



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: David Thomas Bice
Master Case No.: M2012-1286
Document: Final Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

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**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

DAVID THOMAS BICE,
Credential No. PSYC.PY.00001162,

Respondent.

Master Case No. M2012-1286

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

APPEARANCES:

David Thomas Bice, the Respondent, by
Steven J. Sherlag, Attorney at Law

Department of Health Examining Board of Psychology Program (Department), by
Office of the Attorney General, per
Kristin G. Brewer, Assistant Attorney General

PRESIDING OFFICER: John F. Kuntz, Review Judge

A hearing was held in this matter before the Presiding Officer (on authority delegated to him by the Examining Board of Psychology (Board) on June 7, 2016, regarding allegations of unprofessional conduct. Probation with conditions.

ISSUES

Did the Respondent commit unprofessional conduct as defined by RCW 18.130.180(5)?

If the Department proves unprofessional conduct, what are the appropriate sanctions under RCW 18.130.160?

SUMMARY OF PROCEEDINGS

The Department presented the testimony of the Respondent. The Respondent testified on his own behalf and presented the testimony of: Carmen Davis, Ph.D.; Pam Rathbone, R.N.; and Kendra Summers, Ph.D.

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The Presiding Officer admitted the following Department exhibits:

Exhibit D-1: Credential View Screen, dated March 12, 2013;

Exhibit D-2: *In the Matter of David T. Bice, Ph.D.*, Oregon Board of Psychologist Examiners, Case Nos. 2009-035 and 2010-007, Notice of Proposed License Suspension & Restriction, dated September 14, 2010;

Exhibit D-3: *In the Matter of David T. Bice, Ph.D.*, Oregon Board of Psychologist Examiners, Case Nos. 2009-035 and 2010-007, Answer to Notice of Proposed License Suspension and Restriction, dated October 14, 2010;

Exhibit D-4: *In the Matter of David T. Bice, Ph.D.*, Oregon Board of Psychologist Examiners, Case Nos. 2009-035 and 2010-007, Final Order, c. September 28, 2012; and

Exhibit D-5: *In the Matter of David T. Bice, Ph.D.*, Oregon Board of Psychologist Examiners, Case Nos. 2009-035 and 2010-007, Response to Motion to Stay.

The Presiding Officer admitted the following Respondent exhibits:

Exhibit L-6: Curriculum Vitae of David T. Bice, Ph.D.;

Exhibit R-17: Oregon Board of Psychology Examiners May 17, 2013 Response to Motion for Stay; and

Exhibit R-18: Oregon Board of Psychological Examiners, Licensee/Applicant Lookup, dated April 29, 2016.¹

¹ The Respondent offered the Respondent's April 2016 License Lookup as an exhibit at the first prehearing conference and the Department did not oppose its admission. See Prehearing Order No. 20. The Respondent then identified a separate Exhibit L-18, which the Presiding Officer denied. See Prehearing Order No. 21.

I. FINDINGS OF FACT

1.1 On May 17, 2016, the Examining Board of Psychology delegated the decision-making in this case to the Presiding Officer. This case does not involve standards of practice or require clinical expertise.

1.2 The Respondent was granted a license to practice as a psychologist in the state of Washington on June 29, 1987. The Respondent's license to practice in Washington is currently active. The Respondent does not currently maintain an active practice in the state of Washington, and he has no intention of doing so. The Respondent does provide treatment to one individual who resides in the state of Washington. The Respondent has treated this individual for 15 years and all of the treatment has occurred at his practice location in Lake Oswego, Oregon.

1.3 The Respondent was granted a license to practice as a psychologist in the state of Oregon in 1975. The Respondent maintains an active practice as a psychologist in Oregon.

1.4 On September 14, 2010, the Oregon Board of Psychologist Examiners (Oregon Board) issued a Notice of Proposed License Suspension and Restriction (Oregon Notice) relating to his treatment of Clients A and B. See Exhibit D-2. The Oregon Notice alleged that in his treatment of Client A the Respondent violated the following: Oregon Revised Statute (ORS) 675.070(2)(d) (unprofessional conduct); Ethical Principle (EP) 201 (Boundaries of Competence); EP 3.02 (Sexual Harassment); EP 3.04 (Avoiding Harm); EP 3.05 (Multiple Relationships); and EP 10.01 (Informed Consent to Therapy). The Oregon Notice further alleged that in his treatment

of Client B the Respondent violated the following: EP 2.01 (Boundaries of Competence); EP 3.04 (Avoiding Harm); and EP 3.05 (Multiple Relationships). On October 14, 2010, the Respondent filed his Answer to the Oregon Notice to deny the allegations and request a formal hearing to contest the allegations.

1.5 On September 28, 2012, the Oregon Board issued the Final Order in In the Matter of David T. Bice, Case Nos. 2009-035 and 2010-007. Exhibit D-4. The relevant facts in the Final Order show:

A. Client A had seven therapy sessions with the Respondent during the period August 4, 2003 through September 19, 2003. Client A was 17 years old on the day of her first treatment with the Respondent. She turned 18 years old the day after her first visit. Client A reported to her mother that she was uncomfortable in the sessions with the Respondent.

B. Client A related that when she cried the Respondent would sit next to her on the couch and put his arm around her to console Client A. While the Respondent asked Client A if he could move next to her and Client A agreed, but she never felt comfortable enough to say no.

C. When Client A went to leave a session the Respondent would put his hands on her hips and escort her out.

D. On September 19, 2003, the Respondent kissed Client A on the cheek.

See Exhibit D-4, pages 3-7.

1.6 Based on the above facts, the Oregon Board concluded that the Respondent's conduct toward Client A violated Oregon's ethical standards relating to his treatment of Client A.² See Exhibit D-4, page 9. This included the violation of ORS 675.070(2)(d) (immoral or unprofessional conduct or of gross negligence in the practice of psychology, including but not limited to any conduct or practice contrary to recognized standards of ethics of the psychological professional or any conduct or practice that constitutes a danger to the health or safety of a patient); Ethical Standard (ES) 2.01 (Boundaries of Competence); ES 3.04 (Avoiding Harm); and ES 10.01 (Informed Consent).³ The Oregon Board concluded the Respondent did not commit any violations regarding his treatment of Client B.

1.7 Having concluded the Respondent's conduct violated the Oregon ethical standards set forth in Paragraph 1.4, the Oregon Board imposed the following sanctions:

Licensee is reprimanded. Licensee must successfully complete coursework pre-approved by the Board's designee on informed consent, charting, and the use of touch during therapy. In addition, Licensee must practice for a minimum of one year under the supervision of a licensed psychologist pre-approved by the Board's designee, with monthly written reports provided to the Board. During this time, Licensee must revise his informed consent form with the assistance and approval of his supervisor, and submit his revised informed consent form to the Board for review and comment. At the end of one year, Licensee may, with the written endorsement of the supervisor, submit a written request to terminate the requirement to practice under supervision.

² Client A is also referred to in the Oregon Board's Final Order as Client SM.

³ In the 2010 Notice, the Oregon Board citations are called Ethical Principles. In the 2012 Final the Oregon Board citations are called Ethical Standards. There is no explanation regarding the change in terminology from principles to standards.

1.8 On April 10, 2013, the Respondent filed a Motion for Stay with the Oregon Board. On May 17, 2013, the Oregon Board issued a Response to Motion to Stay. The Oregon Board granted the Respondent's request for a stay of the enforcement of the Oregon Board's Final Order. See Exhibit D-5 and L-17. The Oregon Board's Final Order is currently on appeal before the Oregon Court of Appeals.

Sanctioning Findings

1.9 Pam Rathbone is a nurse practitioner in Oregon and specializes in the treatment of conditions relating to women's hormonal and neurotransmitter issues. She first met the Respondent in 1994 and estimates that she has referred hundreds of her clients to the Respondent for supportive counseling. Based on reports she receives from her clients over the years, Ms. Rathbone finds the Respondent to be an exceptional therapist.

1.10 Carmen Davis, Ph.D., was licensed to practice as a psychologist in Oregon. She was in private practice from 1993 until her retirement in 2011. Her practice focus included childhood trauma and post-traumatic stress disorder, and dissociative identity disorder.⁴ Dr. Davis met the Respondent in 1990. Dr. Davis and the Respondent have referred patients or clients to each other. In addition to referrals, she has participated in some version of a consultation group (a group in which psychologists can help each other with issues in providing treatment to patients or

⁴ Dissociative identity disorder is defined as a rare but increasingly reported psychiatric illness in which a person has two (or more) distinct personalities. It was formerly known as "multiple personality disorder." See Taber's Cyclopedic Medical Dictionary, Edition 21, page 674 (2009)

clients) on a monthly basis with the Respondent during the 1993-2011 period. Dr. Davis found the Respondent's conduct in the group to be professional and the Respondent's participation and advice in the consultation group to be insightful and helpful in assisting consultation group members with issues in providing treatment. Dr. Davis found the Respondent's participation was both open and honest.

1.11 Kendra Summers, Ph.D., obtained her license to practice as a psychologist in Oregon in 1987. Dr. Summers has shared an office with the Respondent (that is, shared an office space with the Respondent but not legally affiliated with the Respondent's practice) beginning in 1987 and continuing to the present. Dr. Summers has engaged in case consultation groups and peer consultations (one-on-one) with the Respondent throughout this office sharing period. Dr. Summers finds these consultations helpful given the Respondent's vast knowledge and experience in the field of psychology. She has referred patients or clients to the Respondent and he refers patients or clients to her. Dr. Summers is aware of the Oregon complaint against the Respondent and still feels comfortable referring patients/clients to him.

II. CONCLUSIONS OF LAW

2.1 The Board of Examining Psychology has jurisdiction over the Respondent and the subject of this proceeding. Chapter 18.130 RCW. The Examining Board of Psychology delegated decision-making to the Presiding Officer. RCW 18.130.050(10).

2.2 Except as otherwise required by law, the Department bears the burden of proving the allegations set forth in the Statement of Charges by a preponderance of the

evidence. WAC 246-10-606. The Washington Supreme Court has held the standard of proof in disciplinary proceedings against physicians is proof by clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516, 534 (2001), *cert. denied*, 535 U.S. 904 (2002). In 2006, the Washington Supreme Court extended the *Nguyen* holding to all professional disciplinary proceedings. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), *cert. denied* 550 U.S. 905 (2007). However, in 2011, the Washington Supreme Court overruled *Ongom*, but declined to overrule *Nguyen*. *Hardee v. Dept. of Social and Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011).

2.3 Given the legal uncertainty regarding the standard of proof for disciplinary proceedings, the evidence in this matter will be evaluated under both the clear and convincing standard, as well as the preponderance of the evidence standard.

2.4 The Department proved by a preponderance of the evidence and clear and convincing evidence that the Respondent committed unprofessional conduct as defined in RCW 18.130.180(5), which states:

Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

2.5 The Department requested that the charges alleged in the Statement of Charges be affirmed and appropriate sanctions be imposed. In this instance, the Department argued that appropriate sanctions in this case would be sanctions that mirror the sanctions imposed by the Oregon Board. The Oregon Board's Final Order imposed the following sanctions:

Licensee is reprimanded. Licensee must successfully complete coursework pre-approved by the Board's designee on informed consent, charting, and the use of touch during therapy. In addition, Licensee must practice for a minimum of one year under the supervision of a licensed psychologist pre-approved by the Board's designee, with monthly written reports provided to the Board. During this time, Licensee must revise his informed consent form with the assistance and approval of his supervisor, and submit his revised informed consent form to the Board for review and comment. At the end of one year, Licensee may, with the written endorsement of the supervisor, submit a written request to terminate the requirement to practice under supervision.

Oregon Board's Final Order, page 30. See Exhibit D-4. The Department further argued that it would not oppose a stay of the Washington order pending the outcome of the Respondent's current appeal in the Oregon Court of Appeals, subject to the following condition: the Respondent agrees that he will not practice in the state of Washington during the pendency of the appeal.

2.6 The Respondent requested the dismissal of the action filed by the Washington Examining Board of Psychology (Washington Board) in its entirety. The Respondent renews his argument that the Washington Board does not have the authority to act given the status of the Oregon Board's Final Order. The Respondent argues that the Oregon Court of Appeal is reviewing the case on a de novo basis, so that there is no "final" order. Without a final order, the Respondent argues that the Washington Board cannot bring any action under RCW 18.130.180(5).

2.7 The Oregon Board's Response to Motion for Stay reads:

On April 10, 2013, Licensee submitted through his counsel a Motion for Stay and Affidavit. The Board of Psychological Examiners (Board) has reviewed and now responds to his motion to stay enforcement of the Board's Final Order, which requires Licensee to complete coursework pre-approved by the Board's designee and to

practice for a minimum of one year under the supervision of a licensed psychologist.

1.

In regard to the above-referenced matter, Licensee asserts that he has presented a colorable claim of error and would suffer irreparable injury in the absence of a stay. The Board has determined that substantial public harm will not result from the granting of a stay.

2.

Pursuant to ORS 183.482(3)(c), when an agency grants a stay, the agency may impose reasonable conditions and that the petitioner should file all documents necessary to bring the matter to issue before the Court of Appeals within the specified reasonable periods of time. The Board directs that the parties file all documents necessary to bring this matter to issue before the Court of Appeals without extension, absent an extraordinary circumstance.

3.

The request for stay while the appeal is pending for the enforcement of the Board's Final Order in this case is hereby granted.

Oregon Board's Response to Motion for Stay. See Exhibit D-5 and L-17.

2.8 Based on his reading of the Final Order, the Presiding Officer concludes the language in the Oregon Board's stay order does not set aside the findings of fact contained in the order and does not otherwise vacate the Oregon Board's Final Order. It merely stays the enforcement of the order pending the appeal. The Respondent submitted no case authority that supports his position that there is no final order. The Presiding Officer therefore gives full faith and credit to the Oregon Board's Final Order. On its face, the Oregon Board's Order restricts the Respondent's license to practice in Oregon. The restriction of the Respondent's Oregon license is a sufficient basis to find unprofessional conduct in violation of RCW 18.130.180(5).

2.9 In determining the appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. RCW 18.130.160. The unprofessional conduct in this case is not described in a sanctioning schedule, so the Presiding Officer will use his judgment to determine appropriate sanctions. WAC 246-16-800(2)(d). The Presiding Officer found there were no aggravating or mitigating factors.

III. ORDER

3.1 Reprimand. The Respondent is hereby REPRIMANDED.

3.2 Probation. In addition to the reprimand, the Respondent's license to practice as a psychologist in the state of Washington is placed on PROBATION for a minimum of 12 months from the effective date of this Order and during the Respondent's completion of the terms and conditions set forth below.

3.3 Continuing Education. The Respondent must successfully complete continuing education coursework, which must be pre-approved by the Washington Board or the Washington Board's designee, in the following subject areas: informed consent; charting; and the use of touch during therapy. The continuing education coursework must be in addition to any continuing education that is required as a condition of meeting the Washington licensing requirement.

3.4 Supervision of Practice. The Respondent must practice for a minimum of one year under the supervision of a licensed psychologist. The supervising psychologist must be pre-approved by the Washington Board or the Washington Board's designee. The supervising psychologist must submit monthly written reports to

the Washington Board regarding his or her supervision of the Respondent practice. The Respondent must ensure that he provides the supervising psychologist with any release forms necessary to enable the supervising psychologist to communicate with the Washington Board. The Respondent must ensure that he provides the approved supervising psychologist with copies of the Final Order and exhibits admitted in this matter.

3.5 Informed Consent. During the period of time the Respondent is practicing under the supervision as set forth in Paragraph 3.4 above, the Respondent must revise his informed consent form with the assistance and approval of the Washington Board-approved supervision psychologist. The Respondent must submit his revised informed consent form to the Washington Board or the Washington Board's designee for its review and approval.

3.6 Modification. The Respondent may not seek modification of this Order prior to the successful completion of the requirements set forth in Paragraphs 3.3, 3.4, and 3.5 above. The Respondent must submit written proof of his successful completion to the Washington Board prior to or contemporaneous with the submission of his request for a modification of this Order.

3.7 Change of Address. The Respondent shall inform the program manager for the Examining Board of Psychology and the Adjudicative Service Unit, in writing, of changes in his residential and/or business address within 30 days of such change.

3.8 Assume Compliance Costs. The Respondent shall assume all costs of complying with all requirements, terms, and conditions of this Order.

3.9 Completion of Order. Upon the successful completion of the terms and conditions of this Order, the Respondent may petition for a reinstatement of an unrestricted license or removal of conditions.

3.10 Stay of Final Order. Pursuant to RCW 34.05.467 and WAC 246-11-570, and at the request of the parties, the terms and conditions of the Final Order are STAYED pursuant to the following conditions: (1) the Respondent shall not practice in the state of Washington; and (2) the Respondent must notify the Adjudicative Service Unit, in writing, of the status of the appeal of the Oregon Final Order every six months and provide a copy of any order to Judge Kuntz within thirty days of its issuance.

3.11 Failure to Comply. Protecting the public requires practice under the terms and conditions imposed in this Order. Failure to comply with the terms and conditions of this Order may result in suspension and/or revocation of the Respondent's license after a show cause hearing. If the Respondent fails to comply with the terms and conditions of this Order, the Secretary may hold a hearing. At that hearing, the Respondent must show cause why his license should not be suspended. Alternatively, the Secretary may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, the Respondent will be given notice and an opportunity for a hearing on the issue of non-compliance.

Dated this 10th day of June, 2016.



JOHN F. KUNTZ, Review Judge
Presiding Officer

CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(5)	Violated

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

The Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Department of Health Psychology Program
P.O. Box 47874
Olympia, WA 98504-7874

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this Order. RCW 34.05.542. The procedures are identified in Chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

Final orders will be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act. RCW 18.130.110. All orders are public documents and may be released.

For more information, visit our website at:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>