

<p>IN THE MATTER OF</p> <p>TAMMY SMITH, LCSW-C</p> <p style="padding-left: 40px;">Respondent</p> <p>License No.: 09997</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>MARYLAND STATE BOARD OF</p> <p>SOCIAL WORK EXAMINERS</p> <p>Case No.: 03-636 / 637 / 638</p>
<p>* * * * * * * * * * *</p>		

FINAL DECISION AND ORDER

BACKGROUND

On December 8, 2008, the Maryland State Board of Social Work Examiners (the "Board") issued a Notice of Intent to Revoke Respondent's Certified Social Work Clinical License ("Notice") against Tammy Smith, LCSW-C ("Respondent"). The Notice alleged that Respondent's license should be revoked as a result of Respondent's convictions of felony Medicaid fraud and felony theft, which arose out of her conduct in the practice of social work. The Notice further alleged that these convictions amounted to violating the Maryland Social Workers Act (the "Act"), Maryland Health Occ. Code Ann. ("H.O."), §§19-101 *et seq.*, (2005 Repl. Vol. and 2007 Supp.). Specifically, the Board charged Respondent with violating the following section of H.O. §19-311:

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:

- (8) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or

other proceeding is pending to have the conviction or plea set aside[;].

The Notice and charges were sent to Respondent by regular and certified mail to the Respondent's address of record maintained by the Board. These were not returned to the Board.

On September 23, 2009, the Office of Administrative Hearings ("OAH") mailed to Respondent and to the Administrative Prosecutor a Notice of Pre-Hearing Conference and a Notice of Hearing advising that a pre-hearing conference was scheduled for November 17, 2009 and a hearing was scheduled for January 26, 2010. On November 17, 2009, Respondent and the Administrative Prosecutor both attended an in-person Pre-Hearing Conference at OAH.

On January 26, 2010, Respondent failed to appear for the evidentiary hearing at OAH. The Administrative Prosecutor was present and ready to proceed. Accordingly, pursuant to Maryland State Gov't Code Ann. ("S.G.") §10-205 and H.O. § 19-312 and Code of Maryland Regulations ("COMAR") 10.42.04.01 *et seq.* and 28.02.01.01 *et seq.*, this case was heard before David Hofstetter, Administrative Law Judge ("ALJ").

On April 22, 2010, the ALJ issued a Recommended Decision with Findings of Fact, Discussion, Conclusions of Law, and Proposed Order. The ALJ concluded by a preponderance of the evidence that the Respondent violated H.O. § 19-311(8). Neither party filed Exceptions to the ALJ's Recommended Decision.

After consideration of the entire record in this case, including the Recommended Decision, exhibits and the record made before the ALJ, the Board issues this Final Decision and Order.

STATEMENT OF THE CASE, ISSUES AND SUMMARY OF EVIDENCE

The Board adopts and incorporates by reference the Statement of the Case, Issues and Summary of the Evidence made by the ALJ in the Recommended Decision, dated April 22, 2010. The entire Recommended Decision is attached and incorporated herein as Appendix A.

FINDINGS OF FACT

The Board adopts the Findings of Fact numbered 1 through 6, in their entirety, as set forth in the Recommended Decision of April 22, 2010. These facts have been proved by a preponderance of the evidence and are incorporated by reference into this Final Decision and Order. (See, Appendix A.)

DISCUSSION

The Board agrees with the findings and rationale of the ALJ in the Recommended Decision. There is no dispute that Respondent was convicted of multiple felonies of Medicaid fraud and theft in the Circuit Court for Baltimore County in 2008. Respondent was sentenced to two years of incarceration and ordered to pay restitution in the amount of \$783,650 to the Medicaid Fraud Control Unit. The Board adopts the ALJ's analysis upon which he based his conclusions regarding Respondent having violated HO § 19-311(8), as set forth in the Discussion in the Recommended Decision dated April 22, 2010. The

Board adopts and incorporates by reference the Discussion in the Recommended Decision. (See, Appendix A.)

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, the Board concludes as a matter of law and by a preponderance of the evidence that Tammy Smith, LCSW-C violated Md. Health Occ. Code Ann. § 19-311(8). The Board adopts and incorporates by reference the Conclusions of Law made by the ALJ in the Recommended Decision dated April 22, 2010. (See, Appendix A.)

SANCTION

The Respondent is guilty of committing felonies and serious crimes of moral turpitude. As a result, Respondent has violated the Maryland Social Workers Act. The Respondent repeatedly has been dishonest in her practice and defrauded her clients, Medicaid, private insurers and the public trust by her actions. Due to Respondent's flagrant disregard of the law, the Board believes that a severe sanction is necessary to deter such further misconduct by the Respondent and by other social workers who may be tempted to abdicate their responsibilities to practice social work in an honest and responsible manner.

As the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public" (McDonnell v. Comm'n on Medical Discipline, 301 Md. 426, 436 (1984)), it is imperative that social workers understand that serious misconduct has serious ramifications and is likely to have an effect on one's license to practice one's profession. It is for all of these reasons that the Board

has determined that revocation is the appropriate sanction for Respondent's misconduct.

ORDER

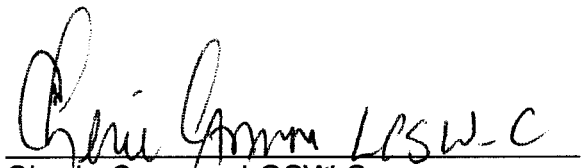
Based upon the foregoing, it is this 14th day of May, 2010, by a majority of the full authorized membership of the Maryland State Board of Social Work Examiners,

ORDERED that Maryland social work license of Respondent, Tammy Smith, LCSW-C, license number 0997, is **REVOKED**; and it is further

ORDERED that this Final Decision and Order shall be effective from the date it is signed by the Board; and it is further

ORDERED that, pursuant to H.O. §19-312(f) and COMAR 10.42.04.12, Respondent shall reimburse the Board for the costs incurred by the Board as a result of the hearing, to which the Board is entitled pursuant to the above-cited authority; and it is further

ORDERED that this is a Final Order of the Maryland State Board of Social Work Examiners and, as such, a Public Document and is reportable to any entity to which the Board is obligated to report, and is disclosable under the Maryland Public Information Act, Maryland State Gov't. Code Ann. §§10-611, *et seq.*


Cherie Cannon, LCSW-C
Chair
Maryland State Board of Social Work
Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. §19-313, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

RECEIVED

APR 26 2010

BOARD OF SOCIAL
WORK EXAMINERS

MARYLAND STATE BOARD OF
SOCIAL WORK EXAMINERS

* BEFORE DAVID HOFSTETTER
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. DHMH-BSW-87-09-33975
*

v.

TAMMY SMITH, LCSW-C,

RESPONDENT

LICENSE No.: 09997

* * * * *

RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On December 8, 2008, the Maryland State Board of Social Work Examiners (Board) issued a Notice of Intent to Revoke the Respondent's Certified Social Work Clinical License (Notice) against Tammy Smith, LCSW-C (Respondent). The Notice alleged that the Respondent's license should be revoked as a result of felony convictions for conduct arising in the practice of social work. The Notice further alleged that the convictions subjected the Respondent to sanctions under the Maryland Social Workers Act (Act). Md. Code Ann., Health Occ. § 19-311(8) (2009).

I held a hearing on January 26, 2010 at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 19-312(a) (2009). The Respondent failed to appear for the hearing. Roberta Gill, Administrative Prosecutor, presented the Board's case.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for Board Hearings, and the Rules of Procedure of the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009), Code of Maryland Regulations (COMAR) 10.42.04; COMAR 28.02.01.

ISSUE

Did the Respondent violate the Act and, if so, what sanction shall be imposed?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Board:

- Bd. Ex. 1 - Computer printout of licensure information, dated September 19, 2009
- Bd. Ex. 2 - Criminal Indictment, *State v. Tammy Smith*, undated
- Bd. Ex. 3 - Transcript of Proceedings, Circuit Court for Baltimore County, *State v. Tammy Smith*, July 10, 2008
- Bd. Ex. 4 - Commitment Record, *State v. Tammy Smith*, dated July 10, 2008
- Bd. Ex. 5 - Judgment, *State v. Tammy Smith*, dated July 14, 2008
- Bd. Ex. 6 - Docketing Record, *State v. Tammy Smith*, dated September 30, 2008
- Bd. Ex. 7 - Notice of Intent to Revoke, issued December 8, 2008

The Respondent failed to appear for hearing and no exhibits were admitted on her behalf.

Testimony

Deborah Sarsgard, Director of Compliance, testified on behalf of the Board.

The Respondent failed to appear for the hearing. No witnesses testified on her behalf.

FINDINGS OF FACT

RECEIVED

APR 26 2010

BOARD OF SOCIAL
WORK EXAMINERS

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was licensed to practice clinical social work in Maryland. The Respondent was first licensed on October 22, 1998. Her license expired on October 31, 2008.
2. At all times relevant, the Respondent owned and operated, with her husband, a business in Baltimore County know as Family and Children Enrichment Services (FACES). The Respondent provided social work services to the public through FACES.
3. On January 16, 2007, the Respondent was indicted in the Circuit Court for Baltimore County on nineteen counts, including one count of Conspiracy to Commit Medicaid Fraud; nine counts of Felony Medicaid Fraud; and, nine counts of Felony Theft.
4. Each of the counts against the Respondent resulted from alleged fraud occurring in the practice of social work, whereby the Respondent billed for services she did not provide.
5. On July 10, 2008, following a jury trial, the Respondent was found guilty of all counts charged.
6. As a result of the guilty findings, the Respondent was sentenced to two years incarceration and ordered to pay restitution in the amount of \$783,650.00.

DISCUSSION

The Act provides in pertinent part as follows:

Subject to the hearing provisions of section 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:

...

(8) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; . . .

Md. Code Ann., Health Occ. § 19-311(8) (2009).

In this case, there is no dispute that the Respondent was convicted of multiple criminal charges and that the crimes at issue are felonies. *See* Md. Code Ann., Crim. Law § 8-509 (2002) (Medicaid Fraud) and Md. Code Ann., Crim. Law. § 8-516(c) (2002) (violation is a felony where over \$500.00 at issue); Md. Code Ann., Crim Law. § 7-104(g) (2002) (felony theft, where over \$1,000.00 at issue.)

It is likewise clear that the crimes at issue involve moral turpitude. The concept of moral turpitude has developed over centuries. Historically, some crimes were considered to constitute moral turpitude *per se*. *Ricketts v. State*, 291 Md. 701, 706-07 (1981). These are crimes used by the courts for the sole purpose of determining whether or not the conviction of a particular crime could be used for impeachment purposes during a witness's testimony at trial. The crimes which the common law regarded as demonstrating moral turpitude *per se* were treason, felony, perjury, forgery, and those other offenses, classified, generally, as *crimen falsi*, which impressed upon their perpetrator such a moral taint that to permit him to testify in legal proceedings would injuriously affect the public administration of justice. *Garitee v. Bond*, 102 Md. 379, 383 (1905).

The concept of moral turpitude for purposes of an administrative disqualification hearing has attained a broader meaning than the concept has under the rules of evidence. In *Stidwell v. Maryland State Bd. Of Chiropractic Exam'rs*, 144 Md.App. 613, 618-19 (2002), the Court of Special Appeals discussed the difference between evidentiary moral turpitude and administrative moral turpitude.

[I]n the field of administrative law where "moral turpitude" has evolved from its common law trappings into an even more fluid descriptive tool. Indeed, while

Maryland's administrative and regulatory statutes repeatedly use the phrase "moral turpitude," that use is variable and inconsistent. Our review of these statutory provisions reveals that, whereas for trials, the expression "moral turpitude" speaks primarily to truthfulness, for the business of professional licensing and public appointments, the expression strikes the broader chord of public confidence in the administration of government. That is, a person who has credibility to testify may not have the public's confidence to practice certain professions or to serve on a governmental board.

In the present case the Respondent was convicted of crimes that concern not only her truthfulness, but also directly concern the public's confidence in the licensing of social workers. A social worker who perpetrates a large-scale scheme to bill for services she does not provide, damages the profession as a whole and the profession's reputation in the eyes of the public. Such crimes are properly considered to involve moral turpitude.

The crimes the Respondent was convicted of constitute both felonies and crimes of moral turpitude; as such, the Respondent is properly subject to sanctions under Md. Code Ann., Health Occ. § 19-311(8) (2009).

CONCLUSIONS OF LAW

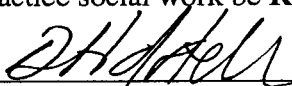
Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent did violate the Act and, as a result, the Respondent is subject to sanction. Md. Code Ann., Health Occ. § 19-311(8) (2009).

ORDER

I **PROPOSE** that the charges filed by the Board against the Respondent on December 8, 2008, be **UPHELD/DISMISSED**, and

I **PROPOSE** that the Respondent's license to practice social work be **REVOKED**.

April 22, 2010
Date Decision mailed



David Hofstetter
Administrative Law Judge

DH/rbs
113279

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Recommended Decision may file exceptions, in writing, with the Board of Social Work Examiners within fifteen days after issuance of this decision. COMAR 10.42.04.06D(2). The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

Roberta Gill, Esquire
Assistant Attorney General
Administrative Prosecutor
300 West Preston Street, Suite 302
Baltimore, MD 21201

Sylvia Morgan, Paralegal
Office of the Attorney General
300 West Preston Street, Suite 207
Baltimore, MD 21201

Cherie Cannon, LCSW-C, Chair
State Board of Social Work Examiners
4201 Patterson Avenue
Baltimore, MD 21215

James Merro, Executive Director
State Board of Social Work Examiners
4201 Patterson Avenue
Baltimore, MD 21215

Delia Schadt
Counsel, State Board of Social Work Examiners
Office of the Attorney General
300 West Preston Street, 3rd Floor
Baltimore, MD 21201

Keith Tobias, Constituent Services Administrator
Department of Health & Mental Hygiene
201 West Preston Street, Room 500
Baltimore, MD 21201

John Nugent, Deputy Counsel
Department of Health and Mental Hygiene
Office of the Attorney General
300 West Preston Street, 3rd Floor
Baltimore, MD 21201

Tammy Smith, LCSW-C
4428 Huntshire Drive
Randallstown, MD 21133

RECEIVED

APR 26 2010

BOARD OF SOCIAL
WORK EXAMINERS