

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND
PROFESSIONAL COUNSELORS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0048-SWP REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 706-2006
ACTION AGAINST THE LICENSE OF)		
MARY J. CLEMENT,)	
LCPC License No. 963.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) of the Department of Labor and Industry seeks to have sanctions imposed against the license of Mary J. Clement, a Montana licensed clinical professional counselor. BSD alleges that Clement violated Mont. Code Ann. § 37-1-316(4), Mont. Code Ann. § 37-1-316(9), Mont. Code Ann. § 37-1-316(15), Mont. Code Ann. § 37-1-316(18), and Mont. Code Ann. § 37-22-301. BSD further alleges that Clement violated Admin. R. Mont. 24.219.804(2)(a)(i), Admin. R. Mont. 24.219.804(2)(a)(iii), Admin. R. Mont. 24.219.804(2)(a)(ix), Admin. R. Mont. 24.219.804(2)(b)(i), and Admin. R. Mont. 24.219.804(2)(b)(viii).

Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on May 25 and May 26 and August 17 and August 18, 2006. Lorraine Schneider, agency legal counsel, represented the BSD. Clement represented herself. Clement, Lavelle Potter, BSD Investigator, BH, Merle Boma, Bob Telljohn, Dr. Kenneth Olsen, Patrick O'Malley, PhD., Stanley Cornell, Certified Public Accountant, Karl Krieger, Blue Cross/Blue Shield insurance fraud investigator, Beverly Medved, Emily Olsen, Christine Hillegass, PhD., Barbara Eckstein, Brenda

Wares, Terry Manska, Arlene Troy, and Roger Dale Barnes, PhD., all testified under oath.¹ Department's Exhibits 1(2), 1(2)(A), 1(2)(B)(1), 1(2)(B)(2), 1(2)(C)(2), 1(2)(L), 1(2)(M), 1(2)(N), 1(2)(P), 1(2)(Q), 1(3), 1(4), (1)(5), 3, 3(a), and Licensee's Exhibits A, B, C, D, E, F, I, J and Attachment 6 were admitted into the record. The parties were permitted to file post-hearing briefs with the last brief in this matter being received by the Hearings Bureau on October 16, 2006. Having considered the evidence and arguments presented, the hearing examiner finds that Clement committed egregious violations of professional standards and recommends that her license be revoked. This recommended decision is based on the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Clement has held a Montana licensed clinical professional counselor license since September 25, 2000.

2. During the mid 1980's, Clement worked as an intern for Child Protective Services in Richmond, Virginia. She was not a licensed clinical professional counselor at that time. In that position, she utilized something known as the "Home Builder" model. That model was used in the context of social work, not licensed clinical professional counseling. However, as will be discussed below, Clement continued and continues to use the "Home Builder" model even though it is not a recognized modality of treatment in the licensed clinical professional counseling arena.

3. Clement began taking on clients in Montana in 2000, working under the auspices of Roger Dale Barnes, PhD. Clement set up practice in Livingston, Montana. Clement did not spend all of her time in Montana. She split her time between Montana and her home in Tennessee.

4. Clement entered into a participating provider agreement with insurer Blue Cross/Blue Shield of Montana (BCBS) in November, 2000 (Exhibit 3) to provide counseling. Under Clement's agreement with BCBS, she agreed to accept as full payment "without charge to the beneficiary" the allowance established by BCBS (Exhibit 3, page 2). She also agreed that she would only bill for face to face counseling sessions. Under the provider agreement with BCBS, "face to face" counseling meant that Clement would counsel clients in an office or outpatient setting and that the client would be in Clement's physical presence while counseling.

¹ The hearing examiner has chosen to refer to client BH, who testified, and client SH by initials only and not by full name. While these persons did not assert any privacy right in this matter, the hearing examiner has nonetheless referred only to the clients' initials to lessen the likelihood of any untoward impact upon the witness' privacy rights as a result of testifying in this case.

5. Clement began treating BH and SH, husband and wife, in February, 2001. BCBS issued BH's and SH's medical insurance policy, and Clement's counseling of BH and SH was controlled by Clement's BCBS participating provider agreement. BH's and SH's policy included an unlimited mental health benefit, having no deductible, no co-payment and no dollar limit on services that could be provided.

6. In order to receive payment for services from BCBS, a licensed clinical professional counselor like Clement must utilize certain standardized numerical billing codes which describe both the type of service provided as well as the length of the time that the service was provided. The three codes at issue in this case are the 90804, 90806 and 90808 codes. The 90804 code provides payment to the counselor for 25 minutes of face to face counseling. The 90806 code provides payment for 45 to 50 minutes of face to face counseling. The 90808 code provides payment for 75 to 80 minutes of face to face counseling. There is also a fourth code, a "22 modifier," which permits the counselor to seek reimbursement for an additional 20 minutes of face to face counseling over the 90808 code.

7. Clement continued to treat BH and SH through 2002. At the beginning of the counseling relationship, Clement met with BH at Clement's office about six times. After that time, however, Clement began to "counsel" BH while the two were shopping in Bozeman, swimming at Chico Hot Springs, and while the two were driving together. Clement billed BCBS for these so-called "counseling sessions."

8. Some of the more egregious examples of Clement's improper billing practices while treating BH include:

(A) Clement flew into Bozeman one time and arranged to have BH pick her up at the airport. Clement was on her way through Livingston to pick up a car from a client. At Clement's request, Clement spent the night at BH's home before going on to pick up the car. Clement then had BH drive her to Pray, Montana, to permit Clement to retrieve the car from her other client. While Clement and BH were in route to BH's house, they discussed **Clement's** plans and **Clement's** future, not BH's issues. Clement never informed BH that they were involved in counseling during any of this contact. No recognized professionally substantive counseling occurred during this time. Nonetheless, Clement billed BCBS for this time with BH.

(B) On another occasion, Clement spent the night at BH's house while Clement was traveling from Tennessee and passing through Livingston. Clement never informed BH that they were involved in counseling during any of this contact. Nevertheless, she also billed for this time.

(C) On another occasion, Clement had BH drive her to Bozeman to go to Staples Office Supplies so that BH could get an Internet video camera. The purpose of purchasing the camera was to permit Clement to have "face to face" meetings with BH and SH when Clement was back in Tennessee. Again, Clement never informed BH that they were involved in counseling during this contact, yet Clement billed BCBS for this time.

(D) On another occasion, Clement and BH went shopping to buy a Lazy Boy recliner for SH. This was done at Clement's urging. Clement never informed BH that they were involved in counseling during any of this contact. Clement billed BCBS for this time that she spent with BH.

(E) On other occasions, Clement and BH would go to Chico Hot Springs to go swimming. Clement billed BCBS for this time. Clement never informed BH that they were involved in counseling during any of these contacts.

(F) Clement also invited BH to attend a trip to Bimini. This was an all expense paid trip, paid for by Clement. It included airfare and lodging in Bimini. Clement's other clients also attended. The trip included swimming with dolphins. As was true of the other so called "counseling sessions," Clement billed BCBS for counseling with BH during this trip.

(G) BH was employed at the Starwinds Ranch located near Livingston. Clement came up to the ranch and stayed for a period of approximately three days. During this time, Clement apparently charged persons at the ranch for counseling services. In addition, Clement billed BCBS for counseling services rendered to BH even though she provided no counseling services to BH during this time period. And again, Clement never informed BH that they were involved in counseling during any of this contact.

9. Clement maintains a web site, Bold Eagle, where, among other things, she advertises the therapeutic benefits of swimming with dolphins. There is no substantial evidence that swimming with dolphins is recognized as therapeutic treatment in licensed clinical professional counseling. This makes Clement's web site misleading.

10. At least 80% of Clement's billing for counseling services for BH and SH were at the 90808 level. For many of these sessions, Clement also sought additional money by adding the 22 modifier. This was far more frequent than most other providers (which averaged around 30%). Clement's conduct raised a red flag for BCBS, causing that entity to review Clement's billing practices. Eventually, BCBS disallowed Clement's use of the 22 modifier. Clement, undeterred by the BCBS disallowance, and obviously aware of the limitations of the BCBS contract which would not permit her to bill more hours for counseling with BH, began to carry over charges to subsequent months and bill that time as face to face counseling with BH and SH **even though she did not in fact counsel them at all** (she was not even in Montana on the dates that she claimed to have rendered services). According to Clement, this carry over billing occurred approximately 14 times. Clement's conduct was fraudulent in that Clement knew that she was extracting payment from BCBS for services not rendered to BH and SH in accordance with Clement's contract with BCBS. Nonetheless, she continued to engage in this type of billing practice.

11. Clement also billed BCBS utilizing the face to face billing codes when in fact she was counseling BH and SH by telephone, a service that was not compensable under Clement's participating provider contract with BCBS. Nonetheless, Clement

sought reimbursement for those sessions. This conduct, also, was fraudulent in that Clement knew or should have known that the telephone services she was providing were not reimbursable, yet she sought payment for them claiming they were face to face counseling sessions.

12. Clement took no initiative to advise BCBS that she was carrying over her billing in the manner described in Paragraph 10 above. Indeed, but for the fact that BCBS received complaints about fraudulent billing practices from BH and SH and launched an investigation which required her to respond, Clement might not have ever reported this conduct.

13. Clement also conducted what she termed as therapy utilizing the "Home Builder" model in BH's and SH's home. Clement hired two painters, one of whom was Bob Telljohn, who cleaned and painted the home. Clement herself was present in the home, helping to do cleaning. Clement billed BCBS for counseling services for all of the time she spent in the home.

14. Clement claims she was counseling BH in the home in the presence of Telljohn. Clement never obtained BH's express consent to conduct counseling in the presence of a third party. In addition, Clement quite frequently disclosed to other people that she was treating BH, even while in BH's presence.

15. BCBS's investigation into Clement's billing practices resulted in BCBS demanding that she return over \$13,000.00 in fees that she had been improperly paid due to her fraudulent billing practices. Soon after returning the money to BCBS, Clement brought suit against BH and SH in Park County, Montana, justice court seeking to recoup the amounts she had paid back to BCBS. After a hearing on the merits, the justice of the county court ruled in favor of BH and SH.

16. On November 4, 2003, BSD forwarded a letter to Clement indicating that BH and SH had filed a complaint against her license. A return receipt from the United States Postal Service indicates that Clement received the letter on November 19, 2003.

17. On the same day that Clement received the notice of the complaint from BSD, she sent a letter to the Social Security Administration (Exhibit 1(2)(m)), exclaiming that BH was a "malingerer and that is not a basis for unemployability." Clement also stated in that letter that BH "in September of 2002, she was employed past the nine month trial period to find employment." *Id.* Before writing this letter, Clement had not conducted any new evaluation of BH and was no longer treating BH. The sole purpose of Clement's letter was to retaliate against BH for filing a complaint with the Board of Social Workers and Professional Counselors.

18. Clement also tried to get BH and SH to sign a document entitled a "Declaration" (Exhibit 1(4)). The declaration in essence tried to get BH and SH to legitimize Clement's billing practices and further tries to have them legitimize Clement's justice court claim against them. In addition, the document attempts to paint BCBS as

the true genesis of BH's and SH's complaints by suggesting that BCBS threatened to accuse BH and SH of fraud if they did not cooperate in bringing a complaint against Clement. BH and SH refused to sign the document because it was not true.

19. Dr. Patrick O'Malley, a licensed clinical professional counselor, testified at the hearing. Dr. O'Malley has had substantial experience with professional ethics in clinical counseling. He has a masters in clinical counseling and a PhD in marriage and family counseling. He has been the chair of the Ethics Committee of the American Counseling Association which promulgates ethical rules for licensed clinical counselors. He also serves as the chairman of the judicial committee of the American Association for American Family Therapy. Between 1998 and 2000, he served on the task force that rewrote the code of ethics for the American Association for Marriage and Family Therapy. Dr. O'Malley is superbly qualified to testify regarding ethical conduct of licensed clinical professional counselors such as Clement.

20. As Dr. O'Malley testified, and the hearing examiner finds, Clement violated professional standards by permitting counseling between her and BH to take place in the presence of others. Clement's counseling of BH in the presence of Telljohn in BH's home while Telljohn was painting BH's home was unprofessional. Clement further violated professional standards by sending her letter to the Social Security Administration in November, 2003, accusing BH of being a malingerer.

21. As Dr. O'Malley testified, and the hearing examiner also finds, Clement's conduct of having BH drive her from the airport and spending the night at BH's house, allowing BH to then drive her to pick up a car, shopping with BH, and taking BH to Bimini was improper. Clement's conduct was a textbook example of engaging in an improper dual relationship which not only had the potential to adversely affect the therapeutic relationship, but in fact did adversely affect the relationship as noted below in Paragraph 25.

22. Clement gifted \$4,567.90 to BH and SH while treating them. This amount consisted primarily of Clement's payment for expenses for cleaning and painting BH's and SH's home. As Dr. O'Malley testified, and the hearing examiner finds, gifting this much money to clients was inappropriate and is yet another example of the improper dual relationship that Clement entered into with BH and SH.

23. As Dr. O'Malley testified, and the hearing examiner finds, engaging in the type of dual relationship such as that exhibited in this case can result in harm to the client. When a dual relationship cannot be avoided, the counselor must "take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure that judgement is not impaired and no exploitation occurs" (Record Transcript, Day 1, page 256, lines 7-11). Here, Clement made no efforts to secure BH's or SH's consent and Clement unquestionably exploited BH for Clement's own benefit (such as the incident of having BH pick Clement up at the airport and then spending the night at BH's house).

24. As Dr. O'Malley testified, and the hearing examiner so finds, the need to maintain and be cognizant of professional boundaries is particularly important when a client has symptoms of borderline personality disorder such as BH suffered in this case. With persons afflicted by that type of disorder, a failure to maintain professional boundaries can be devastating to the client.

25. Clement's improper dual relationships with BH was detrimental to BH's mental health and her treatment. As a result of Clement's conduct, BH began to distrust her other mental health providers such as Dr. Olsen.

26. There are several aggravating factors in Clement's conduct that call for imposition of revocation of her license in order to protect the public. Not the least of these are:

(A) The fact that she committed fraud upon BCBS by billing for counseling she did not in fact undertake in accordance with her BCBS contract in order to avoid coverage limitations in her contract with BCBS.

(B) Clement and her "Home Builder" model denigrate long accepted models of professional boundaries by actively promoting dual relationships of a type that are potentially (and actually) destructive to clients without regard to the client's well-being.

(C) Because of her continued desire to implement the "Home Builder" model, even though it has no demonstrated scientific application to licensed clinical professional counseling, Clement is incapable of safeguarding clients from the dangers of dual relationships.

(D) Clement engaged in retaliatory tactics designed to disrupt an investigation into her professional conduct by attempting to get BH and SH to sign the declaration that Clement had prepared in order to absolve Clement of responsibility for the debacle that she created by fraudulent billing.

(E) Clement engaged in retaliatory conduct against BH by sending an unsolicited letter to the Social Security Administration accusing BH of being a malingerer and suggesting her ineligibility for social security benefits in retaliation for BH's filing of a complaint with the Montana Board of Social Work Examiners and Professional Counselors. Clement did this even though she had no professional basis (such as a recent evaluation of BH) that would have given her cause for believing BH to be a malingerer. This conduct demonstrates unbridled malice toward BH, a former client, as well as a complete disregard for rules prohibiting disclosure of information acquired from a client while counseling that client.

III. CONCLUSIONS OF LAW²

² Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

A. *Clement Committed Acts of Unprofessional Conduct.*

1. The Board of Social Work Examiners and Professional Counselors has the authority to license clinical social workers and to discipline licensees who engage in unprofessional conduct. Mont. Code. Ann. §§ 37-1-307 and 37-22-201.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(4) signing or issuing in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

* * *

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

* * *

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

4. Mont. Code Ann. § 37-22-301 prohibits a licensee from disclosing information received from clients who are consulting the licensee in a professional capacity.

5. Admin. R. Mont. 24.219.804(1) provides that a violation of any of the ethical rules promulgated by the Board under this regulation is unprofessional conduct. Admin. R. Mont. 24.219.804(2)(a)(i) prohibits a counselor from committing fraud or

misrepresenting services performed. Admin. R. Mont. 24.219.804(2)(a)(iii) prohibits a counselor from violating a position of trust by knowingly committing any act detrimental to a client. Admin. R. Mont. 24.219.804(2)(a)(ix) prohibits a counselor from engaging in any advertising which is in any way fraudulent, false, deceptive, or misleading.

6. Admin. R. Mont. 24.219.804(2)(b)(l) requires a counselor to provide clients complete information regarding the extent and nature of the services available to them. Admin. R. Mont. 24.219.804(2)(b)(viii) further requires a licensee to safeguard information provided by a client except where required by law.

7. Clement knowingly billed BCBS for counseling to BH and SH which Clement was not providing in accord with her BCBS contract by billing for counseling on dates when she provided no counseling. She also knowingly billed as face to face counseling her telephonic counseling with BH and SH, a service which was not compensable under her BCBS contract. Clement did this in order to get around contractually imposed limitations in her BCBS contract. By engaging in this conduct, Clement has committed fraud and has thereby violated Mont. Code Ann. §§ 37-1-316(4) and (5) as well as Admin. R. Mont. 24.219.804(a)(i).

8. Clement retaliated against BH and SH after they filed their complaint by sending an unsolicited letter to the Social Security Administration not only claiming that BH was a malingerer but also that BH had, in essence, defrauded Social Security in her employment at Starwinds Ranch. It was not sheer coincidence that this letter was generated the same day that Clement received the complaint against her license. It was retaliatory and violated Mont. Code Ann. § 37-1-316(15).

9. While treating BH and SH, Clement repeatedly entwined herself in impermissible dual relationships with BH and SH, not the least of which was the gifting of over \$4,500.00. While Clement attempted at hearing to argue that this was not truly a gift, her letter to BH and SH (Exhibit 1(2)(B)(1)) shows that it was. The substantial evidence in this case (testimony from O'Malley, Olsen, Hillegass and even Clement's own witness, Wares) demonstrates that the \$4,500.00 plus gift exceeded professional boundaries. Clement used BH for her own personal ends (such as getting BH to pick her up at the airport and then getting BH to take her to pick up an automobile). Clement further impermissibly blurred the lines of her professional relationship with BH by taking BH to Bimini and paying for expenses such as airfare and hotel. Clement's dual relationship with BH and SH violated Mont. Code Ann. § 37-1-316(18).

10. Clement violated Mont. Code Ann. § 37-1-316(15) and Mont. Code Ann. § 37-22-301 by permitting counseling between her and BH to take place in the presence of Bob Telljohn. Clement's suggestion in her closing brief that BH waived this privilege because BH failed to outwardly object to Telljohn's presence is incorrect. Clement has confused a standard of admission of evidence in a trial with the explicit standards governing professional conduct. It is the standard of professional conduct that applies to this case. The protections accorded clients by that standard, which requires the licensee to obtain a knowing waiver of confidentiality from the client, would be neutered if Clement's argument were adopted. Here, Clement made no attempt to obtain a

knowing waiver from BH about engaging counseling in the presence of Telljohn and therefore violated the requirement that Clement protect BH's confidences.

11. Clement violated Admin. R. Mont. 24.219.804(2)(a)(ix) by advertising that on her web site that "swimming with the dolphins" was therapeutic. There is no validated treatment modality in licensed clinical professional counseling that substantiates such a claim. This makes Clement's web site misleading.

12. Because the BSD proved that Clement violated the statute and administrative regulations noted in the preceding paragraph, BSD also proved a derivative violation of Mont. Code Ann. § 37-1-316(18). Admin. R. Mont. 24.219.804(1).

B. The Appropriate Sanction is Revocation.

13. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may revoke a licensee's license.

14. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

15. There are numerous aggravating factors in this case that convince the hearing examiner that revocation is the only way to protect the public from Clement. These factors include:

(A) Clement is convinced that the "Home Builder" model is an appropriate means of treatment even though it is not. That model necessarily blurs professional and personal relationships and legitimizes the blurring of those relationships despite the profession's requirements to scrupulously observe those boundaries. The disastrous consequences of using the model are manifest in this case. The testimony of Dr. O'Malley, Dr. Olsen, and Dr. Hillegass convinces this hearing examiner that there is no presently medically or scientifically justifiable basis for asserting that the "Home Builder" model is a legitimate modality of treatment in the course of licensed clinical professional counseling. All three of those doctors (two of whom are PhDs and one of whom is an MD) had never heard of the model being applied in a licensed counseling context. Despite this, because Clement is convinced of the model's legitimacy, she will continue to utilize that model despite the risk for significant harm to clients.

(B) Even if the "Home Builder" model had some medical or scientific legitimacy, Clement has abused it and has taken advantage of BH for Clement's own gain in direct contravention of applicable statutes and regulations. Because of Clement's conduct, BH's therapy with Dr. Olsen has suffered and BH's treatment has been affected. These facts have been lost on Clement, who contends that she did not use BH for her own

gain but does not deny that she had BH serve as her errand girl to assist Clement in picking up a car and in spending the night at BH's house.

(C) Clement believes that it is appropriate to bill in the manner she did and blames BCBS for the fraud she committed because her contract with BCBS did not provide enough coverage for all of the time she needed to spend counseling BH and SH. Her rationale is incomprehensible and shows that Clement does not and will not accept responsibility for her improper conduct. Because Clement refuses to accept responsibility for her fraudulent acts, there is no way to ensure that Clement will discontinue these improper billing practices if she is allowed to continue to practice.

(D) Clement unabashedly lashed out against BH and SH once they filed a complaint by filing an unsolicited letter with the Social Security Administration. Even if the letter had been solicited, Clement violated her professional standards of conduct by opining without recent assessment that BH was a malingerer. This shows an utter lack of disregard for the requirements of her profession and an even more disturbing lack of regard for the well-being of clients who might "cross" her by filing a licensing complaint.

(E) Clement attempted to stymie the license investigation in this case by preparing the "Declaration" document for BH and SH. Her blatant attempt to hinder the investigation demonstrates that she cannot be trusted to fulfill her obligations to the public or to her regulatory board.

16. In light of the above factors, nothing short of revocation can protect the public.

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that Clement's License No. 963 be revoked.

DATED this 8th day of December, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.