

IN THE MATTER OF
RICHARD HARVEY, CAC-AD
LICENSE NO. AC0497
Respondent

* BEFORE THE BOARD OF
* PROFESSIONAL
* COUNSELORS AND
* THERAPISTS
* CASE NO. 2012-36

* * * * *

CONSENT ORDER

The Maryland Board of Professional Counselors and Therapists (the "Board") filed charges under the Professional Counselors and Therapists Act (the "Act") against Richard Harvey ("Respondent"), Certified Associate Alcohol and Drug Counselor ("CAC-AD"), for the violations of the Act, codified at Md. Code Ann., Health Occ. ("H.O.") § 17-101 *et seq.* (2009 and 2014 Repl. Vol.)

The pertinent provisions of the Act under H.O. § 17-509 are as follows:

H.O § 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;
- (13) Violates any rule or regulation adopted by the Board[.]

Further, Respondent is charged with violating the Board's corresponding regulations under Code of Md. Regs. ("COMAR") Title 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;

(7) Maintain accurate records;

(10) Provide lawfully requested treatment reports or evaluations, or both, to a client, insurance carriers, courts systems, institutions, or other authorized persons;

(11) Be familiar with and adhere to this chapter[.]

B. A counselor may not:

(2) Participate in dishonest, fraudulent, or deceitful activity in the capacity of a counselor [.]

.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[.]

C. Multiple Clients.

(1) A counselor shall clarify the unit of treatment in a counselor's written records as:

(a) Individual;

(b) Couple;

(c) Family;

(d) Group; or

(e) Any combination of §C(1)(a)—(d) of this regulation.

CASE RESOLUTION CONFERENCE

On July 17, 2015, the Board convened a Case Resolution Conference (“CRC”) regarding this matter. Present at the CRC was Debra A. Smith, Administrative Prosecutor, and the Respondent, Richard Harvey, CAC-AD. Based on negotiations which occurred as a result of this Case Resolution Conference the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has reason to believe are true:

I. Factual Background

1. At all times relevant hereto, Respondent was and is licensed to practice as a CAC-AD in the State of Maryland.
2. Respondent was originally licensed to practice professional counseling in the State of Maryland on August 16, 2011, under License Number AC0497. Respondent’s license is currently active and will expire on January 31, 2015.
3. At all times relevant hereto, Respondent was employed as a CAC-AD with a county health department (“Facility A”)¹ where he provided counseling services to patients with drug addiction.

¹ Facility, Facility employees, and patient names have been withheld for the sake of privacy, but Respondent may obtain them from the Board.

II. Complaint

4. On or about March 19, 2012, Respondent's supervisor and a program manager at Facility A ("Program Manager A") wrote a letter to the Board (the "Complaint") wherein she stated that she had received a complaint from one of Respondent's current patients ("Patient A") who was concerned that he had not been successfully discharged from treatment in spite of more than six (6) months of program compliant treatment. According to the Complaint, Patient A's medical insurance paid for the treatment.

5. In following up on Patient A's complaint, Program Manager A discovered that more than 50 of Respondent's patients, some dating back to July 2010, had not been discharged from treatment and/or the files had not been properly closed.

6. Program Manager A also stated that clerical staff informed her that Respondent had been seeing patients in a group setting and failing to document that he also had individual, face-to-face sessions with them. Program Manager A also reported that as a result of billing errors many of Respondent's patients were overcharged.

7. Program Manager A reported that after her discovery of these deficiencies, Respondent was removed from providing patient services and assigned tasks to resolve patient documentation issues. She further stated, however, that even after implementation of a correction plan, Respondent failed to meet any of the deadlines or goals, in spite of having been granted several extensions.

III. Investigation

8. Based upon the Complaint, the Board initiated an investigation, and requested documents and records from Facility A, and conducted interviews with the Respondent and Facility A employees.

9. Pursuant to a subpoena, Program Manager A provided the Board with six (6) randomly selected patient files. Board staff reviewed the records, and determined that the selected files contained conflicting and/or missing records, and evidence that Medicaid and other insurance companies had been improperly billed.

10. Program Manager A further reported that Respondent's current supervisor was working with him on a correction plan to correct and complete over 75 patient records, including billing errors.

11. In correspondence dated April 4, 2013, Facility A's health officer ("Health Officer A") informed the Board that Respondent was reprimanded; suspended for five (5) days; suspended for ten (10) days, and suspended for fifteen (15) days. Health Officer A reported that the Respondent's employment was finally terminated due to a lack of clinical documentation for services provided over a six (6) month period and insurance fraud.

12. Health Officer A further stated that Facility A's administration determined that Respondent had charged patients' Medicaid and insurance providers for services that he had not delivered.

13. In addition, Facility A's personnel officer ("Personnel Officer A") informed the Board that Respondent had been suspended three (3) times during his employment at Facility A for continued improper billing and incomplete patient files. After the

Respondent failed to correct documentation errors, he was terminated on or about September 25, 2012.

14. Pursuant to a subpoena, Personnel Officer A provided the Board with a copy of Respondent's employment records, which confirmed Personnel Officer A's allegations.

15. In a subsequent conversation with Personnel Officer A, she informed the Board's investigator that Facility A had initiated an independent audit of records during April 2012, which revealed hundreds of incomplete and improperly billed records for Respondent's patients.

16. On or about April 18, 2012, Board staff interviewed the Respondent regarding the allegations in the Complaint. In response to the allegations the Respondent states he had problems completing the file documentation due to a high case load, understaffing problems, and poor supervision from superiors. He further states that his supervisors did not respond to his request for assistance with the high case load.

17. The Respondent's conduct, as described herein, constitutes, in whole or in part, grounds for discipline pursuant to Health Occ. § 17-509 (8), (9), (13) and COMAR 10.58.03.04A (1),(7),(10),11, and B(2); 10.58.03.05A(2)(a); and 10.58.03.05C(1).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact the Board finds that the Respondent violated: Health Occ. § 17-509, (8), (9), (13); COMAR 10.58.03.04A (1),(7),(10),11, and B(2); 10.58.03.05A(2)(a); and 10.58.03.05C(1).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 17th day of July, 2015, by a majority of the quorum of the Board considering this case hereby:

AND BE IT ORDERED effective the date of this Consent Order, the Respondent shall be placed on **PROBATION** for a period of one **year (1) year**, subject to the following terms and conditions:

1. During the one **year (1) year** period of probation to begin on the date of execution of this Consent Order, the Respondent shall enroll in and successfully complete a Board-approved continuing education course focused on the professional, legal and ethical responsibility required in record-keeping and billing for a certified drug and alcohol counselor.
2. The Respondent's client files shall be subject to random review by the Board to determine compliance with the regulatory record keeping, billing and reporting requirements.
3. The Respondent shall submit the course description/syllabus to the Board for approval prior to enrolling in the course. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes, and further reserves the right to reject the proposed course and require submission of an alternative proposal. The Board will approve a course

only if it deems the curriculum and the duration of the course to be adequate to fulfill the Respondent's requirements under this Order.

4. The Respondent shall be responsible for all costs incurred in fulfilling the course requirement and for submitting to the Board written documentary proof of her successful completion of the course.

5. The course completed under this Order cannot be used to satisfy the continuing education requirements for the applicable 2-year licensure renewal period.

6. The Respondent is responsible for ensuring that he completes the required courses in a timely manner;

AND BE IT FURTHER ORDERED, that the Respondent shall not petition the Board for early termination of his probation or the terms of this Consent Order; and it is further;

ORDERED that the Respondent's failure to comply with any of the conditions of this Consent Order in a timely manner as set out above, shall be considered a violation of this Consent Order; and it is further;

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any other disciplinary sanctions that the Board may have imposed in this case, including additional probationary terms and conditions, reprimand, suspension, revocation and monetary penalty; and it is further

ORDERED that the Respondent shall comply with the Maryland Professional Counselors and Therapists Act and all applicable laws, statutes and regulations; and it is further

ORDERED that the Respondent may submit a written petition to the Board requesting termination of his probation no earlier than one **(1) year** from the date of commencement of the probationary period, but only if he has fully and satisfactorily complied with all terms and conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two (two) year period of probation, and there are no pending complaints against her; and it is further

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

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. General Provisions §§ 4-104 *et seq.* (2014).

A handwritten signature in blue ink, reading "Carol A. Deel PhD", is written over a horizontal line.

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

CONSENT

I, Richard Harvey, CAC-AD, License No. AC0497, by affixing my signature hereto, acknowledge that:

1. I understand that I am entitled to be represented by counsel, and I have knowingly and voluntarily elected to waive my right to counsel and proceed in

this matter without counsel. I enter into this Consent Order knowingly and voluntarily. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. II, Code Ann. § 17-511(2014 Repl. Vol.) and Md. State Gov't II, Code Ann §§ 10-201 *et seq.* (2014 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have 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 as provided by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.
5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice as a licensed professional counselor.

6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

7/17/15
Date

Richard Harvey CAC-AD
Richard Harvey CAC-AD
Respondent

NOTARY

STATE OF Maryland
COUNTY OF Baltimore

I HEREBY CERTIFY that on this 17th day of July, 2015, before me, a Notary Public of the State and County aforesaid, personally appeared Richard Harvey, CAC-AD, License Number AC0497, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal:

Heather McLaughlin
Notary Public

My Commission expires: 12/20/2016

