

**IN THE MATTER OF
GARY A. HORSEY, LGPC**

Respondent

License Number: LGP8967

*** BEFORE THE MARYLAND STATE
* BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
* Case Number: 2019-089**

* * * * *

FINAL ORDER

On or about May 8, 2019, the Maryland State Board of Professional Counselors and Therapists (the “Board”) received a complaint filed by the clinic director (the “Clinic Director”)¹ at the Respondent’s former employer (the “Employer”). The complaint alleged that the Respondent, a licensed graduate professional counselor (“LGPC”) was “wanted by police in Virginia in connection with an alleged sexual assault on a 19 year old female who was identified as a client of his.”

After receiving the Clinic Director’s complaint, the Board initiated an investigation of the Respondent under Case Number 2019-089. The investigation of the complaint revealed that on or about May 3, 2019, the Respondent was charged with Aggravated Sexual Battery: Victim Incapacity, in the General District Court of Prince William County, Virginia (Case Number GC19006040-00). On or about June 26, 2019, the charge was reduced to Sexual Battery, and the Respondent was convicted and sentenced to twelve (12) months of imprisonment with eight (8) months suspended. The Respondent was also sentenced to three (3) years of probation. As a requirement of his probation, the Respondent

¹ For confidentiality and privacy purposes, the names of individuals and facilities involved in this case are not disclosed in this document. The Respondent may obtain the names of all individuals and facilities referenced in this document by contacting the administrative prosecutor.

was ordered not to be employed as a counselor or therapist working with anyone under 21 years old.

On or about September 25, 2019, the Maryland State Board of Professional Counselors and Therapists (the "Board") notified **GARY A. HORSEY, LGPC** (the "Respondent"), of the Board's intent to revoke his license to practice as a Licensed Graduate Professional Counselor ("LGPC"), License Number: LGP8967, under the Maryland Professional Counselors and Therapists Act (the "Act"), codified at Md. Code Ann., Health Occ. §§ 17-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

Specifically, the Board based its intent to revoke on the following provisions of the Act:

§ 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 . . . place any trainee, licensee, or certificate holder on probation, reprimand any trainee, licensee, or certificate holder, or suspend, rescind, or revoke the status of any trainee, a license of any licensee, or a certificate of any certificate holder if the applicant, trainee, licensee, or certificate holder:

- (9) Knowingly violates any provision of this title;
- (10) Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[.]

A notice of hearing was served upon the Respondent by way of certified mail, regular mail and electronic mail on or about February 28, 2020. The notice indicated that an evidentiary hearing was scheduled on Friday, April 17, 2020 at 12:30 pm.

Procedural History

On or about September 20, 2019, the Board summarily suspended the Respondent's license and issued formal charges notifying the Respondent of the intent to revoke his license. A show cause hearing was held on or about January 17, 2020, and the Board entered a Disposition Order upholding the summary suspension pursuant to COMAR 10.58.04.10. D - F. The Respondent requested an evidentiary hearing on the merits of the summary suspension within the timeframe prescribed in the Board's regulations. In accordance with COMAR 10.58.04.10 G, the Board scheduled a consolidated evidentiary hearing on the merits of the summary suspension and the notice of intent to revoke the license.

Hearing Before the Board

On April 17, 2020, the consolidated hearing commenced at approximately 12:30 pm. A quorum of the Board was present. Assistant Attorney General Kelly Cooper, Administrative Prosecutor, was present to represent the State. The Respondent was not represented by an attorney at the proceeding². The State introduced evidence through the testimony of the Board's investigator, Shelly-Ann Barnes. The Respondent did not introduce any witnesses.

Exhibits

² The day before the hearing, on April 16, 2020, the Respondent requested a postponement to afford him more time to obtain legal counsel.

The following exhibits were accepted into evidence at the proceeding:

1. Complaint, received May 8, 2019
2. *State of Virginia v. Gary Horsey* (Case No. GC19006040-00)

Request for copies of records, dated September 4, 2019

Warrant of Arrest, dated May 3, 2019

Criminal Complaint, dated May 3, 2019

Trial Advisement and Plea

Disposition documents, dated June 26, 2019

3. *State of Virginia v. Gary Horsey* (Case No. GC19006041-00)

Request for copies of records, dated July 17, 2019

Warrant of Arrest, dated May 3, 2019

Request for a Lawyer, dated May 9, 2019

Disposition documents, dated June 26, 2019

4. Licensing Unit Information
5. Memo to File by Investigator Shelly-Anne Barnes, Investigator, dated August 29, 2019
6. Maryland Board of Professional Counselors and Therapists Report of Investigation, dated September 20, 2019

7. Order of Summary Suspension, dated September 20, 2019
8. Notice of Intent to Revoke Licensure, dated September 25, 2019
9. Notice of Intent to Revoke Licensure – duplicate, reissued December 11, 2019
10. Request for show cause hearing, dated October 15, 2019
11. Disposition Order, dated February 7, 2020
12. Request for evidentiary hearing, dated February 14, 2020
13. Notice of Hearing, dated February 28, 2020

FINDINGS OF FACT

The Board makes the following Findings of Fact based on the entirety of the record:

I. PRELIMINARY REQUEST

1. On or about February 28, 2020, the Respondent was notified that an evidentiary hearing had been scheduled for April 17, 2020.
2. The Respondent did not provide the Board with written documentation that he had retained counsel to represent him at the hearing.
3. The Respondent was able to participate fully at the proceeding, did not require any accommodations and did not acknowledge experiencing any communication challenges at any point in time at the hearing.

II. BACKGROUND

4. At all times relevant, the Respondent was authorized to practice graduate professional counseling in the State of Maryland. The Respondent was originally licensed to practice as an LGPC in the State of Maryland on September 4, 2018, under License Number LGP8967. The Respondent's license is scheduled to expire on September 30, 2020.

III. COMPLAINT

5. On or about May 8, 2019, the Board received a complaint filed by the clinic director (the "Clinic Director")³ at the Respondent's former employer (the "Employer"). The complaint alleged the Respondent was "wanted by police in Virginia in connection with an alleged sexual assault on a 19 year old female who was identified as a client of his."
6. After receiving the Clinic Director's complaint, the Board initiated an investigation of the Respondent under Case Number 2019-089.

IV. BOARD INVESTIGATION

7. As part of its investigation, the Board requested records from the General District Court in Prince William County, Virginia.
8. On or about May 3, 2019, the Respondent was charged with Aggravated Sexual Battery: Victim Incapacity, in the General District Court of Prince

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William County, Virginia (Case Number GC19006040-00). On or about June 26, 2019, the charge was reduced to Sexual Battery, and the Respondent was convicted and sentenced to twelve (12) months of imprisonment with eight (8) months suspended. The Respondent was also sentenced to three (3) years of probation. As a requirement of his probation, the Respondent was ordered not to be employed as a counselor or therapist working with anyone under 21 years old.

9. According to the Criminal Complaint, on May 1, 2019, the victim reported being sexually assaulted on two occasions by the Respondent at a park. The victim had diagnoses which included developmental delay, emotional disturbance, learning disability, and intellectual impairment. According to the victim, while she was at the park with the Respondent:

they both sat down on a bench at the park. [The victim] then mentioned feeling something inside one of her shoes, and when she got up to clear her shoe, [the Respondent] also got up and placed himself behind her and began to “hump her” from behind. . . . [The victim] stated she then told [the Respondent] “. . . can you please get off, I do not like that . . .” and then she pushed him to the side. [The victim] also stated that [the Respondent] then grabbed her hand and put it “. . . directly right there . . .” making her feel his penis through his underwear.

CONCLUSIONS OF LAW

The Respondent made a last minute request for a postponement⁴ of the consolidated hearing citing his need for additional time to obtain legal representation, and communication challenges as the basis for his request. The State opposed the Respondent's request for a postponement. The State argued that the Respondent knew about the pending evidentiary hearing for several months, and was afforded more than adequate time to seek counsel. The State reminded the Board that the Respondent requested a postponement of his show cause hearing in November 2019 and January 2020 because, according to Mr. Horsey, he was in the process of hiring an attorney. In consideration of the Respondent's request, the Board considered the Respondent's prior requests for a postponement for more time to obtain legal representation and the Respondent's failure to supply the Board with any documentation to support the claim that he had obtained legal representation for this proceeding. Given the Respondent's two prior postponement requests for the exact same reason, the Board could not find the need for more time to obtain legal representation was good cause to grant the yet another postponement.

With regard to the Respondent's request to postpone this matter due to "communication challenges," under Md. Code Ann., State Gov't Article, §10-211 (2018), if a party establishes good cause in opposition of holding the hearing by

⁴ The Respondent's postponement request and the State's response were both received on April 16, 2020, the day before the hearing. The Board addressed the postponement preliminarily at the hearing.

telephone, video conferencing or other similar means, the hearing shall be conducted in person. At the hearing, the Respondent was present by phone and he did not renew his objection or cite any communication challenges or issues.⁵ The State argued that permitting a postponement, particularly in light of the dilatory nature of the request, would cause an undue delay and an unnecessary hardship for the State, the State's witnesses, and the Board. In consideration of the Respondent's request and the State's response, the Board finds that the Respondent did not establish good cause in opposition to the holding of the hearing by telephone and audiovisual electronic means. As such, the Respondent's request for an in-person hearing was denied.⁶

Concerning the hearing on the merits of the summary suspension and the charges against the Respondent's license, the Board concludes as a matter of law that the Respondent's conviction of sexual battery of a vulnerable adult, as set forth in the Findings of Fact constitutes violations of the Act and a basis on which to summarily suspend and to revoke the Respondent's license to practice as a Licensed Graduate Professional Counselor. Specifically, the Respondent's conviction constitutes violations of Health Occ. § 17-509(9) (knowingly violates any provision of this title) and § 17-509(10) (is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside).

⁵ The Respondent was provided with a meaningful opportunity to be heard in a meaningful manner as he was permitted to attend the hearing via telephone or computer. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

⁶ Under Maryland law, testimony by video conference does not violate the confrontation clause. *White v. State*, 223 Md. App. 353 (2015).

ORDER

It is, on the affirmative vote of a majority of the members of the Board then serving, hereby:

ORDERED that the Disposition Order dated February 7, 2020 is upheld; and it is

ORDERED that the Respondent's license to practice as a Licensed Graduate Professional Counselor is hereby **REVOKED**; and it is further

ORDERED that this is a Final Order and as such is a **PUBLIC RECORD** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101-4-601 (2014).

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 § 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, J.D., 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.

May 15, 2020
Date

Risa Ganel / DMU

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

