BEFORE THE
BOARD OF PSYCHOLOGIST EXAMINERS
STATE OF OREGON

IN THE MATTER OF:	) Agency Case No. 2009-073
	)
DOUGLAS A. REXIN	) FINAL ORDER
Respondent.	)

HISTORY OF THE CASE

On July 29, 2011, the Board of Psychologist Examiners (Board) issued a Notice of Intent to Impose Civil Penalty to Douglas A. Rexin (Respondent). On August 10, 2011, received August 12, 2011, Respondent requested a hearing. The Board referred the matter to the Office of Administrative Hearings (OAH) on August 12, 2011. Administrative Law Judge (ALJ) Rick Barber was assigned to the case.

A prehearing conference was held on September 28, 2011, to discuss the issues, and to set a hearing date. Hearing was set for December 29, 2011. Respondent filed a Motion to Dismiss and for Summary Determination. The motions were denied on November 9, 2011.

Hearing was held as scheduled on December 29, 2011, in Salem, Oregon. Respondent appeared without counsel and testified on his own behalf. He called no other witnesses. The Board was represented by Senior Assistant Attorney General Warren Foote. The Board called Respondent and David Sweet, Ph.D., as its witnesses. The record closed at the end of the hearing.

ISSUES

1. Whether Respondent practiced psychology without a license.

2. Whether, if Respondent practiced psychology without a license, he should be assessed a civil penalty of $5,000.

EVIDENTIARY RULING

Exhibits A1 through A8, offered by the Board, were admitted into evidence. Respondent objected to Exhibits A2 and A3, the investigator's report and a document drafted by Respondent, respectively. Both objections were overruled. Procedural documents P1 through P12 are also part of the documentary record of the hearing.

FINDINGS OF FACT

1. Respondent is a medical doctor who was licensed in the State of Oregon to practice medicine until he gave up his license as part of a settlement with the Oregon Medical Board on July 13, 2011. (Ex. A6). His license to practice medicine in Oregon had been suspended in 2006, and the suspension remained in effect until the 2011 settlement. (*Id.*).

2. Respondent practiced general medicine in Oregon from 1999 until the suspension in 2006. Approximately 50 percent of his practice involved psychiatry and mental health issues. He worked with Marion County Adult Behavioral Health, and its counterpart in Polk County, addressing the mental health medication needs of the patients. For two years prior to his Oregon practice, Respondent worked with mental health patients incarcerated through the California Department of Corrections, managing their psychotropic medications among other duties. In his medical practice, he often used the phrase "psychological evaluation" in his reports dealing with psychiatric issues. It is part of the template that he used for such cases when he was practicing medicine, and he continued to use it until recently with some of the sex offender cases he currently works on with Terry Harrington, M.S. (Test. of Respondent).

3. In November 2009, while suspended by the Oregon Medical Board, Respondent evaluated an eleven-year-old boy at the request of the boy's foster father, MC. The document drafted by Respondent was on Harrington's letterhead, was not addressed to anyone, and stated in pertinent part:

> [Name, address, info re: the boy]
>
> Psychological evaluation:
>
> Presentation:
> This is an 11 year old Caucasian/Hispanic youth who is referred by his care provider and foster parents. The Salem-Keizer School District has also asked if there are physical or sensory factors that may affect the child's educational performance. [MC], the care provider, outlined the behavioral issues present. [Information concerning the boy's behaviors].
>
> History:
> * * * * *
>
> Family History:
> * * * * *
>
> Medical History: History of head injury times three. He takes prescription medications (clonidine, Concerta) prescribed by Dr. Soto. No known drug allergies.
>
> Mental Status:
> * * * * *

Intelligence:
* * * * *

Mood: * * * * *

Memory: * * * * *

Judgment: * * * * *

Hallucinations: * * * * *

Formulation:
This is an 11-year-old youth who has no evidence of psychosis or delusion. He resides in a stable home and doing well in school. He wishes to have a puppy for Christmas.

Diagnosis:
Axis I Post trauma (victim of domestic violence and chronic abuse).
Axis II Deferred.
Axis III Small stature.
Axis IV Family stressors (positive relationship in foster family).
Axis V GAF 91

Recommendations:
* * * * *

Douglas A. Rexin, M.D.

(Ex. A3).

4. Respondent drafted this document to keep a record of this visit with the boy, not intending to draft a "report" or a document for dissemination. However, when MC asked for a copy of the document, Respondent agreed and made him a copy of the document. (Test. of Respondent).

5. The Oregon Medical Board received a copy of the document and disciplined Respondent for practicing medicine without a valid license. The document drafted on November 6, 2009 was the basis for the Medical Board's further discipline of Respondent. (Ex. A6 at 2).

6. David Sweet, Ph.D., is a practicing psychologist in Oregon who presently focuses on evaluations and forensic work. He has been in practice since 1980, and has served on the Board of Psychologist Examiners in the past. He has reviewed psychological reports and psychiatric reports in his work, and has never seen a psychiatrist use the word "psychological" in a psychiatric report. In his experience, once a copy of a report is provided to someone, one should expect that the person receiving the report will further disseminate the report. (Test. of

Sweet).

7. After the charges were brought by this Board, Respondent stopped using the word "psychological" in his written documents. (Test. of Respondent).

CONCLUSIONS OF LAW

1. The ALJ found that Respondent practiced psychology without a license. The Board concurs.

2. The ALJ recommended that Respondent should be assessed a civil penalty of $500. The Board originally proposed a civil penalty of $5,000. The Board now decides to assess a civil penalty of $1,000.

OPINION

The Board contended at hearing that Rexin unlawfully practiced psychology when he used the phrase "Psychological Evaluation" in the document he drafted on November 6, 2009. ORS 675.020 states in part:

> **Practice or representation as psychologist prohibited without license; use of business name or designation.** (1) To safeguard the people of the State of Oregon from the dangers of unqualified and improper practice of psychology, no person shall, unless exempted from the provisions of ORS 675.010 to 675.150 by ORS 675.090:
>
> (a) Practice psychology in this state without first being licensed under ORS 675.010 to 675.150; or
>
> (b) Represent oneself to be a psychologist without first being licensed under ORS 675.010 to 675.150.
>
> (2) As used in subsection (1)(b) of this section, "represent oneself to be a psychologist" means to use any title or description of services incorporating the words "psychology," "psychological," "psychotherapy" or "psychologist," or to offer or render to individuals or to groups of individuals services included in the practice of psychology.

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

The ALJ concluded that the Board has established that Rexin used the phrase "psychological evaluation" without being a licensed psychologist, the facts of the case present an interesting question of what to do with that fact. Rexin was formerly licensed as a medical doctor, and his general practice included a large percentage of psychiatry. On the "psychological evaluation" in question here, he signed the document as "Douglas A. Rexin, M.D." (Ex. A3 at 2).

Rexin had previously been disciplined and suspended by the Oregon Medical Board, and was in suspended status when he wrote the assessment in 2009. Based upon that document, the same document at issue here, Rexin was again disciplined and ultimately surrendered his license to practice medicine in July 2011. (Ex. A6).

While the Oregon Medical Board was accusing Rexin of practicing medicine without a license (because of the "M.D." signature at the end of the document), this Board accused him of practicing psychology without a license because he used the word "psychological" at the beginning of the document. The Board did not allege that Rexin intended to practice psychology; its argument is that the use of the word "psychological" constitutes the practice of psychology under the statute.

The interesting question in the case is whether Rexin's actions were the practice of psychology or actually the practice of medicine without a license. Rexin testified that he used the word "psychological" all the time in his medical practice, while Dr. Sweet testified he had never seen a psychiatrist use the word "psychological" in a report. Probably both were testifying accurately. The ALJ stated that he had no doubt that Rexin was acting as a medical doctor/psychiatrist—albeit an unlicensed one—when he wrote the assessment in question.

The Board's counsel argued at hearing that the document violates both the medical and the psychological rules and statutes. Given the wording of the statute, the ALJ stated that he agreed that Rexin's use of the word "psychological" constituted the unlicensed practice of psychology. The Board agrees.

The Sanction. The ALJ stated that in setting the civil penalty in this case at $5,000, the Board's counsel contended at hearing that it needed to "get his attention" with a "significant fine." However, for the reasons that follow, the ALJ disagreed with the Board's assessment that this is a significant violation, and that a fine of that magnitude is called for here.

The ALJ found that Rexin has been significantly sanctioned by the Medical Board for his actions. He can no longer practice medicine as a result of the same letter in question here. In that case, he attempted to practice medicine without a license and paid the ultimate price professionally.

The ALJ stated that in this case, but for the statutory protection of the word "psychological" there would be no violation at all. The skills and expertise Rexin used in the 2009 assessment were not intended to be a psychological practice—they were a continuation, in my opinion, of his previous psychiatric practice. The ALJ found no intent to practice psychology here.

With no such intent, the ALJ opined that there is little reason to "get his attention" in this case and observed that as Rexin stated in closing argument, the Board has his attention. He has removed the psychological language of the documents he uses when assisting Mr. Harrington in his sex offender therapy. The ALJ recommended a civil penalty of $500.

The Board acknowledges that Rexin was a licensed physician (albeit suspended pursuant to a Stipulated Order, dated October 13, 2006), when he signed the assessment, dated November 6, 2009, that was styled as "Psychological Evaluation." The Board also notes that the body of the assessment was structured as a psychological evaluation and contained an Axis I – V diagnosis. The Board concludes that Rexin knew from the title and substance of the document that the written assessment was a psychological evaluation. Rexin also knew that his license to practice medicine was suspended at the time. Rexin's conduct violated the statute of two health licensing boards—the Oregon Medical Board, and the Board of Psychologist Examiners. This is not a matter of mitigation. With his professional training and experience, Rexin knew better.

Nevertheless, the Board has seriously considered the ALJ's perspective, and now decides to reduce the assessed civil penalty from $5,000 to $1,000. The Board's intent is to provide a sufficient sanction to address his unlicensed conduct. It is the Board's hope that this action will also serve to deter Rexin from engaging in unlicensed conduct in the future.

EXCEPTIONS

On May 4, 2012, the Board mailed the Amended Proposed Final Order to Rexin's address. The Board informed Licensee that he had ten days to file written exceptions. Rexin has not filed written exceptions.

ORDER

The Board of Psychologist Examiners now issues the following order:

Rexin is assessed a civil penalty of $1,000.

Redacted

Shane Haydon, Ph.D.
Board Chair

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 *et seq.*

BEFORE THE

BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF OREGON

In the Matter of the Conduct of:	) AGENCY NO: OBPE #2009-073
	)
DOUGLAS ALLEN REXIN	) NOTICE OF INTENT TO IMPOSE CIVIL
	) PENALTY
Respondent	)

The Board of Psychologist Examiners (Board) is the state agency responsible for licensing and disciplining psychologists, and for regulating the practice of psychology in the State of Oregon. The Board is also responsible for enforcing the laws against the unlicensed practice of psychology in the State of Oregon. Douglas Allen Rexin (Respondent) is not licensed by the Board to practice psychology in the State of Oregon.

1.

The Board proposes to impose a civil penalty of $5,000 against Respondent pursuant to ORS 675.020(1), ORS 675.070(1)(g) and ORS 675.070(3)(b)(E). Respondent's violation of this statute is more particularly described below.

2.

2.1 On October 13, 2006, the Oregon Medical Board approved a Stipulated Order in which Respondent stipulated that he had engaged in a pattern of substandard medical practice. The Oregon Medical Board suspended Respondent's medical license for an indefinite term.

2.2 Respondent signed a document entitled "Psychological Evaluation" dated 11/6/2009 for a child who had been a victim of abuse. In this document, Respondent indicated the following diagnoses:

> Formulation: This is a 11 year-old youth who has no evidence of psychosis or delusion. He resides in a stable home and doing well (sic) in school. He wishes to have a puppy for Christmas.

Diagnosis:

Axis I Post trauma (victim of domestic violence and chronic abuse).

Axis II Deferred,

Axis III Small stature,

Axis IV Family stressors, (positive relationship in foster family).

Axis V GAF 91

Respondent signed this evaluation report as "Douglas A. Rexin, M.D." By contributing to this evaluation report and signing the document that contains a diagnosis and recommendations, Respondent engaged in the unlicensed practice of psychology. This conduct violates ORS 675.020(1)(a) and (b).

3.

The Board has authority to impose a civil penalty against Respondent pursuant to ORS 675.020(1), ORS 675.070(1)(g), and ORS 675.070(3)(b)(E).

4.

Respondent has the right, if Respondent requests, to have a formal contested case hearing before an Administrative Law Judge to contest the matter set out above, as provided by ORS 183.310 to 183.497. At the hearing, Respondent may be represented by an attorney and subpoena and cross-examine witnesses.

5.

If Respondent requests a hearing, the request must be made in writing to the Board, must be received by the Board within thirty (30) days from the mailing of this notice, and must be accompanied by a written answer to the charges contained in this notice. Before commencement of the hearing, Respondent will be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413 to 183.415.

6.

If Respondent fails to request a hearing within 30 days, or fails to appear at the hearing as scheduled, the Board may issue a final order by default and impose the above sanctions against Respondent. Respondent's submissions to the Board to-date regarding the subject of this disciplinary case and all information in the Board's files relevant to the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a *prima facie* case. ORS 183.417(4).

DATED this 29 day of July, 2011.

BOARD OF PSYCHOLOGIST EXAMINERS
State of Oregon

Redacted

Shane Haydon, Ph.D.
Board Chair