

On December 9, 2015, Respondent filed a Prehearing Memorandum. On December 10, 2015, the Board filed a response entitled Respondent is Subject to the Board's Authority to Impose a Civil Penalty (Board's Prehearing Response).

On December 10, 2015, ALJ Bignon presided over the hearing held at the Board's offices in Salem, Oregon. Respondent, appeared, accompanied by counsel Mr. Flinn. AAG Foote, accompanied by Charles Hill, Executive Director, represented the Board. The following testified at hearing: Respondent; Dulcy Neeley, L.C.S.W.; Colleen Adarhormazd, L.P.C.; James Lane, Ph.D., licensed psychologist; Jaquelyn Tasker, L.P.C.; and Robert Palmondon. The record closed at the conclusion of the hearing on December 10, 2015.

ISSUES

(1) Whether Respondent engaged in conduct that constituted the unlicensed practice of psychology in violation of ORS 675.010(4), 675.020(1)(a),(b) and (2); and if so, whether the Board may impose a civil penalty of \$5000 against Respondent, pursuant to ORS 675.070(1)(g) and (3)(a) and (b)(E).

(2) Whether Respondent is exempt from regulation by the Board as "otherwise authorized" to provide counseling services without a license because she is exempt from regulation by the Board of Licensed Professional Counselors and Therapists, under ORS 675.825(4)(a).

EVIDENTIARY RULINGS

Exhibits A1 through A14, offered by the Board and Exhibit R1, offered by Respondent, were admitted into the record without objections.²

James Lane, Ph.D. testified as an expert in the practice of psychology, the credentials and training of individuals awarded a doctoral degree in psychology, and the requirements necessary to attain a license to practice psychology.³ Based on his training and experience, Dr. Lane qualifies to offer his expert opinion on the practice of psychology, the credentials and training of individuals awarded a doctoral degree in psychology, and the requirements for qualifications for a psychologist license.

FINDINGS OF FACT

(1) Respondent left home when she was 17 years of age and moved into a homeless youth shelter in Colorado. When Respondent was 18 years old, staff at the shelter allowed her to sit in when a staff member was talking with another shelter client. On some occasions, shelter staff asked Respondent to work with another shelter client. At some point Respondent moved

² Pleadings P1 through P7 were also admitted into the record.

³ Dr. Lane established his expertise through testimony as to his training and experience and his curriculum vita as set out in Exhibit A14. Respondent offered no objections to Dr. Lane's testimony as an expert.

into an apartment associated with or provided by the shelter. (Test. of Respondent.)

(2) Respondent remained associated with the shelter for approximately 5 years. During that time, Respondent worked at a domestic violence shelter and at an alternative school. She also worked in other jobs associated with human services in Colorado before moving to Oregon about 5 years ago. (Test. of Respondent.)

(3) After moving from Colorado to Oregon, Respondent became a tenant in an office building where she met another tenant, Robert Palmondon. (Test. of Respondent and Palmondon.) Palmondon and Respondent developed an interest in studying hypnotherapy. They enrolled in the Apositiva Institute to study hypnotherapy and traveled together from Corvallis to Portland for the classes. Both Palmondon and Respondent completed the hypnotherapy course at the Apositiva Institute. (*Id.*)

(4) Respondent was awarded a certificate in clinical hypnotherapy in 2012, which is indicated by the letters "CHt" following her name. Oregon does not regulate the practice of hypnotherapy. (Test. of Respondent.)

(5) Palmondon and Respondent initially intended to open a practice in hypnotherapy together. (Test. of Palmondon.) Palmondon has a bachelor's degree in computer engineering, and has several other businesses, including technical writing, and raising free range poultry. After he completed his training, he opened a practice in hypnotherapy. (*Id.*) Respondent's hypnotherapy practice did not generate many clients and she believed her skills and interest were directed more towards counseling others. (Test. of Respondent.)

(6) While trying to develop her hypnotherapy practice, Respondent met, among others, Colleen Adarhormazd. Adarhormazd is an Oregon licensed professional counselor who has been licensed since 2012. She met Respondent around February 2013, when they had offices in the same building and used a shared waiting room. Respondent introduced herself as a hypnotherapist and told Adarhormazd that she was trying to open a practice. (Test. of Adarhormazd.)

(7) In subsequent conversations, Respondent told Adarhormazd, among other things, that Respondent intended to change her practice to focus on counseling. Adarhormazd cautioned Respondent about licensing restrictions regarding the use of titles like "counselor" or "therapist." She encouraged Respondent to pursue an undergraduate degree and to become licensed. (Test. of Adarhormazd.)

(8) During casual conversations, Adarhormazd and Respondent discussed creating an informal consulting group. Respondent expressed great interest and organized the group to meet at the conference room in Adarhormazd's building. Adarhormazd was somewhat concerned when she learned that Respondent intended to change her business name to include the term "counseling." (Test. of Adarhormazd.)

(9) Respondent opened a practice in counseling. She has an office in Corvallis and uses the business name "Michaela's Counseling." (Test. of Respondent; Exs. A9, A10 and A11.)

(10) Adarhormazd invited Dulcy Neeley, L.C.S.W., to join what Neeley understood

would be a cohort of professionals who could discuss their work. (Test. of Neeley.) When Neeley met with the group, four people attended, including Respondent, Neeley, and Arthur Salamon, Ph.D. The group discussed, among other topics, the process to get on an insurance company's panel. Respondent told the group that she required her clients pay up front because she was not on any insurance panel. (*Id.*) Respondent described her practice as "eclectic," including individuals with dissociative issues, self-harming behavior, and autism. (Test. of Neeley, Adarhormazd.) Neeley did not return to the group because she was concerned about Respondent's qualifications to treat the individuals Respondent described as her clients. (Test. of Neeley.)

(11) After possibly two meetings with the group, Adarhormazd and others also became concerned about Respondent's description of her clientele. Because Respondent was not a licensed counselor, Adarhormazd and the other counselors were uncomfortable participating in a consulting group with her. Adarhormazd and the others decided to stop meeting. Adarhormazd told Respondent she was concerned about liability, that the group was disbanding, and that Respondent could no longer use the conference room. (Test. of Adarhormazd.)

(12) Palmondon and Respondent maintained professional contact. At some point, the two moved to adjoining offices in a second building. Palmondon has referred patients from his hypnotherapy practice to Respondent for counseling, including a child who was having eating problems, an older individual who was taking large doses of narcotics, and another patient who had trouble being motivated to get out of bed. Palmondon has also seen Respondent in her capacity as his counselor. (*Id.*)

(13) As of November 26, 2014, Respondent had a paid advertisement for her services published in Psychology Today. (Test. of Respondent; Ex. A9.) The advertisement appeared under the category "Therapists," followed by Respondent's full name and the initials "CHt." (Ex. A9 at 1.)

(14) In the 2014 Psychology Today advertisement, the narrative following Respondent's name reads, in part, as follows:

Do you notice things that people around you often don't? Are you deeply affected by feelings, interactions, and other people? You're likely highly sensitive. Folks who are highly sensitive may have ongoing stress that shows up as *depression, panic, dissociation, or relationship issues*. This is typical of smart, sensitive people, but it's not inevitable, because, with help, these abilities begin to work for you, more and more.

Therapy with me is interactive. We both bring our smarts and intuition to the process, and we find what truly helps, trading "symptoms" for clarity and connection. I offer both intensive, personalized one-on-one counseling, and a practical, safe workshop for women struggling with the aftermath of childhood trauma[.]

(Ex. A9 at 1.) (Emphasis added.)

(15) In the Psychology Today advertisement, under the column heading "Specialties,"

Respondent listed the following: trauma and PTSD; relationship issues; and sexual abuse. Under the column heading "Issues," she listed the following: chronic pain; coping skills; domestic violence; self-esteem; spirituality; codependency; domestic abuse; peer relationships; and self-harming. (Test. of Respondent, Lane; Ex. A9 at 1.) Under the heading "Treatment Approach," subheading "Treatment Orientation," Respondent listed the following: Attachment-based; Eclectic; Mindfulness-based (MBCT); Neuro-Linguistic; Relational; Sensorimotor Psychotherapy; Somatic; Somatic Experiencing; and Trauma Focused. (*Id.*)

(16) James Lane, Ph.D., psychologist has been licensed in Oregon since 1988. (Test. of Lane; Ex. A14.) From 2006 to the present, he has been a professor at the School of Professional Psychology, College of Health Professions, Pacific University, in Hillsboro, Oregon (Pacific University Psychology School). Dr. Lane was Interim Dean of that program from 2011-2012. His past experience includes classroom teaching (1987-present), clinical teaching (1988-1993, 1996-2000), and clinical supervision (1988-1993, 1997-present) in the Pacific University Psychology School. Prior to moving to Oregon, Dr. Lane was a Registered Psychologist and worked as a psychologist, in both the Saskatchewan and Ontario Provinces of Canada. (*Id.*)

(17) Dr. Lane is experienced in the requirements for teaching and supervising doctoral psychology students and the requirements for Oregon licensure. (Test. of Lane; Ex. A12.) Prior to the hearing, he reviewed Respondent's advertisements and he was present throughout Respondent's testimony. (Test. of Lane; Exs. A9, A10, and A11.)

(18) Respondent offered to serve clients who have PTSD, which is a recognized psychological diagnosis in the DSM-V. (Test. of Lane; Ex. A9.)

(19) In the past, Respondent offered to serve clients with complex trauma. (Test. of Respondent; Ex. A10 at 3.) Complex trauma is not a diagnosis in itself but is a historical fact that could lead to any number of psychological disorders, such as PTSD. (Test. of Lane.)

(20) Respondent offered to serve clients who are experiencing issues with co-dependency. (Ex. A9 at 1.) Co-dependency is a description of relationship difficulties. (Test. of Lane.)

(21) Respondent offered to serve individuals with chronic pain. (Ex. A9 at 1.) Chronic pain may be a symptom of a medical disorder or it may be a side-effect of developing a mental disorder. (Test. of Lane.)

(22) Respondent offered to serve clients experiencing anxiety, depression, and/or self-harming. (Ex. A9 at 1.) Anxiety, depression, and self-harming may be symptoms of more serious disorders. For example, self-harming is frequently a symptom of borderline personality disorder. (Test. of Lane.) An individual who is experiencing self-harming behavior may be at high risk if treated improperly. To adequately treat a person with self-harming behavior, the individual providing services would be expected to have completed formal supervised training. Self-harming is frequently a response to an individual experiencing very intense emotional arousal. If the individual's condition is not adequately recognized during treatment, an individual may be at high risk of leaving a therapy session in a high state of emotional arousal which may result in an increased risk of serious, or even lethal, self-harm. (*Id.*)

(23) Respondent offered to serve clients who experience dissociation. (Test. of Respondent; Ex. A9.) In its severe form, dissociation may result in dissociative identity disorder, formerly known as multiple personality disorder. Dissociative identity disorder is a recognized mental disorder listed in the DSM-V with a recognized set of diagnostic symptoms. The disorder does not have a well-established treatment method but there are practitioners who have had success treating it. (Test. of Lane; Ex. A9.)

(24) Respondent's list of treatment approaches included several areas of therapy that are used by psychologists. (Test. of Lane; Ex. A9.) Mindfulness-based Cognitive Therapy (MBCT) is widely recognized in the psychological community. Dr. Lane is trained in MBCT and currently teaches a course in MBCT to psychology students. MBCT is a highly structured, manualized treatment which consists of eight sessions used to treat patients with depression. Use of MBCT greatly reduces the risk of relapse in patients with depression. It is implemented in a group setting. Other terms Respondent listed described concepts a psychologist would use in approaching therapy. For example, "eclectic" describes another highly recognized psychological treatment approach. (*Id.*)

(25) As of November 26, 2014, Respondent listed "sensorimotor psychotherapy" as one of her treatment approaches. (Test. of Respondent; Ex. A9 at 1.) She changed the term to "sensorimotor therapy" when she learned that "psychotherapy" referred to a regulated practice. (Test. of Respondent; Ex. A9 at 2.) Respondent took the first year of training in sensorimotor therapy. The therapy focuses on reading an individual's body language based on the theory that an individual's body reflects the individual's state of mind. (Test. of Respondent.)

(26) As of December 22, 2014, Respondent had removed "Mindfulness-based (MBCT)" and "Neuro-Linguistic" from her list of treatment orientations in the Psychology Today advertisement. (Ex. A9 at 2.)

(27) Respondent maintains a Facebook page for Michaela's Counseling. The page is categorized under "Counseling & Mental Health." (Test. of Respondent; Ex. A10 at 1.) Facebook automatically added the category "mental health" when Respondent created her listing under "counselor." Respondent was aware that Facebook listed her under the categories "counselor" and "mental health" and had not changed it as of December 30, 2014. (Test. of Respondent.)

(28) On July 20, 2014, Respondent posted an article on her Facebook page under the title "EMDR is good, but limited." Respondent's post began with a video YouTube link and a link to her webpage at <http://www.michaelas-counseling.com>, followed by a partial quote that read:

Looking for therapy for trauma or anxiety? Heard that EMDR will solve all your symptoms? It might! But keep in mind: It's considered a "power tool" to be used with caution. That's why I use EMDR techniques[.]

(Test. of Respondent; Ex. A10 at 2.)

(29) As of December 30, 2014, the post remained on Respondent's Facebook page but she later removed the post. Respondent removed the posting after learning that "anxiety" was

considered a word associated with the practice of psychology. (Test. of Respondent; Ex. A10 at 2.)

(30) Respondent is not trained or certified in EMDR (eye movement desensitization reprocessing). She uses what she believes are some of the techniques used by those certified in EMDR. (Test. of Respondent.) Respondent learned some things about it by reading some books and hearing about it in other trainings. (*Id.*)

(31) Respondent has had two clients who engaged in self-harming behavior. (Test. of Respondent.) One of those individuals, a female, is still Respondent's client. Respondent does not presently work with couples, and no longer markets herself to individuals with self-harm struggles or complex trauma. Respondent had worked with two couples in the past. She referred one of the couples who came in with abuse related issues to another provider. (*Id.*)

(32) Respondent used an Internet site, Outcomes.com, for a period of time to track client progress but she ceased using it because she was getting consistent scores. Respondent currently uses observation of the client to gauge client progress. (Test. of Respondent.) She does not use a formal or consistent note-taking system. Respondent generally uses markers and a drawing pad to create notes or a diagram together with her clients during a session as a collaboration. Respondent has kept those notes. She has used a computer-based note system called My Client Plus that is encrypted where she can take notes but she does so sporadically. (*Id.*)

(33) Respondent considered pursuing training to become a licensed counselor. She did not pursue training because she believes that other counselors are paying for training to perform the work that Respondent is already doing. Respondent has heard counselors-in-training saying that they were only pursuing the training to "get their tickets punched." (Test. of Respondent.)

(34) Respondent is a member of the American Counselors Association. The Association has a code of ethics that Respondent believes she follows. Respondent is not insured for malpractice. Her fees are set at \$140.00 per hour and clients pre-pay for sessions. Respondent occasionally sees clients for less or for no cost. Respondent uses a sliding scale and some reduction for clients who sign up for monthly visits; visits may be reduced to between \$110.00 and \$127.00. (Test. of Respondent; Ex. A11.)

(35) Respondent's personal Internet page, or website, includes a statement, under a heading "Certifications/Trainings" "My Profession" that reads:

I am a counselor operating under Oregon's "educational licensing exemption" under ORS 675.825(4)(a).

(Test. of Respondent; Ex. A11 at 5.)

(36) As of December 30, 2014, Respondent's business website contains, among other things, a list of trainings Respondent stated she had completed within the last three years. One of those trainings listed is *Neurobiologically Informed Trauma Therapy* with Janina Fisher, Ph.D. (Ex. A11 at 5.) Dr. Fisher's webinar meets two hours a month and, as of December 2015, Respondent had audited the class for three of the four years offered. Students who are registered for certification and complete the course take exams and, if successful, are certified as having

completed the class. Respondent did not register for certification because it was more expensive and she does not choose to pursue certification. She will not be tested on the course material. She has not completed the class but is currently in the third of four years required to complete the course. Respondent was unsure if the course had qualifications necessary as pre-requisites. When she registered, Respondent told Dr. Fisher that she was a sensory motor psychotherapy student. (Test. of Respondent.)

(37) Respondent has provided therapy to a client who came to her feeling suicidal at the time of the visit. Respondent used her experience answering the telephone at the crisis center in Colorado as her background for how she approached dealing with the client. (Test. of Respondent.)

(38) When counseling a suicidal client, Respondent's goal is to ensure that an individual experiencing immediate suicidal thoughts is safe when they leave the session. She does so by ensuring the individual has a plan, by asking about the person's support network and identifying someone she hopes will work with the individual. Additionally, she has a conversation with the person to find out what is going on with them. She believes that a conversation where the individual has the opportunity to talk and to be heard will help reduce the suicidal thoughts. Respondent will ask the individual to commit to being safe between visits and will also tell the person about other resources, such as the emergency room or identifying someone in the person's life who will help if the individual needs that. (Test. of Respondent.)

(39) Respondent does not follow the practice of formal assessment of new clients. Respondent believes that psychologists are using a medical model which she characterizes as looking for a problem that can be coded for purposes of billing insurance. Respondent "reframes" a client's use of a description such as "disorder," with the exception of PTSD (post-traumatic stress disorder), in a way she describes as a way the person is dealing with something. (Test. of Respondent.)

(40) Respondent dislikes the terms "disorder" because she believes it infers that there is something wrong with an individual to whom the term is applied. Respondent sees people who are seeking help because the person has a problem or dysfunction in the person's life. The issue may be relational, emotional or behavioral, or an internal mindset. (Test. of Respondent.)

(41) Respondent avoids using the word "treat" with regard to her relationship with her clients. She believes that the word "treat" indicates that she has specialized training or knowledge, that the individual she is working with does not, regarding the reason the individual sought her help. Respondent acknowledged that she had listed several items in her Psychology Today advertisement under the heading Treatment Approach. She does not believe she was being dishonest in listing those terms as "treatment approaches" because she is describing how she works with her clients. Respondent provides therapy to individuals but does not consider that she is providing "treatment." (Test. of Respondent.)

(42) Respondent has had clients who have experienced flashbacks (not of a drug-induced nature). She uses a technique from a book called "The Flashback Helping Protocol." According to Respondent, the method encourages the individual to acknowledge that they are experiencing a memory, acknowledging that they are in their body, and that the person is in a different place

and time. Respondent used the method with a client by creating a card of symptoms that the client could refer to during the day. The use of the technique aided in reducing and eventually eliminating the client's experiencing flashbacks. (Test. of Respondent.)

(43) By letter of August 22, 2015, the Board notified Respondent that it was investigating her for alleged unlicensed practice of psychology. (Ex. A2.)

(44) Within the context of professional psychology, to "diagnosis" an individual with a mental disorder involves application of the symptoms or criteria listed in the Diagnostic and Statistical Manual of Mental Disorders, currently in its 5th edition, (DSM-V). (Test. of Lane.) Respondent does not engage in the diagnosis of mental disorders. (Test. of Lane, Respondent.) Respondent, by necessity, does perform assessment of her clients in order to understand where the client is or what the client is seeking, in order to engage in counseling. (Test. of Lane.)

(45) The term "treatment" is a commonly used word. An individual, working in a professional capacity with other individuals in a counseling format, engages in treatment when the individual applies techniques (proven or unproven) with the intent of intervention, or offers to help an individual with the aim of improving the individual's function. (Test. of Lane.)

(46) Respondent also advertised using an "attachment-based" treatment approach. (Test. of Respondent; Ex. A9.) Attachment-based therapy is an approach many psychologists would describe themselves as using. The therapy is based on the work of John Bowlby, psychiatrist, who researched and published theory on how humans form attachments. Bowlby focused on the relationship between care-givers and infants, and how the quality of that attachment may later impact an individual's development of adult attachments. Others conducted much research in this area. The result is an approach to psychological treatment based on attachment theory. (Test. of Lane.)

(47) When she offered to treat people with complex trauma disorder, regardless of intention, Respondent offered to treat individuals who may have one or more of many psychological disorders. Respondent lacks basic underlying training in psychology. She also lacks knowledge of statistics and research to critically analyze and understand psychological studies and treatment recommendations. (Test. of Lane.)

(48) Students who attain a doctoral degree in psychology are exposed to other psychology students and practicing professionals. Such exposure aids the psychology student in developing a professional identity. Doctoral candidates must complete the equivalent of one full year of supervised internship. During the internship, the student practices under the supervision of a qualified psychologist, who provides immediate and on-going feedback and instruction. (Test. of Lane.)

(49) A licensed psychologist has taken, among other courses, psychology, personality theory, statistics and ethics, which are applied in the practice of psychology. For example, knowledge of statistics is necessary for a psychologist to evaluate the reliability of studies and/or methods and to apply methodologies correctly. Respondent has not had formal statistics training which impacts her ability to understand and evaluate and apply research. (Test. of Lane.)

(50) In addition to the formal psychology educational requirements, licensing in Oregon

requires 2000 hours of supervised practice post-graduate degree. (Test. of Lane.)⁴

(51) Respondent's lack of underlying formal training may inadvertently lead to failure to adequately recognize and treat an individual's underlying serious psychological disorder. The on-going self-education Respondent has engaged in may be similar to some continuing education psychologists. However, Respondent lacks the basic, underlying, formal training to place the training within context. (Test. of Lane.)

(52) Based on his training and experience, Dr. Lane evaluated Respondent's testimony and her written advertisements and concluded that Respondent had engaged in the practice of psychology. (Test. of Lane.)

CONCLUSIONS OF LAW

(1) Respondent engaged in conduct that constituted the unlicensed practice of psychology. The Board may impose a civil penalty of \$5000 against Respondent.

(2) Respondent is not exempt from regulation by the Board under any other affirmative grant of authority from the State of Oregon.

OPINION

The Board alleges that Respondent engaged in the unlawful practice of psychology without a license and that the Board is authorized to sanction Respondent by imposing a civil penalty of \$5000. As the proponent of this position, the Board has the burden of proof. ORS 183.450(2) and (5); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Respondent denies that her conduct constituted the practice of psychology and affirmatively contends that her conduct is exempt from licensure requirements under ORS 675.825(4)(b). Respondent bears the burden of proof on the affirmative defense. The Board has met its burden of proof. Respondent failed to meet her burden of proof.

Board's Authority

The Board is authorized to regulate the practice of psychology, including imposing civil penalties for the unlicensed practice of psychology in Oregon. ORS 675.110, 675.010 to 675.150, 675.070. Individuals are prohibited from either practicing psychology in Oregon

⁴ Dr. Lane's recollection of the requirements for licensure needs to be corrected in one particular, applicants for licensure as a psychologist in Oregon must complete at least 1500 hours of post-graduate degree supervised work experience, OAR 858-010-0036(1)(a).

without first being licensed, unless exempted, or representing oneself to be a psychologist without first being licensed under ORS 675.010 to 675.150. ORS 675.020(1)(a) and (b). As used in ORS 675.070(1)(b), “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. ORS 675.070(2). ORS 675.010(4) defines the practice of psychology as:

[R]endering or offering to render supervision, consultation, evaluation or therapy services to individuals, groups or organizations for the purpose of diagnosing or treating behavioral, emotional or mental disorders[.]

It is undisputed that Respondent engages in counseling and is paid by her clients. It also undisputed that Respondent is not a licensed as a psychologist, professional counselor, therapist, or social worker. Respondent does not have the education, training, supervised experience, and current competency to provide treatment services to individuals with mental disorders.

The Board contends that Respondent, regardless of intention, both (1) offered to provide services that are regulated as the practice of psychology, thereby representing herself to be a psychologist, and (2) engaged in the practice of psychology, in violation of the law. The evidence supports the Board’s allegations.

Representing oneself to be a psychologist

Respondent advertised her services to engage in counseling with individuals who had experienced, among other conditions or situations, PTSD, anxiety, depression, complex trauma, dissociation, and self-harming. PTSD and dissociative personality disorder are mental disorders. Anxiety and depression are frequently symptoms of psychological disorders. Self-harming is symptomatic of serious underlying mental disorders and failure to adequately understand the psychological condition of an individual in treatment has the potential to place the individual at serious risk of self-harm or harm to others. Respondent is not qualified or licensed to treat mental disorders. Respondent’s representations included specializations and activities that constitute offering “consultation, evaluation, or therapy services to individuals . . . for the purpose of diagnosing or treating behavioral, emotional, or mental disorders.” Therefore, Respondent represented herself to be a psychologist under ORS 675.020(2), in violation of ORS 675.020(1)(b).

Practicing psychology without a license

Respondent has engaged in therapy to treat individuals who had, among other issues or diagnoses, PTSD, dissociation, anxiety, and depression. In doing so, Respondent engaged in the practice of psychology, as defined pursuant to ORS 675.010(4). By engaging in the practice of psychology without a license, Respondent violated ORS 675.020(1)(a).

At hearing, Respondent engaged in semantics to redefine terms that described her practice, in what could be reasonably inferred to be an effort to distance her conduct from conduct associated with the practice of psychology. In practicality, Respondent offered to, and provided, paid services to establish a client/provider relationship within which she applied various principles of interaction to effect an outcome with the client. Respondent may dislike the word therapy or treatment but she practiced both. And, she practiced therapy or treated individuals with mental disorders, which she is not licensed to do. Dr. Lane opined that Respondent, whether intended or not, offered to, and engaged in, the practice of psychology with clients. The evidence at hearing supported Dr. Lane's expert opinion.

In addition, Respondent's testimony and her published information about her experience and training revealed Respondent inflated her credentials for qualifying to engage in any type of professional counseling. Respondent advertises that she uses a variety of named therapy techniques. She testified to training in and/or use of those therapy techniques. Upon closer questioning, Respondent admitted that, in some instances, she had taken part of a training in a particular technique, *i.e.* the first year of sensorimotor training. Or Respondent read about a technique and applied what she understood to be one of the principles of the technique, *i.e.* EMDR, without having been trained or certified in the technique.

When asked about additional training, Respondent testified that she was in her third year of training with psychologist Dr. Janine Fischer through an on-line Webinar. Upon closer questioning, Respondent admitted that she is not taking the course for certification and will not be tested on the information taught in the class. Also, Respondent was unsure if the course had qualifications necessary as pre-requisites to take the class. When registering, Respondent told Dr. Fisher that she was a sensory motor psychotherapy student. Additionally, Respondent's website as of December 30, 2014, stated that she had completed Dr. Fisher's training within the past three years. To the contrary, Respondent testified that she was in year three of a four year course. At the very least, Respondent is not accurate in her representations; at worst, Respondent is misleading the public as to her qualifications. Her lack of clarity regarding the training and experience reflects negatively on her credibility. Respondent's misleading statements lend support to the determination that she has engaged in the practice of psychology when she denies having done so.

Respondent's Affirmative Defense

Respondent affirmatively asserted that her conduct was exempt from regulation of the Board under ORS 675.090(1) which provides in part:

(1) ORS 675.010 to 675.150 do not apply to:

(e) A person who is licensed, certified or *otherwise authorized* by the State of Oregon to provide mental health services, *provided that the services are rendered within the person's lawful scope of practice* and that the person does not use the title "psychologist" in connection with the activities described in this paragraph.

(Emphasis added.)

Respondent argues that, under ORS 675.090(1)(e), she is otherwise authorized by the State because she claims to be an unlicensed counselor practicing under ORS 675.825(4)(a). Therefore, Respondent claims she is exempt from regulation by the Board. Respondent's argument is not persuasive.

ORS 675.825(4)(a) provides an exemption to licensing requirements in practice areas regulated by the Board of Licensed Professional Counselors and Therapists (BLPCT). ORS 675.825 sets forth practices which are prohibited under the laws and rules pertaining to licensed professional counselors and therapists, and for which the BLPCT may assess civil penalties. ORS 675.825(4) provides that:

Nothing in ORS 675.715 to 675.835 limits or prevents the practice of a person's profession or restricts a person from providing counseling services or services related to marriage and family if the person:

(a) Does not meet the requirements of ORS 675.715 (1)(b)[.]

ORS 675.715(1)(b) lists the educational requirements for licensing by the BLPCT. It is undisputed that Licensee does not have the necessary education to meet the requirements of ORS 675.715(b). Licensee, in parts of her practice, may or may not also be acting as an unlicensed counselor within the education exemption to the BLPCT's licensing requirements. The Board in this case does not argue that Respondent is subject to licensing by the BLPCT. As argued in the Board's pre-hearing statement, the professional licensing boards established by the Legislature are authorized to regulate a particular profession, defined by the profession's scope of practice. (Board's Prehearing Response, at 4-5.) The evidence showed that Respondent has no affirmative grant of authority by the State of Oregon to provide mental health services. The Board argued and proved that Respondent engaged in conduct that falls within regulation by the Board as the practice of psychology when she is not licensed to do so.⁵

Additional evidence

Respondent's evidence included testimony from Respondent and others that Respondent discusses cases with licensed counselors and that she takes on-going classes in various subjects. The evidence presented shows that Respondent maintains professional relationships, engages in peer-to-peer case discussions, and on-going education similar to practices that might be expected of professional, licensed counselors. If, as Respondent argues in the main, she is not subject to licensing requirements under any professional licensing board authorized by the State of Oregon,

⁵ Respondent and the Board referred to legislative intent in arguing whether the provisions of ORS 675.825(4)(a) applied to Respondent. The ALJ found no ambiguity or conflict in the application of ORS 675.825(4)(a), 675.010(4), and 675.020. As a result, the ALJ did not go beyond application of the plain meaning of the text of the statutes to the facts as found at hearing. ORS 170.010; *State v. Gaines*, 345 Or 160 (2009) (Court examined the method of statutory analysis set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993), reiterating that "[f]irst, the court examines the text and context of the statute. [citation omitted] If the legislature's intent is obvious from that first level of analysis, 'further inquiry is unnecessary.'" *Id.* at 611.)

the evidence is irrelevant. If the evidence was offered to prove Respondent maintains similar standards to licensed counselors, and somehow Respondent is competent, the evidence is still irrelevant. Respondent is either subject to a licensing requirement and does not have it, or she is not and there is no standard to which she can be held. The ultimate issue is whether Respondent is engaging in the practice of psychology as that term is defined under the relevant laws and rules or not. As found above, the ALJ concluded, and the Board agrees, that Respondent's conduct falls under the practice of psychology and that she is subject to sanction for practicing psychology without a license.

Civil Penalty

ORS 675.070 provides that:

(1) Where any of the grounds enumerated in subsection (2) of this section exist, the State Board of Psychologist Examiners may impose any of the following sanctions:

* * * * *

(g) Impose a civil penalty as set forth in subsection (3) of this section.

* * * * *

(3) The board may impose a civil penalty under subsection (1) of this section:

(a) In an amount not to exceed \$5,000; or

(b) In an amount not to exceed \$10,000, if any of the following conditions exist:

* * * * *

(E) The person subject to the penalty violated ORS 675.020 by practicing psychology or representing that the person is a psychologist without having a license.

In the current matter, the Board is authorized to assess the proposed civil penalty of \$5000 against Respondent for violations of ORS 675.020(1)(a), (b) and (2) and 675.070(1)(h), ORS 675.070(1)(g), (3)(b)(E).

EXCEPTIONS

On February 2, 2016, the Board received Respondent's written exceptions. Respondent's counsel correctly notes in the exceptions that the correct spelling of one witness is "Ducly Neeley". The Final Order reflects that correction.

Respondent contends that the ALJ did not consider emails presented by Respondent in

her exhibit 1. The Board notes that the lack of comment by the ALJ on the exhibit does not mean that she did not consider the emails. Respondent also argues that at the beginning of treatment, she told all her clients that she was not a psychologist and was not licensed in the State of Oregon. Setting aside the lack of chart notes to support this assertion and assuming this assertion to be true, such a disclaimer does not negate the Board's conclusion that her representations to the public and the therapy that she provided to clients constituted the unlicensed practice of psychology.

The Board has considered Respondent's remaining written exceptions, and finds them to lack merit.

ORDER

The Board adopts the ALJ's recommendation that the Board of Psychologist Examiners issue the following order:

The Board assesses Respondent the proposed civil penalty of \$5000 for conduct constituting the practice of psychology and for representing that she is a psychologist by offering services included in the practice of psychology without having a license to practice psychology. Respondent must pay the civil penalty of \$5,000 no later than 60 days after this Order is signed by the Board Chair, or in the event of an appeal, after the Order becomes final by operation of law.

IT IS SO ORDERED this 18th day of March, 2016.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon

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FRAN FERDER, Ph.D.
Board Chair

Right to Judicial Review

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. See ORS 183.482. If this Order was personally delivered to you, the date of service is the day it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60 days' time period, you will lose your right to appeal.

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5.

If Respondent requests a hearing, the request 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. Before commencement of the hearing, Respondent 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.

6.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

7.

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 Respondent. Respondent's submissions to the Board to-date regarding the subject of this case and all information in the Board's files relevant to the subject of this case automatically become part of the evidentiary record of this Board action upon default for the purpose of proving a *prima facie* case. ORS 183.417(4).

DATED this 24th day of MARCH, 2015.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon

Redacted

Charles Hill
Executive Director