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February 2, 2017

To: Oregon House Committee on Healthcare
Re: **HB 2329 (2017)**
Position: **Against**

Dear Members of the Oregon House Committee on Healthcare:

I am writing today in opposition to HB 2329.

OBPE is in deep need of state legislative & executive oversight. At present OBPE operates without adequate supervision and are at risk of losing the legal immunity afforded them as a state agency. See the SCOTUS decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission https://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf.

In support of HB 2329, I imagine OBPE will argue they are simply following precedent set in the Oregon Medical Board's (OMB) ORS 677.205 (2) & (2)(f) & the Oregon Board of Licensed Professional Counselors & Therapists (OBLPCT) ORS 675.745 (7) which read respectively:

ORS 677.205 (2) In disciplining a licensee as authorized by subsection (1) of this section, the board may use any or all of the following methods:

(f) Take such other disciplinary action as the board in its discretion finds proper, including **assessment of the costs of the disciplinary proceedings** as a civil penalty or assessment of a civil penalty not to exceed \$10,000, or both; and

ORS 677.205 (2) In addition to the actions authorized by subsections (1) and (2) of this section, the board may take such disciplinary action as the board in its discretion finds proper, including but not limited to the **assessment of the costs of the disciplinary process**.

ORS 677.205 (2) & (2)(f) and ORS 677.205 (2) are NOT good precedents. They are **horrible life-destroying statutes**. I will explain why this is so as briefly as I can.

The Oregon Board of Psychologist Examiners is in absolute control of every single aspect of any disciplinary proceeding. They:

1) Make the charges against licensees (or *can*)

- 2) *Investigate* the charges against licensees, characteristically adding extra charges capriciously as they go, keeping investigations open and “on-going”
- 3) *Write the rules* which govern investigative and disciplinary processes, and determine the nature of the licensees’ rights & responsibilities (see Oregon Administrative Rules (OAR) 858, Division 20), limiting rights in a manner which consistently pre-disadvantages the licensees
- 4) *Prosecute* the licensees
- 5) *Gaslight* the licensees into madness with confusing, sham, Administrative Hearings
- 6) *Make the final judgement* on the case (overriding the Administrative Law Judge opinion if they please)
- 7) *Decide the specific disciplinary action* (ALL of this without *any* oversight or real checks and balances)
- 8) *Will do their very best to lie straight through an appeals process* before the Oregon Court of Appeals (See Bice v. Board of Psychologist Examiners) https://scholar.google.com/scholar_case?case=15541191640451220749&q=bice+v.+board+of+psychologist+examiners&hl=en&as_sdt=4,227

This bears NO resemblance to due process which every citizen (including professional licensees) are guaranteed under the Constitution of the United States and the Constitution of Oregon which every government official and employee has sworn by oath to uphold. “Due process” has a specific meaning and it does not mean “any customary nefarious process which is established as business as usual.”

The “quasi-judicial” process by which the OMB & OBLPCT must be stopped - not expanded, and in as much as these processes must be fast-tracked for reform, there is no point passing HB2329.

If not already blazingly clear to the intelligent members of the House Committee, passing HB 2329 would be tantamount to approving OBPE to continue acts no longer of larceny but of **grand** larceny with no checks and balances in place to keep OBPE from torturously squeezing licensees for their licenses and their livelihood.

At present, good healthcare professionals are being brought up on arbitrary and capricious charges by their regulatory boards, often with prima facie evidence so weak that it would not, by any system with checks and balances or oversight, warrant a case opening. OBPE will argue that they dismiss far more complaints than they pursue. Unfortunately, only OBPE knows why they dismiss those cases.

Without checks and balances, or functional state oversight we have no way of knowing how, in OBPE’s “quasi-judicial” processes, they separate the truly guilty from the truly innocent. Appeals before the Oregon Court of Appeals are of little remedy. With very rare exception, the licensee does not get a *trial de novo* (new trial), but must depend upon the incomprehensibly convoluted material produced at the mock trial before the Administrative Judge. Regularly, even in a win for the licensee, the appellate court will “Reverse and REMAND.” This means that even after a win, the case goes back to the Licensing Board to again, ultimately decide the licensee’s fate.

Now, OBPE is asking these licensees to **pay** for OBPE's villainy.

A judiciary process, or a "quasi-judiciary" process (yes a real term used by the boards) is to be designed as a very, very important test. It is to be designed in such a way that it reliably separates the guilty and the innocent. If a test cannot *discriminate* (tell the difference) reliably, then it is a worthless test and of useless design. Psychologists among all professionals should know the difference between a valid test and one which is not valid. Psychologists receive concentrated, specialized training in Test Construction. Why it is that once appointed to a Regulatory Board, they seem to forget every ounce of what they've learned about Test Construction, I only have theories.

One reasonable hypothesis is dishonesty. Dishonesty worthy of investigation. With the submission of HB 2329, another reasonable theory is "easy money." If HB 2329 is passed without broad regulatory board reform and stepped-up state oversight. The OBPE, like the OMB, and the OBLPCT, will need to do nothing but choose a licensee, level charges at them, and then, line their coffers with *tens of thousands of dollars if not more*. OBPE is asking that the assessment for costs following a judiciary proceedings against a licensee go directly into the State Board of Psychologists' Account.

On the dishonesty hypothesis let me assert that the quasi-judicial processes used by the OMB, the OBLPCT, and the OBPE are *inherently* dishonest. As with conflict of interest concerns, it is as much a matter of what improprieties *could* occur as what improprieties *do* occur. In business and in government, when conflicts of interest are recognized, the situation is remedied *before* (further) harm can be done. So it is with any system in which, due to lack of checks and balances and oversight, harm due to dishonesty factors is a distinct possibility.

Warren Foote, Senior Assistant Attorney General for the Oregon Department of Justice (DoJ), including, serves as legal counsel to not just one Oregon healthcare board, but three; the Oregon Medical Board (OMB), the Oregon Board of Licensed Professional Counselors and Therapists (OBLPCT), and the Oregon Board of Psychologist Examiners (OBPE).

Karen Berry, LCSW, JD, has just now suddenly "retired" after acting as the OBPE's Investigator for approximately 15 years.

At present, as he remains in his position(s) Mr. Foote is being investigated in a matter related to the Bice case (https://scholar.google.com/scholar_case?case=15541191640451220749&q=bice+v.+board+of+psychologist+examiners&hl=en&as_sdt=4,227), along with Ms. Berry. The investigation is being conducted by the Oregon State Bar (OSB). Being investigated are the following acts of misconduct as described by the OSB: 3.1 [Meritorious claims and contentions], 3.4(b) [Conduct toward witnesses], 4.1 [Truthfulness in statements to others], and 8.4(a)(4) [Conduct prejudicial to the administration of justice]. Mr. Foote's case number DPA

1601877. Ms. Berry's case number is DPA 1601877. These cases were opened on December 7, 2017 and are still in process. As of yesterday, February 1, 2017, another investigation has been initiated by the OSB regarding Karen Berry. Under OSB's Rules of Professional Conduct (RPC) Ms. Berry is being investigated for Misconduct. Her case number for this investigation is LDD 1601802. This information is a matter of public record.

Nor do licensees receive any assistance or assurance when they reach out to Oregon's leaders in the Executive Branch. Three other members of the DoJ, including Oregon's Attorney General, Ellen Rosenblum are being investigated in matters related to the Bice case, along with Foote and Berry. Ms. Rosenblum has received a case number as well and is being investigated for commission or complicity with those whose acts she is, by nature of her position, charged with oversight.

Bice's case is no anomaly. Those who have committed corrupt acts in a system which allowed it are just now starting to be caught.

In 2014, the North Carolina State Auditor investigated the NC Physician Health Program - a state contracted facility to which physicians are mandated (at risk of loss of license) by the NC Medical Board when the board asserts concerns about mental health or substance abuse. The auditor found that more than 1,140 physicians over a 10 year period, were denied due process due to lack of adequate state oversight, lack of basic due process mechanisms, and a multitude of problems with conflicts of interest. <http://www.ncauditor.net/EPSTWeb/Reports/performance/per-2013-8141.pdf>

Who pays the price for these travesties of justice? In this case, the physicians. In Oregon, it is the licensees of OMB, OBLPCT, and OBPE. Already, lives of GOOD healthcare practitioners have been destroyed. Licensees have been driven to homelessness unjustly. Most who have gone through these processes have developed some degree of Post Traumatic Stress Disorder. Many have considered suicide, and on a national level, many (far too many) suicides are completed and documented. I will assert that the majority of those licensees so egregiously denied due process never fully recover - and this is before the provisions as described in HB 2329 have been implemented.

Please terminate HB 2329 in Committee and join me in investigating the horrible practices of OMB, OBLPCT, and OBPE. An independent performance audit is in order.

Thank you very much for allowing me to address my concerns before the committee

Sincerely,

Christian Wolff

