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RE: Concern regarding governmental malfeasance; request for investigation

For the Oregon State Bar:

Attorneys who may have violated law or professional ethics include:

Karen Berry, Warren Foote, Carolyn Alexander, Ellen F. Rosenblum, Anna M. Joyce, and any attorneys who were members of the Oregon Board of Psychologist Examiners who were involved in any part of the handling of the Bice case as described in the attached opinion of the Oregon Court of Appeals. This is a request for an investigation.

Follow Up & Response

March, 19, 2017

Daniel P. Atkinson
Assistant General Counsel
Oregon State Bar
Client Assistance Office
P.O. Box 231935
Tigard, OR 97281-1935

Dear Mr. Atkinson,

We respond to the January 17, 2017 letter sent to you by Stephanie Thompson, Senior Assistant Attorney General, which she wrote on behalf of:

CAO File No. DPA 1601876

Karen Berry, MSW, JD
Investigator for the Oregon Board of Psychologist Examiners

CAO File No. DPA 1601877

Warren Foote, Oregon Senior Assistant Attorney General
General Counsel Division, Busines Activities Section

Primary Legal Counsel assigned to the Oregon Board of Psychologist Examiners, the Oregon Board of Licensed Professional Counselors, and the Oregon Medical Board

CAO File No. DPA 1601878

Carolyn Alexander, Oregon Senior Assistant Attorney General
Appellate Division

CAO File No. DPA 1601880

Anna Joyce, Oregon Solicitor General
Head of the Appellate Division of the Oregon Department of Justice

CAO File No. DPA 1601879

Ellen Rosenblum, Oregon Attorney General
Head of the Oregon Department of Justice

_____

Introduction:

On November 29, 2016, 12 persons signed a letter of concern. It regarded the behavior of 5 identified attorneys in the matter of actions taken against David T. Bice by the Oregon Board of Psychologist Examiners. It also regarded the behavior of the 5 identified attorneys in the matter of Bice v. Board of Psychologist Examiners. We asked for an investigation into the possibility of violation of rules, laws and ethical standards. As a result, the Oregon State Bar Client Assistance Office ("OSB CAO" or "CAO") sent notices to each of the named attorneys, individually, asking them to respond to the stated concerns.

In the initial letter of concern it was made clear that none of the 12 signers were attorneys. Nevertheless, the OSB CAO asked the 5 named attorneys to respond to the possibility of their commission of *codified* violations in relation to the Bice matter. *Each* recipient of the CAO's notice was asked to include "an explanation of *each* [emphasis added] named lawyer's role and involvement in the underlying matter."

As can be seen by the 5 attorney's joint representation by Stephanie Thompson, the 5 attorneys have chosen to respond in a singular voice. Although it *may* be of minor matter, it seems the group has sidestepped, collectively, the task CAO asked them, individually, to complete.

The notices, sent December 7, 2017, asked the named 5 to respond specifically to the possibility that they may have violated the following Rules of Professional Conduct ("RPC"), codified by CAO:

3.1 [Meritorious claims and contentions]
3.4(b) [Conduct toward witnesses]
4.1 [Truthfulness in statements to others],
8.4(a)(4) [Conduct prejudicial to the administration of justice].

We, the undersigned, find the majority of Ms. Thompson's letter to be <u>irrelevant</u> to the matter at hand. We explain.

1) In it's December 7, 2016 email to Berry, Foote, Alexander, Joyce, and Rosenblum, the Oregon State Bar Citizen Assistance Office (OSB CAO) specifically asked the 5 named attorneys to provide "[...] an explanation of each named lawyer's role and involvement in the underlying matter [...]". In the same communication, the OSB CAO specifically asked the 5 named attorneys to, "*<u>Please limit your response and any documents you send to the **ethics issues presented**</u>* [emphases added]."

2) Ms. Thompson's description of each of the 12 signers is irrelevant. This is not a trial of the 12 signers of the letter requesting investigation. We find the excessive attention given to the details of the 12 signers to be not only deplorable, but an attempt to divert the readers' attention from the matter at hand. We also find the information provided about the 12 signers to be inexcusably incorrect. Because we find information about the 12 signers to be inappropriate and irrelevant to the matter at hand, we will relegate comment on this matter to footnotes and appendices. We will only address this matter at all because the characterization of the signers is incorrect, misleading, defamatory and an additional exhibition of the manner in which the 5 named attorneys operate generally, indicating a *<u>pattern</u>* in the collective behaviors which are now being called to question.

3) The details about Dr. Bice are irrelevant. This is not re-trial of Dr. David Bice nor is the 12 signers' request for investigation an attempt to influence the ultimate outcome of Bice v. the Board of Psychologist Examiners. Dr. Bice is not a signer of the investigation request. Only one of the signers has ever spoken to Dr. Bice and this was more than one year past. Dr. Bice did not solicit any action on the part of *<u>any</u>* of the 12 signers. In full disclosure, we have sent copies of Wolff/CAO correspondence to Dr. Bice's attorney, Steven Sherlag, with permission to do so communicated by the attorney's secretary. Dr. Bice's attorney has never returned our communications.

4) We find an unusually large number of irrelevancies in Ms. Thompson's letter and aspire to address only the relevancies. To the extent that the *irrelevancies* in Ms. Thompson's January 17, 2017 Answer to the OSB CAO warrant comment, we will aspire to relegate these to footnotes and appendices.

What is relevant in this matter?

1) The OSB CAO is investigating the possibility of the violation of laws, rules, or ethical standards by 5 attorneys named in a request for an investigation. The question is whether there is "sufficient evidence warranting a referral to Disciplinary Counsel's Office for further evaluation pursuant to BR 2.5(b)(2)."

2) The behaviors of the 5 named attorneys in the specific context of the Bice matter. That is, barring any behavioral trend or lack of behavioral trend, the behavior of the 5 named attorneys is nevertheless relevant as it is related to the matter of David Bice.

3) Because "other cases" (such as those involving the 12 signers) have been introduced by Ms. Thompson, we will regard as relevant, whether "other cases" would shed light on whether the behavior of the named 5 in the Bice matter are isolated events or trends.

The 12 signers have indicated a concern that behavior exhibited in the Bice matter "is not an aberration, but indicative of OBPE's very standard of operation."

Inasmuch as these "other cases," (as introduced by Ms. Thompson) may be cases brought before the Oregon Medical Board (OMB) or the Oregon Board of Licensed Professional Counselors and Therapists (OBLPCT), they may be relevant to the discernment and determination of trends, repeated violations, assignment of intent, determination of willfulness, and findings of knowledgeability on the part of any or all of the 5 named attorneys.

4) Based upon any reasonable concern that misconduct extends beyond the Bice matter, the question of whether an investigation into any or all of the named 5 should be widened is relevant.

5) Relevant is whether any or all of the named 5 specifically committed the violations already indicated by the OSB CAO. Those possible violations include:

    3.1 [Meritorious claims and contentions]
    3.4(b) [Conduct toward witnesses]
    4.1 [Truthfulness in statements to others],
    8.4(a)(4) [Conduct prejudicial to the administration of justice].

6) Relevant is whether any or all of the named 5 specifically committed any of the *additional* violations excerpted and annotated in Appendix A.

7) If any or all of the the 5 named attorneys did commit any violations of law, rule, ethical standards, or of oath, what are the appropriate group and/or individual sanctions.

Excerpts & Annotations

From:

The Opinion of the Oregon Court of Appeals in the matter of Bice v. the Board of Psychologist Examiners, October 19, 2016: 281 Or 623 (2016)

Relevant Excerpts & Annotations

- Footnotes original to the document are reproduced here *inline*.
- First full paragraphs on referenced pages are denoted [para. 1]. Partial paragraphs preceding [para. 1] on referenced pages are denoted [para. 0].
- Notes by the authors of this document are indented beneath the enumerated excerpts.

1) With her on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General. [p. 623, Title Page]

    This may attest to the responsibility Attorney General Rosenbaum and Solicitor General Anna Joyce may bear for any misconduct on the part of Karen Berry, Warren Foote, and Carolyn Alexander in the Bice matter.

2) We first reject without discussion petitioner's challenge to the denial of his motion to dismiss based on investigatory misconduct. [p. 624, par. 1]

    In Stephanie Thompson's January 17, 2017 Answer to the OSB CAO, p. 6, para. 1, she places the above excerpt from the Bice OCA opinion in both italics and bold. It seems Ms. Thompson would have the reader believe that this is a statement of "no misconduct" on the part of Karen Berry. Given the whole of the Bice OCA opinion, the correct interpretation would seem to be that the fact of Ms. Berry's misconduct alone was not sufficient for the OCA to dismiss Bice's case categorically. The OCA has neither exonerated nor condoned the behavior of Karen Berry.

3) On *de novo* review of the record under ORS 183.650(4), and as explained in detail below, we find that key disputed historical facts are not as found by the board. [p. 264, para. 1]

    It is by the very fact that the board (Foote) modified historical findings as found by the ALJ that the OCA reviews this case *de novo* (ORS 183.650(4)). Yet, on behalf of "the board," Carolyn Alexander *denied* such modifications *in proceedings* despite clear and convincing evidence to the contrary. Despite Ms. Alexander's denial of modifications, there is nothing to indicate that Ms.

Alexander objected to a *de novo* review which is dependent upon the modification of historical fact.

It is difficult to comprehend why she would choose to do so under these circumstances, but it appears as if Ms. Alexander very boldly perjured before the court.

In Stephanie Thompson's January 17, 2017 Answer to the OSB CAO, p. 8, para. 4, Ms. Thompson defends Ms. Alexander's behavior thusly:

> [...] Ms. Alexander reviewed the Board's order at Mr. Foote's request, and represented the Board on appeal: specifically, she filed the brief, as well as the preliminary motions. She did not "lie" about the Board's modification of the findings, as Wolff contends, or otherwise make a frivolous argument: she took a colorable legal position on appeal that was supported by the record, and the Court of Appeals disagreed.

In the opinion of the undersigned, it is very uncharacteristic of any of the healthcare boards, Mr. Foote, or other AAG's from the DOJ to simply "agree to disagree," yet Thompson would have us believe that the OCA simply "disagrees" with the board and its DOJ representatives.

We are concerned that Ms. Thompson is failing to afford the OCA the adequate respect the 12 signers believes it deserves. We are also concerned that this lack of respect will color the boards deliberations following the OCA's decision to first, Reverse, and then Remand the Bice matter back to the board. Extrapolating from the ascertained behaviors of this group (now to include Ms. Thompson) we fear for Dr. Bice.

Obfuscation on this matter would be dishonorable. Ms. Alexander, on behalf of, and in conjunction with Mr. Foote, perjured both herself and Mr. Foote, in proceedings before the OCA.

Ms. Thompson writes that Alexander reviewed the Board's order. This would seem to mean that Alexander read it. Inasmuch as Alexander reviewed the boards order, it can be assumed the order had already been written. In that the review was at the request of Mr. Foote and in that it would have been Mr. Foote's job to pen the order, it is reasonable to believe that Mr. Foote, did in fact write the order.

Ms. Thompson implies through omission that Ms. Alexander did not write the document which the OCA maintains is a substantial modification of material historical fact. Ms. Thompson writes

> "[...] specifically, [Ms. Alexander] filed the brief, as well as the preliminary motions."

It can reasonably be assumed that Ms. Alexander was responsible for writing the fresh document ("the brief") and for any (written) preliminary motions.
What is not clear from Ms. Thompson's Answer is whether Mr. Foote made Ms. Alexander aware of the extent to which he wrote modifications of the ALJ's findings into "the board's" final order. Did Mr. Foote provide Ms. Alexander with an actual copy of the ALJ's decision and was it Mr. Foote's reasonable responsibility to actively do so? Is it conceivable that Ms. Alexander was mislead by Mr. Foote about the actual "colorability" of "the Board's position?" Alternatively, did Mr. Foote and Ms. Alexander share the responsibility for knowing that the historical facts as presented before the OCA were not as Foote and Alexander presented them, but as the ALJ had found them post hearing?

On the singular matter of "colorability," we again wonder what Ms. Thompson intends when she states "[...] [Alexander] took a colorable legal position on appeal that was supported by the record] [...]." What is "the record" to which Ms. Thompson refers? Certainly not the record as written by ALJ Rick Barber. ALJ Barber stated that "the board" (Foote) did not meet it's (his) burden of proof even by the low evidentiary standard of "preponderance of evidence." That is, Foote did not have even so much as a small preponderance of the evidence to support any of the allegations against against Bice. It is reasonable to say Foote had "nothing." Being left with nothing colorable, Foote colored on the ALJ's findings as if with a box of crayons.

The moment Foote decided to modify the ALJ's findings, he not only deprived Dr. Bice of his **right to due process** (discussed later), but Foote took to being a fanciful writer of fiction, making, perhaps with the help of the actual board, arbitrary attributions Bice and SM, projected idiosyncratic hair-splitting interpretations of social mores onto the case. It is fair to say that the goal was to assert that on a scale of 1 to 10, Dr. Bice may have hugged a client at a level 4 instead of a level 3. It is also fair to say that all of this could have and should have been prevented. On this belabored creation of something from nothing rested something very important to Dr. Bice: Whether Dr. Bice would survive to have a clean record in his profession, or whether he would carry a black stain which would effectively black list him and haunt him all the rest of his days. Too, for Dr. Bice, Foote's thin decision to replace established fact with fanciful "colorings," turned Dr. Bice's plight from one which could have ended in 2012 to one which, still, in 2017, has not ended. Dr. Bice still, in March 2017, awaits the board's decision following the OCA's October 19, 2016 Reverse and Remand.

This is where the question of **frivolity** comes in. Were allegations against Bice made **frivolous** the moment Foote decided to substantially alter material findings of historical fact in the manner described by OCA?

Mr. Foote passed all or some of this on to Carol Alexander and this is what created "the board's" position in the now Reversed and Remanded matter of Bice v. the Board of Psychologist Examiners.

4) Because we must remand to the board for reconsideration and entry of an order consistent with our findings on those disputed historical facts, ORS 183.650(4), we do not reach petitioner's assignments of error related to the board's application of the professional standards to his conduct. [p. 264, para. 1)

> This statement, we believe, is more about the scope of the OCA hearing, and should not be construed as a statement of support for the board's position.

5) *Petitioner has been licensed as a psychologist in Oregon since 1975 and has not previously been subject to disciplinary action by the board* [emphasis added]. [p. 264, para. 3]

> In Stephanie Thompson's January 17, 2017 Answer to the OSB CAO, p. 2, table rows G and H, Ms. Thompson *strongly implies* that Dr. Bice has been twice subjected to Disciplinary Action by the Oregon Board of Psychologist Examiners. Dedicating *two rows* to Dr, Bice, in a column entitled "Disciplinary Action," Ms. Thompson writes in Row G:
>
> > Final Order, 9/28/2012 (reprimand, 1 year of supervised practice).
>
> In Row H, Ms. Thompson writes:
>
> > Court of Appeals—reversed and remanded the final order. Pending Board decision on remand.
>
> Ms. Thompson's characterization of Dr. Bice is irrelevant, misleading, prejudicial to Dr. Bice, prejudicial to the administration of justice, and in contrast with the plain statement about Dr. Bice's character and identity as found in the Bice OCA opinion excerpted above.
>
> In accordance with Oregon Rules of Professional Conduct 1(h)[1] and 1(k)[2], we believe AAG Stephanie Thompson wrote of Dr. Bice as she did with intent to misrepresent.
>
> We, the original signers of the request for investigation in to the behaviors of Berry, Foote, Alexander, Joyce, and Rosenblum have grave concerns about Ms. Thompson's presentation. For more on our concerns about Ms. Thompson's

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[1] 1(h) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question, except that for purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person's knowledge may be inferred from circumstances.

[2] 1(k)"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

table of which Dr. Bice was made a part, see Appendix C.

6) In August and *September 2003* [emphasis added], *SM* [emphasis added], an 18-year-old woman,[1] saw petitioner as a client for *seven sessions* [emphasis added]. [p. 264, para. 3]

[1] SM turned 18 the day after her first session with petitioner [footnote original]

The SM matter is a based on a complaint made by SM's mother in 2003 which was subsequently dismissed with no knowledge of any of this provided to Dr. Bice. In 2010, subsequent to the 2009 case of SC which was going nowhere, "the board" "re"opened the SM "complaint." "The board" pursued disciplinary action against David Bice and in November 2011, held a contested case hearing based in part on an 8 year old complaint from the *mother* of an adult woman (SM) who saw Dr. Bice for just seven sessions, and in part on the scant and dubious evidence and testimony provided by the (now) adult SC's *father*.

The adult SC declined to sign a release for her medical records and declined to testify in the contested hearing. In SC's apparently brief interaction with Karen Berry, SC is reported to have said that Dr. Bice had never acted inappropriately toward her.

The third and last person Karen Berry tried to engage in the making of a case against Dr. Bice was DC. Based on a complaint made to the board by DC's *father* about Dr. Bice on a *billing* matter, Ms. Berry *initiated* a call to DC and attempted to manipulate DC into saying something (anything) which Berry could then use in her frustrated case against Bice.

Apparently the billing complaint was dismissed.

The opening of the seemingly frivolous case of SC was *sine qua non* to the straw-grasps in the SM and DC matters - yet after the pursuit of Bice in allegations associated with SC and DC failed, Berry, Foote, and Alexander (and Rosenblum & Joyce "with them" on the brief) mercilessly pursued Bice all the way through Appellate Court.

Perhaps anchored in the record of SC's statements that Dr. Bice had never acted inappropriately toward her, and in the scant and dubious nature of SC's father's evidence and testimony, ALJ Rick Barber *determined* that Warren Foote and his witness/investigator, Karen Berry (aka "the board") **failed to prove that Dr. Bice had violated professional standards in his treatment of SC.**

The only remaining allegation against Dr. Bice was the incidental matter of SM and ALJ Rick Barber found that **Foote and Berry failed to prove that Dr. Bice had violated professional standards in his treatment of her as well.**

In the end, after more than two years of arguable *harassment* by Berry and Foote and the Oregon Board of Psychologist Examiners, **Dr. Bice stood exonerated.**

In the end, even "the board" itself agreed with ALJ Barber that Foote and Berry had failed to prove their case against Bice in relation to SC.

As it would turn out, the *apparent* end was not the *actual* end for Dr. Bice. According to the Bice OCA opinion, "the board" (aka Warren Foote) substantially modified matters of the historical facts as they had been recorded in the ALJ's findings. The **modifications made it possible** for "the board" to *continue* it's pursuit of Bice (in the *incidental* matter of SM) while *appearing* to be justified in doing so. The board (Foote) wrote an Amended Notice of Proposed Disciplinary Action based upon material **not established** in Dr. Bice's hearing and, without the mediation of a *new* contested hearing, wrote the board's Final Order. Uncharacteristically, the board did not post the Amended Notice of Disciplinary Action on the Oregon Board of Psychologist Examiner's "Licensee Look-Up" where such documents are usually placed for public view and for the embarrassment of disciplined licensees. In actuality, there is much which is confusing about "the board's" set of publicly posted documents. The names of the documents are irregular, **at least one seems to be missing**, and the one titled simply, "Final Order" (undated, Haydon) is such a mess as to make it difficult to make sense of it all. Both in the posted Final Order and in the OCA opinion, "Amended" documents have been referenced and assigned degrees of great and central importance.

In their Final Order, the board chose to reprimand Dr. Bice for violations associated with SM and to suspend his license for one year. That is, this is what we *think* the board did (in terms of the specific discipline noted). Given the material written, referenced, and posted by Foote, we are uncertain as to which "final order" is which. No matter. We will attempt to decipher this elsewhere. Modification of the following paragraphs is presently not required.

Uncharacteristically, the Oregon Board of Psychologist Examiners (OBPE), granted Dr. Bice a stay of his suspension pending the outcome of his appeal. They did not, however, stay their verdict, and Dr. Bice has remained a "guilty man" to the the present day (March 2017). Dr. Bice's Appeal was argued and submitted on March 17, 2015. The Oregon Court of Appeals issued it's opinion (Reverse & Remand) on October 19, 2016. To the extent the OBPE may still choose to make good on their proposal to discipline Dr. Bice, Dr. Bice lives in suspense. The board's Final Order in Dr. Bice's case was Reversed and Remanded on October 19, 2016, and as of the present, the board has had nearly 5 months to decide whether they are going to abide the Appellate Court's Reversal or issue some other type of order. The signers of the request for investigation into the behavior of Berry, Foote, Alexander, Joyce, and Rosenblum find this to represent **an unconscionable delay**.

Dr. Bice has been reported to the National Provider's Data Bank as a Psychologist with a History of Disciplinary Action. Between the hearing of his case before the OCA and the issuance of OCA's opinion, the State of Washington Department of Health imposed a "mirror discipline" against Dr. Bice. His discipline in Washington, where he has had a license to practice Psychology since 1987 was based solely on the OBPE's Final Order. As of June 10, 2016, Dr. Bice is prohibited from practicing psychology in Washington.

As of March 2017, websites remain active which report the findings of OBPE to the public. In the least, these include reports on "PsychCrime," and "Ethical Psychology" defamatory to Dr. Bice.

http://www.psychcrime.org/news/index.php?vd=1075&t=Oregon+psychology+board+seeking+to+suspend+David+T.+Bice

http://www.psychcrime.org/news/index.php?vd=2084&t=Washington+health+department+seeks+to+discipline+psychologist+David+T.+Bice%3B+disciplined+in+Oregon+in+2010

http://www.ethicalpsychology.com/2013/01/state-reprimands-psychologist-david-t.html

http://www.doh.wa.gov/Newsroom/2016NewsReleases16144Discipline27NewsRelease

In the name of penalizing Dr. Bice for something (anything) the Oregon Board of Psychologist Examiners, primarily via the work of Berry & Foote, but also Alexander (and lack of supervision by Joyce and Rosenblum), have subjected Dr. David T. Bice to their intimidating and career compromising behavior for nearly 7 1/2 years.

In order to not come up empty handed and in order to not lose face, Berry manipulated witnesses and lied about releases 4, Foote modified matters of established historical fact, Alexander allowed it and repeatedly lied to the OCA about it, and Joyce and Rosenblum signed off on all of it with apparent full faith in Alexander and all Alexander represented.

All this to show that during the course of 7 sessions nearly 7 years prior to Bice's first notification, Bice may have hugged a patient a little too tightly or in a manner that may have been a little inappropriate, and this, *contrary* to the ALJ's finding at Bice's hearing in 2011.

Thompson denies that the parties she is representing acted frivolously (or allowed frivolous action). We, the undersigned disagree.

7) ***The board, which it now admits was in violation of its own rules****, deliberately* [emphases added] *decided not to notify petitioner about the complaint or the dismissal.* [p. 265, para. 0]

This refers to the 2003 complaint by SM's mother.

Despite the obfuscation in "the board's" Final Order, "the board" here means, in relevant part, Karen Berry.

In "the board's" Final Order to Dr. Bice, Warren Foote writes, "In violation of its own rule, the Board never informed Licensee of the complaint against him, or of its dismissal."

Were this statement written more clearly and correctly, it would have read, "In violation of [the board's] own rule, [**Karen Berry**] never informed Licensee of the complaint against him, or of its dismissal."

Karen Berry was the OBPE Investigator in 2003 and was assigned to the SM complaint. It was Ms. Berry's responsibility to notify Dr. Bice.

In the assessment of the OCA, Ms. Berry's failure to notify Dr. Bice *as required by rule* was a ***deliberate act***.

8) In *2009* [emphasis added], *the father* [emphasis added] of *SC* [emphasis added], a female client of petitioner, filed a complaint against petitioner based on two birthday cards and a high school graduation card petitioner had sent to SC, *when* [emphasis added] SC was still a minor. [p. 625, para. 1]

9) SC did not provide a release of her medical records for the investigation. [p.625, para. 1]

10) In an interview, **SC stated that petitioner had never acted inappropriately toward her** [emphases added] [...] [p. 625, para.1]

11) In addition, the board's investigator, Berry, contacted another of petitioner's female clients, DC, after DC's *father* [emphasis added] filed a complaint about petitioner's *billings* [emphasis added]. [p.265, para. 2]

12) **DC told Berry that petitioner was never inappropriate with her** [emphases added], but, in the course of the conversation, became very uncomfortable because Berry was being manipulative, kept trying to take her comments out of context, and insinuated that petitioner had done something wrong. [pg. 625. para. 2]

13) ***As a result, DC filed a complaint with the board against Berry*** [emphases added], [...] [p. 625, para. 2]

14) [...] ***which the board declined to pursue*** [emphases added]. [p.625, para. 2]

Given the board's aggressive pursuit of Dr. Bice for "discomforts" he allegedly caused on the part of his clients, how is it the board could have justified not pursuing this complaint against Ms. Berry? In their overly ardent attempts to get something (anything) on Dr. Bice and not wanting these attempts to look tainted, "the board" conspired to cover up Ms. Berry's **witness tampering**. The choice to cover up Ms. Berry's witness tampering interfered with the hastening of Dr. Bice's exoneration.

It is the Oregon Board of Psychologist Examiners' sole charter to protect the public and Warren Foote's job to advise the same board in *all* legal matters.

In conspiring to cover up Karen Berry's witness tampering, the board failed to protect DC, other clients "in similar situations", Dr. Bice, and other licensees which might be or have been targeted by the board in a similar manner.

Mr. Foote either advised the cover up or neglected to advise. If Mr, Foote advised correctly and was simply ignored by the board, we are unaware of any documentation which shows Mr. Foote do so or that Mr. Foote sought counsel within the DOJ on this matter.

Mr. Foote, Ms. Berry and/or other members of "the Board" were also in the position to know or to find out, for DC, who DC's important and relevant complaint should most properly go to so DC's complaint against Berry could be "pursued." There is no record we know of which show that Foote, Berry, or "the board" did this. Nor is there any record that we know of that "the board" communicated with DC, telling her that her complaint against Ms. Berry had been "dissmissed," "rejected," "forwarded" or otherwise handled at all.

Under *Complaints on Which the Board Can Act* (OAR 858-020-0025), it can be argued that the Oregon Board of Psychologists Examiners (OBPE) had an obligation to follow up with DC's complaint. The OAR reads in relevant part:

> The Board will review and accept for consideration complaints that might affect the licensure of psychologists [...]

When OBPE receives a complaint, there are three basic ways they may respond. They may review and reject, review and dismiss, or review and pursue. "Declining" to pursue, is not language found in statute or rule on these matters and the provisions for "rejecting" a complaint "dismissing a complaint are different. Inasmuch as "dismissing" could indicate the board *ignored* DC's complaint against Berry, we are concerned.

In OBPE's *undated* "Final Order" signed by Shane Haydon, it is simply written, that "DC filed a complaint with the Board about Berry's investigatory tactics."

There are no follow up comments whatsoever which would indicate the nature of "the board's" follow up with DC if any.

Most specific to the matter of Dr. Bice, the matter is relevant because *not* facilitating DC's complaint was prejudicial to Dr. Bice. Exposing Ms. Berry's improper conduct in a timely fashion could have had the effect of "putting Ms. Berry and the rest of the board *on notice*" to make sure the rest of the investigation and matters of proceedings were conducted properly. Failing to pursue a complaint against Ms. Berry allowed her to avoid looking suspect, and this was at the expense of Dr. Bice.

15) ***Berry admitted that she had tried to press DC into saying that petitioner had acted inappropriately toward DC*** [emphases added].[2] [p.625, para. 2]

[2] ***Unlike the board, we consider Berry's investigation in relation to DC relevant to our assessment of the evidence in undertaking our de novo review under ORS 183.650(4)*** [emphases added]. [footnote original]

16) *In 2010* [emphasis added], the board reopened the complaint involving SM *because* [emphasis added] SC's *father* [emphasis added] had filed his complaint. [p. 625, Para. 3]

It seems a bit odd to "reopen" a dismissed "complaint." A dismissed "complaint" does not seem to rise to the level of a closed or even dismissed "case." The dismissed "complaint," seems to be a "case" that was *never* actually opened. "Reopening" a complaint seems a novel oxymoron. Too, the "complaint" referenced here is one which was made by a client's *mother* and which, by 2010 was 7, or nearly 7, years old.

17) The board pursued [p. 625, para. 3] this disciplinary action against petitioner based on the allegations relating to SM and SC. [p.626, para. 0]

"This disciplinary action" refers to the action pursued at Bice's contested hearing.

18) ***The ALJ issued a 19-page proposed order that determined that the board had failed to prove that petitioner had violated professional standards in his treatment of <u>either</u> SM or SC*** [emphases added]. [p.626, para 1]

That is, ALJ Barber fully exonerated Dr. David T. Bice.

19) The board subsequently issued an amended proposed order that concluded petitioner had violated professional standards *with regard to his treatment of SM* [emphasis added] and imposed sanctions, but agreed with the ALJ that it had *not proved violations with regard to SC* [emphasis added]. Petitioner filed exceptions to that order. [p. 626, para. 2]

Note: It is not clear whether Foote wrote an "amended proposed order" or an "Amended Notice of Proposed Disciplinary Action (NPDA)" and *then* an "amended proposed order." As stated in the OCA opinion, Foote wrote changes to one or both of these documents, and despite the changes, there is no indication that a new Final Order was mediated by a new hearing before an ALJ. That is, there is no indication that Bice, but for written exceptions, had full opportunity to rebut Foote's modifications; that is, there was no new ALJ hearing of record.

Whether it be an "amended proposed order," an "Amended NPDA," or both, at least one of these is not posted along with similar documents on OBPE's Licensee Look-Up for juxtaposition. Failing to post both the original and the amended documents makes it difficult for the public to witness for themselves what Foote had done and easier to pass negative judgement on Bice.

A document posted on the OBPE website entitled "Notice of Proposed License Suspension and Restriction," reads:

> The Board proposes to suspend the license of Licensee to practice psychology for one year, to impose terms of probation that restrict him from seeing female clients that are 25 years old or younger, and to impose a $5,000 fine.

The document is dated September 14, 2010. Although there is a place for a handwritten signature this area is blocked out. In it's place is the word "Redacted." The typed signature simply reads:

> BOARD OF PSYCHOLOGIST EXAMINERS
> State of Oregon
> Oregon Board of Psychologist Examiners

We presume this document represents the original NPDA because the $5,000 Civil Penalty is not mentioned on Foote's draft of the board's Final Order as it is posted on OBPE's Licensee Look-up. On the posted draft, on page 30 of 31, the order reads:

Page 30 of 31 in the posted document "Final Order" reads:

Order

> 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.

We, the undersigned, have grave concerns about the document which appears to be the "amended proposed order" noted in the OCA excerpt above. We note that:

1) From among the documents posted on the OBPE website's Licensee Look-Up, at least one document is missing which is necessary for juxtaposition. Given the nature of this case, said document in necessary for the full understanding of the Bice case by any interested parties. Such parties may be advocates for Bice, potential clients for Bice, friends, family and neighbors of Bice, internet bloggers, or citizen watchdogs (both of boards and licensees). Without it, the set of documents presented by OBPE on Bice (and as well, author Foote) is misleading and on-goingly prejudicial to Dr. Bice.

2) The "amended proposed order" reads only that it is the "Final Order," not an "Amended" document. This leads the reader to believe that there is no "other" document to which the "Final Order" may be compared.

In the posted document called "Final Order," Mr. Foote references a document called "The Board's Amended Proposed Final Order" [p. 3, footenote 6] and writes of it in the past tense suggesting that it is indeed a different document.

We suspect that one of the conspicuously disincluded documents is the findings of ALJ Rick Barber and we can only assume that the other document was written by Mr. Foote.

We have requested ALJ Rick Barber's findings in the Bice case from the Oregon Office of Administrative Hearings (OAH) but the OAH has been evasive.

3) The document entitled "Final Order" is without a date. Warren Foote did not so much as place a line for the recording of a date next to the signature line. If ever there was a date next to the signature, it has been entirely redacted. It is not possible for any reader to discern when *this version* of the Final Order was written or signed.

4) On the OBPE website, the board electronically locked the PDF files posted under Bice's name (except for the OCA report) such that any person trying to work with these files would have considerable difficulty.

In our work with these documents, we could not easily high-light portions or copy & paste to other documents such as this present document. Conversion to a usable format was very difficult and even then some portions had to be re-typed by hand in order to reproduce them.

We are concerned that this represents a deliberate attempt by Mr. Foote and others to conceal or otherwise make unavailable, information relevant to Dr. Bice and the Bice case. We believe that these efforts to conceal and impede are prejudicial to Dr. Bice and to the administration of justice.

20) Because we find several of the disputed historical facts are not as found by the board, we reverse and remand for the board to reconsider its decision, as required by ORS 183.650(4), [...] [p.629, para. 0]

21) [...] and we do not reach petitioner's other challenges. [p.629, para. 0]

This statement, we believe, is more about the scope of the OCA hearing, and should not be construed as a statement of support for the board's position.

22) When an agency modifies an ALJ's findings of historical fact under ORS 183.650(3), we review those modified findings *de novo* under ORS 183.650(4), applying a preponderance of the evidence standard to our assessment of the record.[5] Weldon v. Bd. of Lic. Pro. Counselors and Therapists, 266 Or App 52, 63, 337 P3d 911 (2014), rev den, 356 Or 690 (2015). *However, when an agency modifies an ALJ's order* ***by making additional findings*** [emphases added], it is a modification under **ORS 183.650(2)**, which requires an explanation by the agency. We review additional findings for substantial evidence under ORS 183.482(8)(c). Weldon, 266 Or App at 69-70; Becklin v. Board of Examiners for Engineering, 195 Or App 186, 206,97 P3d 1216 (2004), rev den, 338 Or 16 (2005). [p.629, para 1 - p. 630, para. 0]

[Note by authors of this document: The Oregon Court of Appeals reproduces the whole of ORS 183.650 in it's footnote 5 in its original document. Only footnote 5 - ORS 183.650(2) is reproduced here.]

[5](2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge ***in any substantial manner***, *the agency* ***must*** *identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications* [emphases added].

23) In particular, it is our assessment that the reliability of the evidence has been negatively affected by the board's failure to properly inform petitioner of SM's mother's complaint when it was made, which resulted in petitioner not having recollections of the sessions with SM independent of his chart notes; [...] [p. 631, para. 1]

24) [...] the board's significant delay in investigating that complaint and interviewing SM; [...] [p. 631, para. 1]

25) [...] SM's inability to recall any details of her sessions with petitioner aside from details suggested by her mother's 2003 complaint; [...] [p.631, para. 1]

26) [...] ***and the manner in which Berry investigated the matters, which likely influenced SM's recollections*** [emphases added]. [p.631, para. 1]

> *This statement is not in a passive voice*. It does not simply suggest that SM's recollections were likely influenced. This statement by the OCA suggests that it was ***the manner in which Berry investigated matters which likely influenced SM's recollections.***

27) Turning to the *modified* [emphasis added] findings, we first reject the board's modified finding that petitioner led SM out of his office after each session by grabbing her hips from behind and walking her out into the hall. [p. 631, para. 2]

28) We first *reject without discussion* [emphasis added] the board's preservation challenge to petitioner's assignment of error. [p. 632, para. 1]

29) ***We also reject the board's argument that it did not modify the ALJ's findings*** [emphasis added] and that it *did not* [emphasis added] find that petitioner had attempted to kiss SM on the lips. [p. 632, para. 1]

> The OCA indicates here that the board argued that it did not modify the ALJ's findings and alludes to a specific modification which the board denied. Here, it can be understood that "the board" means Foote and Alexander. The OCA makes reference to a specific item of modification and indicates that the board (Foote and Alexander) denied penning that specific modification.
>
> **It seems a simple matter of "did or did not."** Two documents held side by side are identical or they are not. In this matter, the OCA, in finding it proper to hold a *de novo* review *because* of the modification of the ALJ's findings by the board (Foote) (ORS 183.650(4)) chose to *require* the board (via Foote and Alexander) to "[...] identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications" (ORS183.650(2)) because the modifications were ***substantial*** as per ORS 183.650(2).
>
> It would seem, from the OCA report, that not only did Ms. Alexander not comply with the requirement to identify and explain substantial modifications, but she flat out denied, on behalf of Foote, that there were modifications made at all.

30) The board *did* [emphasis added] find that petitioner attempted to kiss SM on the lips, at least implicitly, because the board *explicitly* [emphasis added] credited *all* [emphasis added] of SM's testimony on the matter. [p. 632, para. 1]

> In other words, "the board" *did* make modifications despite presenting otherwise.

31) The board also *explicitly* [emphasis added] found that petitioner *did* [emphasis added] kiss SM on the cheek, ***which was a modification of the ALJ's findings*** [emphasis added]. [p. 632, para. 1]

This cannot be stated more plainly.

32) We next address petitioner's challenge to the board's *modified* [emphasis added] finding that petitioner used touch as a treatment modality in his treatment of SM. *We reject* ***the board's contention*** *that it did not make such a finding* [emphasis added]. [p. 632, para. 2]

Again, (on a second matter) "the board" (Foote) modified the ALJ's findings, and Carolyn Alexander lied for him in a bold faced manner *in proceeding* before the Oregon Court of Appeals.

33) On review of the board's order, ***it is apparent that, not only did the board explicitly make the modified finding challenged by petitioner*** [emphasis added] —as clarified by the board in its response to petitioner's exceptions— ***but that that finding was <u>crucial</u> to the board's conclusions that petitioner violated professional standards*** [emphasis added]. [p.632, para. 2]

Plainly stated, by gross deceit, Warren Foote behaved in a manner prejudicial to Dr. Bice, and to the administration of justice.

It is suggested in the OCA statement excerpted above, that "the board" at some point admitted they had modified the ALJ's finding. There is also reason to believe, based on the same statement, that the board nevertheless moved forward with their Final Order as it was, and moved forward with that version into the Appeals process.

Finally, it is asserted in the OCA statement excerpted above, that without this unsubstantiated modification the board could not have concluded, by any reasonable standard, that Dr. David T. Bice violated professional standards.

34) We first reject without discussion the board's preservation challenge to petitioner's assignment of error. On *de novo* review, we again find that the historical facts are as articulated by the ALJ. *The board's contrary findings were* ***explicitly*** *made* [emphases added] [...] [p.636, para. 1]

Plainly stated, "the board" (Foote and Alexander) attempted to quash Dr. Bice's very right to challenge Foote and Alexander's erroneous assertions.

Because the OCA did not allow Foote & Alexander to to quash Bice's quest for the truth, Foote and Alexander's misrepresentations were caught.

The historical facts as they were articulated by the ALJ <u>in the first place</u> (back in 2012) were supported by the OCA in 2016.

35) We also briefly address petitioner's challenge to the board's modification of finding number 6. In that finding, the ALJ found that, in relation to investigating SC's complaint, Berry had phoned Nancy Wernecke, a mental health practitioner for SC, and told Wernecke that "she had sent her a release, not mentioning that the release was signed by SC's father and not SC," who was then 18 years old, so that Wernecke began telling the investigator protected information.

As stated above, the historical facts as they were articulated by the ALJ in the first place (back in 2012) were supported by the OCA in 2016. In this instance, this means that Karen Berry *did* seek information from a therapist without a proper release. Not only did Ms. Berry put SC and Dr. Bice at risk by doing so, she placed Nancy Wernecke at risk of being held accountable for sharing confidential information without a proper release.

Given the fact that Ms. Berry admitted to intentionally trying to manipulate the testimony of DC, and given the fact that the OCA found SM's testimony less than credible due to Ms. Berry's manipulative interviewing, it is reasonable to believe that Ms. Berry *intentionally* misrepresented the nature of her release when she contacted Ms. Wernecke.

Apparently "the board" did not find that which may have been Ms. Berry's most egregious attempt at witness tampering to be of concern. In a footnote to a statement in p.625, para. 2 of the OCA report, OCA writes:

[2] ***Unlike the board, we consider Berry's investigation in relation to DC relevant to our assessment of the evidence in undertaking our de novo review under ORS 183.650(4)*** [emphases added]**.**

36) **The board modified that finding** [emphasis added] to find that the investigator. On *de novo* review, we find that the investigator referred *only* [emphasis] to a "release" *without telling Wernecke that the release was signed by SC's father and not SC* [emphasis added].[9]

[9] I*n response to petitioner's assignment of error, the board argues only that the finding is irrelevant to its conclusions* [emphasis added]. Regardless of whether the board believes the modified finding of historical fact that it made was irrelevant, our task, under ORS 183.650(4), is to resolve that disputed historical fact. Thus, we address petitioner's assignment of error.

We the undersigned do not accept this modification. First, the author of this modification (Foote) cast as credible, the memory of a witness who was a client of Dr. Bice's for 7 sessions in 2003. Ms. Berry is simply being asked to remember an event from 2009. If a client can be thought to have sufficient memory to recall 2003 events, certainly Ms. Berry can be thought to have sufficient memory to

recall significant events from 2009 which she knows fully well, she will be called upon to remember. Two, among the disciplinary proposals for Dr. Bice was that he complete course work in charting. We would expect that Ms. Berry, an OBPE Investigator, would "chart" or keep "case notes" documenting her activities for matters on which she can fully expect to testify. Third, among the disciplinary proposals for Dr. Bice was that he "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." If Dr. Bice can be held accountable for matters related to proper "informed consent," then it stands to reason that Ms. Berry can be held to account for "errors" related to informed consent. Finally, inasmuch as modifying this particular finding in this particular manner would not advance Foote's adversarial case against Bice, the only purpose such modification could serve is to soften the tone surrounding Ms. Berry's misrepresentation to Ms. Wernecke. Given this, it would seem that Mr. Foote, in writing the modification of this matter, and inserting it into the record of this case failed to restrict his efforts to matters related to Dr. Bice and modified a finding for the sole purpose of ***abetting Berry*** in avoiding a charge of misconduct. Among other things, in doing this, Foote and Berry conspired to risk prejudice to Dr. Bice.

Too, it would seem that had Ms. Berry not been successful in *misleading* Ms. Wernecke, giving Ms. Wernecke the idea that Berry possessed a proper release, Ms. Wernecke would have been guilty of committing a violation of law in providing such information without a release signed by the client. Ms. Berry, under such circumstances would have been obligated to report Ms. Werecke to Ms. Wernecke's licensing board.

We are not aware of any records which would indicate that Ms. Berry has made such a report.

Were Ms. Berry prepared to stand by her assertion that she "[...] could not remember whether she told Wernecke that she did not have a release signed by SC," the possibility that Ms. Berry *did* tell Ms. Wernecke that she had a proper release remains. In neither case would Berry be exonerated. Ms. Berry either lied to or mislead Ms. Wernecke, or Berry *simply* failed to tell Ms. Wernicke in which case, Wernecke may be guilty of a crime. Given the possibility of the latter, it would seem that to this very day "the board" (Berry is now retired) would be obligated to report this violation (made plausible by the Berry/Foote modifications of the ALJ's established historical facts) to Wernecke's board for them to handle as they see fit. Inasmuch as this present matter is an investigation into possible violations by Ms. Berry a call to Ms. Wernecke might easily settle the matter of Ms. Berry's memory. We are not aware of any records, subsequent to Ms. Berry's memory problem assertions, that show Berry or "the board" has contacted Ms. Wernecke.

37) *The board responds that it did not make that finding* [emphasis added]. [p.638, para. 0]

> Once ***again*** [empases added], this is a simple matter of evidence proved by holding two documents side by side. Either OCA is lying in the matter or Foote and Alexander are.

38) *We reject the board's argument. In its responses to petitioner's exceptions, the board made **explicit** the finding of historical fact complained of by petitioner* [emphases added], [...] [p. 638, para. 1]

> Although OCA has refrained from using the word "lying," It is clear, by the proclamation of OCA, that Foote and Alexander were *lying, in proceedings before the OCA.*

39) [...] which was only *implicit* [emphasis added] in the body of the *board's final order* [emphasis added]. [p. 638, para. 1]

40) *That* [emphasis added] finding was *not an explicit, nor implicit*, [emphasis added] finding in the *ALJ's* [emphasis added] proposed order. [p. 638, para. 1]

> This is a statement about the *extent* to which Foote and Alexander's were lying. The OCA is asserting that this matter was not a modification, but a novel addition to the historical fact as articulated by the ALJ and upheld by OCA.

41) *The board did not identify or explain that additional finding, as **required** by ORS 183.650(2)* [emphases added], which was error. [p.638, para. 1]

> In fact, Foote and Alexander denied they had inserted the novel "historical finding" ***at all***. **This in contrast to direct evidence to the contrary.**

From:

Thompson's OSB Response Letter on Behalf of Berry, Foote, Alexander, Joyce, & Rosenblum Submitted to OSB on January 17, 2017

Relevant Excerpts and Annotations

- Footnotes original to the document are reproduced here *inline*.
- First full paragraphs on referenced pages are denoted [para. 1]. *Partial paragraphs preceding [para. 1]* on referenced pages are denoted [para. 0].
- Notes by the authors of this document are indented beneath the enumerated excerpts.

<u>Thomson's Introductory Paragraph</u>

1) These allegations are without basis in fact, and should be dismissed. [p. 1, para. 1]

> Assertions such as these are one of the principle causes of the "law's delay" and reflective, perhaps, of the proverbial "insolence of office." Like AAG Carol Alexander before her, AAG Stephanie Thompson proffers an assertion which is directly contradicted by the plain evidence directly before her.
>
> In Ms. Thompson's January 17, 2017 Answer to the OSB CAO, she write's under her section 4: "**Wolff's allegations.":**

In his complaint to the Bar, *armed only with the opinion of the Court of Appeals from which to speculate* [emphasis added] [...]

> The 12 signers of the initial request for investigation into the behaviors of Berry, Foote, Alexander, Joyce, and Rosenblum provided two documents which appear to have provided enough *prima facie* evidence for the OSB CAO to require these cited parties to Answer to it. But for the article by Robert Plamondon, summarizing the OCA opinion report in the case of *Bice v. Board of Psychologist Examiners*, 281 Or. App. 623 (Ct. App. 2016), the *only* document submitted along side the investigation request was a document carrying the opinions of Presiding Judge P.J. Armstrong, Chief Judge, Erika L. Hadlock, Judge pro tempore, Tracy Prall.
>
> **When offered the opportunity to add evidence or commentary following Ms. Thompson's January 17, 2017 Answer to the OSB CAO, the signers considered whether anything more was necessary at all, so satisfied were we in the evidence provided in the OCA Bice opinion alone.**

Thompson's Section 1: Overview

> See Appendix C

Thompson's Section 2: Identity of the Complainants

> See Appendix C

Thompson's Section 3: Explanation of the Bice Case

2) The case featured in Mr. Wolff's (see Appendix C) complaint to the Bar is that of David Bice, Ph.D., who had a hearing before an ALJ, culminating in a Final Order (Tab G) that modified the ALJ's findings of fact and conclusions of law *as allowed by ORS 183.650* [5] [emphasis added], and imposed terms of discipline. Bice filed an appeal. [p. 3. para. 1 below table]

> [Note by present authors]: Ms. Thompson's footnote 5 is simply a reproduction of ORS 183.650

We are not convinced that ORS 183.650 is that which allows a board or agency to modify an ALJ's findings of fact and conclusions of law so much as it imposes *limitations* on a board or agency ability to do so. We believe Ms. Thompson may be confused.

ORS 183. 650(4) Explains that because of contested modifications, an offended party is entitled to a *de novo* review of their case as a whole. In this matter, the offended party is Dr. David T. Bice.

Ors 183.650(2) Explains that when the "agency modifies the form of order issued by the administrative law judge in ***any substantial*** [emphases added] manner, the agency *must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.*

Relying upon the OCA opinion, it would seems that not only did the Oregon Board of Psychologist Examiners (OBPE) (via Warren Foote and Carolyn Alexander) fail to identify their ***substantial*** [emphases added] modifications of the ALJ's findings, they boldly asserted to the OCA, in proceedings, that they did not even make the modifications - assertions the OCA flatly rejected.

We find it astounding that Ms. Thompson would cite *first*, in this section of her Answer to OSB OCA, ORS 183.650 as a statute *permissive* to OBPE rather than *prescriptive and restrictive*. This frustrates the board, the DOJ, Dr. Bice, the OCA, the OSB, and the State of Oregon. It is even more astounding that Ms. Thompson would pad her response to the OSB CAO with a footnote containing the full text of OSB 183.650 when it is flatly contradictory to her conceptualization of the statute.

We find it implausible that Ms. Thompson would actually believe that ORS 183.650 is a permissive statute for the board and that proving this warranted proof via the full reproduction of the statute in her Answer. In that we find honest misunderstanding of this statute by Ms. Thompson to be implausible, we believe alternatively, that her reference to the statute [p. 3. para. 1 below table], her presentation of its effect, and the reproduction of an in-context, non-sensical reproduction of the lengthy statute was a deliberate attempt at obfuscation and an abuse of the time of all parties.

3) In its opinion, the Court conducted a *de novo* review because the Board had modified findings of historical fact. [p.4, para. 2]

4) The contested case hearing at issue was conducted on *November 14 - 17, 2011* [emphasis added] before ALJ Rick Barber. [p. 4, para. 3]

This statement was excerpted from Ms. Alexander's Answer simply to draw attention to sheer length of time the Bice matter has been going on. Dr. Bice's

Appeal was not submitted and heard until March 17, 2015, and not decided until October 19, 2016. Due to the OCA's obligation to remand it's *reversal* [emphasis added] to the board, Dr. Bice remains in wait, nearly 5 months after the OCA decision, for OBPE to issue a new order in light of the OCA opinion. Due to Mr. Foote's insistence on or willingness to wrongly modify the ALJ's complete exoneration of Dr. Bice, Dr. Bice's life and career have remained in limbo for approximately 5 extra years.

We have searched and found no publicly available information to suggest that Mr. Foote and the Oregon Board of Psychologist Examiners have come to a decision on the Bice matter to date (March 2017).

5) The Board did not agree with the ALJ in regard to client SM, [...] [p. 4, para. 3]

Inasmuch as the term "the Board" is used in reference to a variety of configurations of persons, and inasmuch as the OSB CAO asked Berry, Foote, Alexander, Joyce and Rosenblum to provide "[...] an explanation of ***each*** [emphases added] named lawyer's role and involvement in the underlying matter [...] we find that clarification of the meaning the term "the Board" as it is used here to be important in determining the part any or all of these named attorneys my have played in the Bice matter.

6) [...] but did accept the ALJ's conclusions in regard to client SC. [p. 4, para. 3]

7) As a result, the Board changed some the ALJ's findings of fact and conclusions of law [...] [p. 4, para. 3]

Again, we find clarification regarding the composition of "the Board to be essential to this inquiry." We find clarity necessary for the sake of disambiguation.

8) [...] and after issuing an Amended Proposed Final Order and considering Bice's exceptions, issued the Final Order. [p. 4, para. 3]

We have searched and have found *no* document published which is stated to be an "amended" document in relation to Dr, Bice. In the Bice OCA opinion it is written:

> The board subsequently issued an amended proposed order that concluded petitioner had violated professional standards *with regard to his treatment of SM* [emphasis added] and imposed sanctions, but agreed with the ALJ that it had *not proved violations with regard to SC* [emphasis added]. Petitioner filed exceptions to that order. [OCA Bice Opinion, p. 626, para. 2]

Our considerable concern about an "amended" document missing from publication is expressed in detail in our notes under Excerpt no. 19, *The Opinion of the Oregon Court of Appeals in the matter of Bice v. the Board of Psychologist Examiners, October 19, 2017: 281 Or 623 (2016): Relevant Excerpts & Annotations.*

Thompson's Section 4: Wolff's Allegation's

In Section 4 of Ms. Thompson's January 17 Answer to OSB CAO, Ms. Thompson refers to Wolff's "allegations," or writes Wolff "alleges 6 times in single paragraph." On one occasion, the refers to "Wolff," or "Wolff, et al." as "he." "Wolff" is not a single person. "Wolff" is 12 persons. See Appendix C. Ms. Thompson also writes of Wolff being "armed" which we find odd. It seems Ms. Thompson would like to color the event of a letter of concern as an attack by Wolff, et al.

The letter Wolff sent to OSB CAO was entitled "Concern regarding governmental malfeasance; request for investigation." All concerns were expressed with warrant by responsible citizens with special knowledge of the matter(s) at hand. At the risk of great harm and retribution by their respective boards, the 12 signers did their duty to express a concern and ask for an investigation. The 12 signers had, nor have, any interest in making inadequately "armed" or warrantless allegations against anyone. Ours was toned as inquiry. Following the response by Ms. Thompson, however, we are more concerned than ever that the 5 named attorneys present a grave danger to the public beyond the Bice matter. Too many of the behaviors, known to us far too well, are intimated in Ms. Thompson's Answer.

More than prior to our November 29 letter, we have concerns, beyond the matter of Bice, that the misconduct of the healthcare boards/ DOJ are systematic and endemic. We have written much in this document of March 2017 and we hope that Ms. Thompson and the named 5 are more impressed with the "arms" we bear.

Thompson's Section 5: Inquiry by the OSB CAO

"As Related to Ellen Rosenblum, Oregon Attorney General Head of the Oregon Department of Justice (DOJ)" follows "As Related to Carolyn Alexander" in "Thompson's Section 6" (below).

"As Related to Anna Joyce, Oregon Attorney General Head of the Oregon Department of Justice (DOJ)" follows "As Related to Carolyn Alexander" in "Thompson's Section 6" (below).

Thompson's Section 6: Response to Allegations of Particular RPCs

As Related to Karen Berry, MSW, JD
Investigator for the Oregon Board of Psychologist Examiners

9) In the case of Ms. Berry, we need not conduct a lengthy analysis, because contrary to Mr. Wolff's assertion. the Court addressed the allegation of misconduct by the Board's investigator in the beginning of its opinion as follows: ***"We first reject without discussion petitioner's challenge to the denial of his motion to dismiss based on investigatory misconduct.*** In his remaining assignments of error, petitioner principally argues that the board erred in modifying key findings of historical fact made by the administrative law judge." (Italics and bold added.)[1] Bice v. Board of Psychologist Examiners, 281 Or. App. 623, 624 (2016). [p. 6, para1]

[1] The "(Italics and bold added)" are Stephanie Thompson's.

It seems Ms. Thompson would have the reader believe that statement that she placed in both italics and bold is a statement of "no misconduct" on the part of Karen Berry. Given the whole of the Bice OCA opinion, the correct interpretation would seem to be that the fact of Ms. Berry's misconduct alone was not sufficient for the OCA to dismiss Bice's case categorically. The statement is *not* an OCA exoneration of Karen Berry.

Nor is Ms. Thompson's assertion that "[...] the Court [already] addressed the allegation of misconduct by the Board's investigator [Berry] [...]" an indication that the OCA has taken it upon themselves to give Ms. Berry some sort of "pass" for her misconduct. Karen Berry was not being tried. The matter the OCA was reviewing was the matter of David Bice (Bice v. the Board of Psychologist Examiners). Any mention of Ms. Berry's misconduct extended only to the manner in which it affected the outcome of Dr. Bice's hearing and appeal.

The OCA determined that Ms. Berry *did* engage in misconduct and part of this rests on Ms. Berry's admission of the same.

The question now before the Oregon State Bar CAO is whether the conclusions of ALJ Rick Barber, the OCA, the OBPE, and the admissions of Ms. Berry herself are sufficient to forward the matter of Ms. Berry's misconduct to Oregon State Bar Disciplinary Counsel's Office for further inquiry.

<u>From the Opinion of the Oregon Court of Appeals in the matter of Bice v. the Board of Psychologist Examiners, October 19, 2016: 281 Or 623 (2016)</u>:

7) ***The board, which it now admits was in violation of its own rules****, deliberately* [emphases added] *decided not to notify petitioner about the complaint or the dismissal.* [p. 265, para. 0]

13) ***As a result, DC filed a complaint with the board against Berry*** [emphases added], [...] [p. 625, para. 2]

14) [...] ***which the board declined to pursue*** [emphases added]. [p.625, para. 2]

15) ***Berry admitted that she had tried to press DC into saying that petitioner had acted inappropriately toward DC*** [emphases added].[2] [p.625, para. 2]

[2] ***Unlike the board, we consider Berry's investigation in relation to DC relevant to our assessment of the evidence in undertaking our de novo review under ORS 183.650(4)*** [emphases added]***.***

26) [...] ***and the manner in which Berry investigated the matters, which likely influenced SM's recollections*** [emphases added]. [p.631, para. 1]

35) We also briefly address petitioner's challenge to the board's modification of finding number 6. In that finding, the ALJ found that, in relation to investigating SC's complaint, Berry had phoned Nancy Wernecke, a mental health practitioner for SC, and told Wernecke that "she had sent her a release, not mentioning that the release was signed by SC's father and not SC," who was then 18 years old, so that Wernecke began telling the investigator protected information.

36) **The board modified that finding** [emphasis added] to find that the investigator could not remember whether she told Wernecke that she did not have a release signed by SC. On *de novo* review, we find that the investigator referred *only* [emphasis] to a "release" *without telling Wernecke that the release was signed by SC's father and not SC* [emphasis added].[9]

[9] I*n response to petitioner's assignment of error, the board argues only that the finding is irrelevant to its conclusions* [emphasis added]. Regardless of whether the board believes the modified finding of historical fact that it made was irrelevant, our task, under ORS 183.650(4), is to resolve that disputed historical fact. Thus, we address petitioner's assignment of error.

As Related to Warren Foote, Oregon Senior Assistant Attorney General
General Counsel Division, Busines Activities Section
Primary Legal Counsel assigned to the Oregon Board of Psychologist Examiners, the Oregon Board of Licensed Professional Counselors, and the Oregon Medical Board

10) Under this rule, knowledge may be inferred from the circumstances. [p. 7, para. 0]

Here, it would appear that Ms. Thompson wishes to wax epistemological and bring into question, the nature of "knowledge" so as to provide numerous

defenses of ignorance on the part of Mr. Foote. We, the undersign reject categorically any defenses of ignorance on behalf of Warren Foote, Senior Assistant Attorney General for the Oregon Department of Justice.

From the *Oregon Rules of Professional Conduct (2015)*, we find the following definitions:

> **Rule 1(h)** ***"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question*** [empahses added], except that for purposes of determining a lawyer's knowledge of the existence of a conflict of interest, ***all facts which the lawyer knew***, ***or by the exercise of reasonable care should have known, will be attributed to the lawyer. A person's knowledge may be inferred from circumstances*** [emphases added].
>
> Note: In reading Rule 1(h), understanding “all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer,” to be limited to matters in which the lawyer’s knowledge of a conflict of interest was being determined would be absurd. We preemptively reject said understanding of Rule 1(h) as implausible. We offer that were Rule 1(h) to have been so narrowly conditioned, RPC Rule 1.0 would have include an additional definition of "Knowingly," "known," or "knows" so as to serve a broader set of issues given the broad importance of these terms.
>
> **Rule 1(k)** "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

11) The Board is mandated to investigate conduct that might be a violation of ethical standards; [...] [p. 7, para. 1]

Actually, I don’t think this is true. The public never gets to look at the cases the the board dismisses, but I would wager the board encounters, “might be an ethical violation” more often than they investigate. If Ms. Thompson’s assertion were wholly true, the board would be in trouble for violating their mandate a LOT. No, the board must choose which “might be’s” to investigate. How do they choose? What is the policy? We have reason to believe the board may have chosen to “not pursue” a complaint against Karen Berry delivered to the board by one of Dr. Bice’s former clients, “DC.”

12) [...] it is Mr. Foote's job to advise the Board and to advance its position in administrative hearings. [p. 7, para. 1]

The matter of “Mr. Foote’s job” is central to our stated concerns and our request for investigation into the behaviors of Foote and others as they relate to the matter of Dr. Bice.

In order to investigate the behavior of Mr. Foote we must be able to identify Mr. Foote. Unlike many other persons in the cases Warren Foote prosecutes, Foote rarely references or cites himself in the particular. More often than not, Foote goes by the name of "the board" as if (in nearly all cases) he and "the board" are one and the same. Although this may not cause problems in a matter for which there are no conflicts or issues, in matters of investigation and discernment of potential misconduct, this only obfuscates responsibility. No matter how common place such practice may be in the general practice of law, one must agree that the practice obfuscates responsibility. In order to investigate Mr. Foote, we must be able to know which actions are his in his official capacity and which actions were committed by other persons.

Based on our research, Warren Foote, is the author or overseer of all legal documents put forth by or on behalf of the Oregon Board of Psychologist Examiners. He is assigned the position of General Counsel to the OBPE. Foote is the only person directly affiliated with OBPE licensed to practice law.

The nebulous & obfuscatious, endlessly repeated reference to "the board." is tantamount to systematic deceipt on the part of healthcare boards generally and to the members of the DOJ who pen their legal stances.

In Miller v. the Board of Psychologist Examiners, we find:

> Because "the board" [italics added] has neither expertise nor experience in construing legal documents such as dissolution judgments, [the boards] interpretation is entitled to no deference. *Miller v. Board of Psychologist Examiners*, 91 P.3d 786, 193 Or. App. 715 (Ct. App. 2004).

According to the Oregon State Bar's website under "**What is the Unlawful Practice of Law**," at https://www.osbar.org/UPL: A person who is not an active member of the Oregon State Bar, but appears in court on behalf of others, drafts or selects legal documents, advises others of legal rights, acts as an immigration consultant, holds him or herself out to be a lawyer, or has a law office in Oregon, regardless of where his or her clients are located, may be engaged in the Unlawful Practice of Law. Please refer to the UPL FAQ for additional information.

We find this adequate to support our assertion that, unless practicing law unlawfully, *Warren Foote* (at least through the final order in every contested disciplinary matter) **is** *the author or overseer of **all** legal materials written by or on behalf of OBPE*, and is ultimately responsible for those materials to include, the content, style, truthfulness, inclusions, exclusions, relevance, necessity, and the adherence of those materials to all the prevailing laws (and BR's) governing Mr. Foote's behavior as an attorney. This is even more specifically the case in his position as an assistant attorney general. We admit that material's may have one or more additional authors or layers of

oversight once a board disciplinary matter has reached the Appellate Level. That is when a case goes before the Oregon Court of Appeals or other higher court. In such a case however, if not Mr. Foote, the author **will be** an identified, responsible member of the Department of Justice.

Current Oregon Revised Statutes (OARs) add further insight into the nature of Mr. Foote's Job:

> **180.140 Other assistants; salaries; representation of indigent clients.** (1) The Attorney General shall appoint the other assistants the Attorney General deems necessary to transact the business of the office, each to serve at the pleasure of the Attorney General and perform such duties as the Attorney General may designate *and for whose acts the Attorney General shall be responsible* [emphasis added]. Each assistant shall have full authority *under the direction* [emphasis added] of the Attorney General to perform any duty required by law to be performed by the Attorney General.
> (2) Each assistant so appointed shall be a person admitted to the practice of law by the Supreme Court of this state and shall qualify by taking the usual oath of office, conditioned upon the faithful performance of duties.
>
> **180.220 Powers and duties.** (1) The Department of Justice shall have:
> (a) General control and supervision of all civil actions and legal proceedings in which the State of Oregon may be a party or may be interested.
> (b) Full charge and control of all the legal business of all departments, commissions and bureaus of the state, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the state.
> (2) No state officer, board, commission, or the head of a department or institution of the state shall employ or be represented by any other counsel or attorney at law.

From the Oregon Department of Justice Website at http://www.doj.state.or.us/divisions/pages/general_counsel_index.aspx, we find description of both the DOJ General Counsel Division and the Business Activities Section, each of which Mr. Foote is a part. They read:

> **General Counsel**
>
> The General Counsel Division provides a broad range of legal services to state officials, agencies, boards and commissions. This is accomplished through such activities as giving day-to-day legal advice, drafting contracts and other documents, representation in administrative hearings and furnishing legal opinions. The Division also handles some litigation and appellate work involving client agencies, and drafts ballot titles in cooperation with the Appellate Division. The Division is under the leadership of the Chief Counsel. Some of the specialized functions administered by the Chief Counsel's office include:
>
> - Formal Opinions (signed by the Attorney General) typically respond to questions concerning constitutional issues and other matters of statewide concern.
> - Informal Opinions or Letters of Advice (signed by the Chief Counsel of the General Counsel Division) are issued on matters less likely to impact those other than the requestor.

- DOJ Alternative Dispute Resolution Coordinator and resources that encourage the use of collaborative problem-solving processes.
- DOJ manuals and DOJ client training provide informational resources to agencies.
- Response to public record petitions that result in Public Record Orders.
- Review and authorization of agency requests to use lay representation in contested case hearings.

The Division's work is organized into sections dealing with specialized areas of the law:

Business Activities

The Business Activities Section represents about over 50 of the state's professional and occupational licensing and regulatory agencies, including the Department of Consumer and Business Services (Insurance Division, Workers Compensation Division, Building Codes Division, Division of Finance & Corporate Securities, and Oregon OSHA), Oregon Public Utility Commission, Teacher Standards and Practices Commission, Bureau of Labor and Industries, Construction Contractors Board, Board of Examiners for Engineering & Land Surveying, Board of Architect Examiners, Oregon Racing Commission, Oregon Medical Board, Board of Nursing, Board of Pharmacy, Board of Dentistry, Board of Psychologist Examiners, Health Licensing Agency, and the Real Estate Commission. Section attorneys provide legal advice to those agencies on a wide variety of issues and represent them in regulatory and administrative enforcement proceedings.

Finally, we look to the Oregon Board of Psychologist Examiners for guidance on understanding the nature of Mr. Foote's job in relation to the board.

We find that there is little guidance here. In our research, we could find no statement clearly based in law or rule which would clearly define the purpose or the charter of OBPE. The best we could find were statements such as this found on the OBPE website under "About Us, Mission Statement, OUR MISSION" at http://www.oregon.gov/OBPE/Pages/about_us.aspx. It reads:

OUR MISSION

The mission of the Oregon Board of Psychologist Examiners is to promote, preserve, and protect the public health and welfare by ensuring the ethical and legal practice of psychology.

OUR CORE VALUES

- TRANSPARENCY
- INTEGRITY
- OBJECTIVITY
- ACCOUNTABILITY
- COMPASSION

In regards to OBPE Mission Statement and Statement of Core Values we would simply assert that it is Mr. Foote's job to restrict his activities to those which would conceivably achieve OBPE's mission. To understand what may

and may not be congruent with the board's (limited) mission, we must interpret the mission statement.

The mission statement contains two parts:

1) The "what" of it (or the "mission itself"): The mission of the Oregon Board of Psychologist Examiners is to promote, preserve, and protect the public health and welfare [...],

and

2) The "how" of it (or the "means"): [...] by ensuring the ethical and legal practice of psychology.

In that the "means" stated here is as well, a description of another mission ("to ensure the ethical and legal practice of psychology") we must again ask a "how" question. That question is "How (or by what means) is the ethical and legal practice of going to be ensured?"

We recognize that beyond the OBPE's Mission Statement, there are permissive written statutes, rules, and ethical standards, and we are certain that none of these permit the "promotion, preservation, and protection of the public health and welfare" nor "the ensurance of the ethical and legal practice of psychology" by a stand of of "any means necessary."

> **ORS 676.303(2)** All health professional regulatory boards shall operate with the primary purposes of promoting the quality of health services provided, protecting the public health, safety and welfare by ensuring that licensees practice with professional skill and safety and addressing impairment among licensees

We are certain that the means for ensuring the ethical and legal practice of psychology are meant to be within the bounds of the law, and applicable rules and ethical standards which, in addition to permissive forms, are written in prescriptive and prohibitive forms.

For these laws, rules and ethical standards as pertain to the investigation of the behaviors of Warren Foote and others, we will turn to:

The Constitution of the United States of America
The Constitution of Oregon
Oregon Revised Statutes (OARs)
Oregon Administrative Rules (OARs)
Oregon Rules of Professional Conduct (RPCs)

and, as possible, given we are not attorneys, Case Law.

13) Oregon Rule of Professional Conduct (RPC) 4.1(a) provides that "[i]n the course of representing a client[,] a lawyer shall not knowingly ... make a false statement of material fact or law to a third person." As noted earlier, RPC 1.0(h) defines knowingly, known, or knows as "actual knowledge of the fact in question." [p. 7, Para. 2]

Here, we note a significant case in point. Ms. Thompson, in her January 17, 2017 Answer to the OSB CAO, p. 7, para. 2 (in which she is representing clients), would lead a reader to believe she has quoted the relevant whole of two RPC's. Since she did not. I will quote them in whole here. The first is found in RPC Section 4 entitled:

> *TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS*
>
> **RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**
>
> In the course of representing a client a lawyer shall not knowingly:
>
> (a) make a false statement of material fact or law to a third person; or
>
> (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an illegal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Regarding Ms. Thompson's reference to 1.0(h), we believe, *by definition, Ms. Thompson has knowingly and intentional attempted to (mis)lead the reader to believe she has quoted the significant whole of her citation*. As emphasized before, RPC 1.0(h) reads in whole:

> (h) *"Knowingly," "known," or "knows" denotes actual knowledge of the fact in question, except that for purposes of determining* [emphasis added] a lawyer's knowledge of the existence of a conflict of interest, ***all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer*** [emphases added]. *A person's knowledge may be inferred from circumstances* [empahasis added].

In preemptive exhibition, we again quote from RPC 1.0(k) which reads in whole:

> (k)"Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

This reflects on Ms. Thompson's credibility, relevance, and possibly, her own violations of the RPC. In this, she compromises her defense of the behaviors of Mr. Foote and the others she is presently representing.

We pause to consider the manner in which Ms. Thompson's behavior in this context supports out collective concern that such behaviors are persistent and endemic in the DOJ. Work cultures are often inherited by new leaders,

but this does not absolve a new leader from remediating problematic behaviors in departments under their direction.

13) A material statement would be one that "would or could significantly influence the hearer's decision-making process." [p. 7, para 3]

Inasmuch as the RPC in question (RPC 4.1) references "*statement of material fact*" - not "*material statement*" (as Ms. Thompson has phrased it), we find it easier, simpler, clearer, and more sensible to define "*statement of material fact*" in a manner congruent with the RPC 4.1. It would indeed make matters more difficult were we to entertain Ms. Thompson's needless rephrasing of a simple concept, especially for the present writers who are not attorneys. Too, commentary on the definition of "statement of material fact" would not place us in unnecessary reliance upon the nuanced vagarities, of case law in this matter. We are confident that neither *In re Smith*, 348 Or at 550 nor *In re Marandas*, 351 Or 521, 530-33, 270 P3d 231 (2012), as referenced by Ms. Thompson, stands out among cases in setting precedents of definition relevant here. We believe Black's Law Dictionary will serve us adequately, and as well, help to keep us all honest. **Black's Law Dictionary, 10th edition (2014)** has over 50,000 entries and zero entries for "material statement." Under "material fact" however, it does have an entry. It reads: "See FACT."

We will not belabor this further by reproducing, here, definitions of "fact," "statement," or "statement of fact." Because we believe it is relevant to RPC 4.1, to Ms. Thompson's presentation, and to the question of Warren Foote's violation of RPC 4.1, however, we will reproduce Black's definition of "false statement."

> **false statement.** (18c) **1.** An untrue statement knowingly made with the intent to mislead. See PURJURY. **2.** One of three federal offenses: (1) falsifying of concealing a material fact by trick, scheme or device; (2) making a false, fictitious, or fraudulent representation; and (3) making or using a false document or writing. USCA § 1001.

Again:

> RPC 4.1 reads as follows:
>
> **RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**
>
> In the course of representing a client a lawyer shall not knowingly:
>
> (a) make a false statement of material fact or law to a third person; or
>
> (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an illegal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

14) Bar Rule Procedure (BR) 2.5(b)(2) [...] the Bar has the burden of establishing a violation by "clear and convincing evidence," which is "evidence establishing that the truth of the facts asserted is highly probable" [...][p. 8, para. 0]

Again, here, Ms. Thompson's presentation makes little sense. It seems incorrectly cited and irrelevant in context. From Oregon Rules of Procedure (2015), we find Ms. Thompson's referenced BR 2.5(b)(2) to read:

> If the *Client Assistance Office* [emphasis added] determines, after reviewing the complaint and any other information deemed relevant, that there is sufficient evidence to support a *reasonable belief* [emphasis added] that misconduct *may* [emphasis added] have occurred, the complaint *will* [emphasis added] be referred to Disciplinary Counsel. Otherwise, the complaint will be dismissed with written notice to the complainant and the attorney.

The referenced section of the Oregon Rules of Procedure (2015) is entitled:

> **Rule 2.5 *Intake and Review of Inquiries and Complaints*** [emphases added] **by Client Assistance Office.**

We remain confused about Ms. Thompson's apparent "confusion."

16) Wolff's speculation alone that [Foote] [violated RPC 4.1] is insufficient to support a reasonable belief that Mr. Foote violated RPC 4.1.

Wolff submitted three documents to the OSB CAO on November 29, 2016. One was a letter which included in the heading, **"Re: Concern regarding governmental malfeasance; request for investigation."** This was the introductory letter's "title." This letter was signed by 13 people. It is a stretch to say that this letter, careful to retain a tone of concern and inquiry rose to the level of speculation.

Another was an Article written by Robert Plamondon, entitled, *Court Overturns Incompetent Psychology Board Decision*. This article was an editorial review of the OCA Opinion on the matter of Bice v. the Board of Psychologists Examiners.

The third document submitted to the OSB CAO was a simple copy of the *Opinion of the Oregon Court of Appeals in the matter of Bice v. the Board of Psychologist Examiners, October 19, 2016: 281 Or 623 (2016).*

Wolff did not deliver "speculation alone." Wolff delivered considerable prima facie evidence. The congruence of Wolff's expressions of concern and the OCA report were sufficient to warrant a "reasonable belief" that Mr. Foote is complicit in the violation of RPC 4.1.

17) Bar Rule of Procedure (BR) 2.5(b)(2). Cf. *In re Conduct of Groom*, 350 Or 113,121,249 P3d 976 (2011) (the Bar has the burden of establishing a violation by "clear and convincing evidence," which is "evidence establishing that the truth of the facts asserted is highly probable" (quoting *In re Magar*, 335 Or 306, 308, 66P3d 1014 (2003)).

Once again, we are derailed from our primary objective of assisting OSB CAO in determining whether there is sufficient *prima facie* evidence to forward the matter of Berry, Foote, Alexander, Joyce, and Rosenblum's **x** possible misconduct to the OSB Disciplinary Counsel.

Ms. Thompson has chosen to waste our time and to pad her Answer on behalf of the named 5, by referencing cases irrelevant to the present matter. In an attempt to make the case references seem relevant, Ms. Thompson has withheld the *context* of the quotes, and as well, some of the words from her quotation without any indication that a significant (material) portion of the quotation was omitted.

This is, in the material Ms. Thompson references in her January 17, 2017 Answer to the OSB CAO, p. 8, para. 0, she has actually suggested that the reader compare BR 2.5(b)(2) to *In re Conduct of Groom*, 350 Or 113,121,249 P3d 976 (2011).

From *In re Conduct of Groom*, 350 Or 113,121,249 P3d 976 (2011) it can only be assumed that Ms. Thompson is asking us to note the following:

> On March 25, 2008, Simmons wrote to the Bar to report what he considered to be the accused's ethical violations. The Bar charged the accused with violating RPC 1.4, and, *following a hearing,* ***the trial panel*** *found the accused guilty* [empases added] of that charge and imposed a four-month suspension. *The accused seeks review of* ***the trial panel*** *decision* [emphases added]. See ORS 9.536(1) (parties may appeal trial panel decision directly to Supreme Court).
>
> **RPC 1.4 provides** [empasis added]:
>
> "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information
>
> "(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."
>
> The Bar had the burden of establishing a violation ***of <u>that</u> rule*** [emphases added] by clear and convincing evidence. Bar Rules of Procedure (BR) 5.2. "`Clear and convincing evidence' means evidence establishing that the truth of the facts asserted is highly probable." In re Magar, 335 Or. 306, 308, 66 P.3d 1014 (2003).

In Ms. Thompson's quotation of *In re Conduct of Groom*, 350 Or 113,121,249 P3d 976 (2011) Ms Thompson's significant misquote is as follows:

> "[...] (the Bar ***has*** [emphases added] the burden of establishing a violation ***[ ]*** [emphases of omission added] by "clear and convincing evidence, [...]"

Ms. Thompson has taken the liberty without "flagging" or noting the liberty, to change the past-specific "had to it's present-general form, "has." More substantially, however, she has (again, *without flag or notation* to the reader) omitted the words "***of <u>that</u> rule***."

RPC 1.4 is irrelevant to the present matter and is not generalizable in any way which makes sense.

Nor is BR 5.2 relevant to the matter at hand. The present matter is *simply* an order for Berry, Foote, Alexander, Joyce, and Rosenblum to provide an initial Answer (with specific guidelines) to OSB CAO following a a "complaint" CAO found meritous under the authority of BR 2.5(b)(2). Among Ms. Thomas's omissions is the fact that the "clear and convincing evidence" quotes in *Groom* are clearly in the context of BR 5.2 under "***Title 5 - Disciplinary Hearing Procedure*** [emphases added]" in the *Oregon Rules of Procedure*.

We believe, based on the above, that Ms. Thompson, knowingly and intentional tried to obfuscate her Answer and her defense of those she represents via the introduction of space-taking, time consuming, complex references, clearly out of relevant context and that she did so with the intent to mislead.

Again, chasing down Ms. Thompson's apparent complicity in behavior similar to those of Karen Berry and the 4 Department of Justice attorneys she represents has taken us from our primary objective of examining the possible misconduct of Berry, Foote, Alexander, Joyce, and Rosenblum. We have been handed more and deeper concerns as a result of Ms. Thompson's presentation.

x We write "and" instead of "and/or" because the 5 attorneys named in our concern letter have chosen to seek legal representation jointly from a single attorney. That attorney is Stephanie Thompson.

15) Finally, the Bar indicates that RPC 8.4 might be at issue here. Oregon RPC 8.4(a)(4) provides that it is "professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice." **2** [p. 8, para. 1]

2 Ellipses inserted by Stephanie Thompson.

We find it necessary to look at the whole of RPC 8.4 given the complexities of RPC 8.4(b) (added in 2005) regarding the allowability or disallowability of "misrepresentations or other subterfuge." For our general views on the matter of RPC 8.4(b), please see <u>Appendix E</u>.

For the moment. we shall strongly assert our reasonable belief that Mr. Foote does not qualify for any exemptions provided by RPC 8.4(b).

In *FORMAL OPINION NO 2005-173 on Dishonesty and Misrepresentation: Participation in Covert Investigations Approved by Board of Governors, August 2005, 2016 Revision* (Opinion 2005-173), On p. 8, para. 2, the Board of Governors (BOG) write;

> "Having said that, it is equally clear under Oregon RPC 8.4(b) that any review of the rationality of a lawyer's good-faith belief in unlawful activity should be minimal."

We respond:

There seems to be little that is clear about RPC 8.4(b) and how it affects RPC 8.4 generally, or for that matter, the entire set of RPC's. If it were clear, it would not need such detailed analysis by the BOG nor would it cause so much puzzlement to the average intelligent reader trying to station themselves in relation to an important legal matter. To the short of it we, the 13 signers of the initial request for investigation are going to interpret BOG's use of the word "minimal" to mean "collectively minimal" and/or "infrequent." We are also going to interpret the word "should" not in the instructive sense, but in the predictive sense. That is, " All other things being honest in the milieu of jurisprudence in an Oregon jurisdiction, the need to (substantially) review the rationality of a lawyer's good faith belief in unlawful activity should only infrequently be required."

To follow, two related admonitions are implied:

1) A lawyer is to use the exceptions provided in RPC 8.4(b) as infrequently as possible, conscientiously trying to abide the whole the RPC's and the whole of RPC 8.4 as much as possible. A lawyer is to not exploit RPC 8.4(b) on behalf of his clients, employer or self, to the point that the lawyer generally or regularly finds themselves exempt to the letter or the spirit of the Oregon Rules of Professional Conduct (RPCs) as a whole.

2) Should there come a time when exploitation of, or reliance upon the exceptions provided in 8.4(b) becomes more than "collectively minimal" or "infrequent" RPC 8.4(b) should be reviewed for revision or repeal so that it might optimally contribute to the rightful administration of justice.

We share BOG 2005's hope that the need for *substantial review* of a lawyer's assertion of rationality behind professed good-faith belief in unlawful activity (which would permit a lawyer to advise those committing acts of "misrepresentation and other subterfuge") will be infrequent.

The "reasonable good faith criteria" and similar criteria were <u>not</u> met by Mr. Foote, Ms. Berry, or the other named attorneys in the Bice matter.

This is a case in which a substantial, thoughtful, reasoned examination of "state of mind" criteria is necessary toward answering the question, "Were violations committed."

Though some would believe that proving "bad faith" or any "state of mind" issue would be technically impossible - especially if held to the "clear and convincing" standard. In the case of Mr. Foote, Ms. Berry, and the others, we believe that we can reach this standard via exhibit and reliable testimony of pervasive and robust patterns of behavior on the part of Mr. Foote and the other named attorneys.

We begin with the fact of our 12 signers. All can attest and provide material which, in congregate, will show *strong patterns* of misconduct (both within and across cases). Particularly, most of the signers can attest to patterns of misconduct on the part of Mr. Warren Foote and approximately half the signers can attest to patterns of misconduct on the part of Karen Berry. Behavioral patterns suggest trends in state of mind, and trends in state of mind can attest to character, and character is important in determining a lawyers fitness to practice.

Although we focus now on the singular matter of David T. Bice. we believe a broader investigation into Foote and Berry will be necessary to settle "state of mind" issues relevant to the Bice matter.

We even entertain the possibility that DC, SC, and even SM (former clients of Dr. Bice harassed in investigation by Ms. Berry) can be reasonably considered non-licensee victims of the abuses of the named 5 attorneys.

Final comments on RPC 8.4(b): We neither agree nor disagree with the BOG 2005's general opinion, that RPC 8.4(b) permits lawyers to advise and counsel, but not directly engage in misrepresentation and other subterfuge. Nevertheless we support it and understand it to mean that an attorney under certain circumstances may counsel or advise others who will be, are, or have been engaged in misrepresentation or other subterfuge as long as the attorney is otherwise adhering to relevant laws, rules, and ethical principles. We do not believe that the words "*(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct*," are sufficient to give any Oregon lawyer carte blache with regard to law, rule, or ethical principles.

Whether those engaged in covert activity are members of a state regulatory board, staff of a state regulatory board or, (directly relevant in this matter), the Investigator for a state board, it is *not* the job of the board's attorney, no matter the affiliation with the DOJ, to advise others in ways of violating the law, skirting the law, or in ways of avoiding getting caught when violating the law. Nor is it to advise them to do so. It can be understood from RPC 8.4(b) and the RPC's generally that an attorney may advise, counsel, or supervise covert activity as long as in this role, the attorney helps the *participants* in any covert activity to differentiate legal from illegal and advises against illegal behavior. This last part is not made explicit in RPC 8.4 and 8.4(b) but it can be inferred from the RPC's generally.

We turn our attention to Mr. Foote's role in the behavior of Karen Berry.

OAR 858-020-0045(4) states:

> **Scope of Investigation.** The **investigator** *shall seek* [emphases added] guidance as appropriate *and necessary* [emphasis added] from individual Board members, the full Board, **agency legal counsel** [emphasis added] , and the Board's administrator. If the Board decides to operate with a Consumer Protection Committee structure, that committee shall serve as the primary source of guidance for the investigator.

When it is necessary, the investigator (Berry), must seek guidance from "the board." When that necessity of guidance is a legal matter, the investigator (Berry) must seek that guidance from a person licensed to practice law in Oregon. More specifically, the investigator must seek legal guidance from "agency legal counsel" who in this case, is Senior AAG Warren Foote. No one else, by license or role, is a person the investigator must or may go to for legal guidance in lieu of Warren Foote.

Inasmuch as board investigatory work involves the investigations of possible violations as described by law, it would seem that Berry would seek a lot of legal guidance as OAR 858-020-0045(4) states she "shall."

It is no matter that Berry is registered as an inactive member of the Oregon State Bar. In her role as OBPE investigator, she is obligated to actively seek guidance from Foote on all legal matters whenever it is reasonably *necessary*. Given her behaviors as related to the Bice matter, we believe it was necessary for her to seek guidance from Foote on matters of legality. It is reasonable to believe that Ms. Berry, given her significant tenure as a board investigator, and her legal training, should have been able to identify instances when such guidance was necessary in order to show a good faith effort on her part to avoid improper behavior.

As described in ORS 180.140 and ORS 180.122, Foote has a reciprocal mandate which does not allow for his passivity. Foote, by statute, as an AAG for the DOJ is responsible for ***all*** legal matters related to the agency or

agencies to which he has been assigned. In this case, the agency is the Oregon Board of Psychologist Examiners, and the matter is the Bice matter.

Certainly Berry is responsible for her own behavior,
Foote, as board counsel, is responsible for her behavior as well. Inasmuch as we do not believe Berry and Foote (nor any of the other attorneys named in this matter) qualify for the exemption described in RPC 8.4(b), we do not believe these person's qualify for the RPC 8.4(b) exemption as it is referenced in RPC 5.3(b).

16) A violation of this rule requires proof that (1) the lawyer's "action or inaction was improper," (2) such conduct -occurred during the course of a judicial proceeding," and (3) the conduct "did or could have had a prejudicial effect upon the administration of justice." In re Carini, 354 Or 47, 54-55, 308 P3d 197 (2013). Prejudice occurs when the lawyer's conduct "[h]armed [or had the potential to harm] the procedural functioning of the judicial system, either by disrupting or improperly influencing the court's decision-making process or by creating unnecessary work or imposing a substantial burden on the court or the opposing party."

We are satisfied with Ms. Thompson's definitions here.

17) In his complaint, Wolff has pointed to no specific instances showing that any actions or inactions by Mr. Foote were improper, only speculating that "the nature of his position" and the fact that he represented the Board at Dr. Bice's administrative hearing may have caused some harm to the administration of justice. *Absent* [emphasis added] clear and convincing evidence, the complaint against Mr. Foote should be dismissed.

By OSB Rules of Procedure, as stated earlier, only "reasonable belief" that a violation has occurred is required for a complaint to be investigated by OSB. We have provided evidence sufficient for that purpose..

As Related to Carolyn Alexander, Oregon Senior Assistant Attorney General Appellate Division

18) Without repeating the prior analyses, which are similar here, it should be sufficient to say that Ms. Alexander reviewed the Board's order at Mr. Foote's request, and represented the Board on appeal: specifically, she filed the brief, as well as the preliminary motions. She did not "lie" about the Board's modification of the findings, as Wolff contends, [...]: she took a colorable legal position on appeal that was supported by the record, and the Court of Appeals disagreed. She conferred with her supervisor, Denise Fjordbeck, from the issuance of the Board's order forward. Ms. Fjordbeck, the Attorney in Charge of the Defense of Agency Orders Section of the Appellate Division, agreed with the approach that

Mr. Foote and Ms. Alexander took, both at the administrative hearing and appellate court levels.

Given the reasoning made plain in our initial expression of concern and request for investigation, it should be apparent to Ms. Thompson that we have included Anna Joyce and Ellen Rosenblum in our concerns due their dereliction of responsibility to avoid harm to persons by failing to adequately or properly supervise others for whose behavior they are statutorily or otherwise responsible. Ms. Rosenblum's responsibility is directly described in statute and by the signature "on the brief" as "with" Ms. Alexander in Bice v. the Board of Psychologist Examiners. Anna Joyces' responsibility in this matter can be assumed given the assumption of functional hierarchies constructed by Ms. Rosenblum, and as Solicitor General, her signature "on the brief" as "with" Ms. Alexander in Bice v. the Board of Psychologist Examiners.

Now, Ms. Thompson has introduced a new supervisory person not previously known to us - **Ms. Alexander's supervisor, Denise Fjordbeck**. In this, Stephanie Thompson seems to be stating that she is of the belief that supervision (good or bad) *matters* and that the presence or absence of supervision matters. **Inasmuch as Ms. Thompson is representing all 5 of the initially named attorneys** and that she has, as required by RPC, duly communicated with her clients, it can reasonably be believed that all 5 (in unison) have agreed with Ms. Thompson's strongly implied belief, that (good or bad) supervision *matters*.This directly undermines Ms. Thompson's arguments that the complaints against Ms. Joyce and Ms. Rosenblum should be dismissed.

It may be assumed that Ms. Thompson is attempting to represent all of her clients equally and well. As well, it might be assumed that Ms. Thompson is forwarding the following erroneous argument on behalf of Ms. Alexander:

1) Ms. Fjordbeck supervised Ms. Alexander in the Bice matter.

2) Ms. Fjordbeck is a good, just, and responsible person who supervised Ms. Alexander adequately and well in the Bice matter.

3) Therefore Ms. Alexander must have done good, just, and responsible work in the Bice matter and the complaint against her should be dismissed on these grounds.

Alternately, Ms. Thompson may be attempting to argue differently for Ms. Alexander:

1) Ms. Fjordbeck supervised Ms. Alexander in the Bice matter.

2) The quality, frequency, directness, adequacy, wisdom of Ms. FjordBeck's supervision in the Bice matter is unknown.

3) Therefore, if Ms. Alexander did anything "wrong," it is Ms. Fjordbeck's fault, and the complaint against Ms. Alexander should be dismissed.

Either way, it seems as if in her January 17, 2017 Answer to OSB CAO [p. 8, para, 4], Ms. Thompson threw at least 4 of the named attorneys plus Ms. Fjordbeck under the bus.

Honoring the importance of proper supervision and the rightful acceptance of responsibility for the behavior of one's underlings, we see that (roughly) OBPE Investigator Berry answered to Foote, Foote answered to the Chief and Deputy Chief Counsel of the General Counsel Division - presently Wolf and Giers respectively, Alexander (in the Appellate Division) was relied on Foote and answered to Fjordbeck, Fjordbeck answered to then Solicitor General Anna Joyce and an unknown Deputy Solicitor General, and all answered to Rosenblum.

One of the following can be held to be true:

1) The underlings in important positions should be excused for poor performance due to poor supervision. Supervisors should be held accountable.

2) The supervisors should be excused because they should not be expected to be responsible for the poor or improper work and behavior of their underlings in important positions.

3) Underlings in important positions ***and*** their supervisors should be jointly held responsible for the ultimate outcome of important matters.

    a) All are condemned or exonerated together.

    b) Relative responsibilities can be discerned clearly and each party should be regarded individually.

    c) Relative responsibilities can be discerned clearly, **and** the group itself should be regarded as an entity and held responsible appropriately.

4) No one can be held accountable for improper behaviors in important organizations because each person can always blame someone else.

Specifically to the possible of misconduct on the part of AAG Carolyn Alexander:

Please see **Item No. 3**, in this document under:

> **From:**
>
> **Thompson's OSB Response Letter on Behalf of Berry, Foote, Alexander, Joyce, & Rosenblum Submitted to OSB on January 17, 2017**
>
> **Relevant Excerpts and Annotations**

As Related to Ellen Rosenblum, Oregon Attorney General Head of the Oregon Department of Justice (DOJ)

19) **Ellen Rosenblum**, the Attorney General, had no *direct* [emphasis added] involvement with the Bice case *or in any of the cases identified in Mr. Wolff's complaint* [emphasis added]. Ms. Rosenblum has served as the Oregon Attorney General since June 29, 2012, *and executes her duties as identified in ORS Chapter 180* [emphasis added]. [p. 5, bullet point 4]

Attorney General Rosenblum has supervisory responsibilities over the the entire Department of Justice. In order for her to be held accountable for the possible misconduct of those to whom she provides ultimate oversight, it is not necessary for her to be, or to have been, directly involved in any given case where misconduct may have occurred at the hands of those serving under her. It is Ms. Rosenblum's responsibility to see to it that the Department of Justice is organized such that employees engaged in misconduct are identified early and dealt with appropriately before persons are harmed or damage is done to the reputation of the Department of Justice.

Ms. Rosenblum's name is attached to the brief submitted by Carolyn Alexander to the Oregon Court of Appeals (OCA) in the matter of David T. Bice v. Board of Psychologist Examiners. Specifically, Attorney General Rosenblum's name is found on the header of the OCA's opinion on the Bice matter as follows:

> Carolyn Alexander, Assistant Attorney General, argued the cause for respondent. *With her on the brief* [emphasis added] were *Ellen F. Rosenblum , Attorney General* [emphasis added], and Anna M. Joyce, Solicitor General.

We the undersigned, as citizens and as stakeholders in matters related to the Department of Justice rely on the assurances of responsibility that come with the Attorney General's name placed prominently and routinely on documents of importance. Woe be it to the the citizens of Oregon were the name of the Attorney General on a document be allowed to signify nothing.

We believe that the citizens of Oregon at large, join us in this regard.

Attorney General Rosenblum's responsibilities and duties as stated by Ms. Thompson, are in fact outlined in ORS Chapter 180. From ORS Chapter 180:

> **180.140 Other assistants; salaries; representation of indigent clients.** (1) The Attorney General shall appoint the other assistants the Attorney General deems necessary to transact the business of the office, each to serve at the pleasure of the Attorney General and perform such duties as the Attorney General may designate *and for whose acts the Attorney General shall be responsible* [emphasis added]. Each assistant shall have full authority *under the direction* [emphasis added] of the Attorney General to perform any duty required by law to be performed by the Attorney General.
>
> (2) Each assistant so appointed shall be a person admitted to the practice of law by the Supreme Court of this state and shall qualify by taking the usual oath of office, conditioned upon the faithful performance of duties.
>
> **180.210 Department of Justice; Attorney General head and chief law officer.** There hereby is constituted an executive department to be known as the Department of Justice. The *Attorney General shall be the head of this department and the chief law officer for the state and all its departments* [emphasis added].
>
> **180.220 Powers and duties.** (1) The Department of Justice shall have:
>
> (a) General control and supervision of all civil actions and legal proceedings in which the State of Oregon may be a party or may be interested.
>
> (b) Full charge and control of all the legal business of all departments, commissions and bureaus of the state, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the state.
>
> (2) No state officer, board, commission, or the head of a department or institution of the state shall employ or be represented by any other counsel or attorney at law.
>
> **180.235 Authority of agency to employ counsel; qualification and salary; status.** (1) Notwithstanding any provision of law to the contrary, whenever the Attorney General concludes that it is inappropriate and contrary to the public interest for the office of the Attorney General to concurrently represent more than one public officer or agency in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the Attorney General, the Attorney General may authorize one or both of such officers or agencies to employ its own general or special counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the Attorney General whenever the Attorney General determines that separate representation is no longer appropriate.

Given the provisions of ORS 180.235, we the undersigned are concerned about the judgement of the Attorney General in approving, ordering, or

allowing the group representation of the "5 named persons" by a single employee of the Department of Justice answerable to the attorney general. We are concerned that this in itself represents a conflict of interest for the Attorney General and the Assistant Attorney General, Stephanie Thompson who has agreed or been ordered to represent "the named 5." We are also concerned about the poor judgment demonstrated by the Attorney General ordering the AAG, and/or AAG accepting the assignment, to represent all of the named 5, for not considering the foreseeable possibility that a conflict of interest is likely to arise if any of the 5's story's of accountability vary. For this reason and others as is addressed elsewhere, we add Stephanie Thompson to the list of persons who, as attorneys, may be guilty of misconduct.

As Related to Anna Joyce, Oregon Attorney General
Head of the Oregon Department of Justice

20) **Anna Joyce** served as the Oregon Solicitor General during most of the time that Bice has been pending before the Oregon Court of Appeals. She had no direct involvement in the case on appeal. The complaint against Ms. Joyce should be dismissed. [p. 5, bullet point 5]

As (former) Oregon Solicitor General. Ms. Joyce was the head of the Department of Justice's Appellate Division. The position she held during is a very important position. We, the 12 signers of the present Request for Investigation by OSB as related to the Bice matter are licensed professionals and citizens invested in knowing the Solicitor Generals behavior and the outcomes of the Appellate cases he or she supervises. If the OCA Opinion on the Bice matter is chronologically reflective of Ms. Joyce's supervision of Carolyn Alexander's behavior, it can be ascertained that Ms. Joyce's signature was on OBPE's brief, as "with" Alexander "on the brief," at the time Ms. Alexander submitted her briefs to the OCA for *Bice v. the Board of Psychologist Examiners*, and likely, during the time the case was argued.

We wonder whether Ms. Joyce, in being "with" Ms. Alexander, provided supervision to Ms. Alexander, checked in to see that Ms. Alexander's supervisor (Fjordbeck, by Ms. Thompson's account) was providing appropriate supervision, or whether Ms. Joyce removed herself from the matter altogether giving the false impression (as traditional as it may be) that she was "actually" somehow involved in the Bice matter, and thus, culpable for any misconduct on the part of Ms. Alexander.

Signature means signify. Along with most persons in any modern ordered citizenry, we've are participants in customs where signatures mean something. Generally a signature signifies some sort of accountability. A signature facilitates redress. When something goes afoul, a signature allows offended persons to know the identity of accountable parties who, by signing

their names, indicated a voluntary willingness (often in exchange for something given or allowed them) to be answerable to something.

People are careful about what they sign so as to not be held accountable for things they cannot or will not be responsible for.

Agreements (such as those which are born of social compacts) are often halted or ended for lack of signatures).

The Online Etymological Dictionary http://www.etymonline.com associates a number of telling words: signature, signify, significance, signification. A direct citation is hardly necessary, so clear is the fact that a “signature” *means* something.

Anna Joyce, Oregon Solicitor General, voluntarily signed her name to the work and behavior of Carolyn Alexander and all that Alexander brought with her given Alexander’s choices and/or negligence in her involvement with Foote and Berry, and thus, must, for the good of the people be held accountable. Lest the assurances engendered by the Solicitor General‘s signature lose all meaning, Ms. Joyce must be held accountable in this matter.

In order to shed light on what it is the Solicitor General and the DOJ’s Appellate Division does, we cite from the Oregon Attorney General’s Website under the Appellate division. From the first paragraph at http://www.doj.state.or.us/divisions/pages/appellate_index.aspx:

> The Appellate Division strives to effectively represent the state's interests and to *advance the rule of law* [emphasis added] in all cases in state and federal courts in which the State is either a party or has an interest. **The Division in performing its work seeks to accommodate the appellate courts' dual role of deciding cases before them and announcing "the law" in a way that becomes binding precedent for the State and its citizens** [emphasis added]. In its work in the appellate courts, therefore, the Appellate Division strives not simply to advance a position that best represents the state's interests. **The Division also must take great care to ensure that it presents its legal arguments in a manner that takes full advantage of the opportunity each case presents to influence the court's law-announcing function.**

We do not believe that the DOJ Appellate Division of which Anna Joyce was the head attempts to establish the rule of law in the broader sense of “rule of law” so much as it attempts to undermine it circularly, to suit *it’s own* purposes. By attempting to “create” law by winning precedent-setting cases, and then using those laws to win more cases which serve their interest the question of justice and injustice becomes moot. “Justice” in Appellate cases (the citizens’ place for redress and judicial review) becomes that and only that which Appellate Division says it is. They pass the effect of their winnings down to smaller courts (such as the so-called “quasi-judicial” Administrative

Hearings, and up to higher courts which draw on case law and remand their cases back to courts with known prejudices.

In as much as the DOJ attempts to affect law through setting case precedents which serve them, and *draw* up on case precedents which do the same, we are interested in doing the same in the name, not of our own purposes but in the name of justice.. In short, in the present matter of our work on the issues surrounding the Bice case (including possible misconduct on the part the DOJ), we wish to draw upon the increasing number of precedents which uplift justice and in *setting* precedents which will do the same. We hope, in presenting this matter to the OSB, to not so much be bound by case laws which certainly will be drawn upon by the violators, but to boldly set new precedents and to set new landmarks. Given the choice to follow or to lead, we wish to be leaders in the present matter.

In matters related to the egregious behaviors of the 5 named attorneys, *both direct and indirect*, as related to the Bice case, we, the undersigned take a stance a crucial matter. Perjury, witness tampering, records falsification, immunities of authorities to fair accountability, the harassments of persons by those in office, the threat to citizens' life liberty and property, and the deprivation of true due process and real equal protection will not stand.

Ms. Thompson wrote of Ms. Joyce:

> [Anna Joyce] had no direct involvement in the case on appeal. The complaint against Ms. Joyce should be dismissed.

If this is true - that Ms. Joyce had *no direct* involvement in [Bice's] case on appeal, then this may be one of the very reason's Ms. Joyce should be considered complicit in the violations of the other named 5 - for testifying (signing) that she would have, and did have, direct (identifiable) involvement in Bice's case and Ms. Alexander's representation, when in fact, she did not.

Those in higher positions who keep themselves remote and uninformed of the behaviors of their underlings do not get passes on accountability for this behavior. Those who have advanced up pyramidic hierarchies take on *more* responsibilities, not less. They should be the first but not last to be held to account.

We do not believe the complaints against Ms. Joyce should be dismissed.

We hold her to account.

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In Memoriam

James D. “Chip” Fenn, MD
Ashuelot Cemetery in Dalton, MA
On January 17, 2017, Dr. Fenn contacted us wishing to add his signature to our amended letter of concern to OSB which would be sent on that same day. He was thanked, but told it would be best in this particular letter for it to be signed only by those with Oregon standing. After a long battle with medical boards in North Carolina, Massachusetts, and Virginia, on January 23, 2017, Dr. Fenn took his own life. He was 59.