

IN THE MATTER OF	*	BEFORE THE MARYLAND
BERMAN BENNETT, CAC-AD	*	STATE BOARD OF PROFESSIONAL
	*	COUNSELORS AND THERAPISTS
RESPONDENT	*	
Certificate Number: AC1863	*	Case Number: 2016-60
* * * * *		* * * * *

FINAL DECISION AND ORDER OF REVOCATION

I. PROCEDURAL BACKGROUND

On September 9, 2015, the Board of Professional Counselors and Therapists (“the Board”) received a complaint alleging that the Respondent, Berman Bennett, CAC-AD, was engaging in inappropriate activities with a client. The Board conducted an investigation into these issues. On or about July 26, 2016, after completing its investigation, the Board notified the Respondent of its intent to revoke the Respondent’s certificate to practice alcohol and drug counseling as a CAC-AD (Certified Associate Counselor – Alcohol and Drug), alleging violations of the Maryland Professional Counselors and Therapists Act, *see* Md. Code Ann., Health Occ. II (“H.O.”) §§ 17-101 *et seq.* (2014 Repl. Vol.), and the regulations adopted by the Board, *see* Md. Code Regs. (“COMAR”) §§ 10.58.01 *et seq.*

The Board’s intent to revoke charged that the Respondent violated the following provisions:

Health Occ. § 17-509. Denial, probation, suspension or revocation of certificate applicant or holder

Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or certificate to any applicant, place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license of any licensee or a certificate of any certificate holder if the applicant, licensee, or certificate holder:

- (8) Violates the code of ethics adopted by the Board;

- (9) Knowingly violates any provision of this title;
- (11) Is professionally, physically, or mentally incompetent;
- (13) Violates any rule or regulation adopted by the Board; [and]
- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy[.]

COMAR § 10.58.03.04 Ethical Responsibility.

A. A counselor shall:

- (1) Consult with other counselors or other relevant professionals regarding questions related to ethical obligations or professional practice;
- (11) Be familiar with and adhere to this chapter; [and]
- (14) Take reasonable precautions to protect clients from physical or psychological trauma.

B. A counselor may not:

- (3) Enter into relationships that could compromise a counselor's objectivity or create a conflict of interest.

COMAR § 10.58.03.05 The Counseling Relationship.

A. Client Welfare and Rights.

- (2) A counselor may not:
 - (a) Place or participate in placing clients in positions that may result in damaging the interests and the welfare of clients, employees, employers, or the public; [and]

B. Dual Relationships.

- (1) A counselor shall:
 - (a) Avoid dual relationships with clients; and
 - (b) Take appropriate measures, including but not limited to, informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs if a dual relationship cannot be avoided.

COMAR § 10.58.03.09 The Counseling Relationship.

A. A counselor may not engage in sexual misconduct with a client or supervisee. Sexual misconduct includes but is not limited to:

- (1) Inappropriate sexual language;
- (2) Sexual exploitation;
- (3) Sexual harassment[.]

...

E. Sexual Harassment.

(1) A counselor may not sexually harass a:

(a) Client[.]

COMAR § 10.58.03.11 Sanctions.

E. A counselor who does not comply with this chapter shall be in violation of Health Occupations Article, §17-313, Annotated Code of Maryland, and subject to disciplinary actions.¹

F. A lack of knowledge, or misunderstanding of an ethical responsibility, is not a defense against a charge of unethical conduct.

On June 16, 2017 and July 21, 2017, the evidentiary hearing was held before the Board. Dawn Rubin, Assistant Attorney General, Administrative Prosecutor, presented the case for the State of Maryland. The Respondent was present, represented by his counsel, David Solomon, Esq.

Evidentiary Exhibits and Witnesses

State's Exhibits:

1. Notice of Intent to Revoke License to Practice as a Certified Associate Counselor – Alcohol and Drug
2. Investigative Report with Attachments (as set forth below 2 – 1 through 2 -11)
3. License verification printout Client B

¹ The pertinent provisions of Health Occ. § 17-313 establishing the Board's grounds for discipline have been moved to Health Occ. §17-509.

4. Application for licensure
5. CJIS arrest/conviction printout
6. Email complaint
7. Transcript of interview of Client A
8. Transcript of conversation between the Respondent Client B
9. Transcript of recording of telephone voice mail to Client A's sibling from the Respondent
10. 9/26/2015 email from Client A to Mr. Ed Fox, Board Investigator, and Facebook posts received from Client A
11. Subpoena ad testificandum and transcript of interview of the Respondent
12. Subpoena duces tecum for treatment records directed to UMMS for Client A
13. Subpoena duces tecum for personnel records directed to UMMS for the Respondent
14. Email from Client A's sibling to Ed Fox, Board Investigator
15. License verification printout
16. Personnel file received from UMMS (bate stamped pp. 1 through 49)
17. Excerpts from medical records received from UMMS for Client A (drug treatment records)
(bate stamped pp.1 through 55)

State's Witness

1. Complainant
2. Complainant's Sibling
3. Ed Fox, Board Investigator

Respondent's Witness

1. Respondent
2. Employee 1
3. Employee 2

II. FINDINGS OF FACT

The Board finds that the following facts were proved by a preponderance of evidence:

Background

1. On or about November 26, 2013, the Respondent was initially licensed by the Board as a Certified Associate Counselor -- Alcohol and Drug. The Respondent's license is scheduled to expire on January 31, 2018.

2. At all times relevant, the Respondent was employed by Hospital A, at its Methadone Clinic ("Clinic") as a certified alcohol and drug counselor.²

3. On or about September 9, 2015, a family member of a former client of the Respondent ("Client A") filed a complaint with the Board by e-mail alleging that the Respondent had been speaking to Client A in a sexually inappropriate manner and had "friend[ed]" her on a social media site. The complainant stated that Client A had reported the Respondent to her doctor and was "scared."

4. Following receipt of the complaint, the Board initiated an investigation of the Respondent.

5. On or about September 14, 2015, Board staff interviewed Client A regarding the allegations filed in the complaint.

9. Client A stated that she had been treated at Hospital A's Clinic since October 2007. Initially, she was assigned to another counselor (Employee A). Near the end of 2014, Client A was reassigned to the Respondent to conduct her drug counseling.

10. Client A stated that shortly after she began seeing the Respondent for drug counseling, he made her feel uncomfortable. According to Client A, after her initial visits with the Respondent, he began hugging her. Client A stated that she told the Respondent to stop hugging her and he complied.

² On or about October 21, 2015, the Respondent submitted his resignation to Hospital A. Hospital A had placed the Respondent on administrative leave two months before he resigned.

11. Subsequently, according to Client A, the Respondent located her (Client A's) online social media webpage. Client A sent the Respondent a "friend request" and he "friended" her on the social media webpage.

12. On or about September 9, 2015, Client A took a screenshot of the Respondent's social media message that the Respondent had directed to her which stated:

Be careful on social media. There are some counselors that will crucify me. Like [Employee A] for befriending my clients on [Social Media]. Here is number to reach me...We must be discreet.

13. Often when Client A would show up for a scheduled session with the Respondent, she stated that he (the Respondent) would electronically open her (Client A's) social media webpage and make inappropriate comments of a sexual nature about her photographs. Client A stated on one occasion the Respondent told Client A she looked "so good" in the photograph, opened his legs and grabbed his penis.

14. Client A stated that during another session with the Respondent, the Respondent told Client A to lift her eyeglasses up, and told her she had beautiful, sexy eyes.

15. On other occasions, Client A stated that the Respondent, while walking to group therapy with Client A, would make inappropriate sexual comments to Client A regarding the shape of her buttocks, and stated that he would not need Viagra in order to engage in sexual relations with Client A.

17. On one occasion, according to Client A, the Respondent told Client A that she "needed to come to his house...so that he could help [Client A] overcome everything that [Client A had] been through."

18. According to Client A, during an office visit with the Respondent, the Respondent touched Client A's breast and made an inappropriate sexual comment. Client A stated that the inappropriate touching occurred on the date that the Respondent contacted her sister by telephone.³

19. On or about September 24, 2015, Board staff interviewed the Respondent regarding the allegations cited in the complaint.

20. Initially, the Respondent denied that he had placed a phone call to Client A's sister apologizing for his inappropriate comments toward Client A. After Board staff provided the Respondent with a recording of his (the Respondent's) voice mail message on Client A's sister's phone, however, the Respondent acknowledged that he had placed the call.

21. The Respondent acknowledged that he had made inappropriate comments of a sexual nature to Client A, and the purpose for placing the call to Client A was, "Because I was concerned that it may have been some type of damage done or some type of harm done..."

22. The Respondent acknowledged that he may have shared with Client A that he uses medication for erectile dysfunction.

23. The Respondent stated that he holds a group therapy session on Thursdays, and that Clients A and B attend the group.

24. The Respondent acknowledged that he shared with group members during the group therapy session that he used medication for erectile dysfunction, was not as virile as he used to be, and that "we talk about sex and all of that in our group therapy sessions."

25. The Respondent acknowledged that both a former counselor, Employee A, and the Respondent's wife had warned him about engaging in boundary violations with his clients.

³The Respondent contacted Client A's sister by telephone, and left a voice mail message for her acknowledging that he and Client A "went overboard with the way that we kid and joke with each other" and that maybe he "did say something that was inappropriate, but it was only for our ears, you know what I mean?" Other than the above, he denied anything "inappropriate" had been going on.

26. Initially when asked by Board staff whether he communicated with clients or former clients on a social media site, the Respondent denied that he had. Later during the interview, however, he acknowledged that he had communicated with some clients including Clients B and C on a social media website.⁴ The Respondent stated that he had been communicating with clients on the social media site for approximately one year.

27. The Respondent denied that he had inappropriately touched Client A, but acknowledged that he had “stepped across my boundaries and I was wrong.”

III. PRELIMINARY ISSUES

The State filed a Motion to Quash subpoenas filed by the Respondent. The Board denied the State’s Motion to Quash.

IV. DISCUSSION

By making inappropriate remarks, including highly personal comments of a sexual nature, to his client, Client A, the Respondent committed an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy and violated H.O. 17-509(9) and COMAR 10.58.03.09. In its discretion, the Board dismisses the charges that the client violated H.O. § 17-509(9) and (11), as well as COMAR 10.58.03.04 and 05.

The Board finds that the Respondent’s violations of the Practice Act most appropriately fall within B(16) the Board’s sanctioning guidelines. *See* COMAR 10.58.09.06B(16). The range of potential sanctions under COMAR 10.58.09.06B(16) includes reprimand to revocation and/or a minimum fine of \$100 to a maximum fine of \$5,000. Based upon the particular facts and circumstances of this case, the Board finds the Respondent’s conduct by engaging in inappropriate conversations and making sexual comments to his patient during and outside of therapy sessions to be plainly immoral and unprofessional conduct in the practice of clinical and nonclinical

⁴ The Respondent denied that he had “friended” Client A on the social media website.

counseling. Thus, in considering an appropriate sanction for the Respondent's certificate, the Board found his conduct to warrant the revocation of his certificate to practice alcohol and drug counseling in the State of Maryland. The Board finds that the Respondent's demonstrated disregard for professional conduct and patient safety, as well as Respondent's disregard for the statutes and regulations in place to ensure that safety, make him unfit to practice as a certified associate counselor-alcohol and drug. Establishing and maintaining appropriate boundaries is fundamental to a counselor's ethical responsibility in a therapeutic relationship and is foundational in protecting patients from potential harm. Therefore, in order to adequately protect the public, the Board finds that the Respondent may no longer practice alcohol and drug counseling in the State of Maryland.

IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 17-509(8), (13), (16):

- (8) Violates the code of ethics adopted by the Board;
- (13) Violates any rule or regulation adopted by the Board; [and]
- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy[.]

COMAR § 10.58.03.09 Sexual misconduct:

- A. A counselor may not engage in sexual misconduct with a client or supervisee. Sexual misconduct includes but is not limited to:
 - (1) Inappropriate sexual language;
 - (2) Sexual exploitation;
 - (3) Sexual harassment[.]
 - ...
- E. Sexual Harassment.
 - (1) A counselor may not sexually harass a:
 - (a) Client[.]

V. SANCTION

Pursuant to section 17-509 of the Health Occupations Article, the Board may reprimand any certificate holder, place any certificate holder on probation, or suspend or revoke the certificate of a certificate holder if, after a hearing, the Board determines that the certificate holder violated the code of ethics adopted by the Board, violated any rule or regulation adopted by the Board, or committed an act of immoral or unprofessional conduct in the practice of clinical or nonclinical therapy. *See* H.O. § 17-509(8), (13) and (16).

The Board finds that the Respondent's violations of the Practice Act most appropriately fall within B(16) the Board's sanctioning guidelines. *See* COMAR 10.58.09.06B(16). The range of potential sanctions under COMAR 10.58.09.06B(16) includes reprimand to revocation and/or a minimum fine of \$100 to a maximum fine of \$5,000.

Thus, in considering an appropriate sanction for the Respondent's certificate, the Board found his conduct to warrant the revocation of his certificate to practice alcohol and drug counseling in the State of Maryland. The Board finds that the Respondent's demonstrated disregard for professional conduct and patient safety, as well as Respondent's disregard for the statutes and regulations in place to ensure that safety, make him unfit to practice as a certified associate counselor-alcohol and drug. Therefore, in order to adequately protect the public, the Board finds that the Respondent may no longer practice alcohol and drug counseling in the State of Maryland.

ORDER

Based on the Findings of Fact and Conclusions of Law, on the affirmative vote of a majority of its members then serving, it is this 19th day of January, 2018, by the Board hereby:

ORDERED that the Respondent's certificate to practice alcohol and drug counseling as a CAC-AD, is hereby **REVOKED**; and it is further

ORDERED that upon service of this Order, the Respondent shall immediately surrender to the Board all indicia of certification from the Board that are in his possession, including but not limited to the original certificate and/or renewal certificates; and it is further

ORDERED that this Order is a **PUBLIC DOCUMENT** under Md. Code Ann., General Provisions, §§ 4-101 through 4-601 (Repl. Vol. 2014).

January 19, 2018
Date

Risa Ganel kbl

Risa Ganel, LCMFT, Board Chair
Maryland State Board of Professional
Counselors and Therapists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 17-512(b), the Respondent has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the date of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't II § 10-222; and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files an appeal, the Board is a party and should be served with the court's process at the following address:

Kimberly Link, Executive Director
Maryland State Board of Professional Counselors and Therapists
4201 Patterson Avenue
Baltimore, Maryland 21215-2299
Phone: 410-764-4732
Fax: 410-358-1610

At that point, the Administrative Prosecutor is no longer a party to this case and need not be served or copied.