BEFORE THE BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS FOR THE STATE OF OREGON

In the Matter of:	Agency Case No. 2009-030
DAVID N. BIRD, PHD, LMFT,	
Respondent.	**FINAL ORDER BY DEFAULT REVOKING LICENSE**

HISTORY OF THE CASE

On December 23, 2009, the Board of Licensed Professional Counselors and Therapists (Board) issued a Notice of Intent to Revoke License and Right to Request Hearing (Notice) stating that the Board intended to revoke David N. Bird's license as a Marriage and Family Therapist for numerous violations of the Board's Code of Ethics, OAR 833, Chapter 100.

The Notice was served on Respondent by regular and certified U.S. Mail addressed to Respondent at Respondent's last known address – 644 NW 4th Street, Corvallis, Oregon 97330 on February 25, 2010. An Amended Notice of Intent to Revoke License and Right to Request Hearing was served on Respondent by regular and certified U.S. Mail sent to the same address on March 1, 2010. Both Notices informed Respondent of the opportunity for a hearing if requested in writing and received within twenty-one (21) days of service of the Notice. Both Notices also informed Respondent that if a written request for a hearing is not received within the 21-day period, Respondent's right to a hearing shall be considered waived. By letter dated March 16, 2010, Respondent informed the Board that he would not be requesting a hearing. Respondent is therefore in default. The Notice further informed

Respondent that in the event the Board issues a Final Order by Default, the Board designates it file on this matter for purposes of proving a *prima facie* case.

NOW, THEREFORE, after consideration of the records and files of the Board relating to this matter, including various correspondences received from Respondent, the Board enters the following Findings of Fact, Conclusions of Law, Opinion and Order.

FINDINGS OF FACT

1. Respondent is licensed as a Licensed Marriage and Family Therapist (LMFT).

2. The Board has adopted a Code of Ethics (Code) that applies to all licensees.

3. Respondent provided couples counseling to Husband and Wife. Respondent cultivated a sexual relationship with Wife.

4. Respondent admits he began an "intimate" relationship with Wife within three months after the counseling sessions ended.

5. In 1991, Client A began a counseling relationship with Respondent. Over the course of the next 16 years, Client continued to seek counseling services from Respondent on an "as-needed" basis. During a counseling session in 2006, Respondent asked Client A if the client wanted to work for him as his office manager, a job offer Client A accepted.

6. Although Client A's formal counseling services with Respondent discontinued after 2007, Respondent continued to advise Client A on mental health issues during the time Client A was employed by Respondent.

7. In April 2009, Client A began formal counseling with another licensee, and also terminated the employment relationship with Respondent. Given the damage caused by her relationship with Respondent, Client A later attempted suicide.

8. Respondent shared with Client A confidential client information he obtained as part of his counseling sessions with other clients when such disclosures were not necessary to carry out Client A's job duties as office manager and without receiving written consent from those clients.

9. Respondent discussed his affair with Wife on several occasions with Client A. Respondent also told Client A that one of his patients played with his genitals during sessions and that another client (who was married) had confided client's wife had performed oral sex on an ex-boyfriend.

10. Respondent continued to provide formal and then informal counseling services to Client A when Client A was employed as his office manager.

11. Respondent continued to provide counseling services to Husband and Wife while cultivating a sexual relationship with Wife.

12. The original Notice was served on Respondent by certified and regular mail on February 25, 2010. An Amended Notice was served on Respondent by certified and regular mail on March 1, 2010. By letter dated March 16, 2010, Respondent informed the Board that he would not be requesting a hearing.

13. The Notice provided that if Respondent failed to request a hearing, the Board may issue a Final Order by Default and revoke his license.

CONCLUSIONS OF LAW

1. Respondent is in default.

2. Respondent violated ORS 675.745(1)(e), OAR 833-100-0041(1) and OAR 833-100-0061(1) when he failed to act in accordance with the highest standards of

professional integrity and competence when providing counseling services to Husband, Wife and Client A.

3. Respondent violated ORS 675.745(1)(e), OAR 833-100-0041(5) and OAR 833-100-0041(10) when he used his counseling relationship with Wife to engage in or solicit sexual acts with Wife.

4. Respondent violated ORS 675.745(1)(e), OAR 833-100-0041(5) and OAR 833-100-0041(10) when he used his counseling relationship with Client A to further his own personal and financial interests.

5. Respondent violated ORS 675.745(1)(e), OAR 833-100-0021(1), and OAR 833-100-0031(1), (2) & (3) when he failed to recognize that his primary professional responsibility is to his clients and caused harm to Client A when he hired Client A to work in his practice while providing formal and informal counseling services to Client A.

6. Respondent violated ORS 675.745(1)(e), OAR 833-100-0021(1), and OAR 833-100-0031(1), (2) & (3) when he failed to recognize that his primary professional responsibility is to his clients and caused harm to Husband and Wife when he had a sexual relationship with Wife;

7. Respondent violated ORS 675.745(1)(e), and OAR 833-100-0051 when he provided confidential client information to Client A without obtaining written client consent for such disclosures.

8. Respondent violated ORS 675.745(1)(e) and OAR 833-100-0021(10) when he continued to provide counseling services to Husband and Wife when his

objectivity and effectiveness was impaired by his cultivation of a sexual relationship with Wife.

9. Respondent continued to provide counseling services to Client A when his objectivity and effectiveness was impaired by their employment relationship in violation of ORS 675.745(1)(e) and OAR 833-100-0021(10);

10. Respondent engaged in an inappropriate dual relationship when he continued to provide counseling services to Client A while at the same time employing Client A in violation of ORS 675.745(1)(e) and OAR 833-100-0041(2) & (3);

11. Respondent engaged in or solicited sexual acts or a sexual relationship with a current client or with a former client within three years since the rendering of professional services in violation of ORS 675.745(1)(e) and OAR 833-100-0041(5); and

12. Respondent engaged in gross negligence when he engaged in the conduct set out above in violation of ORS 675.745(1)(d) and OAR 833, Chapter 100.

OPINION

Respondent has admitted he engaged in serious misconduct with current and former clients. Such misconduct ranged from disclosing confidential information, inappropriate dual relationships, to having a sexual relationship with a former client. Part of the Board's Mission is to "Deter and discipline misconduct by licensees." Given the magnitude and severity of the misconduct involved, nothing short of revocation of Respondent's license would be appropriate here. In addition to protecting the public from Respondent, the Board hopes that such action will serve as a deterrent and remind other licensees to consider their ethical responsibilities to each and every client before acting.

FINAL ORDER

NOW THEREFORE, the Board hereby **ORDERS** that:

1. Respondent David N. Bird's license as a Licensed Marriage and Family Therapist is **REVOKED.** Respondent will immediately surrender his license to the Board and will no longer be a Licensed Marriage and Family Therapist;

2. Respondent shall forever be prohibited from: (a) reapplying for or seeking reinstatement of his LMFT license; (b) applying for a new LMFT or LPC license; and (c) applying for or reapplying to practice as a LMFT or LPC in the State of Oregon pursuant to ORS 675.745(7);

3. Respondent is prohibited from using the title of, purporting to be, or practicing as a Licensed Marriage and Family Therapist or a Licensed Professional Counselor, or using any other title that includes those words pursuant to ORS 675.745(7);

4. Respondent is **ASSESSED** the Board's costs associated with this action, including the Board's attorney fees, in an amount of **$1,465.90**, pursuant to ORS 675.745(7); and

5. The matter will be reported to the Healthcare Integrity and Protection Data Bank (HIPDB).

DATED AND ISSUED this 2nd day of April, 2010.

Oregon Board of Licensed Professional Counselors and Therapists

By ____
Ryan Melton, Chair

NOTICE OF RIGHT TO APPEAL

You are entitled to judicial review of this Final Order. You may request judicial review by filing a petition for review with the Oregon Court of Appeals in Salem, Oregon within sixty (60) days from service of this Final Order. Judicial review is pursuant to the provisions of ORS 183.482.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2010, I served the foregoing **FINAL ORDER BY DEFAULT REVOKING LICENSE** by depositing a true copy of the same in a sealed envelope sent by regular mail, addressed as follows:

David N. Bird
644 NW 4th Street
Corvallis OR 97330

I also certify that I provided a copy of the foregoing **FINAL ORDER BY DEFAULT REVOKING LICENSE** via regular mail on this same day to Mr. Bird's counsel as follows:

Pamela Hediger
Evashevski Elliott Cihak et al
PO Box 781
Corvallis OR 97339

Brian Johnson, Investigator
Board of Licensed Professional Counselors
and Therapists

cc: Kelly M. Gabliks, DOJ
Department of Justice
General Counsel/Business Activities Section
1162 Court Street NE
Salem OR 97310