



## ISSUES

1. Whether 19 hours of Mr. Wolff's CE activities qualify for CE credit. *Former*<sup>2</sup> OAR 858-040-0035.
2. Whether the Board may assess a civil penalty of \$200 against Mr. Wolff and require Mr. Wolff to complete 19 hours of qualifying CE activities. ORS 675.070 and ORS 675.110.

## EVIDENTIARY RULING

Exhibits A1 through A19 and A23, offered by the Board, were admitted into the record without objection. ALJ Fair overruled Mr. Wolff's objections to Exhibits A20 through A22 and admitted them into the record. Exhibits R1 through R6 were admitted into the record without objection.

## FINDINGS OF FACT

1. The Board first licensed Mr. Wolff as a psychologist associate in 2000. In 2004, the Board licensed Mr. Wolff as a psychologist associate who was entitled to work independently of any supervision. Mr. Wolff continuously maintained his license except for a one-year suspension that began in December 2013. (Test. of Wolff.)
2. On April 16, 2014, the Board advised Mr. Wolff that he had been selected for the 2014 random audit of licensees for CE compliance. The Board instructed Mr. Wolff to complete an audit report and provide supporting documentation of his CE activities for the period January 1, 2011 through March 2013, the period prior to his latest license renewal. (Exs. A1 at 1; A11 at 1.)
3. On June 15, 2014, Mr. Wolff affirmed his completion of 50 hours of CE activities in the audit report. (Ex. A16 at 1.) In response to the Board's request for documentation, Mr. Wolff created two typed documents, labeled Certificates of Attendance, one for a Group Psychotherapy program entitled "Group Psychotherapy" and the other for a program entitled "Give Sorrow Words: Working with Grief and Loss in Psychotherapy" (Give Sorrow Words). (Exs. A2 at 1; A8 at 1; test. of Wolff.) The certificates indicated that he attended 18 hours of Group Psychotherapy taught by Elliot Geller, licensed clinical social worker (LCSW), and 1 hour of Give Sorrow Words taught by Jennifer Wohl, master's in psychology (MA) and licensed professional counselor (LPC).<sup>3</sup> Mr. Wolff signed his name to both certificates. The presenters did not sign the certificates. (Exs. A2 at 1; A8 at 1.)
4. Mr. Wolff also provided other attendance documentation to the Board for his remaining CE credits. This attendance documentation noted the title of the presentations, the names and titles of the presenter, and the amounts of the CE credit. The documentation did not

<sup>2</sup> The Board amended its administrative rules, effective January 2015. The administrative rules cited herein are those administrative rules in effect at the time of Mr. Wolff's CE reporting period.

<sup>3</sup> The certificate for Give Sorrow Words indicated that the program lasted 1.5 hours; however, handwritten on the certificate was the phrase "1 hour." (Ex. A8 at 1.)

always include the signature of the presenter but did indicate that the presentations were co-sponsored or approved by the American Psychological Association (APA) or the American Mental Health Alliance, Oregon chapter (AMHA-Oregon). (Exs. A3 through A7, A9 and A10.) The Board accepted this attendance documentation as satisfactory. (Test. of Felton.)

5. Mr. Wolff attended six three-hour sessions of Group Psychotherapy, taught by Mr. Geller. (Ex. R5 at 1.) There were four other participants in the training program. (*Id.* at 2.) The sessions occurred on September 28, October 19, November 16 and December 14, 2012 and January 11 and February 16, 2013. (*Id.* at 1.)

6. Group Psychotherapy was a consultation and training group to offer “skills, further understanding of process, opportunities to practice various group roles from leader to most challenging patient, and more to enhance your effectiveness” in group therapy settings for hospital, agency, clinic or private practice settings. (Ex. A17 at 2.) The group met for three-hour sessions once per month for six months and provided “didactic and experiential opportunities to work on concerns with a current group or individual in a group as well as learn to design, implement and lead effective groups.” (*Id.*) It was primarily didactic because Mr. Geller “chiefly provided direct instruction to the five participants, including Mr. Wolff. There was also some experiential training in starting and leading ongoing psychotherapy groups and solving problems that arise in such groups. The program was geared toward leadership of support and psychoeducational groups as well as psychotherapy groups.” (Ex. R5 at 2.) Mr. Geller reviewed the different types of groups, screening aids for proper placement of clients in appropriate groups, managing individuals within the group setting, and confidentiality issues in the group setting. (Test. of Wolff.)

7. Mr. Geller has been a LCSW since 1984. He has been a group psychotherapist (CGP), certified by the American Group Psychotherapy Association since 1996. (Ex. R5 at 1.) As a CGP for three decades, he has experience designing and leading groups in various settings including community mental health, private mental health, hospice and other mental health organizations, prison and general private practice. (Ex. A17 at 2.) He has taught group psychotherapy to graduate students at Portland State University. (Exs. A17 at 2; R5 at 1.)

8. Mr. Wolff attended a one-hour session of Give Sorrow Words, which Ms. Wohl taught on February 8, 2013. (Exs. A15 at 1; R6 at 1.) He noted this session on his audit report and indicated the sponsor as Ms. Wohl. (Ex. A15 at 1.)

9. Ms. Wohl has been a LPC in Oregon since 2012. (Ex. R6 at 1, 3.) Ms. Wohl was licensed as a marriage and family therapist in California from 2008 to 2011. Currently, she offers counseling services in Oregon. (*Id.* at 1.) Give Sorrow Words was a luncheon presentation that lasted 1.5 hours and included 1 hour of substantive instruction to aid therapists in dealing with clients who have bereavement issues. There were a total of 25 attendees at the luncheon. (*Id.* at 1-2.) The presentation provided aids for the grieving process and for maximizing the benefits of therapy for grieving clients and encouraged therapists to be more attentive to grieving clients. (Test. of Wolff.) The presentation was sponsored by Existential Humanistic North West, which is an association of mental health professionals that subscribe to an existential humanistic approach to psychology. (Ex. R6 at 2; test. of Wolff.)

10. Mr. Wolff attended Group Psychotherapy and Give Sorrow Words to satisfy CE credits after receiving advertisements for these programs. He believed the programs would qualify because they were learning activities, which provided instruction about conducting psychotherapy group meetings and assisting grieving clients. (Test. of Wolff.)

11. On September 19, 2014, the Board's Education Committee (EC) met and determined that Group Psychotherapy and Give Sorrow Words did not meet the criteria for any qualifying CE program, including substantive development programs of recognized mental health organizations or formally organized study groups. The EC also determined that there were issues regarding Mr. Wolff's attendance documentation because the documents "appeared homemade and were signed by [Mr. Wolff]." (Ex. A18 at 2.) The EC reviews CE issues and any potential problems with CE audits. The EC is composed of three psychologists who are members of the Board. (Test. of Felton.) The Board provided Mr. Wolff an opportunity to correct the deficiencies by October 17, 2014. (Ex. A18 at 2.)

12. On October 17, 2014, Mr. Wolff provided the Board two additional typed documents, both entitled Certificate of Attendance, which identified the titles of the Group Psychotherapy and Give Sorrow Words programs, the dates and lengths of the programs, and the presenters' names and professional titles. The certificates were signed by the presenters. The certificates were similar in appearance and information as the attendance documentation Mr. Wolff had provided to the Board for his other CE credits. (Exs. A12 at 6-7; A13 at 1; A3 through A7, A9 and A10.) The certificate for Give Sorrow Words indicated it was "A Luncheon Presentation by Existential Humanistic North West" presented by Ms. Wohl. (Ex. A12 at 6.) Both certificates were created by Mr. Wolff. Mr. Wolff forwarded the certificates to the presenters, who returned them after signing them. (Test. of Mr. Wolff.) The appearance of these certificates would not cause the Board to have any concerns or questions during an audit. (Test. of Felton.)

13. Mr. Wolff did not take any additional CEs in response to the Board's rejection of his claimed 19 CE credits for Group Psychotherapy and Give Sorrow Words. (Ex. A12 at 1.)

14. The Board interprets *former* OAR 858-040-0035(1) and (2) as joint requirements for any qualifying CE activity. The Board has always required that CE activities meet both requirements to qualify for CE credit and considers *former* OAR 858-040-0035(2) to be an exhaustive list of qualifying CE programs. (Test. of Felton.)

15. The Board interprets *former* OAR 858-040-0035(2)(a) as conferences or lectures sponsored or hosted by organizations such as the APA, AMHA-Oregon, or the Western Psychological Association (WPA). The Board interprets *former* OAR 858-040-0035(2)(d) to include groups of licensees that meet to study psychological topics. (Test. of Felton.)

16. The Board found that Existential Humanistic North West was not a recognized mental health organization. There are states that only grant CE credit for conferences sponsored by the APA. The Board chose to allow for more expansive opportunities to fulfill CE credits rather than limiting CE credits to APA-sponsored events. (Test. of Felton.)

17. The Board requires a certificate of attendance to show evidence of completion of a CE activity by a licensee. (Test. of Felton.)

18. The Board publishes an overview of CE requirements for licensees on its website.<sup>4</sup> (Ex. A19 at 1-4.) The 2012 overview advised licensees of the prerequisites for specific programs to qualify as acceptable CE activities. This section of the overview referenced *former* OAR 858-040-0035 and included the three prerequisites of subject matter, qualified instructor and record of attendance identified in *former* OAR 858-040-0035(1). Beneath this section was a subsection titled “Examples of what qualifies,” followed by a list that included those programs contained in *former* OAR 858-040-0035(2). (*Id.* at 1.) The overview then provided a list of examples that do not qualify as CE activities, which included the activities listed in *former* OAR 858-040-0036 plus several additional activities not listed in the administrative rule, such as reading a book or martial arts. (*Id.* at 2.) The overview further provided that a qualified instructor or discussion leader does not have to be a licensed psychologist. It indicated:

Licensees will need to use their best professional judgment when considering the person’s education, experience, and credentials to determine whether that person qualified to present on the particular subject matter. Generally speaking, the person should have earned a degree in a mental health or related field.

(*Id.* at 4.) The overview does not provide any guidance for documentation that qualifies as a certificate of attendance. (*Id.*)

19. In January 2015, the Board revised its overview of CE requirements to clarify information as a result of questions that had arisen. (Ex. A20 at 1-6; test. of Felton.) Added to the overview was the statement:

To qualify for CE credit, a program must meet the program prerequisites, be a listed qualifying program category, and meet all other CE requirements.

(Ex. A20 at 2.) Underneath this statement, the 2015 overview had two sections equivalently laid out, one for program prerequisites providing the information from OAR 858-040-0035(1) and one for qualifying programs, providing the list from OAR 858-040-0035(2). Beneath these sections, the subsection with examples of what does not qualify as CE activities appeared. (*Id.*) The 2015 overview made no changes to the description of a qualified instructor or discussion leader. (*Id.* at 5.) The overview indicated that documentation of completion, such as a certificate of attendance, must include the qualified instructor’s name and degree, the date of the program, its start and end times, and the subject matter of the program. (*Id.* at 3.) The overview further advised a licensee that if he/she loses CE certificates to “obtain replacement certificates by contacting the program sponsor.” (*Id.* at 6.)

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<sup>4</sup> The Board’s licensing program coordinator drafts the overview and presents it to the EC for comments before posting it on the Board’s website. (Test. of Felton.)

20. On January 17, 2014, the Board issued a Default Order, assessing a licensee a civil penalty of \$250 and prohibiting the licensee from counting 15 hours of completed qualifying CE activities in the licensee's next reporting period.<sup>5</sup> The Board determined that 21 hours of CE credit claimed by the licensee for a prior reporting period for reading various books and articles did not qualify for CE credit pursuant to *former* OAR 858-040-0035. The Board found that reading books and articles was not a qualifying program for CE credit. The Board did not provide an analysis of whether the activity fulfilled the prerequisites listed in *former* OAR 858-040-0035(1). (Ex. A21 at 1-4.)

21. On January 17, 2014, the Board issued a Default Order, assessing a licensee a civil penalty of \$250 and prohibiting the licensee from counting 11 hours of completed qualifying CE activities and completed ethics CE activities in the licensee's next reporting period.<sup>6</sup> The Board found that 29 hours of CE credit claimed by the licensee for a prior reporting period for receiving supervision for a fee from individuals who were not licensed psychologists did not qualify for CE credit pursuant to *former* OAR 858-040-0035. The Board found that receiving supervision from one who was not a licensed psychologist was not a qualifying program for CE credit. The Board did not provide an analysis of whether the activity fulfilled the prerequisites listed in *former* OAR 858-040-0035(1). (Ex. A22 at 1-4.)

### CONCLUSIONS OF LAW

1. Nineteen hours of Mr. Wolff's CE activities do not qualify for CE credit.
2. Mr. Wolff must complete 19 hours of qualifying CE activities. The Board does not assess a civil penalty against Mr. Wolff.

### OPINION

The Board proposed to assess Mr. Wolff a civil penalty of \$200 and require him to complete an additional 19 hours of CE qualifying activities, based on an allegation that 19 of his claimed CE credits do not qualify for credit. *Former* OAR 858-040-0026(4) provided, "Responsibility for documenting the acceptability of the program and the validity of credit rests with the licensee." Therefore, Mr. Wolff has the burden to establish, by a preponderance of the evidence, that his claimed CE activities are acceptable and qualify for CE credit. If he fails to establish the qualifications of his proposed CE credits, the Board then has the burden to establish, by a preponderance of the evidence, that it is entitled to assess a civil penalty and require the completion of the additional CE credits. Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

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<sup>5</sup> In response to the Board's notice of CE credit deficiency, the licensee completed an additional 15 hours of CE qualifying activities. (Ex. A21 at 3.)

<sup>6</sup> In response to the Board's notice of CE credit deficiency, the licensee completed an additional 11 hours of CE qualifying activities. (Ex. A22 at 3.)

Qualifying CE Activities

Pursuant to *former* OAR 858-040-0015(1), as a licensed psychologist associate, Mr. Wolff had to complete 50 hours of qualifying CE activities during the two years prior to his last renewal, or the period January 1, 2011 through March 2013.<sup>7</sup> For that period, Mr. Wolff claimed 50 hours of CE credit, including 18 hours of CE credit for Group Psychotherapy and 1 hour of CE credit for Give Sorrow Words.

*Former* OAR 858-040-0035, entitled “Programs Which Qualify for Continuing Education Credit,” provided:

Policy. Acceptable continuing education must be a learning activity which contributes directly to the professional competence of the licensee.

(1) Program Prerequisites. Continuing Education programs shall qualify for credit if:

(a) The subject matter deals primarily with substantive psychological issues, skills or laws, rules and ethical standards related to one’s role as a psychologist or psychologist associate.

(b) The program is conducted by a qualified instructor or discussion leader. A qualified instructor or discussion leader is a person whose background, training, education, or experience makes it appropriate for the person to make a presentation or lead a discussion on the subject matter; and

(c) A record of attendance, such as a certificate of completion, is obtained.

(2) Qualifying Programs. The following shall qualify for continuing education credit provided they comply with all other CE requirements:

(a) Substantive professional development programs of recognized mental health organizations;

(b) University or college courses. Each classroom hour shall equal one qualifying hour;

(c) Formally organized work place educational programs;

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<sup>7</sup> Under the provisions of ORS 675.010 to 675.150, licensees who must fulfill continuing education requirements include psychologists and psychologist associates.

- (d) Formally organized study groups that comply with the following:
  - (A) At least two other mental health professionals attend;
  - (B) The study group prepares and preserves a syllabus of meeting dates and study topics in advance;
  - (C) A record is kept of each study group meeting. The record must include the names of the participants present, the subject matter and references which relate to any written material utilized; and
- (e) Supervision or Consultation Received for a fee from an Oregon licensed Psychologist.
  - (A) Credit shall be given only to the licensee receiving supervision or consultation, not to the licensee providing supervision or consultation.
  - (B) No credit shall be given to licensees receiving supervision to fulfill licensure or discipline requirements.
- (f) Home Study including non-interactive internet and tele-courses.
- (g) Published articles and books on substantive psychological issues.
- (h) Service as Lecturer, Discussion Leader, or Speaker on substantive psychological issues.
  - (A) Credit as a lecturer, discussion leader, or speaker may be claimed for work that is either paid or unpaid.
  - (B) Credit shall be allowed for the first time a course is taught. No credit shall be allowed for repeat presentations unless an instructor can demonstrate that the program content was substantially changed and such change required significant additional study or research.
- (i) Ethics.
- (j) Oregon Board of Psychologist Examiners committee volunteer.
- (k) Ethics Committee meetings of professional associations.
- (l) Pain Management.
- (m) Office records organization; records maintenance and security procedures; office procedures; office staff training related to records maintenance and security procedures; billing software instruction.

Mr. Wolff asserted that Group Psychology and Give Sorrow Words satisfied the program prerequisites listed in *former* OAR 858-040-0035(1), and, as such, those programs “shall qualify for credit.” Because those programs satisfied the criteria of *former* OAR 858-040-0035(1), Mr. Wolff argued that it was not necessary for the programs to be among the qualifying programs listed in *former* OAR 858-040-0035(2). The Board argued that subsections (1) and (2) of *former* OAR 858-040-0035 are joint requirements. The Board asserted that, because Group Psychology and Give Sorrow Words were not qualifying programs listed in *former* OAR 858-040-0035(2), those programs did not qualify for CE credit. The question then becomes which interpretation of *former* OAR 858-040-0035 prevails.

As determined by the Oregon Supreme Court, “In interpreting an administrative rule \* \* \* our task is the same as that involved in determining the meaning of a statute, which is to discern the meaning of the words uses, giving effect to the intent of the body that promulgated the rule.” *Tye v. McFetridge*, 342 Or 61, 69 (2006). In this matter, the Board promulgated the administrative rule at issue; therefore, an interpretation of the words of the administrative rule should give effect to the Board’s intent. During the hearing, the Board presented evidence regarding the Board’s intent for qualifying activities for CE credit pursuant to *former* OAR 858-040-0035. The Board intended the two sections of *former* OAR 858-040-0035 to be read together to provide joint requirements for qualifying CE activities. Thus, the Board intended that, in order to qualify as CE credit, a qualifying CE activity must satisfy both subsection (1) and (2) of *former* OAR 858-040-0035.

An agency is entitled to deference in the interpretation of its own administrative rules. The Oregon Supreme Court established this deference to an agency’s plausible interpretation of its own rule, including an interpretation made in the course of applying the rule, if that interpretation is not “inconsistent with the wording of the rule itself, or with the rule’s context, or with any other source of law.” See *Don’t Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142 (1994). Thus, an agency’s interpretation will not always prevail if found to be implausible or inconsistent.

In *Gafus v. Legacy Good Samaritan Hospital*, 344 Or 525 (2008), an action in which employees sought wage compensation for denied rest periods, the Oregon Supreme Court found that the Bureau of Labor and Industries’ (BOLI)<sup>8</sup> interpretation of OAR 839-020-0050, that “work” did not include rest periods, was inconsistent with the wording of the rule and its context. *Id.* at 536. The Oregon Supreme Court found that the rule at issue, related statutes and other related administrative rules defined “work” to include rest periods. *Id.* at 534-535. Additionally, in the past, BOLI had never sought wages as compensation for employees denied a rest period. Instead, BOLI had only sought civil penalties against the employer. *Id.* at 537. Therefore, BOLI’s interpretation was contrary to its own administrative rule’s definition for the word and its prior administrative actions when it enforced the administrative rule. Therefore, the Oregon Supreme Court gave BOLI’s interpretation no deference. *Id.*

In *DeLeon, Inc. v. DHS*, 220 Or App 542 (2008), the Oregon Court of Appeals found the Department of Human Services’ (DHS) interpretation of OAR 333-054-0010(28) and 333-054-

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<sup>8</sup> BOLI had filed an *amicus curiae* brief in *Gafus*.

0050(3)(b)(C) to be inconsistent with the “clear and unequivocal” language of the administrative rule. *Id.* at 550. In this case, DHS interpreted an “authorized shopper” to include a DHS representative performing compliance buys for the purpose of pursuing violations of vendor agreements. However, OAR 333-054-0010(5) defined “authorized shopper” as a participant in the WIC program or a participant’s designee. *Id.*

In the current matter, related statutes and administrative rules do not provide any definitions or additional clarity to the meaning of *former* OAR 858-040-0035. In the 2014 Default Orders, the Board found that reading published materials and receiving supervision for a fee from individuals who were not licensed psychologists, programs not listed under *former* OAR 858-040-0035(2), do not qualify for CE credit. In these Default Orders, the Board failed to analyze whether either of the activities met the requirements of *former* OAR 858-040-0035(1). Thus, the Board concluded that the activities’ failures to be listed qualifying programs under *former* OAR 858-040-0035(2) were enough to disqualify the activities from CE credit. These Default Orders support the Board’s interpretation of the administrative rule as, historically, it has always considered subsections (1) and (2) of *former* OAR 858-040-0035 to be joint requirements. Therefore, the Board’s interpretation is not inconsistent with the rule’s context or its prior administrative actions when it enforced the administrative rule.

The Board interprets *former* OAR 858-040-0035 to require the satisfaction of both subsections (1) and (2) for an activity to qualify for CE credit. *Former* OAR 858-040-0035 does not include an “and” between the two subsections. However, it also does not include an “or” between the two subsections, which would support Mr. Wolff’s interpretation. In the ALJ’s Proposed Order, the ALJ concluded that in the absence of the use of the “and/or” terminology, the meaning of the administrative rule, whether a CE activity must comply with one or both subsections, is not clear and unequivocal. The ALJ then observed that although such a conclusion means that Mr. Wolff’s interpretation is equally plausible, a party’s plausible alternative construction of an agency rule does not mean that the agency’s own construction is implausible. *Oregon Restaurant Services v. Oregon State Lottery*, 199 Or App 545, 562, *rev den*, 339 Or 406 (2005). The Board’s interpretation, requiring CE activities to satisfy both subsections (1) and (2) of *former* OAR 858-040-0035, is both plausible and not inconsistent with the wording of the rule itself, or with the rule’s context, or with any other source of law. Therefore, the Board’s interpretation of *former* OAR 858-040-0035 must be upheld, and Group Psychotherapy and Give Sorrow Words must satisfy the criterion of *former* OAR 858-040-0035(1) and (2).

The Board does not recognize Existential Humanistic North West as a mental health organization as it does the APA, AMHA-Oregon, and the WPA. Other than his general description of Existential Humanistic North West’s philosophical approach to the practice of psychology, Mr. Wolff could provide no further evidence of the legitimacy of this organization or the level of its acceptance in the psychological community. Absent evidence that Existential Humanistic North West is recognized by the Board or the psychological community as a respected, known and legitimate psychological organization, it does not qualify as a recognized mental health organization for purposes of satisfying the requirements of *former* OAR 858-040-0035(2)(a) (“Substantive professional development programs of recognized mental health organizations”). Group Psychology was taught by an individual, Mr. Geller, and was not

sponsored or approved by any organization. Therefore, it does not satisfy the requirements of former OAR 858-040-0035(2)(a).

Give Sorrow Words involved one hour of substantive instruction, suggesting aids to therapists for assisting clients with bereavement issues. Group Psychotherapy primarily involved Mr. Geller providing instruction for conducting group treatments, and it included some experiential training in leading and participating in group therapy. Both programs could potentially qualify as formally organized study groups, as there were multiple attendees for each program and the programs reviewed psychologically relevant subjects. However, former OAR 858-040-0035(2)(d) required formally organized study groups to include at least two other mental health professionals among the attendees; the preservation of a syllabus of dates and study topics provided to participants in advance; and a detailed record of each meeting. Although both programs had more than three attendees, no evidence was presented that the additional attendees were mental health professionals. Additionally, no evidence was presented that a syllabus was provided to participants in advance or that any detailed record of each meeting was kept. Both programs fail to satisfy the requirements of former OAR 858-040-0035(2)(d).

In conclusion, neither program satisfies the criteria of the remaining programs listed in former OAR 858-040-0035(2)(b), (c), and (e) through (m). Group Psychology and Give Sorrow Words are activities that do not qualify for CE credit.

#### Imposition of Disciplinary Action

Because 19 of the 50 CE credits Mr. Wolff claimed do not qualify for CE credit, he failed to complete the CE credits required by former OAR 858-040-0015(1). The Board proposed to assess Mr. Wolff a civil penalty of \$200 and require him to complete 19 CE credits, which could not be counted towards his required CE credits for any renewal period after March 2013.

ORS 675.110(13) grants the Board the authority to establish standards of training and educational qualifications for its licensees. ORS 675.110(4), (5), (14) and (17) grant the Board the power to impose probationary periods and civil penalties, to enforce CE requirements for licensees, and to adopt administrative rules to carry out the provisions of ORS 675.010 to 675.150. ORS 675.070 provides, in part:

(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.

\* \* \* \* \*

(2) Grounds exist for imposition of any of the sanctions enumerated in subsection (1) of this section against any psychologist or psychologist associate or applicant, or, where applicable, any unlicensed person found in violation of ORS 675.010 to 675.150, when, in the judgment of the board, the person:

\* \* \* \* \*

(d) Is guilty of immoral or unprofessional conduct or of gross negligence in the practice of psychology which includes but is not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the psychological profession or any conduct or practice that constitutes a danger to the health or safety of a patient or the public, or any conduct, practice or condition that adversely affects a psychologist or psychologist associate's ability to practice psychology safely and skillfully.

\* \* \* \* \*

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

(a) In an amount not to exceed \$5,000[.]

ORS 675.110(14) provides that CE requirements for licensees are needed "to ensure the highest quality of professional services to the public." *Former* OAR 858-040-0035 noted the requirement that qualifying CE programs contribute "directly to the professional competence of the licensee." Based upon this statute and administrative rule, the purpose of the completion of mandatory CE credits is to ensure licensees' quality and competence in providing services to the public. Therefore, a failure to meet the CE requirements adversely affects a licensee's ability to practice psychology safely and skillfully and is unprofessional conduct. Because Mr. Wolff failed to meet the CE requirements, he engaged in unprofessional conduct in violation of ORS 675.070(2)(d)(A).

Pursuant to ORS 675.070, the Board may assess a civil penalty, in an amount not to exceed \$5,000, for Mr. Wolff's violation of ORS 675.070(2)(d)(A). In its Notice, the Board proposes to assess Mr. Wolff a civil penalty in the amount of \$200, which is consistent with its prior orders. However, the ALJ found that in light of the particular facts of this case, it would not be appropriate to assess Mr. Wolff a civil penalty.

Mr. Wolff attended Group Psychotherapy and Give Sorrow Words to fulfill his CE requirements. The subject matters for both programs deal primarily with substantive psychological issues, assisting grieving clients, or substantive psychological skills, conducting group therapy, which satisfy the prerequisite of *former* OAR 858-040-0035(1)(a). Mr. Geller is a LCSW. Pursuant to ORS 675.530(2)(b), LCSWs must have a master's degree in social work.

Ms. Wohl is a LPC. Pursuant to ORS 675.715(1)(b), LPCs must have a graduate degree in counseling, marriage and family therapy, a comparable program, or a Board-acceptable program that includes training in mental disorder diagnosis with additional counseling or marriage and family therapy. Both instructors have multiple years of experience in counseling, and Mr. Geller has experience in teaching group psychotherapy at a university. Mr. Geller and Ms. Wohl are qualified instructors pursuant to *former* OAR 858-040-0035(1)(b). The Board's administrative rules provided limited guidance as to the form for a "record of attendance" as listed in *former* OAR 858-040-0035(1)(c). The obvious purpose for such a record is confirmation of a licensee's attendance at the program; therefore, Mr. Wolff's original attendance documents were inadequate as they merely included a statement by Mr. Wolff that he had participated in these programs. However, he ultimately provided a second set of attendance documents that were satisfactory in appearance and information to qualify as records of attendance. Although he created the records, Mr. Wolff forwarded the records to each presenter for them to verify by their signatures his attendance at the two programs. Mr. Wolff may have created the records, but he "obtained" the presenters' signatures with their confirmation of his attendance from the presenters. Therefore, Mr. Wolff's second set of records of attendance satisfy the final prerequisite requirement of *former* OAR 858-040-0035(1)(c).

The Board's 2012 overview was significantly different from its current 2015 version. The 2012 version laid out the prerequisite requirements and then included the *former* OAR 858-040-0035(2) list of programs as a subsection beneath the prerequisite requirements. A licensee could reasonably conclude from that format that the list was not its own separate requirement. In the 2015 version, the Board changed the format so that the prerequisite requirements and the list of qualifying programs are equivalent sections, rather than one a subsection of the other. Additionally, in the 2015 version, the Board added the language that a CE activity must satisfy the prerequisites requirement *and* be a listed qualifying program. This language was absent in the 2012 version. Therefore, the 2012 overview failed to make clear to licensees that a CE activity must meet both the prerequisite requirements and be a listed qualifying program to qualify for CE credit.

During the hearing, Mr. Wolff expressed his genuine belief that Group Psychotherapy and Give Sorrow Words qualified as CE credit. The programs satisfied the prerequisite requirements of *former* OAR 858-040-0035(1), and the Board's 2012 overview failed to clarify that a CE activity also had to be a listed qualifying program to qualify for CE credit. As explained previously, Mr. Wolff's interpretation of *former* OAR 858-040-0035, that compliance with subsection (1) was enough to qualify a program for CE credit, was also a plausible interpretation of the rule. Ultimately, the record was clear that Mr. Wolff had a good faith belief that the Group Psychotherapy and Give Sorrow Words programs would qualify for CE credit pursuant to *former* OAR 858-040-0035. Given Mr. Wolff's good faith belief in the adequacy of these programs, the ALJ found that it is not appropriate to assess a civil penalty against Mr. Wolff.<sup>9</sup> The Board will not disturb the ALJ's finding.

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<sup>9</sup> It is clear from letters Mr. Wolff sent to the Board that he holds the Board's representatives and its actions in considerable contempt. (Exs. A12 and A14.) However, the level of his contempt and the perceived rudeness of his communications do not negate his genuine and good faith belief that the programs satisfied the requirements of *former* OAR 858-040-0035. His dissatisfaction with the Board and the nature of his communications with it cannot be the basis for the assessment of a civil penalty.

Mr. Wolff was required to complete 50 CE credits during the period prior to his March 2013 renewal. Because he failed to complete 19 of those CE credits, it is appropriate for the Board to order Mr. Wolff to fulfill his CE requirements by completing an additional 19 CE credits that cannot be counted towards his CE requirements for any other renewal period. He must complete these additional 19 CE credits and provide evidence of their completion to the Board no later than six months after the issuance of the final order.<sup>10</sup>

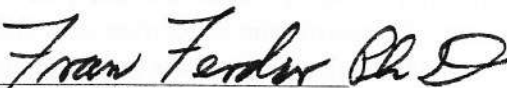
### ORDER

The Board of Psychologist Examiners adopts the Proposed Order of the ALJ and issues the following order:

Christian Wolff must complete 19 hours of qualifying continuing education activities and submit evidence of completion of these activities to the Board of Psychologist Examiners no later than six months after the issuance of the Board's final order. These 19 hours of continuing education activities cannot be used by Christian Wolff to satisfy his continuing education requirements for any reporting period other than the January 2011 to March 2013 period.

IT IS SO ORDERED this 22 day of May, 2015.

BOARD OF PSYCHOLOGIST EXAMINERS  
State of Oregon

  
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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<sup>10</sup> In its Notice, the Board proposed that Mr. Wolff complete the CE credits within 90 days. Neither party presented any evidence on the frequency of the availability of CE qualifying activities. Because he must complete 19 CE credits, a significant number of credits in comparison to the previously-required 50 biennial CE credits, the ALJ stated that a six-month period seemed a more feasible length of time in which to accomplish the completion of that many CE credits. The Board accepts the ALJ's recommendation.

## CERTIFICATE OF SERVICE

I certify that on June 2, 2015, I served the attached **FINAL ORDER** by mailing it certified in a sealed envelope with postage pre-paid to:

**RE: License # 5050**

Christian Wolff, M.A.  
2015 NW Kearney, Suite 403  
Portland, OR 97209

&

Bear Wilner-Nugent  
Attorney at Law  
620 SW 5th Avenue, Ste. 1008  
Portland, OR 97204

**BY CERTIFIED MAIL**



Ashlie Rios  
Office Specialist  
Oregon Board of Psychologist Examiners

DATED this 2<sup>nd</sup> day of June, 2015.

