

**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 Panel<sup>1</sup> on October 1, 2002.<sup>2</sup> 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:

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

<sup>2</sup> 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."<sup>3</sup> 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

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<sup>3</sup> Advertisements for counseling services available through the Foundation of Human Understanding on Advice Line specifically refer to McLittle as a "psychologist." (Ex. R-2.)  
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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).<sup>4</sup> 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

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<sup>4</sup> 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

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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 19<sup>th</sup> day of September, 2003/

Redacted  
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.



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).



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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).

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4 DATED this 20<sup>th</sup> day of August, 2002.

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6 BOARD OF PSYCHOLOGIST EXAMINERS  
State of Oregon

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