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| <p><b>IN THE MATTER OF</b></p> <p><b>KRISTEN ALLEN, LCSW-C</b></p> <p style="padding-left: 40px;"><b>Respondent</b></p> <p><b>License Number 17492</b></p> | <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> | <p><b>BEFORE THE</b></p> <p><b>MARYLAND STATE BOARD§</b></p> <p><b>OF SOCIAL WORK EXAMINERS</b></p> <p><b>Case Number 2017-2374</b></p> |
| <p>* * * * *</p>   |  |   |

**FINAL DECISION AND ORDER**

On February 24, 2020, the Maryland State Board of Social Work Examiners (“the Board”) issued Charges under the Maryland Social Work Practice Act (the “charges”) against Kristen Allen (“Respondent”). The charges alleged that the Respondent violated the Maryland Social Work Practice Act (the “Act”), codified at Md. Code Ann., Health Occ. §§ 19-101 *et seq.* (2014 Rep. Vol.).

The pertinent provisions of the Act provide the following:<sup>1</sup>

**§ 19-311. Denials, reprimands, suspensions, and revocations – Grounds.**

Subject to the hearing provisions of § 19-312 of this subtitle, the Board may deny a license to any applicant, fine a licensee, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

... ..

- (5) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work;
- (6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board;

... ..

- (12) Fails to file or record any report as required by law,

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<sup>1</sup> All statutory and regulatory references herein are to the applicable statutes and regulations in effect at the time of the Respondent’s conduct.

willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file the report;

....

- (14) Fails to report suspected child abuse or neglect in violation of § 5-704 of the Family Law Article;

....

- (20) Fails to maintain adequate patient records[.]

Pursuant to Health Occ. § 19-311(14), the pertinent provision of Md. Code Ann., Family Law § 5-704, provides the following:

**Section 5-704. Reporting of abuse or neglect -- By health practitioner, police officer, educator, or human service worker**

- (a) In general. -- Notwithstanding any other provision of law, including any law on privileged communications, each health practitioner, police officer, educator, or human service worker, acting in a professional capacity in this State:
  - (1) who has reason to believe that a child has been subjected to abuse or neglect, shall notify the local department or the appropriate law enforcement agency; and
  - (2) if acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, shall immediately notify and give all information required by this section to the head of the institution or the designee of the head.
- (b) Oral and written reports; cooperation among departments and agencies. --
  - (1) An individual who notifies the appropriate authorities under subsection (a) of this section shall make:
    - (i) an oral report, by telephone or direct communication, as soon as possible to the local department or appropriate law enforcement agency; and

- (ii) a written report:
  - 1. to the local department not later than 48 hours after the contact, examination, attention, or treatment that caused the individual to believe that the child had been subjected to abuse or neglect; and
  - 2. with a copy to the local State's Attorney.

Pursuant to Health Occ. § 19-311(6), the pertinent provisions of Md. Code Regs. (“COMAR”), provide the following:

**COMAR 10.42.03.03. Responsibilities to Clients.**

A. The licensee shall:

....

- (5) Maintain documentation in the client's record which:

....

- (b) Accurately reflects the services provided, including treatment plans, treatment goals, and contact notes[.]

**COMAR 10.42.03.06. Standards of Practice.**

A. Professional Competence. The licensee shall:

....

- (7) Document and maintain appropriate records of professional service, supervision, and research work[.]

Procedural History

The Respondent requested an evidentiary hearing on the charges. The Board delegated the matter to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a

proposed decision. The OAH held the evidentiary hearing before an administrative law judge (“ALJ”).

On July 9, 2021, the ALJ issued a proposed decision. The ALJ concluded that the Respondent violated § 19-311 (5), (6) and (20) (2014) of the Maryland Social Work Practice Act and COMAR 10.42.03.03A (5) (b) and COMAR 10.42.03.06A (7). The ALJ further concluded that the Respondent did not violate §19-311 (5), (12), and (14) (2014) and Family Law § 5-704 (2019). The ALJ recommended that the Respondent be issued a Reprimand for failure to maintain adequate patient records. The ALJ further recommended that the Board require the Respondent to take a documentation course within one year of the issuance of a final order in the matter.

The Administrative Prosecutor filed exceptions on behalf of the State. On September 10, 2021, a hearing was held before the full Board. The State argued that the ALJ reached an erroneous conclusion in finding that the Respondent did not fail to report suspected child abuse. The State claimed that there was substantial evidence to prove the Respondent did in fact fail to report suspected child abuse and that the proposed sanction of a Reprimand is inadequate to address the seriousness of the Respondent’s failure to act. The Respondent, on the other hand, urged the Board to adopt the ALJ’s proposed decision.

## **FINDINGS OF FACT**

### The Board Is Not Bound By the ALJ’s Findings

Before determining whether the Respondent failed to report child abuse or neglect, the Board must resolve the factual dispute between the State’s position and the Respondent. The key issue is whether the Board must defer to the Findings of Fact in the proposed decision that are based on the witnesses’ testimony. The State claims that the Board does not owe deference to

the ALJ's findings pertaining to the witnesses' testimony because the ALJ did not make demeanor-based credibility determinations. *Department of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 299 (1994). The Respondent argues that the ALJ's Findings of Fact are demeanor-based credibility determinations and they may not be overturned by the Board unless there are "strong reasons" for doing so supported by evidence in the record. *State Com'n on Human Relations v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 693-94 (2003), citing, *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-03 (1994).

Under *Shrieves*, substantial deference is only due to the ALJ's demeanor-based credibility findings. *Id.* Demeanor is primarily based on outward behavior and appearance. It may be evaluated by assessing facial expressions, tone of voice, gestures, posture, eye-contact with the questioner, and readiness or hesitancy to answer questions. *Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 387-88 (2006). In determining whether the ALJ made demeanor-based credibility determinations, the Respondent asks the Board to consider the fact that the ALJ observed the witnesses first hand and was in the best position to determine their believability. The Respondent also points to the ALJ's statement that the Respondent "testified credibly that her assessment of the injury happened in April 2016."

Maryland courts have clearly decided that a demeanor-based credibility determination does not include conclusory statements that a witness was "persuasive" and "credible." *State Board of Physicians v. Bernstein*, 167 Md.App. 714, 759-60 (2006). Here, the ALJ's statement that the Respondent "testified credibly" was not demeanor based. The ALJ did not comment on the Respondent's expressions, eye contact, voice or body language. She simply concluded that she was persuaded by the Respondent's testimony. With regard to the other witnesses who testified at the hearing, the proposed decision makes no mention concerning the believability of

the testimony. The ALJ did not cite any appearances, expressions, voice inflection or outward behaviors as her reason for believing or disbelieving any other witness's testimony in this matter. As such, the Board owes no deference to the ALJ's evaluation of credibility and is free to accept the ALJ's credibility determinations or make its own credibility determinations based on the record.<sup>2</sup>

Accordingly, the Board adopts and incorporates herein by reference the proposed Findings of Fact numbers 6 – 8, 11, and 15 – 16 as stated in the July 9, 2021 proposed decision. The Board further finds that:

1. On or about October 5, 2011, the Respondent was licensed to practice as a licensed graduate<sup>3</sup> social worker. The Board issued the Respondent a license to practice as a licensed clinical social worker, under license number 17492 on or about April 19, 2016.<sup>4</sup>
2. At all times relevant to this matter, the Respondent held an active license, in good standing as a licensed clinical social worker in the State of Maryland.
3. The Respondent provided clinical social work services to the Client to treat anxiety and depression from January 2013 through October 2018. The Client had a history of domestic violence. The Client engaged in abusive relationships while raising her daughters.
4. The Client often discussed her daughters and her concerns about their relationships in treatment sessions with the Respondent. On occasion, the Client brought her

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<sup>2</sup> See *e.g. Elliott*, 170 Md. App. at 393 (2006), stating that inconsistencies and bias do not create demeanor-based credibility determinations, but can be determined from the cold record.

<sup>3</sup> Effective July 1, 2018, the licensed "graduate" social worker designation was changed to licensed "master" social worker.

<sup>4</sup> The Respondent's LCSW-C license is currently inactive.

grandson to treatment sessions. The Respondent felt well acquainted with the Client's grandson.

5. The Client disclosed to the Respondent that she did not feel safe around her daughter's new boyfriend (hereinafter referred to as the "boyfriend").
6. The Respondent met with the Client at five separate treatment sessions where among other things the Client discussed concerns that her three<sup>5</sup>-year old grandson may be subjected to child abuse by the boyfriend.
7. The treatment sessions with the Respondent took place on April 13, April 16, June 2, August 4, and September 29, 2016.
8. At the April 13, 2016 treatment session, the Client reported that she had recently moved out of her daughter's home. The Client believed the boyfriend was controlling and that the daughter's relationship with the boyfriend was abusive.
9. The Client expressed worry, anxiety and fear for her grandson. The Client reported her concerns to the Respondent after she saw the boyfriend spank the grandson. The boyfriend spanked the grandson with an open hand on the buttocks.
10. At the April 16, 2016 treatment session, the Client reported that her grandson liked the boyfriend because "now" he is a "good boy" and he no longer gets into trouble. The Respondent documented that she and the Client were both worried by this and the Respondent helped the Client explore ways to handle this situation.
11. At the June 2, 2016 treatment session the Client discussed multiple stressors including her grandson getting his head hit open requiring staples, his being carried

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<sup>5</sup> At the time the treatment sessions took place, the Client's grandson was three years old. The proposed decision incorrectly describes the Client's grandson as "four" years old.

out of the home by the boyfriend, questioning whether the boyfriend had something to do with the injury, and being confronted by the police.

12. The Client showed the Respondent a bruise that the Client believed was caused by the boyfriend at the August 4, 2016 treatment session.<sup>6</sup>
13. At the September 29, 2016 treatment session the Client expressed anger with the Respondent for not calling the department of social services when the Client showed the Respondent an bruise on the grandson one session a month or so prior to his death.
14. The August 4, 2016 treatment session was the last session the Respondent met with the Client before the grandson unexpectedly passed away on September 4, 2016 from injuries sustained from the boyfriend.
15. The treatment records from April 13, April 18, June 2, August 4, and September 29, 2016 do not document the details of how the Respondent arrived at her decision that there was no suspected abuse. The records do not mention what, if any, interactions she may have had with the Grandson or the Client, inferences that she may have drawn or any resulting action she may have taken as a result of being presented with information regarding her Client's concerns that the grandson may have been subjected to abuse.
16. The Respondent inspected the bruise on the grandson and asked him how it occurred.
17. Assessment of a bruise is the responsibility of the department of social services or local law enforcement. The Respondent, as an LCSW-C, was not qualified to assess

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<sup>6</sup> The September 29, 2016 treatment session note indicates that the Client believed the bruise was shown to the Respondent the month prior. The treatment note was written by the Respondent, contemporaneous to the date and time that the session took place. The Board finds that it is more likely than not that the Respondent observed the bruise at the August 4, 2016 treatment session.



the source of the bruise. The Respondent unilaterally made the decision the child was not physically abused.

18. The Respondent admitted that she was aware of the mandatory reporting requirements and that she had made reports of suspected child abuse or neglect in the past.
19. The Respondent provided the telephone number of child protective services to the Client.
20. Dr. Carlton Munson, an expert in social work, professional standards of social work practice, social work documentation and mandatory reporting gave an opinion that the Respondent's social work practice was inconsistent with the generally accepted professional standards in the practice of social work.
21. Dr. Munson opined that there was reason to believe that child abuse or neglect had occurred and that the Respondent was required to make a report of the Client's suspicions of child abuse and neglect.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated:

**§ 19-311. Denials, reprimands, suspensions, and revocations – Grounds.**

Subject to the hearing provisions of § 19-312 of this subtitle, the Board may deny a license to any applicant, fine a licensee, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

... ..

- (5) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work;

(6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board;

.....

(12) Fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file the report;

.....

(14) Fails to report suspected child abuse or neglect in violation of § 5-704 of the Family Law Article;

.....

(20) Fails to maintain adequate patient records[.]

Pursuant to Health Occ. § 19-311(14), the pertinent provision of Md. Code Ann., Family Law § 5-704, provides the following:

**Md. Code Ann., Family Law § 5-704. Reporting of abuse or neglect -- By health practitioner, police officer, educator, or human service worker**

(a) In general. -- Notwithstanding any other provision of law, including any law on privileged communications, each health practitioner, police officer, educator, or human service worker, acting in a professional capacity in this State:

(1) who has reason to believe that a child has been subjected to abuse or neglect, shall notify the local department or the appropriate law enforcement agency; and

(2) if acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, shall immediately notify and give all information required by this section to the head of the institution or the designee of the head.

(b) Oral and written reports; cooperation among departments and agencies. --

(1) An individual who notifies the appropriate authorities under subsection (a) of this section shall make:

- (i) an oral report, by telephone or direct communication, as soon as possible to the local department or appropriate law enforcement agency; and
- (ii) a written report:
  1. to the local department not later than 48 hours after the contact, examination, attention, or treatment that caused the individual to believe that the child had been subjected to abuse or neglect; and
  2. with a copy to the local State's Attorney.

Pursuant to Health Occ. § 19-311(6), the pertinent provisions of Md. Code Regs.

("COMAR"), provide the following:

**COMAR 10.42.03.03. Responsibilities to Clients.**

B. The licensee shall:

....

- (5) Maintain documentation in the client's record which:

....

- (b) Accurately reflects the services provided, including treatment plans, treatment goals, and contact notes[.]

**COMAR 10.42.03.06. Standards of Practice.**

B. Professional Competence. The licensee shall:

....

- (7) Document and maintain appropriate records of professional service, supervision, and research work[.]

### SANCTION

The Respondent asks the Board to adopt the ALJ's sanction of a Reprimand and completion of a documentation course or in the alternative to give consideration to the mitigating factors and similar past board decisions. The State reminds the Board that there is no right to receive the same sanction as someone else and requests that the Board base sanctions on the circumstances of this case. *See, Maryland State Bd. Of Social Work Examiners v. Chertkov*, 121 Md. App. 574, 588 (1998). In assessing the appropriate sanction in this case, the Board considered mitigating and aggravating factors under COMAR 10.42.09.05A-B. The Board takes into account that the Respondent has no prior disciplinary history, she cooperated with the Board's proceedings and that there was no premeditation to commit misconduct in this matter. The Board also considered that the violations had the potential for, and caused serious harm and that it was part of a pattern of detrimental conduct. The Board also considered the minimum and maximum sanctions for each of the violations as stated under COMAR 10.42.09.04A-B.

### ORDER

It is, on the affirmative vote of a majority of the quorum of the Board, hereby

**ORDERED** that the Respondent's license to practice clinical social work in the State of Maryland is hereby **SUSPENDED** retroactively for a total period of two (2) years, beginning on September 10, 2019 and ending on September 10, 2021; and it is further

**ORDERED** that, upon the reactivation or reinstatement of the Respondent's license to practice social work in Maryland, the Respondent shall immediately be placed on **PROBATION** for a minimum period of **TWO (2) YEARS** and until the following terms and conditions are fully and satisfactorily complied with:

- (1) The Respondent shall enroll in and successfully complete two (2) Board approved courses: one course on ethics in abuse and neglect and one mandatory reporting course.
  - a. The Respondent shall provide the Board with documentation of satisfactory completion of both courses.
  - b. The completion of these two courses shall be in addition to any course that is required in order to satisfy the continuing education requirements for the applicable two-year licensure renewal period.
  
- (2) The Respondent shall meet with a Board Approved Supervisor.
  - a. The Respondent shall meet with the supervisor at least once a month for a minimum of 2 hours for random chart review and discussion.
  - b. The supervisor shall choose a random sample of at least ten (10) of the Respondent's active cases to review. The supervisor shall review charts to determine the Respondent's compliance with documentation and recordkeeping standards, ethics and reporting requirements.
  - c. The Respondent shall provide the Board Approved Supervisor with a signed copy of this Order.
  - d. The Respondent shall ensure that the Board Approved Supervisor submits quarterly reports to the Board.
  - e. The Board has sole authority to implement any changes in the supervision and retains all authority to approve any changes in the supervision.
  - f. In the event that the supervisor discontinues supervising the Respondent for any reason, the Respondent shall immediately notify the Board and work with the Board to find a suitable replacement.
  
- (3) Within **(1) YEAR** of the effective date of this Order, the Respondent shall pay a fine in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500)** by certified check or money order made payable to the Maryland Board of Social Work Examiners.

- (4) The Respondent shall comply with the Maryland Social Workers Act and all laws, statutes and regulations pertaining thereto; and it is further

**ORDERED** that the Respondent shall not serve or continue to serve as a Board Authorized Sponsor, presenter and/or trainer of social work continuing education learning activities, an Ethics Tutor, an evaluator for the Board, or a Board Approved Supervisor for a period of five (5) years from the effective date of this Consent Order; and it is further;

**ORDERED** that after the conclusion of the probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board, or a designated Board committee. The Board, or designated Board committee, may, at its discretion, grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints against the Respondent; and it is further

**ORDERED** that if the Respondent violates or fails to comply with any of the terms and conditions of this 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 facts, or an opportunity for a show cause hearing, before the Board otherwise, may impose any sanction deemed appropriate by the Board; and it is further

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

**ORDERED** that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 Repl. Vol. & 2020 Supp.).



11/12/2021

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karen Richards, LCSW-C, Chair  
Maryland State Board of Social Work Examiners

**NOTICE OF APPEAL RIGHTS**

Any person aggrieved by a final decision of the Board under Md. Code Ann., Health Occ. §§ 19-313 may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 17-512, Md. Code Ann., State Gov't § 10-222, and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").