

1 **BEFORE THE BOARD OF LICENSED**
2 **PROFESSIONAL COUNSELORS AND THERAPISTS**
3 **STATE OF OREGON**

4 In the Matter of:

Agency Case No. 2012-049

5 **BETH L. SWAIN, LPC,**

6 Respondent.

**NOTICE OF INTENT TO REVOKE LICENSE
AND RIGHT TO REQUEST HEARING**

7 1.

8 The Board of Licensed Professional Counselors and Therapists (Board) is the state
9 agency responsible for licensing, regulating, and disciplining licensed professional counselors,
10 licensed marriage & family therapists, and registered interns. ORS 675.705 to 675.835; OAR
11 833-001-0000 to 833-130-0080.

12 2.

13 Beth L. Swain (Respondent) is licensed as a Professional Counselor. The Board has
14 jurisdiction over Respondent under ORS 675.705 to 675.835. The last address provided by
15 Respondent to the Board is 1195 Alpine NW, Salem, Oregon 97304.

16 3.

17 The Board has adopted a Code of Ethics (Code) that applies to all licensees. *See* OAR
18 833, Division 100. The Code “constitutes the standards against which the required professional
19 conduct of licensed professional counselors and marriage and family therapists is measured.”
20 OAR 833-100-0011(1). The Code’s goal is “the welfare and protection of the individuals and
21 groups with whom counselors and therapists work.” *Id.* The Code makes clear that violations of
22 its standards are subject to the highest level of discipline – “Violation of the provisions of this

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1 code of ethics will be considered unprofessional or unethical conduct and is sufficient reason for
2 disciplinary action, including, but not limited to, denial of licensure.” *Id.*

3 4.

4 A licensee’s “primary professional responsibility is to the client.” OAR 833-100-
5 0021(1). A licensee must act in accordance “with the highest standards of professional integrity
6 and competence” and must be honest when dealing with clients. OAR 833-100-0041(1)

7 5.

8 A licensee is also required to “strive to benefit those with whom they work and take care
9 to do no harm.” OAR 833-100-0031(1). *See also* OAR 833-100-0031(2) (licensees required to
10 take reasonable steps to avoid harming clients). To avoid such harm, licensees do not provide
11 services to a client when a licensee’s objectivity or effectiveness is impaired (OAR 833-100-
12 0021(10) and make “every effort to avoid conditions and multiple relationships with clients that
13 could impair professional judgment or increase the risk of exploitation” (OAR 833-100-0041(2)).
14 A fundamental maxim of the counseling profession is that counselors and therapists do not
15 provide professional services to family members. *Id.*; *see also* American Counseling Association
16 Code of Ethics Section A(5)(d) (“Counselors do not engage in counseling relationships with
17 family members”).

18 6.

19 Here, Respondent engaged in unethical and unprofessional conduct when she provided
20 counseling services to her child (Child) and attempted to intervene in the counseling services
21 being provided to Child’s spouse by another practitioner.

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1 7.

2 Respondent's Child was having marital issues and suffered from several mental health
3 problems. According to Respondent, Child's assessment showed that she might benefit from
4 receiving counseling services (LENS Therapy) from Respondent. Respondent believed that
5 providing this counseling to Child "could help [Child] avoid relapse to an addiction, reduce
6 fatigue, help [Child] think more clearly, reduce pain and help relieve anxiety." Before providing
7 this treatment, Child reviewed and signed an informed consent form. Respondent then provided
8 treatment to her Child for several months from July through September, 2012.

9 8.

10 Respondent provided these services despite the fact she was aware that Child was already
11 receiving counseling services from a different provider. *See* OAR 833-100-0051(14)
12 ("Licensees proceed cautiously when asked to provide services to a client currently seeking
13 another professional"). And, Respondent provided these services to her own Child despite the
14 fact she was certainly aware that there were other resources available to Child to treat her
15 problems. OAR 833-100-0021(2) ("A licensee recognizes that there are other professional,
16 technical, and administrative resources available to clients").

17 9.

18 The Code also provides that licensees must not use the counseling relationship "to further
19 **personal**, religious, political, sexual, or **financial interests**." OAR 833-100-0041(10). Here,
20 Respondent admits that she was interested in offering a new type of therapy to her clients –
21 LENS (Low Energy Neurofeedback System), and wanted to get familiar with the equipment.
22 Respondent believed this therapy could assist her Child, so she decided to get familiar with the
23 process by providing this therapy to her Child – thereby furthering both her personal interest in

1 the well-being of her Child and her financial interest in being able to offer a new form to therapy
2 to her clients.

3 10.

4 ORS 675.765 protects the confidentiality of any communication given by a client to a
5 licensee during a counseling session. The Code makes clear that a licensee “does not disclose
6 any confidential information that the licensee * * * may have acquired in rendering services
7 except as provided by rule or law. All other confidential information is disclosed only with the
8 written informed consent of the client” OAR 833-100-0051(3).

9 11.

10 Here, Respondent engaged in unethical and unprofessional conduct when she contacted
11 the person (Therapist) providing counseling services to Respondent’s son-in-law (Son-In-Law)
12 and requested that Therapist violate these confidentiality requirements by discussing Son-In-Law
13 and Child’s marital problems with her.

14 12.

15 Respondent’s Child is married. Child shared with Respondent that Son-In-Law’s
16 therapist had recommended couples therapy. Respondent then contacted Therapist, identified
17 herself as a Licensed Professional Counselor, and provided information regarding Child and
18 Son-In-Law’s marriage to Therapist. In a voicemail message, Respondent also told Therapist not
19 to believe the information Therapist was receiving from Son-In-Law – “He is a con artist” and
20 requested that Therapist contact her regarding Respondent’s concerns about Son-In-Law.
21 Respondent made this request despite the fact she was aware of Therapist’s ethical and legal
22 confidentiality obligations to her client (Son-In-Law), and conceded as much in her message to
23 Therapist.

Based on the above, the Board proposes to revoke Respondent's license for the following reasons:

- A. Respondent engaged in an inappropriate dual relationship when she provided counseling to her Child in violation of ORS 675.745(1)(e), OAR 833-100-0021(1) & (10), OAR 833-100-0031(1) & (2), and OAR 833-100-0041(2);
- B. Respondent provided counseling services to Child despite the fact she was aware that Child was already receiving services from another provider and despite her knowledge that other resources were available in violation of ORS 675.745(1)(e), OAR 833-100-0051(14) and OAR 833-100-0021(2);
- C. Respondent attempted to further both her own personal and financial interests when she provided a new type of therapy to her Child in violation of ORS 675.745(1)(e) and OAR 833-100-0041(10);
- D. Respondent asked another counselor to violate client confidentiality when she contacted Therapist, asked to speak to Therapist about Son-In-Law, and made derogatory comments about Son-In-Law in violation of ORS 675.745(1)(e), OAR 833-100-0051(1), OAR 833-100-0051(3) and ORS 675.765; and
- E. Respondent failed to act in accordance with the highest standards of professional integrity and competence in dealing with her client when she engaged in the conduct described above in violation of ORS 675.745(1)(e) and OAR 833-100-0041(1).

Given these alleged violations, the Board proposes the following discipline be imposed:

1 Board's files relevant to the subject of this case automatically become part of the evidentiary
2 record upon default for the purpose of proving a *prima facie* case. ORS 183.417(4).

3 DATED: May 30, 2013

4 Oregon Board of Licensed Professional
5 Counselors and Therapists

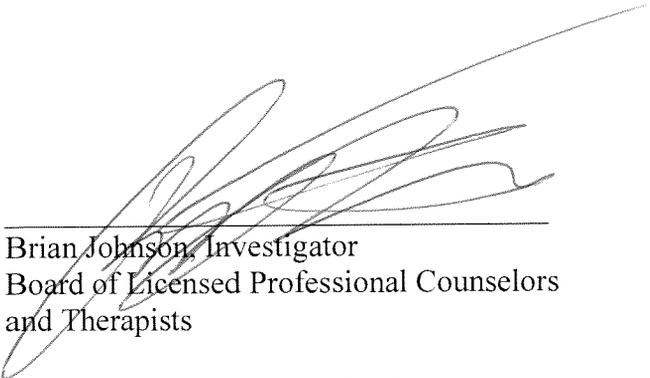
6 By Becky Eklund
7 Becky Eklund, Executive Director

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 31 day of May, 2013, I served the foregoing **Notice of**
4 **Intent to Revoke License and Right to Request Hearing and Notice of Contested Case**
5 **Rights and Procedures** by depositing a full, true and correct copy of the same in a sealed
6 envelope sent by regular and certified mail, addressed as follows:

7 Beth L. Swain
8 1195 Alpine NW
9 Salem OR 97304

10
11 
12 _____
13 Brian Johnson, Investigator
14 Board of Licensed Professional Counselors
15 and Therapists

16 cc: Kelly M. Gabliks, DOJ
17 Department of Justice
18 General Counsel/Business Activities Section
19 1162 Court Street NE
20 Salem OR 97310
21
22
23

OREGON BOARD OF LICENSED PROFESSIONAL COUNSELORS AND THERAPISTS

Notice of Contested Case Rights and Procedures

You should read this information to prepare for the hearing

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules and statutes of the Oregon Board of Licensed Professional Counselors and Therapists (Board), OAR chapter 833, ORS chapter 675, and the Attorney General's Office of Administrative Hearing Rules, OAR Chapter 137 Division 3, and OAR 471-060-0005.
2. **Right to attorney.** The Board will be represented by an attorney but you are not required to be represented. You have a right to be represented by an attorney at your own expense. You may represent yourself at the hearing. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary it will be in the discretion of the Administrative Law Judge (ALJ) to grant you a recess. The ALJ will decide whether to grant such a request. Legal aid organizations may be able to assist you if you have limited financial resources. Agencies, corporations and associations may be represented only by attorney unless otherwise specifically provided by law.
3. **Subpoenas.** You may subpoena witnesses. The Board will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
4. **Presiding Officer.** The person presiding at the hearing will be an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will rule on all matters that arise at the hearing, subject to any agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 and 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings. The Office of Administrative Hearings consists of employees of the Employment Department and independent contractors with the Office of Administrative Hearings. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.
5. **Discovery.** Discovery is permitted by the parties and requests for discovery should be in writing. Discovery should be requested first by informal means by the parties. You have the right to respond to all issues properly before the ALJ, and present evidence and witnesses. Discovery is provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0570(8).
6. **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 witnesses 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 a fact or a position rests upon the party who proposes that fact 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. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by other parties or by the ALJ.

8. **Admissible Evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

Four kinds of evidence may be admitted.

a. Knowledge of the Board. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the Board takes "official notice" of any fact so that you may contest those facts. The agency 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.

b. Testimony of witnesses. This includes your own testimony.

c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.

d. Photographs, experiments, demonstrations and similar means to prove a fact.

9. **Objections to evidence.** **Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on the following grounds:**

a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.

b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.

c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.

d. Hearsay, authenticity or foundation. To the extent that such evidence would not commonly be relied upon by reasonably prudent persons in the conduct of their serious affairs.

10. **Continuances.** Unless allowed by the Board or ALJ, there will be no continuance and the record will not be reopened regarding any matters determined at the conference or hearing. 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.

11. **Proposed Order and Exceptions to proposed order.** 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 also be notified when you may appear and make oral argument to the Board if applicable

Not later than 10 days after the date of the filing of the proposed order with the Board, you may file and serve on the Board and the ALJ, your written exceptions to the proposed order.

a. The exceptions shall be confined to the factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

(1) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

(2) A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or

(3) Prejudicial procedural error occurred.

b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

12. **Board Review of Proposed Orders/Exceptions.** After the Board has received and reviewed the proposed order and the exceptions, if any, the Board shall:

a. Entertain such oral argument as it determines necessary or appropriate to assist it in the proper disposition of the case; and

b. Remand the matter to the hearings officer for further proceedings on any issues of fact which the Board believes were not fully or adequately developed; or

c. Enter a final order adopting the recommendation of the ALJ as the Board's order or rejecting the recommendation of the ALJ. If the Board elects to reject the recommendation of the ALJ, the final order shall contain necessary findings of fact and conclusions of law.

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 it made the modifications. The Board may modify a proposed finding of "historical" fact made by the ALJ only if there is clear and convincing evidence in the record that the finding of the ALJ was wrong.

13. **Conferences.** Prior to a hearing, the ALJ may schedule conferences to:

a. Establish a procedural schedule, including dates for prefiled testimony and exhibits;

b. Identify, simplify or clarify issues;

c. Eliminate irrelevant or immaterial issues;

d. Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and

e. Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

Except as provided in the following paragraph, the record shall reflect the results of any conferences, which shall be binding on all parties.

14. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous or you unreasonably refuse to stipulate to a limited record. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.

15. **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 on you. See Oregon Revised Statutes 183.480 et seq.