



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Dennis R. Schrader, Secretary

September 8, 2017

VIA CERTIFIED MAIL RETURN RECEIPT
7001 2510 0006 0265 6661 AND REGULAR MAIL

Robin R. Cockey, Esquire
313 Lemmon Hill Lane
Salisbury, MD 21801

Re: Judith Arnold-Whaley
Case No.: 2015-19

Dear Ms. Cockey:

Enclosed please find the corrected Final Decision and Order of Revocation in the above-referenced matter.

Please contact me if you have any questions.

Very truly yours,

Kimberly B. Link, J.D.
Interim Executive Director

cc: Christopher Anderson, Admin. Pros.
Nicholas Johansson, Principal Counsel, HOPL
Rosalind Spellman, Admin. Officer
Ari Elbaum, AAG, Board Counsel

IN THE MATTER OF * BEFORE THE MARYLAND
JUDITH ARNOLD-WHALEY, CAC-AD* STATE BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
RESPONDENT *

Certificate Number: AC0464 * Case Number: 2015-19

* * * * *

FINAL DECISION AND ORDER OF REVOCATION

I. PROCEDURAL BACKGROUND

On February 3, 2015, the Board of Professional Counselors and Therapists (“the Board”) received a complaint alleging that the Respondent, Judith Arnold-Whaley, CAC-AD, had engaged in dual relationships with clients. The Board conducted an investigation into these issues. On June 12, 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;

- (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]
 - (d) Foster dependent counseling relationships.
- 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 § 10.58.03.11 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 April 21, 2017, the evidentiary hearing was held before the Board. Christopher Anderson, Assistant Attorney General, Administrative Prosecutor, presented the case for the State of Maryland. The Respondent was present, represented by her counsel, Robin Cockey, Esq.

Evidentiary Exhibits and Witnesses

State's Exhibits:

1. Complaint, dated January 19, 2015
2. Respondent's Licensure Information
3. Subpoena for Treatment Records and Response from Respondent
 - a. Client A
 - b. Client B
 - c. Client C
4. Respondent's Written Response to Complaint, with attachments, June 11, 2015
5. Transcript of Board Interview with Respondent, June 17, 2015
 - a. Text Messages from Respondent to Heather Kelley received prior to interview
6. Transcript of Board Interview with Heather Kelley, October 27, 2015
 - a. Exhibits displayed in interview
7. Report of Board Investigator Ed Fox

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

8. Subpoenas to State's Witnesses to Testify
9. Notice of Intent to Revoke, dated June 12, 2016

State's Witness

1. Complainant

Respondent's Witness

1. Respondent

II. FINDINGS OF FACT

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

Background

1. The Respondent was initially certified to practice as a CAC-AD in the State of Maryland on or about August 6, 2001, under certificate number AC0464. The Respondent's certificate expired on January 31, 2017.²

2. At all times relevant, the Respondent owned, and provided drug and alcohol counseling at an outpatient drug and alcohol counseling center called White Flint Recovery, located at 130 East Main Street, Salisbury Maryland, 21801 ("White Flint").

3. On February 3, 2015, the Board received a written complaint (the "Complaint") from a certified alcohol and drug counselor who was previously employed at White Flint (the "Complainant"). The Complainant reported that the Respondent was engaging in inappropriate dual relationships with a female client ("Client A") and two male clients ("Clients B" and "C") of White Flint ("Clients A, B and C, or the "Clients").³

² The Respondent also holds a license to practice as an LBSW (licensed bachelor social worker) issued by the Maryland State Board of Social Work Examiners.

³ For confidentiality purposes, the names of individuals are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals from the Administrative Prosecutor.

4. The Complainant described how the Respondent had become “extremely close” to the Clients, and attended social events together, texted and communicated via social media, and called Client C “cute.”

5. The Complainant also stated that the Respondent’s actions were causing discomfort among other clients at White Flint, leading to complaints of favoritism.

6. On November 19, 2014, the Complainant became aware that the Respondent’s car was parked at the halfway house where Clients B and C resided. At the time, the Respondent was on vacation at her villa in Mexico, and the Complainant was unable to contact the Respondent.

7. While the Respondent was in Mexico, Client C maintained and operated the Respondent’s car, as the Respondent had asked Client C and Client B to have the car repaired in her absence. Maintaining an unapproved vehicle on the grounds of the halfway house violated the halfway house’s policy.

8. On November 28, 2014, after the Respondent returned from Mexico, the Respondent issued a reprimand to the Complainant for interfering in the Respondent’s personal involvement with Clients B and C, stating that the Complainant had demonstrated a lack of professionalism.

9. Shortly afterward, the Complainant resigned from White Flint.

10. The Clients all received treatment at White Flint from August, 2014 until early 2015. The Clients sought treatment for abuse of alcohol and other drugs, primarily opiates, including heroin. Client A and C reported criminal histories that included auto theft, burglary, assault, and DUI.

11. The Clients’ treatment at White Flint consisted primarily of intensive outpatient (IOP) group counseling sessions held on Tuesday, Wednesday, and Thursday evenings.

12. The Respondent’s name, signature and initials appear several times among the Clients’ treatment records. For example, the Respondent’s signature appears on Client B’s

“Memorandum of Understanding” where it designates “Counselor Signature,” and her initials appear in a comment on Client C’s attendance sheet.⁴ Other forms were signed and completed by the Complainant.

13. Shortly after Halloween, 2014, the Respondent began conducting at least one IOP group counseling session each week, typically every Tuesday night. Each of the Clients attended the sessions the Respondent conducted.

14. The Respondent had regular contact with the Clients and other former clients outside of the therapeutic setting at White Flint. The Respondent communicated with the Clients via text messaging unrelated to treatment, both before and after they were discharged from White Flint. She also communicated with the Clients through social media, specifically Facebook.

15. The social media postings included comments by the Respondent and the Clients on photos and other “status updates” displayed on the site which showed the Respondent and the Clients socializing in various settings. (*id.*) For example, one post by Client A was entitled “Grubbin’”, which indicated that the Clients were with the Respondent at Chipotle restaurant in Salisbury, on November 11, 2014. In response to the post, the Respondent commented, “Absolutely adore you three, [Client A], [Client B], and that other guy [jokingly referring to Client C]...” When Client A responded, “That other guy has a name!”, the Respondent replied “...a rose by any other name...”

16. Other posts included photos of the Respondent posing with Clients A and B with comments such as “Bombed” and “Here’s the cool kids.” In one photo, Client C had his arm around the Respondent, which took place on a boat during a vacation in Cancun, Mexico.

⁴ In addition, during her interview with the Board’s investigator, the Respondent stated that in response to the Board’s subpoena, she failed to send “various signed papers” relating to the Clients.

17. In addition to regular contact, including text messages and social media postings, the Respondent attended numerous social events with one or more of the Clients (as well as various other former clients). The Respondent described her previous clients as “my world”.

18. These non-counseling social occasions included the following:

- (a) Dressing in a coordinated costume with Client C for Halloween, 2014
- (b) A museum trip
- (c) An Orioles baseball game
- (d) A Ravens football game
- (e) Dinners out (various)
- (f) Shopping excursions (various)
- (g) A vacation to Mexico with Client C, during which the Respondent and Client C stayed together at the Respondent’s villa (State’s Exhibit 5, 6 and 6a.)
- (h) In addition to engaging in these social activities with the Clients, the Respondent also entered the following financial and other non-counseling-related affiliations with the Clients:
 - (i) Acting as the Narcotics Anonymous sponsor for Client A
 - (j) Having Clients B & C either perform or arrange repairs on her car
 - (k) Renting a house she owned to Clients B & C (State’s Exhibit 5.)

III. PRELIMINARY ISSUES

The Respondent objected to the admission of State’s Exhibits 1, 3, 5 and 6 due to 42 C.F.R. Part 2, which prohibits the disclosure of the identity of a “patient as having or having had a substance abuse disorder either directly, by reference to publicly available information or through

verification of such identification by another person...” (See 42 C.F.R. § 2.12(a)(1).) The Board overruled the Respondent’s objection at the hearing as the State’s exhibits did not contain any identifying information of any individuals. Thus, presenting the exhibits at the hearing and admitting them into evidence was not a violation of 42 C.F.R. § 2.12(a)(1). Furthermore, the Respondent released this information to the Board. If there was an objection to be made, that objection should have occurred prior to the release of the information by the Respondent.

Additionally, 42 C.F.R. § 2.12(b) states that the prohibition on disclosure only apply to federally assisted drug programs that formed after 1972 and federally assisted alcohol programs formed after 1974. There is no evidence in the record that the program was a federally assisted drug or alcohol program, therefore, there is no demonstration that regulations apply in the case at hand.

IV. DISCUSSION

Based upon the particular facts and circumstances of this case, the Board finds the Respondent’s conduct by engaging in numerous social and business relationships with her patients during and after therapy sessions to be plainly unprofessional conduct in the practice of clinical and nonclinical counseling or therapy and consider the Respondent’s conduct with her clients as constituting a dual relationship. Social and business relationships between therapists and clients create a situation that is emotionally exploitative and unfairly risks harm to the clients. 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. The fact that the Respondent did not believe her behavior was in violation of the Board’s statutes and regulations only confirms that she is not familiar with the pertinent regulations regarding dual relationships and how her actions could result in damaging her clients and former clients’ interests. Additionally, she clearly failed to recognize how her actions, such as vacationing with clients or former clients in

Mexico, allowing clients to drive and maintain her car, attending Ravens games with clients and former clients or taking them to dinner at Chipotle could compromise her objectivity and foster dependent counseling relationships. Her conduct and statements evidence professional incompetence and display an ignorance of the Board's code of ethics. She blatantly failed to avoid dual relationships with clients which, in turn, placed her clients in harm's way and may have resulted in seriously damaging their welfare.

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), (11), (13), (16):

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

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A. Client Welfare and Rights.

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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.

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, is professionally, physically, or mentally incompetent, 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), (11), (13) and (16).

By engaging in social and business relationships with Clients, the Respondent committed an act of unprofessional conduct in the practice of clinical or nonclinical counseling or therapy. 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 her conduct to warrant the revocation of her 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, makes her 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.

V. **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 14th day of August, 2017, 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 her 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).

August 14, 2017
Date


Carol A. Deel, LCMFT, LCPC, 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 B. Link, Interim 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.