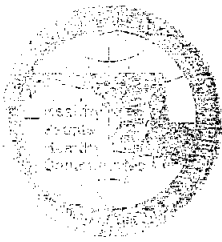


HUGH A. ROBERTS

FINAL ORDER



STATE OF MARYLAND

DHMH

Board of Professional Counselors and Therapists

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Robert L. Ehrlich, Jr., Governor — Michael S. Steele, Lt. Governor — S. Anthony McCann, Secretary

February 28, 2005

VIA CERTIFIED MAIL #7001 2510 0002 0072 3222

Return Receipt Requested

Hugh A. Roberts
3817 Forrester Avenue
Baltimore, MD 21206

Roberta Gill
Assistant Attorney General, Administrative Prosecutor
Office of the Attorney General
300 W. Preston Street
Suite 207
Baltimore, MD 21201

Re: Hugh A. Roberts, CSC-AD
Certification #SC0974

Dear Counsel:

Enclosed please find the Board of Professional Counselors and Therapists Final Decision and Order in the above-referenced case.

Sincerely,

Aileen Taylor
Administrator
Board of Professional Counselors and Therapists

Enclosure

cc: Joanne Faber, L.C.P.C.
Noreen Rubin, Board Counsel
Timothy J. Paulus, Assistant Attorney General, Deputy Counsel
Alfred C. Fick, Jr.
Hugh A. Roberts, CSC-AD, Respondent

410-764-4732 • Fax 410-358-1610 • TTD 800-542-4964

Toll Free 1-877-4MD-DHMH • TTY for Disabled - Maryland Relay Service 1-800-735-2258

Web Site: www.dhmh.state.md.us

IN THE MATTER OF
HUGH A. ROBERTS, CSC-AD
Respondent.

Certificate No.: SC0974

* BEFORE THE MARYLAND
* STATE BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
* Case Number: 2003-09

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On May 21, 2004, the Maryland State Board of Professional Counselors and Therapists (the "Board") charged the Respondent, Hugh A. Roberts ("Mr. Roberts") a certified supervised counselor - alcohol and drug ("CSC-AD"), certified by the Board, with violating certain provisions of the Maryland Professional Counselors and Therapists Act (the "Act"), Md. Health Occ. ("HO") Code Ann. § 17-101 *et seq.*, (Repl. Vol. 2000). On September 3, 2004, the Board issued amended and supplemental charges following its ongoing investigation ¹ of a complaint received from the clinical director of the Phoenix Recovery Center ("Phoenix") in Edgewood, Maryland concerning Patient A.² The Board's charges issued pursuant to its authority under HO § 17-313 which provides:

(a) In General. – The Board, on an affirmative vote of a majority of its members then serving, may deny a certificate to any applicant, reprimand any certificate holder, or suspend or revoke a certificate of any certificate holder, if the applicant or certificate holder has committed any of the acts proscribed in § 17-313 of this title, subject to the provisions in §§ 17-314 and 17-315 of this title.

The Board charged Mr. Roberts with the following violations proscribed by HO §

¹ The State moved to amend the original charges following the discovery of information that Mr. Roberts failed to renew his certification after its expiration on December 31, 2003. Mr. Roberts did not contest the State's Motion, which was granted by the Board on September 3, 2004.

² For purposes of confidentiality, all patients involved in this case are referred to in alphabetical terms throughout this Final Decision and Order.

17-313, which permits the Board to impose disciplinary action if a certificate holder:

- (1) Fraudulently or deceptively obtains or attempts to obtain a certificate for the applicant or certificate holder or for another;
- (4) Violates the code of ethics adopted by the Board;
- (5) Knowingly violates any provision of this title; or
- (9) Violates any rule or regulation adopted by the Board.

The Board also charged Mr. Roberts with violating the following provisions of the

Act:

§ 17-101.

(j) Certified supervised counselor-alcohol and drug: certified associate counselor-alcohol and drug; certified professional counselor-alcohol and drug.

(1) "Certified supervised counselor-alcohol and drug" means an individual who is certified by the Board to practice alcohol and drug counseling in the State pursuant to the limitations in § 17-302.4 of this title.

§ 17-301.

(c) Certified professional counselor-alcohol and drug.

(3) An individual shall be certified as a certified supervised counselor-alcohol and drug by the Board before the individual may:

- (i) Use the title "certified supervised counselor-alcohol and drug";
- (ii) Use the initials "C.S.C.-A.D" after the name of the individual; or
- (iii) Represent to the public that the individual is certified as a certified supervised counselor-alcohol and drug.

§ 17-401.

Except as otherwise provided in this title, unless a person is certified to practice professional counseling, the person may not:

- (1) Represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is certified by the Board to provide professional counseling services in this State;
- (2) Use any title, abbreviation, sign, card, or other representation that the person is a . . . , certified professional counselor-alcohol and drug, certified associate counselor-alcohol and drug, or certified supervised counselor-alcohol and drug; or
- (3) Use the title "C.P.C.", "C.P.C.-M.F.T.", "C.P.C.-A.D.", or "C.P.C.-A.D.", . . . the words "certified professional counselor-alcohol and drug", "certified associate counselor-alcohol and drug", "certified supervised counselor-alcohol and drug" with the intent to represent that the person practices alcohol and drug counseling.

The Board also charged Mr. Roberts with violating Code Md. Regs. ("COMAR") tit. 10, § 58.03, Code of Ethics which provides as follows:

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:

- (3) Sexual behavior[;and]

B. Concurrent Sexual Relationships. A counselor may not engage in either consensual or forced sexual behavior with:

- (1) A client.

In a letter accompanying the charges, the Board notified Mr. Roberts that: (1) a hearing before the Board was scheduled for September 17, 2004; (2) a Case Resolution Conference or settlement conference was scheduled for July 16, 2004 at the Board's office; and (3) a telephonic prehearing conference would be held on August 17, 2004. (St. Exh. 7A) In addition, the Board strongly urged Mr. Roberts to retain private counsel to represent him at each of these conferences and at the hearing before the Board. (*Id.*) Mr. Roberts failed to appear at the Case Resolution Conference on July 16 but

participated in a telephonic prehearing conference with the administrative prosecutor and the Board's counsel on August 17, 2004. (T. 12-13)

Pursuant to HO § 17-314 and the Administrative Procedure Act, Md. Code Ann., State Gov't ("SG") § 10-201 *et seq.*, the Board conducted a contested case hearing on the merits of the Board's charges on September 17, 2004. Mr. Roberts appeared at the hearing but was not represented by counsel. At the hearing, Mr. Roberts acknowledged that he had received notice of all charges, the CRC date, and a copy of the State's exhibits and witness lists.³ (T. 11-13) Mr. Roberts also waived his right to attorney representation. (T. 13)

SUMMARY OF EVIDENCE

A. Documents

The State submitted the following exhibits, which were admitted into evidence:

State's Exhibits 1-8

State's Exhibit 1: Complaint dated June 10, 2003.

State's Exhibit 2A: Investigative Report from Rick Kenney (undated) with attachments.

State's Exhibit 2B: Memo from Kathy Culotta, dated May 29, 2003.

State's Exhibit 2C: Note from Patient A, dated June 3, 2003.

State's Exhibit 2D: Memo from Ronald Greene, Certified Associate Counselor, Alcohol and Drug ("CAC-AD"), dated August 25, 2003.

State's Exhibit 2E: Memo from Ronald Greene, CAC-AD, dated July 23, 2003.

State's Exhibit 2F: Letter from Patient B (undated).

State's Exhibit 2G: Memo from Stephen Dengler, CAC-AD, dated June 4, 2003.

State's Exhibit 2H: Progress Notes, dated July 23 and 26, 2003.

State's Exhibit 2I: Memo from Rick Kenney, Board investigator, dated March 29, 2004.

State's Exhibit 2J: Interview transcript of Patient A, dated August 6, 2003.

State's Exhibit 2K: Interview transcript of Hugh Roberts, dated Nov. 6, 2003.

State's Exhibit 3: Investigative Report, dated March 15, 2004.

State's Exhibit 4: Affidavit of Patient A, dated March 25, 2004.

³ The exhibits included documents that reflect the State's amended and supplemental charges.

- State's Exhibit 5A: Fax from Jackie Carpenter, with attachment, dated April 16, 2004.
State's Exhibit 5B: Most recent license printout of Hugh Roberts.
State's Exhibit 5C: Renewal Application of Hugh Roberts, dated May 6, 2004.
- State's Exhibit 6A: Subpoena to University of Maryland, dated August 20, 2004.
State's Exhibit 6B: Personnel Record of Hugh Roberts from University of Maryland, issued August 26, 2004.
- State's Exhibit 7A: Letter of Procedure, dated May 21, 2004.
State's Exhibit 7B: Charges issued May 21, 2004.
State's Exhibit 7C: Summons dated May 21, 2004.
- State's Exhibit 8A: Letter of Procedure, dated September 3, 2004.
State's Exhibit 8B: Amended and Supplemental Charges issued September 3, 2004; State's Motion to Amend and Supplement Charges; and Board's Order granting State's Motion.

Respondent's Exhibits

The Respondent submitted no exhibits.

B. Witness Testimony

The following witnesses testified on behalf of the State:

1. Stephen Dengler, CAC-AD, Executive Director at Phoenix.
2. Ronald Greene, CAC-AD, Clinical Director at Phoenix.
3. Rick Kenney, Board Investigator.
4. Jacqueline Carpenter, Board Administrative Specialist.
5. Patient C (by telephone hook-up).

The following witnesses testified on behalf of the Respondent:

1. Hugh Roberts, CSC-AD, Respondent.

Evaluation of the Evidence

The numerous documents and witnesses presented by the State showed that Mr. Roberts was certified to practice as a CSC-AD during the time he provided alcohol and drug counseling services at Phoenix, an ambulatory detoxification facility providing in-

house and outpatient care, from January 5 to June 4, 2003. In his capacity as an alcohol and drug counselor at Phoenix, Mr. Roberts counseled in-house and after-care group patients on certain evenings and occasional weekends. Mr. Roberts' was fired following the center's investigation of an alleged sexual relationship between him and Patient A, a female patient at Phoenix. The evidence also showed that Patient A was treated for cocaine and alcohol addiction as an in-house patient at Phoenix and in its aftercare program while Mr. Roberts was employed as an addictions counselor at the facility.

Documents and testimony at the hearing confirmed that Ronald Greene, a certified alcohol and drug associate counselor ("CAC-AD"), was Mr. Roberts' supervisor and Clinical Director at Phoenix. (T. 34, 37) Mr. Greene investigated allegations by employees and other patients regarding Mr. Roberts' relationship with Patient A. (St. Exhs. 2C-G; T. 41-49, 60-61, 65) After these conversations, Mr. Greene telephoned Mr. Roberts, informed him that there had been "allegations" against him at Phoenix, and that he would be suspended until further notice. (T. 39-40) Although Mr. Greene conveyed no specifics about the nature of the allegations, Mr. Roberts responded to Mr. Greene that he had enough women and did not need any of these "bitches." (T. 40) Mr. Stephen Dengler, CAC-AD, Executive Director of Phoenix, who was with Mr. Greene during the phone call to Mr. Roberts and overheard the conversation, corroborated Mr. Greene's testimony and the response from Mr. Roberts. (T. 21, 31-32) At the hearing, Mr. Roberts did not contradict the testimony of either Mr. Greene or Mr. Dengler. (T. 25) Mr. Greene notified the Board of Mr. Roberts' termination.

On July 23, 2003, Patient A contacted Mr. Greene indicating that she was suicidal. (St. Exh. 2E, T. 51) During subsequent assessments at Phoenix on that day and on July 26, staff described Patient A as "anxious, depressed and hopeless." (St.

Exh. 2H) Patient A stated that she had been emotionally and sexually involved with Mr. Roberts while she was an in-house and aftercare patient at Phoenix, was afraid she had become pregnant by Mr. Roberts, and was unable to maintain stability and sobriety as a result. (St. Exh. 2H;T. 51-55, 59-61)

Patient A also informed Phoenix staff that she had been afraid to divulge the relationship with Mr. Roberts during her involvement with him because she did not wish her husband to know. In addition, Patient A disclosed that she did not want to be the cause of Mr. Roberts losing his job at Phoenix. She also confided that she feared a retaliatory physical assault by Mr. Roberts if he discovered that she had revealed their sexual relationship to the staff. (St. Exh. 2H; T. 52, 54) Because of her suicidal thoughts, Patient A was admitted to another facility for stabilization. (T. 54)

The Board conducted an investigation of the allegations against Mr. Roberts, including taped interviews under oath with Patient A and Mr. Roberts. In August, 2003, during her interview, Patient A informed the Board investigator that: (1) she and Mr. Roberts had hugged and kissed at Phoenix prior to her first discharge from in-house care; (2) Mr. Roberts gave her his personal phone number and asked her to call him when she got out; (3) they met by mutual agreement at the Royal Farms store parking lot, after which she followed him by car back to his apartment; (5) they had consensual sexual intercourse there; (6) their sexual encounters continued at Mr. Roberts' apartment and at Phoenix while Patient A was a current patient of Mr. Roberts; and (7) Mr. Roberts continued to provide counseling services to Patient A as an in-patient and in the aftercare group at Phoenix during their personal and sexual relationship (St. Exh. 2J, pp. 8-16, 23); (8) Mr. Roberts knew that Patient A was still "using drugs" and had "gotten high" on several occasions throughout this time. (St. Exh. 2J, p. 39) During her

interview, Patient A also stated that Mr. Roberts asked her to deny their relationship and she agreed to lie so that he would not lose his job. (St. Exh. 2J, pp. 28-31)

In his interview with the Board investigator, Mr. Roberts vehemently denied that he arranged to meet Patient A at the Royal Farms parking lot, or subsequently brought her to his apartment. (St. Exh. 2K, pp. 11-12) Mr. Roberts also denied that any sexual activity with Patient A took place at his apartment or at Phoenix. (Id. pp. 9-13, 20) At the hearing before the Board, however, Mr. Roberts contradicted some of these earlier sworn statements. (T. 114, 118-21) He admitted that he had met Patient A at Royal Farms and taken her to his apartment (*id.*), and conceded that his earlier testimony to the Board investigator was a lie. (T. 137)

Mr. Roberts denied the Board's charges of sexual misconduct with Patient A but offered no witnesses or documentary evidence to refute them. (T. 114) Mr. Roberts also conceded that he was unfamiliar with the Board's Code of Ethics for counselors and stated his belief that a relationship with a former patient was allowed. (T. 122-23, 133-34)

Patient A's sworn statements to the Board's investigator on August 6, 2003, were entirely consistent with her earlier statements to Phoenix staff on July 23 and 26, 2003. The change in Mr. Roberts' testimony, however, undermines his credibility. Based on the testimony of Mr. Greene, Mr. Dengler and Mr. Roberts at the hearing, the Board finds that Mr. Greene and Mr. Dengler, not Mr. Roberts, correctly related their conversations with Mr. Roberts regarding the nature of his relationship with Patient A. Given their

obvious respect for Mr. Roberts' abilities as a counselor, there was no reason for the Phoenix staff to lie.⁴

The Board has considered the arguments and contradictory testimony advanced by Mr. Roberts. They are not persuasive. The overwhelming weight of the evidence does not support Mr. Roberts' claims. In contrast to the conflicting and untruthful testimony of Mr. Roberts, the Board finds the statements of Patient A, Mr. Greene and Mr. Dengler to be consistent and credible. In meeting Patient A outside of the treating setting, in bringing her to his apartment, and in engaging in a sexual relationship with her, Mr. Roberts violated the statute and the regulations.

Further, Mr. Roberts' apparent belief that a counselor may have a sexual relationship with a former client is not only mistaken, but contrary to well-established ethical principles. The Board's regulations specifically prohibit dual relationships between counselors and patients. COMAR 10.58.03.05 B. Because the Board recognizes that a vulnerable patient is incapable of giving informed consent to sexual contact with a counselor, the Board's regulations also forbid either consensual or forced sexual behavior in patient-counselor relationships. COMAR 10.58.03.09 A(3) and (B)(1). Mr. Roberts violated the Board's ethical regulations.

In addition, the Board finds that no valid counseling therapy would require meetings in a parking lot or a counselor's home between a treating counselor and a patient during the course of therapy. Mr. Roberts' history of initiating or acquiescing to this type of meeting makes it abundantly clear that he has no appreciation of his professional and ethical obligation to maintain appropriate counselor-patient boundaries.

⁴ Both Mr. Greene and Mr. Dengler commented on their respect for Mr. Roberts' abilities as an alcohol and drug counselor at the center. (T. 31, 33, 58, 63)

Mr. Roberts' knowledge about Patient A's personal life, her thoughts and her emotional reactions to her addictions came directly from his professional relationship with her as a counselor. The counseling-patient relationship itself created Mr. Roberts' opportunity for a prohibited dual relationship. Mr. Roberts, however, ignored his patient's emotional vulnerability. Mr. Roberts thus exploited, to his own ends, the trust and knowledge derived from his therapeutic association with Patient A, and dispensed with his professional obligations in order to gratify his personal desires. By meeting her in a parking lot, by taking her to his apartment, and especially by engaging in a personal and sexual relationship with her, Mr. Roberts also exploited Patient A.

Mr. Roberts' exploitative conduct was not only unethical, but endangered Patient A's emotional status as a recovering addict. The inherent imbalance of power between a counselor and a patient due to the patient's trust, dependence, emotional vulnerability, and reliance on the counselor's knowledge, training and experience creates a potential for psychological harm to the patient by an unethical counselor. At the hearing, Mr. Roberts' response to questions from Board members showed no insight into the risk of harm to Patient A. At a minimum, Mr. Roberts' disregard of Patient A's obvious risk factors highlights Mr. Roberts' lack of concern for his patient's interests and emotional welfare. Ultimately, his violation of his ethical and legal responsibilities jeopardized her life.

Similarly, Mr. Roberts' unethical conduct extends to his falsification of his renewal application and his practice of alcohol and drug counseling without certification. The documentary evidence presented at the hearing showed that Mr. Roberts' CSC-AD certification expired on December 31, 2003, and he failed to renew it until May 6, 2004. Throughout that period of non-renewal, Mr. Roberts practiced alcohol and drug

counseling as a full-time Substance Abuse Program Specialist at the University of Maryland Department of Psychiatry. In this position, Mr. Roberts practiced as a CSC-AD without appropriate certification. On his application for renewal, Mr. Roberts answered "NO" to questions enquiring whether: (1) he had failed to renew his license in any State; and (2) there were any outstanding complaints, investigations or charges pending against him in any State by any Licensing or Disciplinary Board; and (3) conditions of his employment had been affected by any termination or suspension related to his practice.

When Mr. Roberts' certificate expired in December, 2003, Mr. Roberts had just completed a taped interview with the Board investigator on November 6, 2003, and knew that the Board had opened an investigation into the complaint from Phoenix, his former employer. Mr. Roberts also knew that Phoenix had suspended and terminated his employment in June, 2003, because of his prohibited relationship with Patient A. At the time of his renewal in May, 2004, Mr. Roberts was also aware that he had not renewed his CSC-AD certificate in December, 2003. Mr. Roberts lied on his application and worked from January to May, 2004, without legally-required certification.

At the hearing, Mr. Roberts testified that he did not open his mail, forgot to renew his certification on time and failed to read the application carefully before answering the questions and signing it. (T.138-40) The Board rejects Mr. Roberts' claims. His rationale is implausible. Given the documentary evidence of his false application, and Mr. Roberts' failure to offer any credible testimony to refute it, Mr. Roberts' defense on this issue too, must fail. The Board finds that Mr. Roberts falsified his renewal application and fraudulently obtained CSC-AD certification, in violation of Md. Health Occ. Code Ann. §§ 17-101, 17-301, 17-313(1), and 17-401.

The documentary and testimonial evidence weighs heavily against Mr. Roberts. In particular, Mr. Roberts' own testimony lacked any semblance of candor or credibility. His ignorance of the Board's ethical regulations showed a complete disregard for the unique nature of his profession or the impact on Patient A. His meetings and sexual misconduct with Patient A violated the law, exploited the patient, and caused her psychological harm. In so doing, Mr. Roberts violated the Professional Counselors and Therapists Act, Md. Health Occ. Code Ann. § 17-313(4), (5) and (9), COMAR 10.58.03.09 A(3) and B(1), and the ethical standards of his profession.

FINDINGS OF FACT

Having considered all of the documentary and testimonial evidence presented at the September 17, 2004 hearing, the Board finds by a preponderance of the evidence that Mr. Roberts engaged in a prohibited sexual relationship with a current patient. Mr. Roberts also lied on his renewal application for CSC-AD certification and practiced as an alcohol and drug counselor without legally required certification from January 1 to May 6, 2004.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and after considering the entire record in this case, the Board concludes that: **(1)** Mr. Roberts violated Md. Health Occ. Code Ann. § 17-313 (4), (5) and (9), and COMAR 10.58.03.09 A (3) and B (1) by engaging in a consensual sexual relationship with Patient A. The Board also concludes that: **(2)** Mr. Roberts fraudulently obtained a renewal of his CSC-AD certification, falsely answered questions on his renewal form, and practiced addiction counseling without a certificate, in violation of Md. Health Occ. Code Ann. §§ 17-101, 17-301, 17-313 (1) and 17-401.

SANCTION

The nature of Patient A's crack cocaine and alcohol addiction required Mr. Roberts' vigilance about the impact of his conduct on her well-being. Besides its concern with Mr. Roberts' false statements on his renewal application, and his practice as a CSC-AD without certification, the Board is also concerned about Mr. Roberts' prolonged sexual abuse and exploitation of an emotionally-vulnerable female patient, his apparent ignorance of the ethics regulations and his own ethical responsibilities, as well as his inability to maintain appropriate professional boundaries. Not only did Mr. Roberts violate the law, he caused psychological harm to Patient A. Such conduct poses a risk to any future patients of Mr. Roberts.

One of the primary goals of the Professional Counselors and Therapists Act is to safeguard patients from these types of unethical and illegal actions by counselors. In addition, the Board's mission to protect the integrity of the counseling profession in Maryland mandates that the Board discourage such flagrant abuses of counseling privileges. As a CSC-AD, Mr. Roberts is subject to the standards and policies adopted by the Board and embodied in the law and regulations. Moreover, the State has a legitimate interest in ensuring that patients undergoing drug addiction treatment are protected from predatory conduct that has the potential to cause psychological harm. For those reasons, the Board will revoke Mr. Roberts certificate to practice alcohol and drug counseling in the State.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 25TH day of February, 2004, by a majority of the full authorized membership of the Board:

ORDERED that the charges filed against Hugh Roberts, CSC-AD, Certificate Number SC0974, under Md. Health Occ. Code Ann., §§ 17-313(1), (4), (5) and (9), 17-101, 17-301, 17-401 and COMAR 10.58.03.09 A(3) and B(1), be **UPHELD**; and it is further

ORDERED that the certificate of Hugh Roberts, CSC-AD, Certificate Number SC0974 be **REVOKED** under HO § 17-313(a);

ORDERED that this is a Final Order and as such is a **PUBLIC** document pursuant to Md. State Gov't Code Ann. §§ 10-611 et seq. (1999 Repl. Vol.)

February 25, 2005
Date

Joanne Faber
Joanne Faber, M.Ed., LCPC, Chair
Maryland State Board of Professional
Counselors and Therapists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann., § 17-315, Mr. Roberts has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. State Gov't Code Ann., § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Mr. Roberts files an appeal, the Board is a party and must be served with the court's process. In addition, Mr. Roberts is requested to send a copy to the Board's counsel, Noreen M. Rubin, Esq., at the Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is no longer a party to these proceedings at this point and need not be served or copied.