

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

IN THE MATTER OF:

ROBERT D. MASSENA,

Respondent.

) Agency Case No.: 2010-010

) OAH Case No.: 1001684

) DOJ Case No. 108001-GB0223-10

)

) **FINAL ORDER REVOKING LICENSE**

The Board of Licensed Professional Counselors (Board), having considered this matter and the Proposed Order issued on December 3, 2010, hereby makes the following Findings of Fact, Conclusions of Law, Opinion and issues the following Final Order:

HISTORY OF THE CASE

On March 25, 2010, the Board of Licensed Professional Counselors and Therapists (Board) issued a Notice of Intent to Revoke License and Right to Request Hearing (Notice) to Robert D. Massena (Respondent). The Notice accused Respondent of violating ORS 675.745(1)(d) & (e) and the Board's Code of Ethics (OAR 833, Div 100), by soliciting and/or engaging in sexual acts with a client; by failing to act with the highest standards of professional integrity and competence by his conduct; by continuing to practice counseling when his professional judgment was adversely affected by his own personal and professional problems; and by disclosing confidential information about other clients without written consent. The Notice also sought an assessment of costs for the disciplinary proceeding from Respondent. Respondent filed a timely request for hearing and answer to the Notice on April 20, 2010.

The Board referred the case to the Office of Administrative Hearings on May 14, 2010. The case was assigned to Senior Administrative Law Judge Ken L. Betterton. A telephone pre-hearing conference was held on July 7, 2010. Respondent was represented by Attorney Sheryl Oakes Caddy. The Board was represented by Senior Assistant Attorney General (AAG) Kelly Gabliks. Attorney Sheryl Oakes Caddy withdrew as attorney of record on or about July 30, 2010.

A hearing was held in Salem, Oregon on October 28 and 29, 2010. Respondent appeared and was represented by Attorney Michael P. De Muniz. The Board was represented by Senior AAG Kelly Gabliks. At the beginning of the hearing, the Board moved to amend paragraph 12, lines 19 through 22 of the Notice, to read as follows: "For example, Respondent asked Wife to drive him in her car to retrieve his car from his in-laws in Salem," instead of: "For example, Respondent asked Wife to drive him in her car from Lebanon to Salem to retrieve his car. The car had allegedly been left in Salem because his relatives had called the police to remove Respondent from their property." Respondent had no objection to the amendment. The Notice was amended by interlineation to reflect the change.

The following witnesses testified at the hearing for the Board: Respondent; Wife¹ (victim); Linda LaVallee-Conniff, friend of victim; and Husband (victim's husband). The following witnesses testified for Respondent: Linda Lee, former client of Respondent's; JoAnne Boswell, former client of Respondent's; Colby Hammer, former client of Respondent's; Erica Grastinopolous, former client of Respondent's; Bob Swope, Pastor, and friend of Respondent's; Mel Murphy, restaurant owner and friend of Respondent's; Michaela Parson, former client of Respondent's; and John Kirk, former client of Respondent's. Respondent also testified on his own behalf. The record closed October 29, 2010, and the matter was taken under advisement.

On December 3, 2010, ALJ Betterton issued his Proposed Order recommending that Respondent's license as a Professional Counselor be revoked. The Proposed Order notified Respondent of his right to file written exceptions and argument within twenty (20) days after the Proposed Order was filed. No exceptions were filed.

The Board accepts the recommendations made by ALJ Betterton and in general has made changes only to the extent to correct spelling, grammar, textual placement or other similar errors.

The only exception is the changes made to Finding of Fact ¶ 2. While the Board agrees with the accuracy of the historical findings of fact made by the ALJ in this paragraph, the Board has generalized the nature of those Findings to protect the identity of the victims. *See* OAR 137-003-0665(4)

ISSUES

The Board adopts the Issues set forth by the ALJ in the Proposed Order:

(1) Whether Respondent's professional counseling license should be revoked pursuant to ORS 675.745(1)(d) and (e) and the Board's Code of Ethics.

(2) Whether Respondent should be assessed the costs for the disciplinary proceedings pursuant to ORS 675.745(7).

EVIDENTIARY RULING

The Board adopts the Evidentiary Rulings made by the ALJ in the Proposed Order:

Exhibits A1 through A8, offered by the Board, were admitted into evidence without objection. Exhibit A10, offered by the Board, was excluded from evidence, based on Respondent's objection as to foundation and because the exhibit was not provided to Respondent before the hearing. The Board did not offer Exhibits A9 and A11, marked for identification, into evidence. Exhibits R1 through R12, offered by Respondent, were admitted into evidence without objection. Pleadings P1 through P8 were also made a part of the record.

¹ Although the names of the victims were included in the Proposed Order, they have been removed in all locations in the Final Order to protect their confidentiality.

FINDINGS OF FACT

With the exception of the changes made in Paragraph 2 as noted above, the Board adopts the Findings of Fact made by the ALJ as set forth below:

(1) Respondent graduated from George Fox University, Newberg, Oregon, in April 2005 with a master's degree in counseling. Initially, in 2005, Respondent worked in counseling as an intern under the supervision of Dr. Robert Piehl in the Salem, Oregon area. Respondent later operated a counseling service at 734 Hawthorne Avenue, Salem, Oregon, under the name of Abundant Life Counseling, LLC. Respondent was interested in counseling with a Christian emphasis. He received his Professional Counseling License (LPC) from the Board in January 2007. He continued to practice and maintained supervision from Dr. Piehl until July 2007. Respondent's relationship with Dr. Piehl abruptly ended in July 2007 after one of Respondent's former clients filed a civil lawsuit against Respondent. Respondent had no employees and was the only counselor with his service from January 2006 through September 2008. He received many of his client referrals from ministers and pastors in the Salem and Mid-Willamette Valley areas. (Respondent's testimony.)

(2) In December 2005, Wife and Husband were looking for a marriage counselor to help them with problems in their marriage. A friend referred them to Respondent. Husband and Wife have been married approximately 23 years. They have three children, who were approximately thirteen, nine, and seven years old, in 2006. They lived in the Mid-Willamette Valley area. Husband worked as a farmer helping his parents who owned a grass seed farm. Wife did not work outside the home and home-schooled their three children. (Husband's testimony; Wife's testimony.)

(3) Husband and Wife first met with Respondent in January 2006. They were active in their church and were pleased to learn that Respondent focused on Christian principles in his counseling. Husband and Wife met with Respondent once a week in the morning for a couple of months. Wife revealed to Respondent her difficulty in growing up with an alcoholic father. Husband revealed that he was sexually abused as a youngster by an older brother. Respondent told the couple that he had been sexually abused as a boy by an older woman. (Husband's testimony; Wife's testimony.)

(4) Due to family financial problems, Husband got a full-time job in March 2006 separate from his job working for his parents. Because of his new job, Husband could not meet during the week in the morning. At Respondent's suggestion, Husband joined a men's counseling group Respondent had organized that met in the evening. Husband attended the men's evening group counseling for approximately one year. Husband then started meeting individually with Respondent in the evening after work, although he did not meet as regularly as Wife did. Wife continued to meet regularly once a week with Respondent, usually in the morning. When Husband and Wife had separate individual counseling, Respondent usually met with Wife on Monday morning and met with Husband on Monday evening. The individual counseling sessions were scheduled for 50 minutes, although sometimes they ran a little longer. (Husband's testimony; Wife's testimony.)

(5) During individual and joint sessions with Husband and Wife, Respondent sometimes referred to himself as the “wounded healer.” On more than one occasion with them, either individually or together, Respondent talked about his own sexual abuse as a young boy by an older woman, his belief that his wife was having an affair with another man, and his belief that he was not the father of one of his children. He expressed relief in a later counseling session that a DNA test he had taken confirmed he was the father of his child. (Husband’s testimony; Wife’s testimony.)

(6) Respondent also talked to Husband and Wife on more than one occasion about the civil lawsuit filed against him in July 2007 in Marion County Circuit Court. The lawsuit, brought by the husband of a couple that Respondent had counseled, accused Respondent of interfering with their marriage and encouraging the wife to divorce the husband. The lawsuit was eventually settled with Respondent’s insurance carrier paying money damages to the husband. (Husband’s testimony; Wife’s testimony; Respondent’s testimony.)

(7) On occasion, Respondent introduced Wife to the other clients counseling with him either immediately before or immediately after Wife’s session. (Wife’s testimony.) On occasion, Respondent also talked to Husband and Wife about other clients’ problems, although he did not tell them the names of those clients. Respondent did not have written permission from other clients to talk about them. (Husband’s testimony; Wife’s testimony.)

(8) After one counseling session in 2006, Respondent asked Wife to drive him from his office to his in-laws’ house in Salem where his vehicle was parked. She drove him to their house, which was a 15-minute drive from his office. During the drive, Respondent expressed frustration and anger with his in-laws’ Mennonite faith. Wife also had family members of the Mennonite faith and identified with those feelings. Respondent told Wife that they had “something in common.” Respondent’s comment made Wife feel uncomfortable, but she assumed it was part of the counseling process. (Wife’s testimony.) Wife told Husband at the time about Respondent asking her to drive him to his in-laws’ home. (Husband’s testimony.)

(9) At first, Wife believed Respondent’s counseling helped her. Early in the counseling, Respondent drew an imaginary line with his hand and explained to Wife that there was a line between them that could not be crossed, but he told her that he had to be the first man she ever trusted. (Wife’s testimony.) Respondent did not take notes during his counseling sessions with either Husband or Wife. (Husband’s testimony; Wife’s testimony.) After each session, Respondent would make notes of the session. (Respondent’s testimony.) Wife at first took notes during her counseling sessions. She later stopped taking notes when she sensed it made Respondent nervous. Wife believed that Respondent’s talking about his own personal problems and his clients’ problems fostered her relationship with him. Over time, in 2007, as Wife continued to meet regularly with Respondent, she began to question whether the counseling was helping her improve her relationship with Husband, but she had placed her trust in Respondent and wanted to see the counseling through to its conclusion. (Wife’s testimony.)

(10) In the spring of 2007, Respondent suggested to Wife that she “separate herself” sexually from Husband. (Wife’s testimony.) Wife and Husband stopped having sex. Husband started sleeping on the sofa in the living room; he continued to sleep on the sofa through

September 2008. The separation led the couple's children to believe that their parents were about to divorce, which caused additional stress and anxiety in their marriage. (Husband's testimony; Wife's testimony.)

(11) During spring break in mid-March 2008, Wife took a trip with her daughter and her sister to California and Arizona for about nine days. Wife was excited about the trip. She had not been away from home for several years. Wife shared her excitement about the trip with Respondent in counseling sessions in late February and early March before the trip, and in late March, after she returned from the trip. (Wife's testimony.) Respondent's session notes reflect that Wife talked with him about taking the trip in May 2008. (Ex. R3 at 16.) Husband kept a daily journal of his life from when he was a teenager until early 2010. He noted in his journal at the time that Wife took her trip during spring break in March 2008, and that she had told him she talked to Respondent about the trip, in late February and early March 2008, before the trip, and in late March, after the trip. (Husband's testimony.)

(12) By the summer of 2008, Wife started to look to Respondent for advice on family matters, such as selling the family home, making repairs to the home and home-schooling the children. Wife began to trust Respondent more than she trusted Husband or anyone else. (Wife's testimony.)

(13) In counseling sessions in early August 2008, Respondent told Wife that he "bet she had gorgeous breasts." He told her that she needed to improve her self esteem, and suggested that she go home, undress, and look at her breasts in the mirror to see if she agreed that she had gorgeous breasts. Respondent also told Wife during one session in early August that she was ready for "deeper therapy," and explained how women in his women's group would remove their blouses and bras during group counseling sessions and discuss their sexual problems. Respondent told Wife that her counseling sessions would need to become more frequent and longer. (Wife's testimony.)

(14) In a counseling session on Monday, August 18, 2008, Respondent continued to talk to Wife about "deeper therapy" and told her to remove her blouse and bra during the session in order to improve her self esteem. Wife did as instructed and exposed her breasts to Respondent. Respondent told Wife that his counseling license could be put in jeopardy with the "deeper therapy." He asked her to call him later to confirm that she was okay with the "deeper therapy." Wife did not call Respondent later on August 18. (Wife's testimony.)

(15) On August 19, Respondent telephoned Wife at approximately 8:00 p.m. to ask her if she was still willing to undergo "deeper therapy." Although she was confused and reluctant, Wife told Respondent she was "on board" with the "deeper therapy." Wife hoped the "deeper therapy" would help her sexually with Husband. Wife's cell phone records show a 19 minute telephone call on August 19, 2008, starting at 8:01 p.m., from Respondent's phone number to her cell phone number. (Wife's testimony.)

(16) In a counseling session on Monday, August 25, Wife removed her blouse and bra in front of Respondent. Respondent lowered his trousers and underwear and stood in front of wife, exposing his penis to her. He drew an imaginary line between his penis and her pubic area and

explained, "This can't go in there." Respondent told Wife that she had missed some "sexual growth" during her youth. (Wife's testimony.)

(17) The counseling sessions with Wife became more frequent and longer starting in mid to late August 2008. Wife would remove her blouse and bra shortly after the session started and Respondent would lower his trousers and underwear. At first, there was no physical contact between Respondent and Wife. Then, in one session, Respondent had Wife fondle his penis and help him masturbate into a tissue. Respondent explained to Wife that the episode triggered thoughts of his sexual abuse as a youth by an older woman. (Wife's testimony.)

(18) Wife and Husband had a joint session with Respondent in early September 2008. The session became contentious between Wife and Husband. Respondent asked Husband to leave the room and to remain in a nearby waiting area. (Husband's testimony; Wife's testimony.) Respondent talked to Wife about her low self esteem and her "gorgeous breasts." Wife removed her blouse and bra and Respondent lowered his trousers and underwear. Respondent approached wife and had her touch his penis and helped him masturbate into a tissue. He told wife not to tell Husband what had happened, as he would not understand the "deeper therapy." (Wife's testimony.) After they put their clothes back on, Respondent had Husband return to the office. (Husband's testimony; Wife's testimony.) Husband noticed that Wife acted calmer when he returned to the office. (Husband's testimony.) Wife did as Respondent instructed her and did not tell husband what occurred while he was out of the room. (Wife's testimony.)

(19) Husband noticed the more frequent and longer sessions between Respondent and Wife during late August and early September 2008, but went along with the sessions, believing they might help Wife cope with her problems. (Husband's testimony.)

(20) The pattern would repeat in subsequent sessions in early to mid-September 2008. Wife would remove her blouse and bra and Respondent would lower his trousers and underwear and exposed himself to her. In one session, Respondent told Wife that he thought "she would give good head," and that oral sex would "instill value" in her. In three sessions during mid-September, Respondent had Wife perform oral sex on him. Wife began to feel used and confused by what Respondent was doing, but returned for the sessions because she felt a certain loyalty to Respondent and had no other place to go. She trusted that what Respondent was doing would help her relationship with Husband. (Wife's testimony.)

(21) Wife telephoned Respondent during the day on September 19 and assured him she was still "on board" with the "deeper therapy." Respondent telephoned Wife that evening and talked to her at length about "deeper therapy" and problems with his own wife. Wife's telephone records show a telephone call from Respondent's phone number to her cell phone at 7:46 p.m. that lasted 47 minutes. (Wife's testimony.)

(22) On Monday, September 22, 2008, Wife's car broke down on the highway south of Salem as she was driving to her counseling session with Respondent. She telephoned Husband to explain what had happened. Wife became upset at Husband when she believed he acted more concerned about the car than about her well-being on the side of the road. Wife then telephoned

Respondent who agreed to drive to her location and drive her back to his office. They arrived at Respondent's office a short time later. Respondent agreed to talk to Husband that evening in his regularly scheduled counseling session about what Wife believed was his insensitivity to her situation, and to schedule another appointment for Wife for September 23rd or 24th. Respondent met with Husband that evening as scheduled. Wife believed an appointment would be scheduled for her on September 23rd. Respondent later told Wife he could not meet her on September 23rd. Wife became upset with Respondent over the cancelled session and because she did not believe Respondent addressed her concerns about Husband in his counseling session Monday evening. (Wife's testimony.)

(23) By the morning of September 24, 2008, Wife had concluded that Respondent's "deeper therapy" was not legitimate counseling at all. She spoke with him by phone and demanded an apology before she would continue counseling. Wife did not receive what she considered an appropriate apology. She told Respondent she would not be back. (Wife's testimony.)

(24) Shortly after that phone call with Respondent on September 24th, wife telephoned Linda LaVallee-Conniff (LaVallee-Conniff) and asked to meet with her as soon as possible. Wife acted upset to LaVallee-Conniff. LaVallee-Conniff and Wife have been friends for approximately 18 years, and, at the time, saw each other socially three or four times a year. LaVallee-Conniff is a licensed clinical social worker in Oregon and has a counseling office in Corvallis, Oregon. LaVallee-Conniff agreed to meet in her office with Wife later in the afternoon on September 24th. (Linda LaVallee-Conniff's testimony.)

(25) After her phone call with LaVallee-Conniff on September 24th, Wife told Husband that they would not be going back to counseling with Respondent. Husband could tell that Wife was upset about something, but he did not ask her why. Husband knows Wife's personality and believed she would tell him why she was upset when she was ready to do so. (Husband's testimony.)

(26) In Wife's meeting with LaVallee-Conniff during the afternoon on September 24th, wife explained how her counseling sessions with Respondent had gone from her exposing her breasts, to fondling and sexual contact, and finally to oral sex with him. Wife acted upset and confused to LaVallee-Conniff. LaVallee-Conniff suggested that Wife not tell Husband what had happened and send a certified letter to Respondent informing him that they were ending their counseling with him. (Linda LaVallee-Conniff's testimony.) A short time later, Wife sent a certified letter to Respondent, but she put an incorrect address for him on the envelope and the letter was returned to her by the Postal Service. (Wife's testimony.)

(27) On Monday morning, September 29, 2008, Respondent telephoned Husband and asked him why Wife did not show up for her regularly scheduled Monday counseling session. Husband told Respondent they would not be returning to counseling, but did not give a reason. (Husband's testimony.)

(28) On October 27, 2008, Husband and Wife sent an email to Respondent informing him that they were ending their therapy with him. They did not give a reason. (Ex. A8 at 1.)

(29) Wife told Husband in December 2008 or January 2009 about her sexual encounters with Respondent. Wife and Husband discussed during 2009 what, if anything, they should do about Respondent's conduct. They discussed filing a civil lawsuit against Respondent and they discussed reporting his conduct to the Board. They weighed the impact such actions would have on their children and their families. (Husband's testimony; Wife's testimony.)

(30) In early 2010, Husband and Wife decided to report Respondent's conduct to the Board. Between February 26 and March 1, 2010, Wife completed a Board complaint and filed it with the Board. (Wife's testimony; Ex. R1.) Wife and Husband did not go back to review their calendars and other records for 2008 before filing the complaint. (Wife's testimony.) In her complaint, Wife wrote that the sexual contact with Respondent occurred in October 2008. (Wife's testimony; Ex. R1 at 1.)

(31) Respondent did not send Husband and Wife a closing letter after they stopped seeing him for counseling. (Wife's testimony.)

(32) Husband and Wife have not filed a civil lawsuit against Respondent. (Husband's testimony.)

(33) Respondent denied talking to Husband and Wife about his own marital problems and his belief that his wife was cheating on him. He denied having Wife drive him to his in-laws' house in Salem. Respondent denied sharing information about other clients with Husband or Wife. He denied talking to Wife or Husband about the lawsuit that a former client filed against him. He denied suggesting or persuading Wife to undergo "deeper therapy." Respondent denied asking or telling Wife to remove her blouse and bra; he denied exposing himself to her and having her fondle his genitals; and he denied having oral sex with her. (Respondent's testimony.)

CONCLUSIONS OF LAW

(1) Respondent's professional counseling license is revoked pursuant to ORS 675.745(1)(d) and (e) and the Board's Code of Ethics.

(2) Respondent is assessed the costs for the disciplinary proceedings pursuant to ORS 675.745(7).

OPINION

The Board has the burden of proof to establish its allegations. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683 (1980). The Board must prove the allegations by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

(1) Allegations of Misconduct

The Board is responsible pursuant to ORS 675.705 *et seq* for licensing and regulating professional counselors. Respondent has been licensed by the Board as a professional counselor since January 2007.

The Board seeks to revoke Respondent's license for violating ORS 675.745(1)(d) and (e) and provisions in the Board's Code of Ethics (OAR 833, Div 100), by soliciting or engaging in sexual acts with a client; by failing to act with the highest standards of professional integrity and competence by his conduct; by continuing to practice counseling when his professional judgment was adversely affected by personal and professional problems; and by disclosing confidential information about other clients without written consent.

ORS 675.745(1)(d) and (e) state:

(1) The Oregon Board of Licensed Professional Counselors and Therapists may deny, suspend, revoke or refuse to issue or renew any license issued under ORS 675.715 to 675.835 upon proof that the applicant for licensure or the licensee:

(d) Has been grossly negligent in the practice of professional counseling or marriage and family therapy; [or]

(e) Has violated one or more of the rules of the Board pertaining to the licensure or professional counselors or licensed marriage and family therapists;

The Board, in its Notice of Intent to Revoke, accused Respondent of violating numerous provisions of its Code of Ethics. Those ethical provisions read as follows:

OAR 833-100-0011—General Purpose and Scope

(1) This code constitutes the standards against which the required professional conduct of licensed professional counselors and marriage and family therapists is measured. It has as its goal the welfare and protection of the individuals and groups with whom counselors and therapists work. This code applies to the conduct of all licensees, registered interns and applicants, including the applicant's conduct during the period of education, training, and employment which is required for licensure. Violations of the provisions of this code of ethics will be considered unprofessional or unethical conduct and is sufficient reason for disciplinary action, including, but not limited to, denial of licensure.

OAR 833-100-0021—Responsibility

(1) A licensee's primary professional responsibility is to the client. A licensee makes every reasonable effort to advance the welfare and best interests of all clients for whom the licensee provides professional services. A licensee respects

the rights of those persons seeking assistance and makes reasonable efforts to ensure that the licensee's services are used appropriately:

(7) A licensee does not practice when adversely influenced by either physical or emotional impairment that would interfere with their ability to provide professional services.

(10) A licensee does not provide services to a client when the licensee's objectivity or effectiveness is impaired. If a licensee's objectivity or effectiveness becomes impaired during a professional relationship with a client, the licensee notifies the client that the licensee can no longer serve the client professionally and makes a reasonable effort to assist the client in obtaining other professional services.

OAR 833-100-0031—Client Welfare

(1) Licensees strive to benefit those with whom they work and take care to do no harm. In their professional actions, licensees seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons and shall hold the welfare and interests of clients as primary.

(2) Licensees take reasonable steps to avoid harming their clients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(3) The primary obligation of licensees is to respect the integrity and promote the welfare of their clients, including treating the client at all times in a caring, fair, courteous and respectful manner. This is particularly true for vulnerable populations such as children, seniors or clients with disabilities.

(5) Licensees do not engage in physical contact with clients when there is a possibility of physical or psychological harm from the contact.

OAR 833-100-0041—Integrity

(1) A licensee acts in accordance with the highest standards of professional integrity and competence. A licensee is honest in dealing with clients, students, trainees, colleagues, related third parties, and the public.

(2) Licensees are aware of their influential positions with respect to students, employees, supervisees, and clients, and they avoid exploiting the trust and dependency of such persons. Licensees make every effort to avoid conditions and multiple relationships with clients that could impair professional judgment or increase the risk of exploitation. Such relationships include, but are not limited to, business or personal relationships, sexual relationship (*sic*), relatives, students, employees, or supervisees.

(5) A licensee does not engage in or solicit sexual acts or a sexual relationship with a client or with individuals the licensee knows to be immediate relatives, guardians, supervisees, or significant others of current clients, or with a former client within three years since the rendering of professional services.

(10) A licensee does not use the counseling relationship to further personal, religious, political, sexual, or financial interests.

OAR 833-100-0051—Confidentiality

(3) A licensee, including employees and professional associates of the licensee, does not disclose any confidential information that the licensee, employee, or associate may have acquired in rendering services except as provided by rule or law. All other confidential information is disclosed only with the written informed consent of the client.

OAR 833-100-0061—Conduct and Competence

(1) A licensee accepts the obligation to conform to higher standards of conduct in the capacity of a counseling professional. The private conduct of a licensee is a personal matter to the degree that it does not compromise the fulfillment of professional responsibilities. A licensee will respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.

This case turns on the credibility of the witnesses and other evidence presented by the parties. At its core, the case pits Wife's allegations of misconduct by Respondent against Respondent's denials. Respondent emphatically denied all the allegations of misconduct against him. If the allegations against Respondent are true, particularly the allegations of Respondent persuading or compelling Wife to have repeated sexual contact with him, his conduct clearly violated ORS 675.745(1)(d) and (e) and OAR 833-100-0041(2), (5) and (10) in the Code of Ethics and his professional counseling license should be revoked.

The ALJ found, and the Board agrees, that the evidence presented by the Board of Respondent's misconduct is more persuasive and credible than his denials. Wife gave detailed testimony about the course of her and her Husband's counseling with Respondent and the events that involved the acts of misconduct. Her testimony was consistent with what both the ALJ and the Board believes were Respondent's efforts over a period of time to "groom" Wife for what he had in mind for her. While Wife may have been off a little as to the dates when certain things happened, her testimony overall was consistent and logical. Respondent pointed out that on the complaint she filed with the Board, Wife wrote that the alleged misconduct occurred in October 2008, rather than August and September 2008, when it actually occurred. The ALJ found, and the Board agrees, that this inconsistency is insignificant when weighed against all the other evidence presented and the explanation by Wife and Husband that they did not go back to review their calendars and other records at the time Wife filed her complaint.

The ALJ found, and the Board agrees, that significant evidence exists that corroborates Wife's testimony. When Respondent first started talking to Wife about her "gorgeous breasts," she reported that fact to Husband. Wife told Husband at the time when Respondent asked her to give him a ride to his in-laws' house. Husband corroborated events in the tense joint counseling session in September 2008, when Respondent told Husband to leave the room, and Respondent proceeded to have sexual contact with Wife. Husband's testimony that when he returned to the room Wife acted calmer supports Wife's testimony as to what happened between her and Respondent while Husband was out of the room and the relationship between Wife and Respondent and the influence he had over her at the time. Husband kept a journal that corroborated parts of Wife's testimony and rebutted Respondent's testimony and evidence. For example, Husband's journal confirms that Wife took the spring break trip in March 2008, not in May 2008, like Respondent testified and like his session notes reflect.

Wife's cell phone records corroborate her testimony that Respondent telephoned her on the evenings of August 19, 2008 and talked for 19 minutes, and that he telephoned her on the evening of September 19, 2008 and talked for 47 minutes. Respondent presented no evidence of a legitimate reason to call Wife on those evenings and talk for such lengthy periods of time. The timing of those calls support the time frame when Wife testified that Respondent put pressure on her first to engage in and then to continue the "deeper therapy" with him.

On September 24, 2008, Husband and Wife abruptly ended more than two and one-half years of counseling with Respondent. Yet Respondent made no further effort to contact Husband and Wife, other than the phone call to Husband on September 29th to ask why Wife had not showed up for her counseling session that morning. Respondent did not send them a closing letter, summarizing their counseling or suggesting continued counseling with someone else. If nothing improper had occurred, like Respondent contends, both the ALJ and the Board believes a counselor would have had some further communication with clients under those circumstances to wrap up their relationship.

Finally, when Wife came to the realization on the morning of September 24, 2008 that what Respondent was doing was not appropriate therapy, she immediately telephoned her friend LaVallee-Conniff and asked to see her as soon as possible. They meet later than same day. Wife explained what had happened between her and Respondent. LaVallee-Conniff noted that Wife acted confused and upset. LaVallee-Conniff's testimony as to what Wife told her in September 2008 was consistent with Wife's testimony at hearing.

For the above reasons, the ALJ concluded, and the Board agrees, that Respondent violated ORS 675.745(1)(d) and (e) and the Code of Ethics based on the sexual acts with Wife. His professional counseling license should be revoked for that reason alone.

The ALJ also found, and the Board agrees, that Respondent violated ORS 675.745(1)(d) and (e) and the Code of Ethics by continuing to practice counseling with Husband and Wife when his professional judgment was adversely affected by his relationship with Wife; by continuing to counsel Husband and Wife when his own personal and emotional problems adversely affected his ability to provide professional services; and by disclosing confidential

information about other clients without their written consent. On more than one occasion, Respondent talked to Husband and Wife about his own sexual abuse as a youngster, his personal problems with his wife, and about other clients.

(2) Assessment of Costs of the Disciplinary Process

The Board in its Notice seeks to recover from Respondent its costs for pursuing this disciplinary matter. ORS 675.745(7)² authorizes the Board to recover its costs. The ALJ found, and the Board agrees, that the Board is entitled to recover all costs incurred in this disciplinary action.

FINAL ORDER

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

1. Respondent Robert D. Massena's license as a Professional Counselor is REVOKED pursuant to ORS 675.745(1)(d) & (1)(e); and
2. Respondent is ASSESSED the Board's costs associated with this matter, including the Board's attorney fees, in the amount of **\$22,087.11**, pursuant to ORS 675.745(7).

DATED AND ISSUED this 15th day of May 2011.

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 by Default. You may request judicial review by filing a petition for review with the Oregon Court of Appeals in Salem,

² ORS 675.745(7) states:

In addition to the actions authorized by subsections (1) and (2) of this section, the board may take such disciplinary action as the board in its discretion finds proper, including but not limited to the assessment of the costs of the disciplinary process.