problem submitting an insurance claim for his
12 services because he was a "licensed psychologist"; but that he would need to mail
13 JFS the "diagnosis code" before she could submit her insurance claim.

14 3.6 Following the sessions of July 16 and July 17, Respondent submitted an invoice
15 to JFS for the purpose of making a reimbursement claim to her insurer.
16 Respondent noted in the invoice as follows: "Client Suffers from Chronic
17 Depressive Disorder (301.12)." Respondent's name appeared below the diagnosis
18 with the title of "psychotherapist."

19 4.

20 The Board alleges that Respondent's acts and conduct described above constitute
21 violations of ORS 675.020(1)(a) and (b) as further defined under ORS 675.010; ORS 675.020(2);
22 and OAR 858-010-0001. The Board therefore proposes to assess civil penalties against
23 Respondent as follows:

24 4.1 \$1,000 for violation of ORS 675.020(1)(a) (practice of psychology without first
25 being licensed for rendering supervision, consultation, evaluation or therapy
26 services to JFS for the purpose of diagnosing or treating her depression).

1 4.2 \$1,000 for violation of ORS 675.020(1)(b) (representation as a psychologist by
2 telling JFS he was a licensed psychologist; and for using the title
3 “psychotherapist” without first being licensed.

4 5.

5 In addition to the civil penalties described above, the Board also proposes to assess civil
6 penalties against Respondent, pursuant to ORS 675.070(2)(i) and ORS 675.070(1) for separate
7 violations of ORS 675.020(1)(b) for misrepresenting himself to be a psychologist without first
8 being licensed. The alleged violations are more particularly described as follows:

9 5.1 The Board re-alleges paragraph 3.1 and hereby incorporates it by reference.

10 5.2 Respondent is featured in a portion of the FHU website as the director of its
11 counseling service. The FHU website describes the counseling service provided
12 by Respondent as a service to help with “personal dilemmas requiring one-to-one
13 attention of a trained psychologist.” The description of the services provided by
14 the counseling service also refers to Respondent’s “counseling psychology
15 program” work; his “Master’s Degree in Counseling Psychology”; and his “two
16 decades of public and private practice.”

17 5.3 The FHU Website also features the article “What Mental Health Isn’t” authored
18 by Respondent. Respondent represents himself in the article to be a “trained
19 psychologist” and refers to his methodology as “Emanuel’s psychology 101.”

20 5.4 The Board has advised Respondent that he is in violation of the Board’s statutes
21 and rules. On April 12, 2002, Respondent acknowledged the Board’s position
22 and represented to the Board that the references on the FHU website would be
23 removed in “a week or two.” Despite respondent’s assurances, the unauthorized
24 representations continue to appear on the FHU website.

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6.

The Board alleges that Respondent's actions and the information contained in the FHU website as described in paragraph 5 are prohibited representations that Respondent is a psychologist, and violate ORS 675.020(1)(b) as further defined under ORS 675.020(2) and OAR 858-010-0001(1). The Board therefore proposes to assess a civil penalty against Respondent as follows:

6.1 \$1,000 for violation of ORS 675.020(1)(b) (representation as a psychologist on the FHU website and description of the services incorporating variations of the word "psychology" without first being licensed.

7.

Respondent has the right, if he requests, to have a formal contested case hearing before the Board or its hearings officer to contest the matter set out above, as provided by Oregon Revised Statutes 183.310 to 183.550. At the hearing, Respondent may be represented by an attorney and subpoena and cross-examine witnesses.

8.

That request for hearing must be made in writing to the Board, must be received by the Board within thirty (30) days from the mailing of this notice and must be accompanied by a written answer to the charges contained in this notice.

9.

If Respondent requests a hearing, before commencement of that hearing, he will be given information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing as required under ORS 183.413-415, before commencement of the hearing.

10.

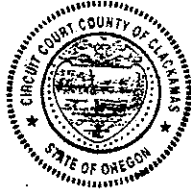
If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as scheduled, the Board may issue a final order by default and impose the above sanctions against him. Respondent's submissions to the Board to-date regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case automatically become part of the

1 evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie*
2 case. ORS 183.415(6).

3
4 DATED this 20th day of August, 2002.

5
6 BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon

7 By: Janis M. Côté
8 Janis M. Côté, Executive Director



Certified True Copy of The Original
Dated This 20th Day of Sept 2007
Trial Court Administrator

STATE OF OREGON
CLACKAMAS COUNTY COURTS
FILED

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ENTERED BY _____
BOOKETED BY _____

By: _____

CIRCUIT COURT OF OREGON

CLACKAMAS COUNTY

CV07090558

IN THE MATTER OF:

RALPH D. MITCHELL; GREENHOUSE
HEALTH & WELLNESS CENTER, LLC; and
IMPACT CHRISTIAN MINISTRIES,

Respondents.

Case No.

ASSURANCE OF VOLUNTARY
COMPLIANCE

1.

RALPH D. MITCHELL; GREENHOUSE HEALTH & WELLNESS CENTER, LLC;
and IMPACT CHRISTIAN MINISTRIES do business in Oregon. RALPH D. MITCHELL;
GREENHOUSE HEALTH & WELLNESS CENTER, LLC; and IMPACT CHRISTIAN
MINISTRIES are the Respondents herein. This agreement is between Respondents and the
Oregon Department of Justice (DOJ) acting pursuant to ORS 646.632.

PROCEDURE

2.

This Assurance of Voluntary Compliance (AVC) is a settlement of a disputed matter. It
shall not be considered an admission of a violation for any purpose. Nothing in this AVC
limits in any way the ability of any criminal law enforcement agency or any other state agency
than the ones listed herein to enforce laws and regulations or to achieve fines and penalties for
conduct that might have occurred up to the date of filing this AVC. Nothing in this AVC limits
actions of state agencies against Respondents for conduct in violation of the law and the AVC
after the date of filing. Respondents and DOJ agree that Respondents will by October 12, 2007,
sign a Consent Order with the Board of Naturopathic Examiners (OBNE) to resolve its pending
dispute with Respondents; Respondents will pay the Board of Naturopathic Examiners (OBNE)

1 through DOJ as part of the \$25,000 listed in this AVC, the sum of \$2500 to resolve proposed
2 civil penalties in such a Consent Order. DOJ will also disburse \$1000 of the \$25,000 listed
3 herein to the Oregon Office of Degree Authorization; the rest of the money after that agency
4 and the OBNE are paid is a contribution to the Consumer Protection Fund as set out herein.

5 The following agencies agree by the acceptance of DOJ to this AVC that this AVC
6 resolves any licensing disputes with said agencies up to the date of filing this AVC:

- 7 • Oregon Board of Medical Examiners
- 8 • Oregon Board of Psychologist Examiners
- 9 • Oregon Board of Licensed Professional Counselors and Therapists
- 10 • Oregon Board of Massage Therapists.
- 11 • Oregon Office of Degree Authorization.
- 12 • Oregon Board of Naturopathic Examiners (upon signing acceptable Consent Order to
13 resolve the pending administrative case for injunctive relief and civil penalties).

14 3.

15 Respondents acknowledge a notice from the State of Oregon pursuant to ORS
16 646.632(2) of the alleged unlawful trade practice and the relief to be sought.

17 4.

18 Respondents understand and agree this AVC applies to Respondents, their principals,
19 officers, directors, agents, employees, representatives, successors, and assigns, jointly and
20 severally, while acting personally, or through any corporation or other business entities, whose
21 acts, practices, or policies are directed, formulated, or controlled by Respondents.

22 5.

23 Respondents and Respondents' attorney agree and understand that following acceptance
24 of the AVC by DOJ, DOJ may communicate directly with Respondents for the purpose of
25 executing and enforcing the terms of this agreement, resolving future complaints, and
26 conducting undercover investigations of Respondents.

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6.

Respondents understand and agree that if this AVC is accepted by DOJ, it will be submitted to the Circuit Court of the State of Oregon for Clackamas County for approval and, if approved, will be filed with the court pursuant to ORS 646.632(2).

7.

Respondents waive any further notice of submission to and filing with the court of this AVC. Respondents agree to accept service of a conformed or court certified copy by prepaid first class mail sent to the addresses following their respective signatures or to their attorney.

8.

If monies which are ordered to be paid in this AVC are not paid timely, DOJ may convert the AVC to a money judgment under ORS 646.632(2) without notice to Respondents. Respondents agree a copy of the money judgment may be sent to Respondents, first class mail to the addresses following their respective signatures, or to their attorney.

9.

Respondents understand that, in addition to any other sanctions which may be imposed under this AVC or under the law, violation of any of the terms of this AVC may result in contempt of court proceedings, civil penalties of up to \$25,000.00 for each violation, and such further relief as the court may deem appropriate. ORS 646.632(4), ORS 646.642(1), and ORS 646.642(2).

10.

The parties acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the parties shall interpret the remaining provisions in a manner consistent with the goals and purpose of this AVC as executed.

1 **REMEDIES**

2 11.

3 Respondents shall obey:

- 4 A. Oregon's Unlawful Trade Practices Act, ORS 646.605 to ORS 646.656 and all
5 regulations thereunder;
- 6 B. All laws and regulations concerning the practice of medicine in Oregon, including ORS
7 677.010 through 677.085 and ORS 676.120;
- 8 C. All laws and regulations concerning the practice and licensing of naturopathic medicine
9 in Oregon, including ORS 685.010 through 685.990;
- 10 D. All laws and regulations concerning psychologists in Oregon, including ORS 675.010
11 through 675.150;
- 12 E. All laws and regulations concerning professional counselors and therapists, ORS
13 675.705 through 675.990.
- 14 F. All laws and regulations concerning the practice of massage in Oregon, including ORS
15 687.011 through 687.250;
- 16 G. All laws and regulations concerning the use of a professional designation in Oregon,
17 including ORS 676.100 through 676.120;
- 18 H. All Oregon laws and regulations concerning the use of degrees including from
19 unaccredited institutions and diploma mills, including ORS 348.594 through 348.615;
20 and
- 21 I. All Oregon laws and regulations concerning the issuance of college credits, including
22 ORS 348.606.

23 12.

24 Respondents shall not represent or imply that DOJ, the Oregon Board of Naturopathic
25 Examiners, the Oregon Board of Licensed Professional Counselors and Therapists, or any other
26 agency or board in the State of Oregon acquiesces or approves Respondents' past business

1 practices; current efforts to reform their practices; or any future practices which Respondents
2 may adopt or consider adopting. DOJ's decision to settle this matter or to otherwise unilaterally
3 limit current or future enforcement action does not constitute approval or imply authorization
4 for any past, present, or future business practices.

5 13.

6 In consideration of this AVC, Respondents shall pay the sum of \$25,000.00 to DOJ for
7 deposit to the Consumer Protection and Education Revolving Account established pursuant to
8 ORS 180.095. Said sum shall be used by DOJ as provided by law, and paid as follows: \$4,800
9 to be paid at signing which sum includes the \$800 payable to Morbetos under paragraph 14 A;
10 the remaining \$21,000 by the assignment securing the money as set out as follows. Upon
11 signing of the AVC Respondents shall deliver to DOJ an assignment of their vendors' interest in
12 that certain agreement for purchase and sale of the café in Woodburn, to the extent necessary to
13 satisfy Respondents' financial obligations under this paragraph 13. If the remaining \$21,000 is
14 not paid by 60 days from the day of filing the AVC then DOJ may take judgment against
15 Respondents for \$42,000 and all costs of collection.

16 14.

17 Consumer restitution shall be paid as provided in this section:

18 A. Immediately upon execution of this AVC, Respondents shall (1) fully reimburse
19 Betty Morbeto and her husband Mike Morbeto via DOJ for all monies paid (\$800) to
20 Respondents for Betty Morbeto's care; (2) cancel any alleged debt owed to Respondents by
21 Betty or Mike Morbeto; and (3) do everything necessary to restore Betty and Mike Morbeto's
22 credit if damaged by any of Respondents' billings.

23 B. If within 60 calendar days from the day this AVC is filed (or if the 60th calendar day
24 falls on a weekend, close of business on the following Monday), any of Respondents' customers
25 file complaints with DOJ; any other state agency; the Better Business Bureau of Alaska, Oregon
26

1 & Western Washington; or Respondents (or there are any complaints previously and similarly
2 submitted which are unresolved), Respondents agree to the following:

3 1) Within 70 days of the date this AVC is filed, Respondents will submit to DOJ any and
4 all unresolved complaints (old and new) received from customers before or during the
5 60-day period identified in the first paragraph of this section, 14(B). For each
6 complaint, Respondents shall include the date on which they received the complaint and
7 a description of any action they took to resolve the complaint;

8 2) DOJ will review all complaints submitted to Respondents, DOJ, any other state
9 agencies, and the Better Business Bureau of Alaska, Oregon & Western Washington
10 during the time period identified in the first paragraph of this section, 14(B), and any
11 remaining unresolved complaints concerning Respondents, to determine, in DOJ's sole
12 discretion, whether each complaint is legitimately based on allegations that Respondents
13 unlawfully practiced medicine, including unlicensed naturopathy; unlawfully practiced
14 as a professional counselor; unlawfully practiced as a massage therapist in Oregon; or
15 unlawfully represented that they could offer college credits and whether each
16 complainant has been otherwise reimbursed;

17 3) After Respondents comply with provision 1) of this section, 14(B), DOJ will provide
18 Respondents with copies of each of the complaints for restitution recoverable under this
19 section along with the amounts Respondents must pay and any billings that Respondents
20 must cancel. (Respondent's payments to Betty and Mike Morbetto are excluded from
21 this process and will be managed separately.);

22 4) For each customer complaint forwarded to Respondents by DOJ that the DOJ has
23 determined is legitimately based on allegations that Respondents unlawfully practiced
24 medicine, including unlicensed naturopathy; unlawfully practiced as a professional
25 counselor; unlawfully practiced as a massage therapist in Oregon; or unlawfully
26 represented that they could offer college credits, Respondents must cancel any alleged

1 debt for services identified by DOJ, and to the extent of any payments identified in this
2 section, Respondents must fully reimburse each customer for the amounts specified by
3 DOJ;

4 5) If the DOJ determines that Respondents do not owe restitution on any additional
5 accounts, DOJ will not require Respondents to pay any amounts under section 14(B) of
6 this AVC; however, if any customers come forward with complaints or if previous
7 complaints remain unresolved, DOJ will require Respondents to pay up to \$20,000.00 in
8 restitution, beyond any amounts paid to Betty and Mike Morbeto, and to cancel an
9 unlimited dollar value of the complaining customers' alleged debt with Respondents;

10 6) If DOJ requests of Respondents, via their counsel, any amounts under this section,
11 14(B), Respondents shall, within 10 calendar days of DOJ's request, pay DOJ, in full, all
12 amounts requested under this section. Provided, however, all amounts under this
13 section, 14(B), are exclusive of any amounts owed to Betty and Mike Morbeto;

14 7) If Respondents do not pay any amounts due under this section within 10 calendar days
15 of DOJ's request, DOJ may take a judgment against Respondents on this portion of the
16 AVC for twice the reported or requested amount. (Any money under this paragraph
17 that is recovered by DOJ that does not get distributed to consumers for restitution for
18 any reason may go into the Consumer Protection and Education Revolving Account
19 established pursuant to ORS 180.095.);

20 8) If DOJ requests of Respondents, via their counsel, that Respondents cancel any debt
21 customers allegedly owe Respondents, within 10 calendar days of DOJ's request,
22 Respondents will provide proof to DOJ that each specified customers' debt has been
23 canceled;

24 9) If Respondents do not cancel the amounts requested by DOJ and provide proof of such
25 adjustments within 10 calendar days of DOJ's request, DOJ may take a judgment against
26 Respondents on this portion of the AVC for an amount equal to double the total amount

1 of the debt Respondents failed to adjust. (Any money under this paragraph, 14(B)(9),
2 that is recovered by DOJ but not distributed to consumers for any reason may go into the
3 Consumer Protection and Education Revolving Account established pursuant to ORS
4 180.095) and

5 10) Respondents and DOJ recognize that Deana Rieden has filed a lawsuit against
6 Respondents; this AVC does not govern any payments to Deana or Jalinna Rieden.
7 Without admitting any liability whatsoever to the Riedens, Respondents hereby cancel
8 any debts for services that the Riedens may owe to Respondents.

9 15.

10 Effective immediately upon execution of this AVC by Respondents, Respondents agree
11 to adhere to each of the following requirements:

12 A. Respondents, unless Ralph D. Mitchell is ever properly licensed as a
13 naturopathic physician, or any other kind of medical doctor in Oregon, are permanently
14 enjoined from representing that Ralph D. Mitchell is a naturopath, a doctor practicing
15 naturopathy, or any other kind of medical doctor, and Respondents and their employees shall
16 not use the term "doctor" in conjunction with Ralph D. Mitchell's name, business, or academic
17 degrees or represent that Respondents "prescribe" any drugs or treatments including
18 "prescription grade" homeopathic medications;

19 B. Respondents, unless Ralph D. Mitchell is ever properly licensed as a
20 naturopathic physician in Oregon, are permanently enjoined from representing, in any manner,
21 that Respondents are authorized to provide any service to any person pertaining to the practice
22 of naturopathic medicine as defined by ORS 685.010(5). For purposes of this AVC, the term
23 "*represent*," "*representing*," or any other form of the word "*represent*" includes any statements
24 made in plaques, advertisements, promotions, and other marketing materials as well as verbal
25 statements made both inside and outside of any clinic or office operated by Respondents;

1 C. Respondents, unless Ralph D. Mitchell is ever properly licensed as a
2 naturopathic or other kind of physician in Oregon, are permanently enjoined from the practice
3 of naturopathic, or any other kind of, medicine in Oregon;

4 D. Respondents are permanently enjoined from offering any counseling services,
5 pastoral or otherwise, not authorized under ORS 675.090 and not engage in the unlicensed
6 practice of psychology;

7 E. Respondents, unless Ralph D. Mitchell is ever properly licensed as a massage
8 therapist in Oregon, are permanently enjoined from any practice of massage therapy, including
9 acupressure, in Oregon;

10 F. Respondents, unless Ralph D. Mitchell ever obtains an undergraduate degree
11 from an accredited university or an unaccredited school that meets the requirements of ORS
12 348.609, are permanently enjoined from representing that Ralph D. Mitchell has a degree from
13 any college or university, including Berean Bible College, now in Poway, California. If Ralph
14 D. Mitchell has or obtains a degree from an unaccredited university that meets the requirements
15 of ORS 348.609, Respondents shall include all disclaimers required by ORS 348.609 along with
16 each reference to said degree;

17 G. Respondents, unless Ralph D. Mitchell ever obtains a graduate degree from an
18 accredited university or an unaccredited school that meets the requirements of ORS 348.609,
19 are permanently enjoined from representing that Ralph D. Mitchell has a graduate degree,
20 including a Ph.D or a Doctor of Ministry, from any university. Such representations include,
21 but are not limited to, plaques; any verbal statements representing that Ralph D. Mitchell has
22 any kind of graduate degree; Respondents' use of the abbreviations "Ph.D.," "D.Min.," and
23 "HHP" in reference to Ralph D. Mitchell's name; and Respondents' references to a "Doctorate
24 of Ministry" or Ph.D. of "Clinical Psychology" held by Ralph D. Mitchell. Should Ralph D.
25 Mitchell obtain a graduate degree from an unaccredited university that meets the requirements
26 of ORS 348.609, Respondents shall include all disclaimers required by ORS 348.609 along with

1 each reference to said degree; however, under *no* circumstances, will Respondents claim an
2 advanced degree from any of the following schools: Shelbourne University, Berean Bible
3 College (of San Clemente, CA and/or San Juan Capistrano, CA and/or any other location), and
4 the University of Biblical Studies;

5 I. Respondents are enjoined from representing that Ralph D. Mitchell "graduated"
6 from the International College of BioEnergetic Medicine and that any education that Ralph D.
7 Mitchell obtained from the International College of BioEnergetic Medicine constitutes anything
8 more than a certificate or training course;

9 J. Respondents, unless Ralph D. Mitchell is ever again certified by the National
10 Christian Counselors Association, are permanently enjoined from representing that Ralph D.
11 Mitchell is certified by the National Christian Counselors Association and listing the acronym
12 "NCAA" on any materials related to Respondents' business;

13 K. Respondents shall not make any express or implied statements in the offer or sale
14 of herbal/vitamin products or in providing any service or testing (not otherwise forbidden by
15 this AVC) that has the capacity, tendency, or effect of deceiving or misleading or that fails to
16 state any material fact, the omission of which deceives or tends to deceive;

17 L. Respondents, in connection with the labeling, advertising, promotion, offering
18 for sale, sale, or distribution of any products or services, shall not make any representation,
19 expressly or by implication, concerning such products' or services' (not otherwise prohibited)
20 efficacy, performance, safety, or benefits, unless, at the time the representation is made,
21 Respondents possess and rely on competent and reliable scientific evidence that substantiates
22 the representation;

23 M. For purposes of this AVC, "*competent and reliable scientific evidence*" means
24 tests, analysis, research, studies, or other evidence based on the expertise of true professionals in
25 the relevant area that have been conducted and evaluated in an objective manner by persons
26

1 qualified to do so, using procedures generally accepted in the profession to yield accurate and
2 reliable results;

3 N. Respondents shall, unless they obtain approval from the Oregon Office of
4 Degree Authorization, are permanently enjoined from representing that they can offer college
5 credit or degrees for any of their trainings, including their leadership seminars;

6 O. Respondents shall cease marketing, offering for sale, and administering
7 procedures using galvanic skin response devices, including, but not limited to, the meridian
8 stress assessment device(s) manufactured by BioMeridian, to diagnose or treat any disease or
9 illness; and in any event will not use such device outside the certification of the Federal FDA or
10 the manufacturer's specifications. If the FDA approves such a device for certain uses then
11 Respondents may use the machine for such certain uses if following the manufacturer's
12 specifications and protocols. If Respondents do use such devices with a customer for any
13 purpose not prohibited by this AVC the customer must sign a paper, copy to the customer, that
14 states Respondents are not licensed health care professionals (unless they are so licensed), that
15 the device cannot in any event be used to diagnose or treat any disease or illness and that
16 important health care decisions should be made by a licensed health care professional.

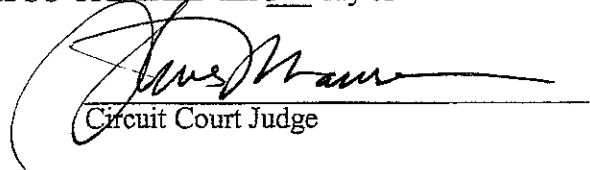
17 P. For purposes of this AVC, "*licensed healthcare professional*" shall be defined as
18 an individual who maintains a license under one or more of the health professional regulatory
19 boards identified in ORS 676.160. Under this AVC, the designation "*licensed healthcare*
20 *professional*" is only valid so long as the individual claiming the designation maintains an active
21 and verifiable license under the regulatory board in question;

22 Q. Respondents, unless and until they are able to produce competent and reliable
23 verifiable scientific evidence to DOJ, and in DOJ's sole discretion such evidence substantiates
24 the health or medical value of ion footbath treatments (like the Body Cleanse™), are
25 permanently enjoined from marketing, promoting, offering for sale, and administering all ion
26 footbath treatments, including the Body Cleanse™ footbath; and

1 R. Until such time as Ralph D. Mitchell has published "pioneering work" in the
2 field of Bio-energetic psychotherapy, Respondents shall cease representing that he has
3 completed such work. No designation on Respondents' part that Ralph D. Mitchell's work is
4 "pioneering" shall be accepted without affidavits from at least two well respected professionals
5 in the applicable field. DOJ will determine, in its sole discretion, whether an individual is well
6 respected.

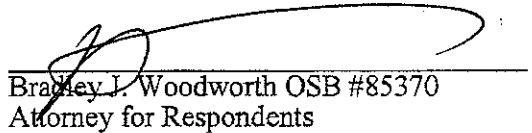
7 **APPROVAL BY COURT**

8 APPROVED FOR FILING and SO ORDERED this 26th day of
9 September, 2007.

10 
Circuit Court Judge

11 **REVIEW BY RESPONDENTS' ATTORNEY**

12 Approved as to form.

13 
14 Bradley J. Woodworth OSB #85370
15 Attorney for Respondents

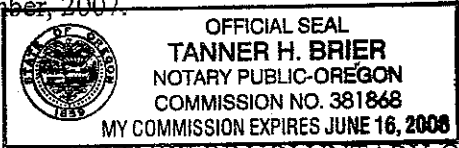
16 **RESPONDENTS' SIGNATURES AND ACKNOWLEDGMENTS**

17 Respondents have read and understand this agreement and each of its terms.
18 Respondents agree to each and every term.

19 **Individual Respondent**

20 Ralph D. Mitchell
21 Ralph D. Mitchell
22 RALPH D. MITCHELL
23 Print Name
24 710 N. Molalla
25 Molalla OR
26 Address

27 SUBSCRIBED AND SWORN to before me this 26th day of
28 September, 2007.



29 Tanner H. Brier
30 Notary Public for Oregon
31 Commission expires 6-16-08

1

Corporate Respondent

2

I, Ralph D. Mitchell, being first duly sworn on oath depose and say that I am the sole member and registered agent of Greenhouse Health & Wellness Center, LLC and am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of Greenhouse Health & Wellness Center, LLC and bind the same to the terms hereof.

3

4

Ralph D. Mitchell
Ralph D. Mitchell

5

6

RALPH D. MITCHELL
Print Name

7

8

PRESIDENT
Title

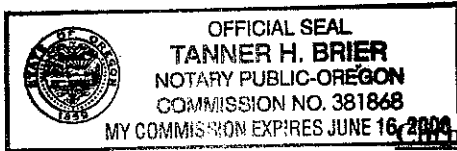
9

Address 215 C. MAIN ST.
Medalla, Or.

10

SUBSCRIBED AND SWORN to before me this 26th day of September, 2007.

11



Tanner H. Brier
Notary Public for Oregon
Commission expires 6-16-08

12

13

14

Corporate Respondent

15

I, Ralph D. Mitchell, being first duly sworn on oath depose and say that I am the President of Impact Christian Ministries an Oregon Domestic Non Profit and am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of Impact Christian Ministries and bind the same to the terms hereof.

16

17

Ralph D. Mitchell
Ralph D. Mitchell

18

19

RALPH D. MITCHELL
Print Name

20

21

PRESIDENT
Title

22

Address 215 C. MAIN ST.
Medalla, OR

23

SUBSCRIBED AND SWORN to before me this 26 day of September, 2007.

24



Tanner H. Brier
Notary Public for Oregon
Commission expires 6-16-08


25

26

ACCEPTANCE OF DOJ

Accepted this 26 day of September, 2007.

HARDY MYERS
Attorney General



Thomas K. Elden #79036
Senior Assistant Attorney General
Department of Justice
Of Attorneys for Plaintiff
Financial Fraud/Consumer Protection Section
1162 Court Street NE
Salem, OR 97301-4096
Phone: (503) 947-4333
Fax: (503) 378-5017
Email: thomas.elden@doj.state.or.us

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COPY

**BEFORE THE OREGON BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON**

In the Matter of) **FINAL ORDER**
)
TRACY NEELY, MSW.) Hearing Officer Panel Case 20011643
) Agency Case OBPE 00-020

HISTORY OF THE CASE

Tracy Neely, MSW (Respondent or Neely) challenges the Board of Psychologist Examiners' (the Board) proposed imposition of a civil penalty in the amount of \$1,000 pursuant to ORS 675.110(5). On February 22, 2001, the Board issued a Notice of Proposed Civil Penalty (Notice).

The Notice proposed to impose a civil penalty of \$1,000 on Neely because the Board believed that Neely violated ORS 675.020(1)(b) and ORS 675.020(2) by authoring a January 21, 2000 report titled "Psychological Evaluation" when he was not licensed to practice psychology in the State of Oregon under ORS 675.010 to 675.150. Neely also failed to respond to the Board's inquiry in writing until after the Notice was issued. Thereafter, Neely requested a hearing challenging the proposed penalty.

On May 23, 2001, the Board referred this matter to the Hearing Officer Panel for hearing pursuant to Neely's request for hearing. On July 11, 2001, Administrative Law Judge Ella D. Johnson conducted a telephone hearing in Salem, Oregon. Assistant Attorney General Caren Rovics represented the Board and called Respondent and Board Investigator Rick Sherbert (Sherbert) as witnesses. Respondent represented himself *pro se*.

After review and consideration of the entire record, a Proposed Order was issued by Administrative Law Judge Johnson finding that Neely violated ORS 675.020(1)(b) and ORS 675.020(2), and assessed a civil penalty of \$1,000 pursuant to ORS 675.110(5). Exceptions were filed with the Board by Neely on August 17, 2001. The Board considered Neely's exceptions at its October 12, 2001 Board meeting.

ISSUES

1. Whether Respondent violated ORS 675.020(1)(b) and ORS 675.020(2) by authoring a January 21, 2000 report titled "Psychological Evaluation;" and
2. If so, whether Respondent's violation warrants assessment of a civil penalty in the amount of \$1,000 pursuant to ORS 675.110(5).

EVIDENTIARY RULING

The Board's Exhibits 1 – 5 were admitted into the record without objection. The Board stipulated that the January 21, 2000 "Psychological Evaluation" was the only violation at issue.

FINDINGS OF FACT

1. Neely has been a clinical social worker since 1997 and holds a Master of Social Work Degree (MSW) but is not currently licensed by the Board of Clinical Social Workers. He has a practice in Ontario, Oregon. On January 21, 2000, and at all times relevant to this matter, Neely was not licensed to practice psychology in the State of Oregon. (Exs. 1, 3, 4 and Neely's testimony.)
2. In June 2000, the Board received a copy of a report titled "Psychological Evaluation" authored by Neely and dated January 21, 2000. (Ex. 1.)
3. On June 29, 2000, Sherbert made contact with Neely by telephone. Sherbert told Neely that the Board had a copy of the report and that his use of the term "psychological" was a violation of the statute. Neely indicated that he was not aware of that restriction and would not do that again. Neely agreed to respond in writing to the Board. (Sherbert's testimony.)
4. Sherbert's normal practice was to tell the individual being investigated that the Board was authorized to assess a penalty of up to \$1,000 for violations of the "Practice Act" but that it was unlikely that the Board would do so if he responded in writing assuring the Board that he would discontinue the practice and would not be repeated. (Sherbert's testimony.)
5. Sherbert subsequently sent Neely a letter on June 29, 2000, along with a copy of the Board's statutes and rules, asking him to respond in writing concerning his use of the words "Psychological Evaluation" after he had reviewed the statutes and rules. Neely received the letter but failed to respond to the Board's request. (Ex. 1 and Neely's testimony.)
6. Because Neely did not respond, Sherbert sent Neely a "cease and desist" letter on October 17, 2000, directing him to respond in writing within 30 days. The letter warned Neely that he might be subject to a civil penalty in the amount of \$1,000. Neely received the letter on October 27, 2000. Sherbert did not speak to Neely between October 17, 2000 and February 22, 2001. (Exs. 1, 5 and testimony of Sherbert.)
7. Neely failed to respond, and on February 22, 2001, the Board issued the Notice. (Exs. 1, 5 and testimony of Sherbert and Neely.)

8. Following the Notice, Sherbert talked to Neely by telephone but did not tell him or assure him that the Board would not assess a civil penalty or that the penalty would be withdrawn or reduced. Sherbert also repeatedly directed Neely to respond in writing to the Board's request. (Testimony of Neely and Sherbert.)
9. On March 15, 2001, Neely sent his first written response to the Board. He apologized for his "mistake" and his failure to timely respond in writing as the Board requested. On that same date, Neely filed a request for hearing challenging the Notice. (Exs. 2, 4.).
10. Neely represents that he has not been subject to prior disciplinary action. (Neely's testimony.)

CONCLUSIONS OF LAW

1. Neely used the title "Psychological Evaluation" in his January 21, 2000 report when he was not licensed pursuant to ORS 675.010 to 675.150.
2. A civil penalty in the amount of \$1,000 is warranted.

OPINION

Respondent challenges both his alleged violation of ORS 675.020(1)(b) and ORS 675.020(2) and the civil penalty assessed. In that regard, the Board has the burden of proving these allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence).

Alleged Violation

Neely concedes that he used the title "Psychological Evaluation" in his January 21, 2000 report but argues that it was an inadvertent mistake and that he was just trying to use the same wording that was used by the agency requesting the evaluation. However, the Board does not find his argument persuasive.

ORS 675.020 states in relevant part:

"(1) To safeguard the people of the State of Oregon from the dangers of unqualified and improper practice of psychology, no person shall, unless exempted from the provisions of ORS 675.020 to 675.150 by ORS 675.090;

“* * * *

“(b) Represent oneself to be a psychologist without first being licensed under ORS 675.010 to 675.150.

“(2) As used in subsection (1)(b) of this section, ‘represent oneself to be a psychologist’ means to use any title or description of services incorporating the words ‘psychology,’ ‘psychological,’ ‘psychotherapy’ or ‘psychologist,’ or to offer or render to individuals or to groups of individuals services included in the practice of psychology.” (Emphasis added.)

The statutory scheme which governs the practice of psychologists, ORS 675.010 to 675.150 (the Practice Act) does not provide an exemption for ignorance of the law. ORS 675.020 clearly prohibits use of the word “psychological” in a title or a description of services. It also defines to “represent oneself as a psychologist” to encompass use of the word “psychological” in a title or description of services in addition to the practice of psychology. The statute does not require that the violation be intentional or with knowledge of the statute.

Neely next argues that, as a “Clinical Social Worker Associate¹,” he is entitled to perform evaluations of a psychosocial nature and that, inasmuch as the functions of psychologists and clinical social workers overlap, he is exempted from ORS 675.020 by ORS 675.090.

ORS 675.090 states in relevant part:

“(1) ORS 675.010 to 675.150 does not apply to:

“* * * *

“(b) A person who is either

“* * * *

“(C) A person pursuing certification or licensure or a graduate degree in any of the certified or licensed professions otherwise exempted from ORS 675.010 to 675.150.

¹ A “Clinical Social Worker Associate” is defined by ORS 675.510(3) as “a person who holds a master’s degree from an accredited college or university accredited by the Council on Social Work Education whose plan of practice and supervision has been approved by the [State Board of Clinical Social Workers], and who is working toward licensure in accordance with ORS 675.510 to 675.600 and rules adopted by the [State Board of Clinical Social Workers].”

“(c) A person who is licensed or certified by the State of Oregon to provide mental health services, provided that the services are rendered within the person’s lawful scope of practice and that the person does not use the title “psychologist” in connection with the activities authorized in this paragraph.

“(d) A person who is licensed, certified or otherwise authorized by the State of Oregon to render professional services, provided that the services are rendered within the person’s lawful scope of practice and that the person does not use the title ‘psychologist’ in connection with the activities authorized under this paragraph.” (Emphasis added.)

Although the statute provides an exemption from ORS 675.020 for individuals who are licensed, certified or otherwise authorized by the State of Oregon and providing services within the lawful scope of practice, without exception none of these individuals are authorized to use the title “psychologist” in connection with their professional services. Moreover, at the time of the hearing, Neely was not licensed, certified, or otherwise authorized to perform the work of a clinical social worker. He argued, however, that he was an “Associate Clinical Social Worker” pursuing his licensure as a clinical social worker. ORS 675.090(b)(C) provides an exemption from ORS 675.020 for individuals who are pursuing licensure or certification but also prohibits such individuals from using the title “psychologist” in connection with their professional services. However, Neely failed to provide any evidence of his licensure status except for his own testimony. But even if he was an individual who was pursuing licensure, he was not authorized to use the title “psychologist.”

The Board interprets the provisions of ORS 675.090 consistent with ORS 675.020 to prohibit the use of the word “psychological” as a derivative of “psychologist.” Even when there is another plausible and equally compelling interpretation, the agency’s interpretation of a statute the agency is charged with enforcing is entitled to deference and will generally be upheld unless the agency’s interpretation is unreasonable or inconsistent with the statute. *Booth v. Tektronix*, 312 Or 463 (1991); *Pease v. National Council on Comp. Ins.*, 128 Or App 471, 475 (1994). The Board’s interpretation of ORS 675.090 is consistent with ORS 675.020 and is not unreasonable or inconsistent with the statute. Consequently, the Board concludes that Neely violated ORS 675.020(1)(b) and ORS 675.020(2) by using the word “psychological” in the title of his January 21, 2000 report.

Civil Penalty

Neely argued that the assessment of the maximum penalty of \$1,000 in this matter was “outlandishly harsh and severe.” In support of his argument, Neely contended that Sherbert misled him with assurances that initial violations were routinely handled by a

“stiff warning.” He also testified that, although he did not respond in writing to the Board, he apologized several times to Sherbert and assured him that he understood the law and that there would be no further violations.

ORS 675.110 states in pertinent part:

“The State Board of Psychologist Examiners shall have the following powers, in addition to the powers otherwise granted under ORS 675.010 to 675.150, and shall have all powers necessary or proper to carry the granted powers into effect:

“* * * *

“(5) To impose civil penalties not to exceed \$1,000.”

The Board imposed the maximum penalty of \$1,000. Although Sherbert confirmed the portion of Neely’s testimony concerning whether a lesser sanction was available for initial violations, Sherbert also testified that he always told Neely orally and in writing to respond to the Board’s investigation in writing. Sherbert credibly testified that after the cease and desist letter was sent on October 17, 2000, he never told Neely that it was unlikely that a civil penalty of \$1,000 would be assessed or that it would be reduced to a “stiff warning.” This contradicts Neely’s testimony that Sherbert made those statements after the October 17, 2000 letter was issued. Neely’s testimony is not persuasive inasmuch as he is a poor historian with respect to his conversations with Sherbert. The Board finds that Neely was not misled.

At hearing, the Board explained that it proposed the maximum civil penalty both because of Neely’s violation of the statute and his failure to timely respond to the Board’s inquiry by indicating that he understood the law and that there would be no further violations. Even though Neely may have given assurances to Sherbert that he understood the law and that such violations would not reoccur, the Board wanted his assurances in writing. Neely failed to provide written assurances prior to issuance of the Board’s Notice. Even at hearing, Neely did not seem to understand the Board’s reason for assessing the penalty or the Board’s need to have his response in writing.

With respect to the amount of the penalty, Neely argued that the amount was “outlandishly harsh and severe.” The Board responded that assessment of the maximum penalty was within its discretion inasmuch as the statute places no restrictions on its ability to assess the maximum civil penalty so long as the penalty does not exceed \$1,000. The Board does not find the amount of the penalty to be “outlandishly harsh and severe” in light of Neely’s failure to respond to the Board’s inquiry as directed and the Board’s need to get Neely’s attention, thereby insuring that there would be no further violations. In light of these circumstances, a civil penalty of \$1,000 is warranted.

ORDER

IT IS HEREBY ORDERED that Tracy Neely is assessed a civil penalty in the amount of \$1,000 for violation of ORS 675.020(1)(b) and 675.020(2).

Dated this 7 day of January, 200~~8~~^{2 JB} at Salem, Oregon.

Jana Zeedyk Ph.D.

Jana Zeedyk, Ph.D.

Chair

RIGHT TO JUDICIAL REVIEW:

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

COPY

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

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4 In the Matter of:) Case No. 00-20
5 TRACY NEELY, MSW,)
6 Licensee.) NOTICE OF PROPOSED
CIVIL PENALTY
(ORS 675.110(5))

7 TO: TRACY NEELY, MSW,

8 The Board of Psychologist Examiners (Board) is the state agency responsible for
9 licensing, disciplining and regulating psychologists in the State of Oregon.

10 1.

11 The Board proposes to impose a civil penalty against Tracy Neely, MSW, (Mr. Neely)
12 for violations of ORS 675.020(1)(b) and ORS 675.020(2) (improper practice of psychology by
13 representing oneself to be a psychologist by use of any title or description of services
incorporating words psychology, psychological, psychotherapy or psychologist).

15 2.

16 At all times material herein, Mr. Neely was not licensed to practice psychology in the
17 State of Oregon under ORS 675.010 to 675.150. The facts and the alleged statutory violation of
18 ORS 675.020(1)(b) and ORS 675.020(2) supporting this proposed civil penalty are described as
19 follows:

20 2.1 In June of 2000 the Board received a copy of a "Psychological Evaluation"
21 written by Tracy Neely, MSW, dated January 21, 2000.

22 2.2 On June 29, 2000 the Board, through it's Investigator, Rick Sherbert, wrote to Mr.
23 Neely stating that his January 21, 2000 report titled "Psychological Evaluation" was in violation
24 of ORS 675.020(1) and ORS 675.020(2). Mr. Neely was sent a copy of the Board's statutes and
25 rules and he was requested to respond, in writing, to the Board after reviewing these documents.

26

1 - NOTICE OF PROPOSED CIVIL PENALTY (ORS 675.110(5)) (Tracy Neely, MSW)
CR/cr:GEN72964

1 2.3 As of October 17, 2000, Mr. Neely had not written to the Board. On that date the
2 Investigator for the Board sent another letter to Mr. Neely advising of possible legal sanctions for
3 using any title or description of services incorporating the words psychology, psychotherapy or
4 psychologist, including a civil penalty of up to \$1,000. This letter directed Mr. Neely to respond
5 to the Board within thirty (30) days of receipt of the letter. The October 17, 2000 letter was sent
6 to Mr. Neely by certified mail and the return receipt has a signature date of October 27, 2000.

7 2.4 To date, Mr. Neely has not responded to the Board's letter of October 17, 2000.

8 3.

9 The Board alleges that because Mr. Neely has described and identified his evaluations by
10 use of the word "psychological" this act violates ORS 675.020(1)(b) and ORS 675.020(2).

11 4.

12 Therefore, the Board proposes to assess a civil penalty of \$1,000.00 under ORS 675.110(5).

13 5.

14 Mr. Neely has the right, if he requests, to have a formal contested case hearing before the
15 Board or its hearings officer to contest the matter set out above, as provided by Oregon Revised
16 Statutes 183.310 to 183.550. At the hearing, Mr. Neely may be represented by an attorney and
17 subpoena and cross-examine witnesses.

18 6.

19 That request for hearing must be made in writing to the Board, must be received by the Board
20 within thirty (30) days from the mailing of this notice and must be accompanied by a written answer
21 to the charges contained in this notice.

22 7.

23 If Mr. Neely requests a hearing, before commencement of that hearing, Mr. Neely will be
24 given information on the procedures, right of representation, and other rights of parties relating to the
25 conduct of the hearing as required under ORS 183.413-415, before commencement of the hearing.

26
e 2 - NOTICE OF PROPOSED CIVIL PENALTY (ORS 675.110(5)) (Tracy Neely, MSW)
CR/cr:GEN72964

2 If Mr. Neely fails to request a hearing within 30 days, or fails to appear at the hearing as
3 scheduled, the Board may issue a final order by default and impose the above sanctions against Mr.
4 Neely's submissions to the Board to-date regarding the subject of this disciplinary case and all
5 information in the Board's files relevant to the subject of this case automatically become part of the
6 evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie
7 case. ORS 183.415(6).

8 DATED this 22 day of February, 2001.

9 BOARD OF PSYCHOLOGIST EXAMINERS
10 State of Oregon

11 Michelle Whitehead Ph.D.
12 Michelle Whitehead, Ph.D.
13 Chair

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the Conduct of:

SCOTT O'NEAL.

Respondent.

STIPULATED FINAL ORDER

1.

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists and for regulating the practice of psychology in the State of Oregon. The Board is also authorized to investigate and enforce its laws against the unlicensed practice of psychology.

2.

On July 22, 2005, the Board issued Notice intent to impose Civil Penalties against Respondent for violations ORS 675.020(1)(a) and (b), and ORS 675.020(2). The Board and Respondent wish to resolve this matter by entry of this Stipulated Order. Respondent understands he has the right to a contested case hearing under the Administrative Procedures Act (chapter 183), Oregon Revised Statutes and fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records. The parties hereby stipulate to entry of the following:

1. By providing psychotherapy services to K as contained in the Board's Notice, Respondent violated ORS 675.020(1)(a).
2. By referring to himself as a "Psychotherapist" and referring to his services as "psychotherapy" as contained in the Board's Notice, Respondent violated ORS 675.020(1)(b) and ORS 675.020(2).

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3.


NOW THEREFORE, in consideration of the above, Respondent and the Board agree to entry of an Order as follows:

1. Respondent is hereby assessed civil penalties in the sum of \$1000.00. The civil penalties are due and payable within ten days from the date of entry of this final order into the Board's records, as provided under ORS 183.745.
2. Respondent agrees to refrain from engaging in any conduct that constitutes the practice of psychology. For purposes of this agreement, the term "practice of psychology" has the meaning contained in ORS 675.010(4) and OAR 858-010-0001.
3. Respondent agrees to refrain from representing himself to be a psychologist, as provided under ORS 675.020(1)(b) and ORS 675.020(2).

IT IS SO STIPULATED this 20TH day of MARCH 2006.


Scott O'Neal

IT IS SO ORDERED this 24th day of MARCH 2006.


Martin Pittioni, Executive Director
Board of Psychologist Examiners
State of Oregon

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BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the conduct of

SCOTT O'NEAL

Respondent.

AGENCY NO: OBPE #04-017

NOTICE OF INTENT TO IMPOSE
CIVIL PENALTY

TO: Scott O'Neal

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists, and for regulating the practice of psychology in the State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed practice of psychology in the State of Oregon.

1.

The Board proposes to impose civil penalties totaling \$2000.00 against Respondent pursuant to ORS 675.110(5),(8) and (10); ORS 675.070(1)(g); ORS 675.070(2)(i) for violation of the following Board statutes and rules: ORS 675.020(1)(a) and (b); ORS 675.020(2); ORS 675.070 (i) and (j), and OAR 858-010-0001. Respondent's violation of the preceding statutes and rule is more particularly described as follows:

2.

2.1 Between June 30, 2003 and February 26, 2004, Respondent provided psychotherapy services to patient K, a 46-year-old woman referred by nurse practitioner Bonnie Acosta for evaluation of depression and anxiety.

2.2 On or about February 26, 2004, Respondent completed a psychological assessment/impression of the same patient.

- 1 2.3 As part of the same psychological assessment completed by Respondent,
 2 Respondent administered to patient K the Clinician Administered PTSD Scale, a
 3 diagnostic tool used in the diagnosis and treatment of Posttraumatic Stress
 4 Disorder.
- 5 2.4 As part of the same psychological assessment completed by Respondent,
 6 Respondent assessed patient K as suffering from “dysfunctional depression,
 7 anxiety, and PTSD”.
- 8 2.5 As part of the same psychological assessment completed by Respondent,
 9 Respondent diagnosed patient K with the following DSM-IV (Diagnostic and
 10 Statistical Manual) Axis I conditions: Posttraumatic Stress Disorder; Dysthymic
 11 Disorder; and Obsessive-Compulsive Disorder (OCD).
- 12 2.6 As part of Respondent’s provision of psychotherapy services to patient K,
 13 Respondent represented himself as a “Psychotherapist” in the psychological
 14 assessment completed by Respondent. Respondent’s use of the title
 15 “Psychotherapist” incorporates the word “psychotherapy”.
- 16 2.7 As part of Respondent’s provision of psychotherapy services to patient K,
 17 Respondent referred to the services being provided as “psychotherapy” and
 18 labeled his assessment as “Psychological assessment/Impression”. Respondent’s
 19 description of the services provided to patient K incorporate the words
 20 “psychology”, “psychological” and “psychotherapy”.
- 21 2.8 The services offered and rendered to patient K are services that are included in the
 22 practice of psychology.

23 3.

24

- 25 3.1 The Board alleges that Respondent’s acts and conduct described in paragraphs 2.1
 26 to 2.5, individually or collectively, constitute the unlicensed practice of

1 psychology, in violation of ORS 675.020(1)(a) as the practice of psychology is
2 defined under ORS 675.010(4) and OAR 858-010-0001

3 3.2 The Board alleges Respondent's acts and conduct described in paragraph 2.6 to
4 2.8, either individually or collectively, constitute an unlawful representation that
5 Respondent is a psychologist, in violation of ORS 675.020(1)(b) and ORS
6 675.020(2).

7 4.

8 The Board has authority to impose civil penalties against Respondent pursuant to ORS
9 675.070(1)(g); ORS 675.020(2); and ORS 675.110(5).

10 5.

11 Respondent has the right, if Respondent requests, to have a formal contested case hearing
12 before a hearings officer to contest the matter set out above, as provided by ORS 183.310 to
13 183.550. At the hearing, Respondent may be represented by an attorney and subpoena and cross-
14 examine witnesses.

15 6.

16 If Respondent requests a hearing, the request must be made in writing to the Board, must be
17 received by the Board within thirty (30) days from the mailing of this notice, and must be
18 accompanied by a written answer to the charges contained in this notice. Before commencement of
19 the hearing, Respondent will be given information on the procedures, right of representation, and
20 other rights of parties relating to the conduct of the hearing as required under ORS 183.413-415.


21 7.

22 If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as
23 scheduled, the Board may issue a final order by default and impose the above sanctions against
24 Respondent. Respondent's submissions to the Board regarding the subject of this disciplinary case
25 and all information in the Board's files relevant to the subject of this case automatically become part
26

1 of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima*
2 *facie* case. ORS 183.415(6).

3
4 DATED this 22nd day of July, 2005.

5 BOARD OF PSYCHOLOGIST EXAMINERS
6 State of Oregon

7 
8 Martin Pittioni, Executive Director
9 Oregon Board of Psychologist Examiners

Notice of Contested Case Rights and Procedures

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 and ORS 675.010 to 675.150 of the Oregon Revised Statutes; the administrative rules of the Board of Psychologist Examiners ("Board"), OAR Chapter 858, and the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700.
2. **Right to an attorney.** You may be represented by an attorney at the hearing. Most persons are represented by counsel. You are not required to be represented by counsel, unless you are an agency, corporation or association. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The hearing officer or administrative law judge will decide whether to grant such a request. The Board will be represented by an attorney.
3. **Administrative Law Judge.** The person presiding at the hearing is known as the administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.
4. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage to the person subpoenaed is your responsibility.
5. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Board's proposed action is appropriate. The order of presentation of evidence is normally as follows:
 - a. Testimony of witness and other evidence of the Board in support of its proposed action.
 - b. Testimony of your witnesses and your other evidence.
 - c. Rebuttal evidence by the Board and by you.
6. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. You should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
7. **Admissible evidence.** Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the ALJ will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.
 - b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts, will be received in evidence.
 - c. Writings. Written documents including letters, maps, diagrams and other written material will be received in evidence.
 - d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.
- 8. Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
- a. The evidence is unreliable;
 - b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
 - c. The evidence is unduly repetitious and duplicates evidence already received.
- 9. Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.
- 10. Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by use of a tape recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. You may obtain a transcript of the court reporter's notes upon payment of a transcription fee.
- 11. Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will be notified when you may appear and make oral argument to the agency.
- 12. Final Order.** The Board will render the final order in this case. The Board may modify the proposed order issued by the ALJ. If the Board modifies the proposed order in any substantial manner, the Board in its order will identify the modifications and will provide an explanation as to why the Board made the modifications. The Board may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.
- 13. Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See Oregon Revised Statutes 183.480 et seq.*

BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

In the Matter of the Unlicensed Practice as a)
Psychologist of:)

WILLIAM H. REID.)
_____)

CASE NO. OBPE #02-05

STIPULATED AGREEMENT
SUSPENDING IMPOSITION
OF CIVIL PENALTIES

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists and for regulating the practice of psychology in the State of Oregon. The Board is also authorized to investigate and enforce its laws against the unlicensed practice of psychology. William H. Reid (Reid) is not licensed by the Board to practice psychology in the State of Oregon.

On February 22, 2002, the Board issued Notice of Proposed Civil Penalty against Reid for alleged violations of ORS 675.020(1) and (2) (practicing psychology without a license, and misrepresenting himself to be a psychologist, in the operation of his website "OnlineTinnitus").

The Board and Reid wish to resolve this matter by entry of this Stipulated Agreement. Reid understands he has the right to a contested case hearing under the Administrative Procedures Act (chapter 183), Oregon Revised Statutes and fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this agreement in the Board's records.

The parties hereby stipulate to entry of the following agreement:

1. Reid agrees to keep the website "OnlineTinnitus" offline (deactivated), and agrees not to misrepresent himself as a psychologist or otherwise engage in the unlicensed practice of psychology in any manner.
2. The Board hereby suspends imposition of the two \$1000 civil penalties as proposed in the Notice of Proposed Civil Penalty, provided that Reid does not breach his responsibilities under this Stipulated Agreement.

3. The Board will periodically monitor the Internet to ensure Reid's compliance with the terms of this Stipulated Agreement.
4. Reid stipulates that violation of any of the terms of this Stipulated Agreement will result in entry of a Final Order imposing the civil penalties as proposed in the Notice of Proposed Civil Penalty. Reid also stipulates that violation of this Stipulated Agreement will not limit any additional action that the Board may take to enforce its laws.

IT IS SO STIPULATED this 23 day of Aug, 2002,

William H. Reid
William H. Reid

IT IS SO ORDERED this 27th day of August, 2002,

Jamie M. Côté
~~Jana Zeedyk, Ph.D., Chair~~ Jamie M. Côté, Executive Director
Oregon Board of Psychologist Examiners

If it were not for my age & ill health I would not think of agreeing to this - you are wrong - misguided -