

STATE OF OREGON
BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

In the matter of the proposed)
license suspension of)
)

FINAL ORDER
OF SUSPENSION

Sylvia Henderson
354 NE Greenwood Suite 100
Bend, OR 97701

On June 14, 1996, a majority of the Board reviewed the findings of fact, conclusions and reasons, and decision rendered by administrative law judge Dean Barr in his proposed order served February 13, 1996 following the contested case hearing on November 2, 1995 in the matter of the Board's proposed license suspension of Sylvia Henderson. The Board also considered the Motion for Correction of Findings of Fact and Reconsideration dated April 2, 1996 and the Licensee's Exceptions to Proposed Order received by the Board on April 12, 1996, filed on behalf of Sylvia Henderson by attorney Daniel M. Carroll. The Board read, but did not consider the letter received from Sylvia Henderson on June 5, 1996 because it was not filed within the 30 days allowed for filing exceptions and because exceptions had been filed and were being considered. The Board, composed of those members present, hereby make the following:

ORDER

The Board adopts the proposed order of the administrative law judge issued February 13, 1996 as its final order with the following amendments and deletions:

1. Finding of Fact Number 36 is amended to read: "Henderson consulted with her husband who had represented _____."
2. Finding of Fact Number 39 is amended to read: "The Hendersons concluded _____ was not the custodial parent."
3. Conclusions and Reasons, page 7, paragraph 5, sentence 1 is amended to read: "Before responding, the appellant consulted her husband who had represented _____ mother."
4. The professional counselor license of Sylvia Henderson is hereby suspended for 10 calendar days beginning July 1, 1996 and ending July 10, 1996 for violations of OAR 833-60-001(2). During suspension she cannot use the title "licensed professional counselor" or purport to be licensed.

A copy of the proposed order suspending the professional counselor license of Sylvia Henderson for 10 days is attached to and made a part of this final order.

RULING ON EXCEPTIONS

1. In the first exception, Henderson argues that the vote taken by the Board on August 19, 1994 to propose suspension for "professional conduct involving providing services when objectivity became impaired" did not state specific grounds and the sanction proposed by the administrative law judge was not for "providing services when objectivity became impaired". The Board notes, however, that the October 24, 1994 Notice of Proposed License Suspension is a more precise statement of the matters at issue in this disciplinary action. It includes specific allegations regarding the failure to produce the records requested and mischaracterizing what records existed to the client's father. The distinction between the representation in the Minutes and the Notice of Proposed License Suspension is not cause for dismissal of the case against Henderson. Furthermore, the Board reviewed and reaffirmed the written notice at October 20, 1995 Board meeting prior to the hearing date

2. In the second exception, Henderson repeats an argument that the regulatory rules adopted by the agency exceed the statutory grant of authority. The Board agrees with the administrative law judge's ruling on this issue.

3. In the third exception, Henderson argues that the administrative law judge found only one allegation that supports a violation of an ethical standard. The Board disagrees, the record shows there are two violations; two actions by Henderson that would constitute unethical conduct. At the bottom of page [redacted] of the proposed order, the judge reasons:

The appellant failed, by the artifice of replying to only part of the letter, to honestly respond to the father's request for "all information" about his son. The appellant then compounded the matter by failing to respond to the father after she later, by her own admission, became aware that the father was the child's custodian.

This describes two particular actions: one is the failure to properly reply as to whether or not there was any information (essentially misleading the father concerning the existence of information), and then after learning the father was the custodian, failing to respond to him. There is substantial evidence in the record to support both of those findings and to support a conclusion that those actions violated OAR 833-60-001(2).

PARTICIPATION OF BOARD MEMBER CAROL SISSON

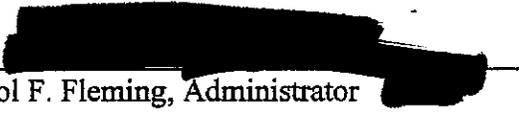
At its August 16, 1994 meeting, the Board voted to issue the Notice of Proposed License Suspension against Ms. Henderson. Prior to deliberation and vote Dr. Sisson disclosed that she knew of Henderson because she and Henderson practice in the same community. Additionally, Sisson's husband, Dr. [redacted] was involved with the case in that he evaluated [redacted] on behalf of CSD (Exhibit 15, page 5). Dr. [redacted] did not testify at the November 2, 1995 hearing. On August 16, 1994, Sisson declared that she had no knowledge about the case other than what appears in the Board's [redacted] investigative file. Sisson determined that she had not prejudged the facts of the case nor was personally biased against Henderson and so participated in the vote to issue the Notice.

At its October 20, 1995 meeting, the Board reconsidered the Notice and voted to go forward with the November 2, 1995 hearing on the August 16, 1994 Notice. Sisson participated in that vote to go forward with the Notice.

On June 5, 1996, Henderson sent a letter to the Board accusing a board member who "resides and practices in Bend" of "an obvious conflict of interest and financial gain". Although Sisson was not personally biased, and felt that she could still judge the case on the merits of the evidence in the record, Sisson felt that her participation in the decision regarding the final order would not be in the Board's best interests. Therefore, Sisson recused herself from the discussion and decision regarding this Final Order.

Dated this 25th day of June 1996.

Board of Licensed Professional Counselors and
Therapists

by 
Carol F. Fleming, Administrator

Attachment: Proposed Order by Administrative Law Judge Dean Barr dated February 13, 1996

Served by Certified Mail No. P 035 083 180

dated June 25, 1996

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

cc: Daniel M. Carroll, Attorney at Law by Certified Mail No. P 035 083 190 dated June 25, 1996
PO Box 4025
Salem, OR 97302-1025