

IN THE MATTER OF

*

BEFORE THE

STEPHEN SCHAFFNER, LCPC
2014 JAN 24 PM 12 36

STATE BOARD OF

Respondent

*

PROFESSIONAL COUNSELORS

*

AND THERAPISTS

License Number:
LC3972

*

Case Number: 2012-95

* * * * *

CONSENT ORDER

On December 13, 2013, The Maryland State Board of Professional Counselors and Therapists (the "Board"), charged Stephen Schaffner, LCPC (the "Respondent"), License Number LC3972, under the Maryland Professional Counselors and Therapists Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 17-509 (2009 Repl. Vol. & 2013 Supp.).

The pertinent provisions of the Act provide the following:

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 or certificate holder place any license on probation, or suspend or revoke a license 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;

...

(13) Violates any rule or regulation adopted by the Board;

...

- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy[.]

The pertinent regulations under Md. Code Regs. 10.58.03 Code of Ethics, are as follows:

...

.02 provides in pertinent part:

...

B. Terms Defined.

...

(6) "inappropriate sexual language" means:

- (a) A sexualized harassing comment;
- (b) An eroticized or sexually provocative comment not reasonably associated with a health care matter; or
- (c) An inappropriate discussion of a sexually related matter.

...

.04 provides in pertinent part:

A. A counselor shall:

...

(11) Be familiar with and adhere to this chapter;

...

(14) Take reasonable precautions to protect clients from physical or psychological trauma.

.05 provides in pertinent part:

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.**

...

B. Dual relationships

(1) A counselor shall:

- (a) Avoid dual relationships with clients;**

...

...

.09 provides in pertinent part:

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;**

...

...

E. Sexual harassment.

(1) A counselor may not sexually harass a:

- (a) Client;**

...

F. Therapeutic Deception. A counselor may not:

...

- (3) Suggest, recommend, or encourage a client to engage in a sexually provocative act, including but not limited to:**

...

(d) Discussion or disclosure of a sexually provocative or erotic nature, not necessitated by treatment or treatment protocol.

On March 4, 2014, a Case Resolution Conference ("CRC") was convened in this matter. Based on negotiations occurring as a result of this CRC, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

The Board finds the following:

1. At all times relevant to these charges, the Respondent was a Licensed Clinical Professional Counselor ("LCPC"), licensed to practice professional counseling in the State of Maryland. The Respondent was initially licensed in Maryland on or about April 21, 2011. The Respondent's license expires on January 31, 2015.
2. At all times relevant to these Charges, the Respondent was employed as a professional counselor for a practice located in Easton, Maryland (hereinafter, "Practice A").¹
3. On or about November 9, 2012, the Respondent's supervisor filed a complaint with the Board alleging that the Respondent had sent a male client ("Client A") inappropriate text messages of a sexual nature while intoxicated.
4. Shortly after receiving the complaint, the Board opened an investigation.

FACILITY A's INVESTIGATION AND ACTION

5. On or about October 31, 2012, the Respondent self-reported his actions to his supervisor, acknowledging that he had engaged in a "major boundary issue" with Client A. In response to Client A's request that his appointment be rescheduled, the

¹ In order to maintain confidentiality, neither facility nor client names will be used in this document, but will be provided to the Respondent on request.

Respondent stated that he had been "very drunk" and his reply to Client A had "sexual overtones."

6. The Respondent documented a written statement in Client A's mental health record at Practice A stating in part that he (the Respondent):

...had been drinking alcohol and was significantly intoxicated.
My text response to [Client A] was inappropriate with sexual innuendo.

7. At the time, Client A's wife was a client of another therapist at Practice A ("Ms. S"). Client A's wife had reported the incident to Ms. S stating she had been "a little freaked out" by the texts the Respondent had sent to Client A.
8. The Respondent's supervisor initially suspended the Respondent from employment pending an investigation of the incident as he was concerned about the Respondent's boundary violation and substance use.
9. The Respondent's supervisor recommended that the Respondent undergo urine screening as well as a drug and alcohol assessment, which is set forth in more detail below.
10. After conducting an investigation, the Respondent's supervisor terminated him from employment.

THE RESPONDENT'S INTERVIEW

11. On April 1, 2013, in furtherance of its investigation, a member of the Board's staff conducted an interview of the Respondent under oath.
12. During the Respondent's interview he stated that he had seen Client A for professional counseling for approximately twelve to eighteen months.
13. The Respondent stated that during Hurricane Sandy,² Practice A had been closed. One evening, around October 30, 2012, Client A sent the Respondent a

² The weather event occurred in late October 2012.

text message to his (the Respondent's) personal cell phone regarding rescheduling an appointment.

14. The Respondent responded to Client A's text message "indicating a sexual attraction" toward Client A.
15. The Respondent acknowledged that he had been intoxicated at the time he responded to Client A's text message. The Respondent stated he had been drinking a "hefty" amount that evening (approximately four drinks that included vodka).
16. The Respondent admitted he "occasionally" smoked marijuana on approximately a monthly basis, but denied having done so on October 30, 2012.
17. The Respondent stated that the day following the text message communications, he contacted Client A by telephone while he (Client A) was at work, and Client A asked the Respondent to contact him at a later time.
18. The Respondent later contacted Client A by telephone, and was unable to reach him. The Respondent stated that he left a message for Client A to contact Practice A about how he (Client A) would like to proceed with counseling.
19. According to the Board's investigation, the Respondent does not dispute the material allegations cited in the complaint filed by his supervisor.
20. The Respondent's conduct toward Client A as outlined in pertinent part above constitutes violations of Health Occ. § 17-509(8) (violates the code of ethics adopted by the Board); (9) knowingly violates any provision of Title 17; (13) violates any rule or regulation adopted by the Board, specifically, Md. Code Regs. 10.58.03.04A(11) and (14), .05A(2)(a) and B(1)(a), .09A(1), .09E(1)(a) and

.09F(3)(d); and (16) commits an act of immoral or unprofessional conduct in the practice of...nonclinical counseling or therapy.

SUBSTANCE ABUSE EVALUATION AND TREATMENT

21. On November 2, 2012, as recommended by Practice A, the Respondent presented to an Alcohol and Drug Treatment Program ("Treatment Program") for evaluation.
22. The Treatment Program found that the Respondent had been "abusing" marijuana and recommended that the Respondent begin treatment in a scheduled group session; however, the Respondent failed to attend any counseling sessions.³ According to the Treatment Program, the Respondent "voluntarily withdrew" from the program based on issues with his health insurance.
23. On April 1, 2013, the Respondent requested a letter from the Treatment Program that stated he was not in need of substance abuse counseling. The Program Director from the Treatment Program recommended that the Respondent participate in individual counseling.
24. One week later, the Respondent returned to the Treatment Program for an evaluation and rescheduled another session.
25. On or about April 13, 2013, the Respondent submitted to a urine toxicology screen which tested negative for all substances.
26. A September 10, 2013 report from the Treatment Program reflected that the Respondent had tested positive for alcohol on August 19, 2013. The Respondent admitted to having drunk alcohol while having dinner with a friend the night before the positive result.
27. The Treatment Program recommended that the Respondent undergo random urine toxicology screening and continue attending self-help group meetings to further his understanding of addiction and recovery.

³ The initial evaluation was conducted by a trainee and was not co-signed by a supervisor.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions constitute violations of Health Occ. § 17-509(8), (9), (13) and (16), and pursuant to the Board's regulations under Code Regs. Md. 10.58.03.04A(14), .05A(2)(a), B(1)(a), .09A(1), E(1)(a) and F(3)(d).

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that as of the date of this Consent Order, the Respondent's license to practice professional counseling is **SUSPENDED** for a minimum period of **SIX (6) MONTHS**; and it is further

ORDERED that the Respondent shall fully and satisfactorily comply with the following:

a. Within **THIRTY (30) DAYS** of the execution of this Consent Order, the Respondent shall undergo a comprehensive substance abuse evaluation by a Board-approved treatment provider that includes treatment recommendations. The Board shall provide the Respondent with the names of three recommended treatment providers, and he shall select one treatment provider from the list as provided by the Board. The Respondent shall comply with all treatment recommendations. A failure to comply with all treatment recommendations may be considered a violation of this Consent Order. The Respondent shall ensure that the Board receives a copy of the substance abuse evaluation and any subsequent reports from treatment providers;

b. The Respondent shall sign any necessary releases to ensure that the Board has the ability to receive any written or oral treatment information and laboratory results from any treatment providers;

c. The Respondent shall ensure that monthly reports are submitted to the Board by his treatment provider(s) for the length of his treatment as recommended by the treatment provider(s). An unsatisfactory report may be considered a violation of this Consent Order;

d. The Respondent shall submit to random urine toxicology screening at least monthly, and ensure the laboratory or treatment provider submits any and all laboratory results to the Board. Any positive results may be considered a violation of this Consent Order;

e. Within **SIX (6) MONTHS** of the date of this Consent Order, the Respondent shall successfully complete a Board-approved ethics course. The course shall not count toward his continuing education requirements for licensure; and it is further

ORDERED that after a minimum period of **SIX (6) months**, the Respondent may petition the Board to stay the suspension of his license but only after he has fully and satisfactorily complied with terms and conditions (a) through (e) above; and is further

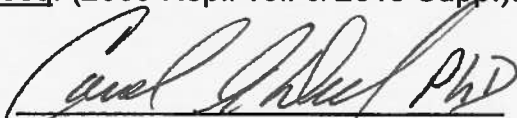
ORDERED that if the Respondent fails to comply with any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and opportunity for a show cause hearing before the board or an evidentiary hearing before the Board or at the Office of Administrative Hearings, may impose additional sanctions authorized under the Professional Counselors and Therapists Act, including a reprimand, suspension, probation, revocation and/or a monetary fine; and it is further

ORDERED that if the Respondent fully and satisfactorily complies with conditions (a) through (e), the Board shall stay the suspension of the Respondent's license and he shall be placed on a minimum of **TWO (2) years of PROBATION** with terms and conditions to be determined by the Board. There shall be no early termination of probation; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. vol. & 2013 Supp.).

6/30/2014
Date


Carol A. Deel, LCPC, LCMFT, Chair
Maryland State Board of Professional
Counselors and Therapists

CONSENT

I, Stephen Schaffner, LCPC, acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

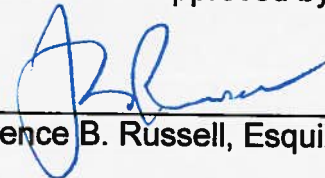
I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

3/18/14
Date


Stephen Schaffner, LCPC

Reviewed and Approved by:


Laurence B. Russell, Esquire

STATE OF: Maryland

CITY/COUNTY OF Caroline

I HEREBY CERTIFY that on this 18th day of March, 2014,
before me, a Notary Public of the foregoing State and City/County personally appeared
Stephen Schaffner, License Number LC3972, and made oath in due form of law that
signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Heather Green
Notary Public

Commission expires: 02/03/14