

COPY

BEFORE THE  
BOARD OF CLINICAL SOCIAL WORKERS  
STATE OF OREGON

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In the Matter of the License as )  
a Clinical Social Worker of: )  
V. JASON HILTON, LCSW, )  
Licensee. )  
\_\_\_\_\_ )

STIPULATED FINAL ORDER

7 The Board of Clinical Social Workers of the State of Oregon  
8 (Board) is the state agency responsible for licensing and  
9 disciplining clinical social workers in the State of Oregon.  
10 V. Jason Hilton, LCSW (Licensee), is licensed by the Board as a  
11 clinical social worker in the State of Oregon.

12 1.

13 On June 3, 1997, the Board served Licensee with a Notice  
14 of Intent to Take Disciplinary Action and informed Licensee that  
15 it intended to revoke his license to practice as a social worker  
16 in the State of Oregon for violations of ORS 675.540(1) and  
17 OAR 877-30-070.

18 2.

19 On June 12, 1997, Licensee requested a hearing, and filed a  
20 First Amended Answer to the Notice of Intent to Take Disciplinary  
21 Action on August 15, 1997, and a Second Amended Answer to the  
22 Notice of Intent to Take Disciplinary Action on October 29, 1997.

23 3.

24 On November 3, 1997, a hearing was convened on the matter to  
25 determine whether Licensee's license as a clinical social worker  
26 should be revoked or whether some lesser sanction should be imposed.

1 4.

2 On April 7, 1998, a Proposed Order was issued by Hearings  
3 Officer Paul Hegstrom. Licensee submitted written exceptions to the  
4 Board on April 27, 1998, and on June 18, 1998, the Board issued a  
5 Final Order Imposing Discipline (Final Order), a copy of which is  
6 attached hereto and marked Exhibit A and made a part hereof.

7 5.

8 Licensee was given the opportunity to seek judicial review of  
9 the Final Order, and on August 18, 1998, Licensee filed a petition  
10 for judicial review.

11 6.

12 The Board and Licensee stipulate and agree that this  
13 disciplinary action may be concluded by the entry of this Stipulated  
14 Final Order upon the following terms:

15 6.1 The Board agrees to provide Licensee with a copy of the  
16 transcript of his hearing.

17 6.2 The Board agrees to modify the Final Order by deleting  
18 paragraph 5 on page 19 (the requirement that Licensee pay the cost  
19 of his hearing).

20 6.3 The Board agrees to modify the first sentence of paragraph  
21 6 on page 19 of the Final Order to read as follows: "Licensee shall  
22 choose a supervisor from a list of five (or more) provided to him by  
23 the Board."

24 6.4 As to the Final Order, Licensee agrees to dismiss his  
25 appeal under ORS 19.410 and to waive all judicial review of the  
26 Final Order as modified and this Stipulated Final Order.



1 STATE OF OREGON  
2 STATE BOARD OF CLINICAL SOCIAL WORKERS

3 In the Matter of the )  
4 License as a Clinical )  
5 Social Worker of ) FINAL ORDER  
6 V. JASON HILTON, LCSW ) IMPOSING DISCIPLINE  
7 License No. 1289 )  
8 LICENSEE )

9 On October 10, 1997, the State Board of Clinical Social Workers (Board), gave notice  
10 of contested case proceedings to determine whether Licensee violated Oregon Revised Statute  
11 (ORS) 675.540 and Oregon Administrative Rules (OAR) 877-030-0070 and 877-030-0090 by  
12 committing unprofessional conduct as a Licensed Clinical Social Worker. The Board sought  
13 to consider whether Licensee's license as a Licensed Clinical Social Worker (LCSW), should  
14 be revoked or whether some lesser sanction should be imposed.

15 On November 3, 1997, a hearing was convened on the matter in Salem, Oregon.  
16 V. Jason Hilton, LCSW, (Licensee), license number 1289, appeared for the hearing  
17 represented by Mark C. Hoyt, Attorney at Law. The Board was represented by J. Kevin  
18 Shuba, Assistant Attorney General. Also present was Elizabeth A. Buys, Administrator,  
19 Board of Clinical Social Workers. Paul Hegstrom, Senior Hearings Officer with Oregon  
20 Department of Transportation, presided as the Hearings Officer. The hearing was conducted  
21 in accordance with ORS Chapter 183.

22 The Proposed Order was issued by Mr. Hegstrom on April 7, 1998. Licensee  
23 submitted written exceptions to the Board on April 27, 1998. At its June 2, 1998 meeting,  
24 the Board considered the entire record and issued this Final Order.

25 **A. SUFFICIENCY OF NOTICE**

26 Licensee argues that the October 10, 1997 Notice in this matter did not provide him  
with adequate notice of the allegations against him. The Notice specifically identified the  
violations (dual relationships), the clients involved and the statutes and rules implicated by  
Licensee's actions. The Board concludes that the Notice was sufficient under ORS 183.415

1 in that it contained the required plain statement of the facts and the references to the law.

2 **B. AMENDMENTS TO THE DISCIPLINARY NOTICE**

3 The Board alleged that Licensee failed to maintain proper boundaries with <sup>Mr. S.</sup> [REDACTED]  
4 <sup>Mrs. S.</sup> [REDACTED] and [REDACTED], thereby creating a dual relationship with potential for  
5 client exploitation, and which had a consequential effect on Mr. and Mrs. <sup>S.</sup> [REDACTED] and their  
6 two minor children. The Board specifically alleges that Licensee violated the ethical  
7 responsibilities of a Licensed Clinical Social Worker by his social and sexual relationship  
8 with Mrs. <sup>S.</sup> [REDACTED].

9 Licensee is alleged to have entered into a dual relationship before January 8, 1997, by  
10 having a relationship that increased the possibility of exploitation of clients, Mr. and  
11 Mrs. <sup>S.</sup> [REDACTED] now <sup>Mrs. H.</sup> [REDACTED]

12 Licensee is alleged to also have entered into a dual relationship by engaging in sexual  
13 acts or a sexual relationship before January 8, 1999 with Mrs. <sup>S.</sup> [REDACTED]

14 At hearing the Board amended the Notice Of Intent To Take Disciplinary Action  
15 issued on June 3, 1997. Licensee was initially given notice of alleged violation of ORS  
16 675.540(I)(d) and (e); OAR 877-030-0070(1) through (4), (6), and (7); and 877-030-0090(1).

17 The Board withdrew the alleged violations set forth in OAR 877-30-0070 (2) and (6).  
18 The Board also withdrew allegations of incompetence relating to performance of mediation  
19 services.

20 Also, on page 5 of his closing argument, Licensee argues that the Board's  
21 October 30, 1997 letter to Mr. Hoyt limited the scope of the Board's allegations. To be  
22 perfectly clear on this point, the letter notified Licensee that:

23 *The board does not plan to raise issues relating to the professional appropriateness of*  
24 *the therapy itself or the overlay of the mediation services with the therapy services.*  
*The factual issues the board will address are dual relationships in the context of a*

25 \_\_\_\_\_ <sup>Mrs. H.</sup>  
26 <sup>1/</sup> Upon marrying Licensee, she has become [REDACTED]. For simplicity, we  
refer to her as Mrs. [REDACTED] her legal name at the time of the alleged conduct.



1 trade [custody of the children] this week. Sorry.

2 Licensee argues that discovery violations require exclusion of the evidence.

3 However, no discovery violation occurred. These e-mail documents were not transmitted by  
4 <sup>Mr. S.</sup> [REDACTED]

to the Board until shortly before the hearing. In fact, the documents were

5 transmitted by facsimile to the Department of Justice on October 31, 1997 at 10:38, the

6 Friday before the November 3, 1997 hearing. Prior to that time, the Board did not know

7 that the documents existed. The Board could not produce documents which it did not

8 possess.

9 Under the Oregon Administrative Procedures Act (ORS chapter 183, hereinafter, the

10 APA), parties to a contested case are entitled to a list of witnesses and a copy of the

11 principal documents relied upon. A list of witnesses and the principle documents relied upon

12 were produced to the defendant on October 30, 1997 and October 31, 1997. The APA, in

13 the statutory section relating to the taking of depositions, provides that "an agency may, by

14 rule, prescribe other methods of discovery which may be used in proceedings before the

15 agency." ORS 183.425(2). The Board has adopted the Attorney General's Model Rules of

16 Procedure under the APA as its own rules of procedure. See OAR 877-001-0005. Those

17 rules do not specifically provide for discovery beyond the taking of depositions and the

18 issuance of subpoenas. See OAR 137-003-0025.

19 However, the APA evinces an intent fully to inform persons of the case before them.

20 See ORS 183.413. In *Gregg v. Racing Commission*, 38 Or App 19, 26, 588 P2d 1290

21 (1979), the court said that " \* \* \* a party to a contested case hearing has the right to be

22 generally informed of the case against him." While a party does not have the right to

23 examine all of an agency's reports, he should be able to inspect "all the material upon which

24 the agency proposes to rely as establishing facts in the pending case." Cooper, State

25 Administrative Law, ch. 10 section 2(C) at 363 (1965).

26 ///

1           Thus, it may be that the Licensee has a right to discover all the evidence the Board  
2 intended to rely upon in this case and to receive a list of the Board's witnesses prior to the  
3 hearing. However, given the date of receipt of these documents, it cannot be said that the  
4 Board intended to rely upon them when it issued its notice or any time prior to October 31,  
5 1997. Moreover, Licensee fails to demonstrate any prejudice to his rights or harm to his  
6 ability to present his case because of the failure to produce these documents prior to hearing.  
7 Therefore, Licensee was not prejudiced by the evidence in the presentation of his defense.  
8 Licensee had, in his possession, the principle documents relied upon by the Board. The e-  
9 mails are communications between Mr. and Mrs. <sup>S.</sup> [REDACTED], both of whom were present at the  
10 hearing and available to testify concerning the reliability of that evidence. Licensee has not  
11 argued that he was prevented from proffering witnesses or physical evidence at hearing by  
12 the "surprise" of the e-mails. Nor did Licensee request a continuance.

13           The central facts of this case are largely undisputed. Without prejudice and  
14 considering the late receipt of the documents by the Board, there is no reason to exclude the  
15 e-mails from the record. The Board conclude that no meaningful error has occurred by the  
16 lack of disclosure. Both the documents and related testimony are properly admitted.

17 **2. Marital Privilege:** At hearing, the Board sought to inquire into Licensee's sexual  
18 interactions with Mrs. <sup>S.</sup> [REDACTED] after he and she were married. The Board sought to compel  
19 Licensee to answer the question: "Have you [Mr. Hilton] had sex with <sup>mrs. S.</sup> [REDACTED] after you and  
20 she were married?" Licensee refused to answer the question. After the hearing, the record  
21 was left open and the Board and Licensee were given opportunity to provide written legal  
22 arguments concerning whether Licensee should be compelled to answer the question.

23           On December 16, 1997, the Hearings Officer, Mr. Hegstrom, ruled that Licensee was  
24 protected by ORS 40.255 (the Husband-Wife Privilege) as a confidential communication and  
25 it was therefore ordered that Licensee could not be compelled to answer. The record was  
26 then closed for submission of written closing arguments.

1           The Board, without deciding whether ORS 40.255 applies, makes its conclusions in  
2 this matter without considering the testimony from either Licensee or Mrs. <sup>5,</sup> [REDACTED] concerning  
3 their communication after they were married. Moreover, the Board draws no implications  
4 from the either the Licensee's or Mrs. <sup>5, 15</sup> [REDACTED] refusal to testify regarding communications  
5 they believe protected by ORS 40.255.

6                                   **D. LICENSEE'S ANSWER AND DEFENSES**

7           Licensee argues that this is a case about love and the sacred commitment of marriage.  
8 He argues that he has exhibited no pattern of behavior or history of questionable conduct.  
9 He also argues that, when viewed objectively, Licensee did not violate the ethical rules  
10 applicable to him, thus, he contends that the proposed sanction (revocation), is wholly  
11 inappropriate.

12           Licensee argues that the Board is acting beyond its statutory authority as set forth in  
13 ORS 675.540 (1)(d) and (e). Licensee contends that under subsection (e), that there is no  
14 violation relating to certification or licensing. As to subsection (d), Licensee asserts that  
15 nothing in the charging instrument in this case alleges any gross negligence and none is  
16 present. Further, that the 1997 legislative session amended ORS 675.540(1)(d), by adding  
17 the words "\* \* \* or has engaged in unprofessional conduct in the practice of clinical social  
18 work \* \* \* ." Licensee therefore argues, that because the amendment became effective  
19 October 4, 1997, which is after this case was initiated, the Board action is not authorized.

20           Regarding the Board's administrative rules, Licensee argues that the Board's  
21 administrative rules do not apply to the marriage relationship. Moreover, he argues that the  
22 right to marry, and the choices and relationships deriving therefrom, are fundamental rights  
23 guaranteed by the constitution and the rights of privacy found therein; and that the rule  
24 cannot regulate the right to marriage without compelling State interest and must be  
25 interpreted narrowly, to limit infringement upon the protected rights.

26    ///

1 Licensee argues that his clinical relationship with Mrs. <sup>S,</sup> [REDACTED] ended in June, 1995.  
2 Further, that the mediation that Licensee subsequently performed, is not social work subject  
3 to the jurisdiction of the Board.

4 Finally, Licensee argues that the record does not support violation of either OAR 877-  
5 030-0070(3) and (4.) Under subsection (4), there is no evidence of any sexual relationship  
6 between Licensee and Mrs. <sup>S,</sup> [REDACTED]. As to subsection (3), Licensee asserts that the record  
7 does not establish an ethical relationship issue because of the sequence of events. Licensee  
8 argues that his clinical relationship ended in late June or early July, 1995; and that the one  
9 year relationship prohibition ended by the time Licensee and the Mrs. <sup>S,</sup> [REDACTED] became friendly  
10 which occurred in late June or early July, 1996. Further, even if the mediation that Licensee  
11 performed was considered to be social work, Licensee asserts no improper relationship.

12 **E. FINDINGS OF FACT:<sup>3/</sup>**

13 1. In the spring of 1994 Mr. and Mrs. <sup>S,</sup> [REDACTED] were married and living together with  
14 their adopted four year old daughter, <sup>A,</sup> [REDACTED]. They were in the final stages of adopting another  
15 child, <sup>A,</sup> [REDACTED], who was subsequently born on October 2, 1994. They had gone through several  
16 separations during their eighteen-year marriage and Mr. <sup>S,</sup> [REDACTED] had, in the past, considered  
17 divorce.

18 2. Despite their plans to adopt another child their marriage remained unstable. In March  
19 1994, Mr. <sup>S,</sup> [REDACTED] had again threatened divorce. He sought counseling and therapy in an  
20 effort to save his marriage. Licensee started treating Mr. <sup>S,</sup> [REDACTED] and shortly thereafter,  
21 started treating Mrs. <sup>S,</sup> [REDACTED] individually and in joint therapy for their marital problems.  
22 Mr. and Mrs. <sup>S,</sup> [REDACTED] received joint therapy with Licensee for about 15 months, until July  
23 1995. During this period, Licensee treated Mr. and Mrs. <sup>S,</sup> [REDACTED] once a week in joint

24 \_\_\_\_\_  
25 <sup>3/</sup> Many of these facts are admitted in Licensee's Hearing Memoranda, Licensee's First  
26 Answer (Exhibit 7), Licensee's Second Amended Answer (Exhibit 10), Licensee's <sup>S,</sup>  
February 28, 1997 letter to the Board (Exhibit 2) and Mrs. <sup>S,</sup> [REDACTED] (the former Mrs. <sup>S,</sup> [REDACTED])  
March 31, 1997, letter to the Board (Exhibit 4). <sup>H,</sup>

1 sessions and once a week in individual sessions.

2 3. By June of 1995 Mr. <sup>S,</sup> [REDACTED] realized that therapy and counseling was not going to  
3 resolve issues plaguing his marriage. The <sup>S,S</sup> [REDACTED] joint marital therapy sessions ended  
4 shortly thereafter. On July 1, 1995, Mr. <sup>S,</sup> [REDACTED] moved out of the residence that he had  
5 shared with his wife and children. Then, he and Mrs. <sup>S,</sup> [REDACTED] announced their intention to  
6 divorce.

7 4. To ease the divorce process, Mr. and Mrs. <sup>S,</sup> [REDACTED] pursued mediation to help them  
8 resolve issues involved in the dissolution, rather than have those issues litigated. They  
9 decided to use Licensee as their mediator because they thought that Licensee's familiarity  
10 with them and their situation would help them reach agreement about the division of marital  
11 assets and in developing a mutually agreeable custody arrangement.

12 5. In September 1995 Licensee agreed to serve as a mediator for Mr. and Mrs. <sup>S,</sup> [REDACTED] to  
13 help them resolve the property and custody disputes inherent in the dissolution of their  
14 marriage. A tentative mediation agreement was developed between the <sup>S,S</sup> [REDACTED]. As he had  
15 while providing therapy to them, Licensee met with Mr. and Mrs. <sup>S,</sup> [REDACTED] individually and  
16 jointly to facilitate agreement on the terms of dissolution. These mediation sessions  
17 continued until January 8, 1996. A property settlement was reached in the mediation, but  
18 they were unable to agree on child custody issues.

19 6. The mediation services provided by Licensee used principles and methods involved  
20 therapeutic practice of clinical social work, including counseling and using disciplined  
21 insight-oriented interviewing. The mediation also included explaining and interpreting the  
22 dynamics of Mr. and Mrs. <sup>S,S</sup> [REDACTED] behavior to facilitate resolution of the issues involved in  
23 their divorce.

24 7. On April 12, 1996, Mrs. <sup>S,</sup> [REDACTED] went to see Licensee and also to obtain paperwork  
25 that was the product of their mediation. Sometime in the spring of 1996 Licensee began a  
26 friendship with Mrs. <sup>S,</sup> [REDACTED]. She suggested that Licensee attend her church and offered to

1 drive Licensee to and from his home to the church. In June of 1996 Licensee, Mrs. [REDACTED]<sup>S,</sup>  
2 and her children attended church together. On June 27, 1996, Licensee and Mrs. [REDACTED]<sup>S,</sup>  
3 went skeet shooting together, a social engagement. Licensee also went to church with  
4 Mrs. [REDACTED]<sup>S,</sup> sometime in August of 1996. About that time, Mr. [REDACTED]<sup>S,</sup> saw Licensee and  
5 Mrs. [REDACTED]<sup>S,</sup> in church together.

6 8. In September of 1996, Mrs. [REDACTED]<sup>S,</sup> informed Mr. [REDACTED]<sup>S,</sup> that she would not agree to  
7 joint custody of their adopted children. Surprised by this development, Mr. [REDACTED]<sup>S,</sup>  
8 approached Licensee in October of 1996 to seek an explanation of Mrs. [REDACTED]<sup>S,S</sup> resistance to  
9 joint custody. Licensee told Mr. [REDACTED]<sup>S,</sup> that he could no longer serve as his therapist.

10 9. Through their friendship, Licensee and Mrs. [REDACTED]<sup>S,</sup> developed a close emotional  
11 relationship which ultimately became romantic. Licensee fell in love with Mrs. [REDACTED]<sup>S,</sup> in  
12 October of 1996. That same month, [REDACTED]<sup>A,</sup> the [REDACTED]<sup>S,S</sup> oldest child, told Mr. [REDACTED]<sup>S,</sup> that  
13 her mother and Licensee were "dating," and were spending a considerable amount of time  
14 together going places and doing things. One Sunday, Mr. [REDACTED]<sup>S,</sup> took his children to church  
15 where they saw Licensee and Mrs. [REDACTED]<sup>S,</sup> sitting together.

16 10. On December 17, 1996, Mr. and Mrs. [REDACTED]<sup>S,</sup> were divorced. Prior to Licensee's  
17 marriage to Mrs. [REDACTED]<sup>S,</sup>, Licensee and Mrs. [REDACTED]<sup>S,</sup> had embraced and kissed romantically.  
18 On December 22, 1996, they became engaged to be married. In early 1997, Licensee's  
19 divorce from his first wife, [REDACTED]<sup>Y,</sup> became final. Licensee and Mrs. [REDACTED]<sup>S,</sup> were married  
20 on July 20, 1997. On the date of their marriage, Licensee moved into his new wife's  
21 residence. Not later than a date shortly after their marriage Licensee and the former  
22 Mrs. [REDACTED]<sup>S,</sup> were involved in conjugal relationships.

23 ///

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26 ///

1 F. CONCLUSIONS OF LAW: <sup>S,</sup>

2 1. Licensee entered into dual relationships with Mrs. [REDACTED] when he engaged in  
3 sexual acts with Mrs. [REDACTED] and when he entered into a romantic relationship, even  
4 without sexual acts, with Mrs. [REDACTED] <sup>S,</sup>

5 OAR 877-30-0070 outlines the ethical responsibility that LCSWs owe to their clients:

6 The Clinical Social Worker's primary responsibility is to clients. The Clinical  
7 Social Worker shall serve clients with professional skill and competence  
8 including but not limited to the following:

9 (1) Dual Relationship. The Clinical Social Worker must not violate  
10 his/her position of power, trust, and dependence by committing any act  
11 detrimental to the client. The Clinical Social Worker shall not enter into a  
12 relationship with the client that conflicts with the interests of the client to  
13 benefit from social work practice or one that may impair professional judgment  
14 and increase the risk of exploitation of the client for the Clinical Social  
15 Worker's personal advantage.

16 \* \* \*

17 (3) The Clinical Social Worker shall not enter into an employer,  
18 supervisor, or any other relationship where there is a potential for exercising  
19 undue influence on any client. This includes the sale of services or goods in a  
20 manner that will exploit the client for the financial gain or personal  
21 gratification of the practitioner or a third party, or if there is a risk that such a  
22 relationship would be likely to impair the clinical social worker's judgment and  
23 increase the risk of client exploitation. This applies both to current clients and  
24 to those persons to whom the Clinical Social Worker, has at anytime in the  
25 previous year, rendered clinical social work.

26 (4) The Clinical Social Workers [*sic*] shall under no circumstance  
engage in or solicit sexual acts or sexual relationships with current clients nor  
with a client to whom the Clinical Social Worker has at anytime within the  
previous three years rendered clinical social work practice.

\* \* \*

21 The Board is persuaded that Licensee violated OAR 877-030-0070(3), the prohibition  
22 against other relationships where there is a potential for exercising undue influence or  
23 increasing the risk of exploitation. Licensee became friends with Mrs. [REDACTED] <sup>S,</sup> and went on  
24 social engagements with her in the spring and summer of 1996, before she was divorced. He  
25 attended Mr. and Mrs. [REDACTED] <sup>S,</sup> family church in summer of 1996. Licensee then became  
26 engaged to marry just after Mrs. [REDACTED] <sup>S,</sup> divorce became final in December of 1997. All of

1 these acts violated OAR 877-030-0070(3) in that Licensee's friendship, courtship and  
2 engagement with the former Mrs. [REDACTED]<sup>S,</sup> were dual relationships with Mrs. [REDACTED]<sup>S,</sup>

3 The purpose of OAR 8770-030-0070(4) is to prevent LCSWs from entering into  
4 intimate relationships with former clients for three years after terminating the client/provider  
5 relationship. Sexual acts are intimate relationships of the sort the rule hopes to prevent for  
6 the protection of the (former) client. The Board concludes that romantic hugs and kisses are  
7 "sexual acts" within the meaning of this rule. Not every hug or kiss is romantic or sexual  
8 and it is not the Board's intention to forbid all physical contact between LCSWs and their  
9 clients. When, however, the physical contact takes places within the emotional framework  
10 necessarily embodied in a "romantic" relationship it constitutes a sexual act sufficient, by  
11 itself, to violate subsection (4). In this case, however, Licensee went even further to engage  
12 in conduct that constitutes a "sexual act" under any definition.

13 Although the Hearing Officer sustained Licensee's objection to the Board's attorney's  
14 inquiry into the specific sexual relationship between Licensee and his former-client/wife, the  
15 Board concludes that marriage, the most intimate physical and psychological relationships  
16 known in our society, necessarily implies a sexual relationship between spouses that, without  
17 evidence overcoming the presumption of conjugal relationships, establishes the state of being  
18 married as sufficient, without more, to establish that "sexual acts" take place. By entering  
19 into the marriage relationship with Mrs. [REDACTED]<sup>S,</sup> before January 8, 1999, Licensee created a  
20 dual relationships with Mrs. [REDACTED]<sup>S,</sup> violating OAR 877-030-0070(4).

21 The therapeutic relationship is the basis of social work. A dual relationship is any  
22 social, business, professional or sexual relationship with a client in addition to the therapeutic  
23 relationship.

24 Dual relationships between LCSWs and clients are prohibited during therapy and after  
25 the therapeutic relationship has been terminated. The reasons for an ongoing prohibition was  
26 established by testimony from Mr. Thomas Stern, LCSW, the only expert to testify at the

1 hearing. Mr. Stern is an accomplished and experienced social worker, maintaining a private  
2 practice in Salem, Oregon. He has practiced as a mediator for dissolutions of marriage  
3 involving custody issues. Mr. Stern testified to three important points at the hearing: (1) that  
4 "boundaries" in the context of clinical social work are the theoretic constructs that distinguish  
5 acceptable conduct and dual relationships; (2) that mediation is within the practice of social  
6 work; and (3) that Licensee entered into multiple dual relationships with both Mr. and  
7 Mrs. <sup>S.</sup> [REDACTED] (and their children) by his actions with the <sup>S's</sup> [REDACTED]. The Board agrees fully  
8 with the testimony of Mr. Stern.

9 The greater weight of the persuasive evidence established that if an LCSW does not  
10 recognize boundaries, he may commit acts that cause him to enter into dual relationships.  
11 Licensee did not then and does not now recognize boundaries and has entered into a  
12 relationship with the former Mrs. <sup>S.</sup> [REDACTED] clearly prohibited by the rules and ethical precepts  
13 of Licensed Clinical Social Work.

14 **2. The mediation services Licensee provided constituted Clinical Social Work.**

15 Licensee contends that mediation services he provided to Mr. and Mrs. <sup>S.</sup> [REDACTED] did not  
16 constitute clinical social work. If his argument is accepted, services he provided as an  
17 LCSW ended in July 1995 so that he could, under the rule, enter into certain kinds of  
18 relations client as soon as July 1996. The sexual acts established by the romantic hugging  
19 and kissing is clearly prohibited for three years under OAR 877-030-0070(4). Even if there  
20 had been no other sexual acts, the prohibitions of OAR 877-030-0070(3) would have applied.  
21 The Board rejects Licensee's argument.

22 Although he argues that he terminated his provider/client relationship with Mr. and  
23 Mrs. <sup>S.</sup> [REDACTED] in July 1995, he concedes that shortly thereafter he began providing mediation  
24 services to them. ORS 675.510 defines "Clinical Social Work as follows:

25 (2) "Clinical social work" means the professional practice of applying principles and methods  
26 with individuals, couples, families, children and groups, which include, but are not restricted to:

- 1 (a) Providing diagnostic, preventive and treatment services of a  
2 psychosocial nature pertaining to personality adjustment, behavior problems,  
3 interpersonal dysfunctioning or deinstitutionalization;
- 4 (b) Developing a psychotherapeutic relationship to employ a series of  
5 problem solving techniques for the purpose of removing, modifying, or retarding  
6 disrupted patterns of behavior, and for promoting positive personality growth and  
7 development;
- 8 (c) Counseling and the use of psychotherapeutic techniques, such as  
9 disciplined interviewing which is supportive, directive or insight oriented  
10 depending upon diagnosed problems, observation and feedback, systematic  
11 analysis, and recommendations;
- 12 (d) Modifying internal and external conditions that affect a client's  
13 behavior, emotions, thinking, or intrapersonal processes;
- 14 (e) Explaining and interpreting the psychosocial dynamics of human  
15 behavior to facilitate problem solving; and
- 16 (f) Supervising, administering or teaching clinical social work practice.

17 (Emphasis added).

18 Mediation, as it was practiced by Licensee with Mr. and Mrs. S, is within the  
19 practice of clinical social work. Licensee has had some training in mediation and agreed to  
20 perform the mediation. Licensee testified that when mediating for Mr. and Mrs. S, that  
21 he helped to facilitate problem-solving by observation and providing feedback to increase the  
22 S's insight. Licensee's testimony and that of the Mr. S, established that the  
23 mediation services Licensee provided used the principles and methods involved in providing  
24 therapy and included explaining and interpreting the dynamics of the clients' behavior to  
25 facilitate resolution of their issues. The conclusion that the mediation services Licensee  
26 provided to Mr. and Mrs. S, constituted clinical social work is important because it  
27 establishes the date that clinical social work services to Mr. and Mrs. S, ended not  
28 earlier than January 8, 1996 and arguably not until the spring of 1996 when Mrs. S,  
29 contacted Licensee regarding the "paperwork" containing the product of the mediation.

30 Therefore, Licensee entered into a dual relationship if he entered into a relationship  
31 that increased the possibility of exploitation of his clients, Mr. or Mrs. S, before

1 January 8, 1997. OAR 877-030-0070(3). Similarly, he entered into a dual relationship if he  
2 entered into a sexual relationship or had sexual acts with Mrs. <sup>S.</sup> [REDACTED] before January 8,  
3 1999. OAR 877-030-0070(4). Licensee did both and violated both rules.

4 **3. The Board's actions do not interfere with Licensee's constitutional right to**  
5 **marry.**

6 Licensee contends that the Board overreaches into the most personal and private of  
7 decisions, and that it may not sanction him for marrying the woman he loves. The sanction  
8 to be imposed is not for marrying, but for entering into dual relationships prohibited by rule.

9 The Board recognizes that the right to marry is fundamental and is rooted in tradition  
10 and our collective consciousness. *See Plyler v. Doe*, 457 US 202, 217 (1982). Application  
11 of OAR 877-030-0070, has not interfered with Licensee's right to marry - he has legally  
12 married the former Mrs. <sup>S.</sup> [REDACTED], the partner of his choice. The rule does not prohibit the act  
13 of marriage. Rather, it prohibits LCSWs from entering into certain relationships with clients  
14 and former clients until the therapeutic relationship has ended and a certain amount of time  
15 has elapsed. Licensee's constitutional argument, although interesting, is wide of the mark.  
16 Marriage does not act as a shield to protect an otherwise prohibited act.

17 Assuming for the sake of argument that OAR 877-030-0070 was found to impact  
18 Licensee's fundamental constitutional right to marry, it is a regulation that has been precisely  
19 tailored to serve a compelling governmental interest. The regulation achieves public safety  
20 by avoiding the potential harm of dual relationships between licensed clinical social workers  
21 and therefore serves a compelling public interest.

22 **4. Dual Relationships are the product of social workers failing to maintain**  
23 **boundaries between themselves and clients.**

24 The testimony of Mr. <sup>S.</sup> [REDACTED] established, and the Board finds, that in the professional  
25 therapeutic setting, there is an imbalance of power between the social worker and the client.  
26 The disproportionate power of the social worker develops in two ways: (1) the social  
worker's professional skills and (2) "attributive" power accorded by the client to the

1 therapist. The social worker's professional skills are a function of the social worker's  
2 education and experience as a mental health professional. The concept of attributive power  
3 is less intuitive. It is a function of the client's participation in the counseling relationship. It  
4 is a difficult decision and takes courage for a client to seek professional assistance from a  
5 social worker for mental, emotional, or behavior dysfunction. It involves the client admitting  
6 that something is wrong and that he needs help. When the client trusts a social worker to  
7 help him and to keep his confidences secret, then the client attributes power to the social  
8 worker. With the trust, the client develops dependency on the social worker and his  
9 counseling skills.

10 Because of this imbalance of power between the client and the provider, it is  
11 professionally imperative to place certain boundaries on the clinical relationship. These  
12 boundaries are expectations that social workers put personal interests aside and act in the best  
13 interests of the client. The Board's administrative rules set forth many of the boundaries  
14 expected to be maintained by licensed clinical social workers.

15 The Board agrees with Mr. <sup>S.S.</sup> [REDACTED] testimony that dual relationships are manifestations  
16 of broken boundaries that occur when a social worker crosses professional boundaries. This  
17 can happen in various ways. A boundary can be broken between the social worker and the  
18 client when a social worker enters into a second relationship with the client. It can also be  
19 broken when a social worker has a relationship with a third party that somehow influences  
20 the client.<sup>4/</sup>

21 Mr. <sup>S,</sup> [REDACTED] explained, and the Board concludes, that dual relationships, because of the  
22 power imbalance inherent in the client/provider relationship, often negatively influences a  
23 client. It is the primary goal of the social worker to act in the best interests of the client.  
24 Dual relationships can result in a loss of trust between the client and the social worker and

25 \_\_\_\_\_  
26 <sup>S,</sup> <sup>S,</sup>  
<sup>4/</sup> It is through this mechanism that the dual relationships with Mrs. [REDACTED] also become  
dual relationships for Mr. [REDACTED] <sup>S,</sup>

1 threaten the social worker's goal of maintaining the best interests of the client. Finally, dual  
2 relationships also reduce public trust in the social work profession.

3 ORS 675.540(1) provides that the Board may impose any or all sanctions set forth in  
4 subsection (2) of this section. Section (2), provides that the Board may deny, suspend,  
5 revoke or refuse to issue any certificate or license or place the licensed clinical social worker  
6 on probation and impose conditions or limits of the scope of practice. ORS 675.540(1) (d)  
7 and (e), (1997), provide that the Board may sanction upon proof that the person:

8 (d) Has been grossly negligent or unprofessional in the practice of clinical  
9 social work;

10 (e) Has violated one or more of the rules of the board pertaining to the  
certification or licensing of clinical social workers \* \* \*

11 **5. Licensee is not subject to sanction for gross negligence in the practice of clinical**  
12 **social work under ORS 675.540(1)(d).**

13 Gross negligence is either a pattern of negligent behavior or a negligent act of such  
14 magnitude that willful indifference to consequences to the client may be inferred. *Britton v.*  
15 *Board of Podiatry Examiners*, 53 Or App 544 (1981). Board conclude that although  
16 unprofessional, that Licensee's acts do not amount to gross negligence.

17 **6. Licensee is subject to sanction for violation of a rule relating to licensure under**  
18 **ORS 675.540(1)(e).**

19 Licensee entered into a client provider relationship with husband and wife, Mr. and  
20 Mrs. <sup>S,</sup> [REDACTED] for marital and individual issues. After more than a year of counseling, the  
21 couple decide to divorce. Licensee was then utilized as a mediator on issues surrounding the  
22 dissolution of the marriage including custody of two minor children. Less then six months  
23 after the mediation ceased, Licensee began seeing Mrs. <sup>S,</sup> [REDACTED] socially. Mrs. <sup>S,</sup> [REDACTED] was  
24 divorced, granted custody of the children and became engaged to Licensee less than a year  
25 after the last mediation session. Licensee then married Mrs. <sup>S,</sup> [REDACTED] one and one-half years  
26 after the last mediation session.

1 Licensee had a dual relationship with the former Mrs. <sup>S,</sup> [REDACTED] prior to January 8,  
2 1998. This relationship could have potentially harmed Mrs. <sup>S,</sup> [REDACTED] although she  
3 acknowledges no harm. However, Mr. <sup>S,</sup> [REDACTED] testified at length concerning the effect of the  
4 relationship on his life and mental condition. He already had many issues to resolve with  
5 Mrs. <sup>S,</sup> [REDACTED] as well as an ongoing parental relationship that was destined to survive the  
6 marriage. Licensee's relationship with Mrs. <sup>S,</sup> [REDACTED] harmed Mr. <sup>S,</sup> [REDACTED] in his own opinion.  
7 The Board agrees. Not only did Licensee's relationship with Mrs. <sup>S,</sup> [REDACTED] have the potential  
8 to harm her, it has actually harmed Mr. <sup>S,</sup> [REDACTED] by complicating an already difficult divorce  
9 and providing on-going stress to the situation. Mr. <sup>S,</sup> [REDACTED] clearly trusted Licensee in both  
10 therapy and mediation. That trust was lost once he became aware of Licensee's relationship,  
11 engagement and ultimate marriage to his ex-wife, leaving Mr. <sup>S,</sup> [REDACTED] feeling betrayed.

12 A clear consequence of Licensee's marriage to the former Mrs. <sup>S,</sup> [REDACTED] is a chilling  
13 effect on Mr. <sup>S's</sup> [REDACTED] relationship with Mrs. <sup>S,</sup> [REDACTED] regarding the custody of their children.  
14 There is a high potential, and some evidence, that Licensee's marriage has exacerbated the  
15 conflict between Mr. <sup>S,</sup> [REDACTED] and his ex-wife as they attend to their parental duties with their  
16 children. This increased conflict could cause Mr. <sup>S,</sup> [REDACTED] Mrs. <sup>S,</sup> [REDACTED] and their children  
17 more emotional problems and makes them victims of Licensee's failure to establish and  
18 respect appropriate boundaries.

19 **G. THE SANCTION**

20 Licensee clearly violated his ethical responsibilities to his clients. However, there is  
21 no reason to believe that this behavior will reoccur. Licensee should be sanctioned for his  
22 violations and the sanction should be commensurate with the violations. Either violation,  
23 OAR 877-030-0070(3) or 0070(4), independently supports the sanction ordered below. In  
24 analyzing an appropriate sanction in this case, Board considered both aggravating and  
25 mitigating circumstances.

26 ///

1 Licensee argued at hearing that a less severe sanction than revocation is appropriate.  
2 Licensee's relationship with his wife constitutes an aggravating circumstance in that it is a  
3 continuing impediment to Mr. <sup>S,</sup> [REDACTED] post-marital relationship with her and the children.  
4 Also, Mr. <sup>S,</sup> [REDACTED] has been left with a lack of trust concerning Licensee and the profession of  
5 clinical social work. He also feels betrayed and feels that Licensee's actions have  
6 contributed to increased friction between himself and his ex-wife. Also, the potential effects  
7 of the dual relationships on the children should be considered. In a typical divorce, the  
8 children's lives are disrupted and their home-life is significantly changed. The triangle  
9 between Licensee, Mr. <sup>S,</sup> [REDACTED] and the former Mrs. <sup>S,</sup> [REDACTED] certainly has caused additional  
10 disruption and instability. Licensee's actions also reflect negatively on the profession of  
11 social work.

12 There are also mitigating factors involved in this case. Licensee appears to have  
13 acted from the heart. If this is true, a reoccurrence is unlikely. Although there is potential  
14 harm to Mrs. <sup>S,</sup> [REDACTED] inherent in Licensee's relationship with her, she acknowledges no harm.  
15 Having considered the aggravating and mitigating factors, the Board finds that a lessor  
16 sanction than revocation is warranted.

#### 17 H. ORDER:

- 18 1. Licensee's license as a Clinical Social Worker shall be suspended from July 1, 1998.  
19 until January 1, 1999.
- 20 2. Licensee is placed on Probation for three years from the date of the order;
- 21 3. Upon reinstatement after suspension, Licensee shall enter supervision with a  
22 supervisor approved by the Board for the duration of his probation;
- 23 4. Licensee shall attend 10 hours of pre-approved continuing education regarding  
24 professional ethics courses before January 1, 1999. At least six hours of this amount shall  
25 emphasize boundaries and boundary recognition Each year thereafter, during the period of  
26 probation, Licensee shall attend not less than 10 hours of board-approved continuing

1 education courses involving ethics. This requirement is a modification of, not in addition to,  
2 the requirement under OAR 877-025-0000.

3 5. Licensee shall reimburse the Board for the costs of the hearing.

4 6. Licensee shall choose a supervisor from a list of three (or more) provided to him by  
5 the Board. Selection of the supervisor shall be completed 30 days prior to reinstatement  
6 after suspension. The supervision shall specifically address client-related ethics issues  
7 including dual relationships. Except as otherwise directed herein, the content and direction  
8 of the supervision shall be at the sole discretion of the supervisor. The supervision shall  
9 occur at least twice a month and for at least one hour each session, for a minimum of 24  
10 hours during each year, unless the supervisor and the Board agree that less supervision is  
11 appropriate.

12 7. The supervisor shall provide a formal report to the Board and Licensee every six  
13 months and at the end of the second year. Each formal report shall detail Licensee's  
14 progress, determine whether Licensee is participating in good faith, whether Licensee is  
15 aware of the ethical rules breached which produced the complaint, whether Licensee  
16 evidences adequate clinical skills, and whether Licensee's practice meets the standards for  
17 practice in the state of Oregon.

18 8. The supervisor may contact the Board if the supervisor believes that there is a risk to  
19 the public by the continued practice of Licensee.

20 9. At the end of supervision, the supervisor shall, as part of the fourth formal report  
21 required by Section (2) above, inform the Board whether Licensee is aware of the ethical  
22 issues that resulted in this complaint, whether Licensee evidences adequate clinical skills, and  
23 whether Licensee's practice meets the standards for practice of an LCSW in Oregon.

24 THE STATE BOARD OF CLINICAL SOCIAL WORKERS

25 Signature on File in Board Office  
26 Elizabeth Buys, Administrator

June 18, 1998  
DATE

1 **NOTICE OF RIGHT TO APPEAL**

2 You are entitled to seek judicial review of this order. Judicial review may be obtained by  
3 filing a petition for review with the Oregon Court of Appeals within sixty (60) days from the  
4 service of the final order. Judicial review is pursuant to the provisions of ORS 183.482.

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1 BEFORE THE  
2 STATE BOARD OF CLINICAL SOCIAL WORKERS  
3 STATE OF OREGON

4 In the Matter of )  
5 Jai V. Hilton, ) NOTICE OF INTENT TO TAKE  
License No. 1289. ) DISCIPLINARY ACTION  
6 \_\_\_\_\_ )

7 1.

8 The State Board of Clinical Social Workers (Board) is the  
9 state agency responsible for licensing and disciplining Licensed  
10 Clinical Social Workers in the State of Oregon. Jai V. Hilton  
11 (Licensee) is a licensee of the Board and is practicing in the  
12 Salem, Oregon area.

13 2.

14 2.1 Hilton entered into a client-provider relationship with  
15 *Mr. S.* [redacted] as early as March 18, 1994. *Mrs. S.* [redacted] was  
16 married to *Mr. S.* [redacted]. Hilton also entered into a client  
17 provider relationship with *Mr. S.* [redacted] and *Mrs. S.* [redacted] as a married  
18 couple, to help them deal with "behavior and communication"  
19 problems. The *S's* [redacted] continued in counselling for 15 months,  
20 ending in September 1995.

21 2.2 Shortly thereafter, the *S.s* [redacted] filed in Polk County  
22 Circuit Court for divorce. As required in Polk County where  
23 custody or visitation is at issue, the *S.s* [redacted] sought mediation

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1 to facilitate their divorce. They requested that Hilton serve as  
2 the mediator. Hilton provided mediation services to the <sup>S's</sup> [REDACTED]  
3 until January of 1996. Contemporaneously, Hilton provided  
4 individual counseling with <sup>Mr. & Mrs. S.</sup> [REDACTED] and <sup>Mrs. S.</sup> [REDACTED]

5 2.3 In September 1996, <sup>Mr. S.</sup> [REDACTED] announced to <sup>Mr. S.</sup> [REDACTED] that she  
6 refused to agree to share custody of their adopted children. In  
7 October of 1996, <sup>Mrs. S.</sup> [REDACTED] approached Hilton to obtain further  
8 counseling and to determine what reason <sup>Mrs. S.</sup> [REDACTED] might have for  
9 refusing to share custody of their children with him. Hilton met  
10 with <sup>Mr. S.</sup> [REDACTED] and informed him that he could not be <sup>Mr. S's</sup> [REDACTED] counselor.  
11

12 2.4 In June of 1996 Hilton began a friendship with <sup>Mrs. S.</sup> [REDACTED].  
13 Subsequently, <sup>Mrs. S.</sup> [REDACTED] suggested that Hilton attend her church.  
14 <sup>Mrs. S.</sup> [REDACTED] offered to drive Hilton to and from the church. Through  
15 church, they became close friends and then romantically involved.  
16 At present, Hilton and <sup>Mrs. S.</sup> [REDACTED] are engaged to be married.

17 3.

18 The above described acts are unprofessional in that Hilton  
19 entered into multiple dual relationships with the <sup>S's</sup> [REDACTED].  
20 Also, Hilton performed acts where he demonstrated incompetence,  
21 including but not limited to, agreeing to serve as a divorce  
22 mediator to the <sup>S's</sup> [REDACTED] while maintaining other provider-client  
23 relationships with the <sup>S's</sup> [REDACTED].

24 ///  
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26 ///

1 4.

2 Based on the above violations of ORS 675.540(1)(d) and (e);  
3 OAR 877-30-070(1) through (4), (6), and (7); and 877-03-090(1)  
4 the Board proposes to revoke Hilton's licensee as a clinical  
5 social worker.

6 5.

7 Hilton is entitled to a hearing as provided by the  
8 Administrative Procedures Act (chapter 183), Oregon Revised  
9 Statutes. Licensee may be represented by counsel at the hearing.  
10 If Licensee desires a hearing, Licensee must request a hearing in  
11 writing within twenty-one (21) days of the receipt of or mailing  
12 of this Notice to Licensee. Upon receipt of a request for a  
13 hearing, the Board will notify Licensee of the time and place of  
14 the hearing.

15 6.

16 If Licensee requests a hearing, Licensee will be given  
17 information on the procedures, right of representation, and other  
18 rights of parties relating to the conduct of the hearing as  
19 required under ORS 183.413(2) before commencement of the hearing.

20 7.

21 Failure to request a hearing or failure to appear at any  
22 hearing scheduled by the Board will result in a default order by  
23 the Board, including the assessment of such penalty and costs as

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1 the Board deems appropriate. If a default order is issued,  
2 Licensee's file with the Board automatically becomes a part of  
3 the contested case record for the purpose of proving a prima  
4 facie case. ORS 183.415(6).

5 DATED this 3rd day of June, 1997.

6 STATE BOARD OF CLINICAL SOCIAL  
7 WORKERS  
8 State of Oregon

9 Signature on File in Board Office

ELIZABETH BUYS, ADMINISTRATOR

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