

IN THE MATTER OF
DONNY SMITH, LCSW-C
Respondent

*** BEFORE THE**
*** STATE BOARD OF**
*** SOCIAL WORK**
*** EXAMINERS**
*** Case Number: 2016-2222**

LICENSE NUMBER 08197

* * * * *

FINAL DECISION AND ORDER

I. PROCEDURAL BACKGROUND

On June 8, 2016, the Maryland Board of Social Work Examiners (“the Board”) received a complaint alleging that the Respondent called a behavioral health program, “Facility B”¹ and identified himself as a social worker employed at “Facility A”. The Respondent stated that he wanted to speak to someone about establishing a referral system where for a predetermined fee the Respondent would refer clients to “Facility B” and in return “Facility B” would pay the Respondent for each referral. The complainant informed the Respondent that to his knowledge “Facility B” does not pay for referrals, but that he would follow up about the proposed arrangement with his supervisor. The supervisor confirmed that “Facility B” does not pay for referrals and advised the complainant to file a complaint with the licensing board.

¹ To ensure confidentiality, the names of individuals, hospitals and health care facilities are not disclosed in these charges. The Respondent may obtain the identity of the referenced individuals and entities by contacting the assigned administrative prosecutor.

The Board opened an investigation. At the conclusion of the investigation, on May 11, 2018, the Board issued charges under the Maryland Social Workers Act (the "Act"). Md. Code Ann., Health Occupations II ("HO") §§ 19-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.). The charges comprise pertinent provisions of the Act under § 19-311 and Code Md. Reg. ("COMAR") tit. 10 § 42.03, which in part states:

§ 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;

- (4) Commits any act of gross negligence, incompetence, or misconduct in the practice of social work;
- (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;
- (16) Fails to cooperate with a lawful investigation of the Board; [and]

COMAR Title 10 § 42.03.

03. Responsibilities to Clients

B. The licensee may not:

- (1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;
- (3) Exploit a relationship with a client for personal advantage or satisfaction; [or]
- (6) Engage or participate in an action that violates or diminishes the civil or legal rights of a client;
- (8) Share a fee or accept or give something of value for receiving or making a referral[.]

A notice of hearing was mailed to the Respondent by regular and certified mail return on or about August 8, 2018. The notice indicated that an evidentiary hearing was scheduled on Friday, September 14, 2018 at 2:00 pm. The Respondent signed as having received the notice of hearing on August 16, 2018 and the return receipt was received by the Board on August 22, 2018.

II. HEARING BEFORE THE BOARD

On September 14, 2018, the hearing commenced at 2:15 pm. A quorum of the Board was present. Assistant Attorney General Debra Smith, Administrative Prosecutor, was present to represent the State. The Respondent was not present, nor was he represented by counsel in his absence.

Exhibits and Witnesses

State's Exhibits:

1. Charges Under the Maryland Social Work Act, 5/11/18
2. Complaint, 6/8/16
3. Investigative Report, 7/31/17

4. Correspondence from Board to Complainant, 6/8/16
5. Correspondence from Investigator Gilmore to Respondent, 5/17/17
6. Subpoena Duces Tecum, 5/17/17
7. Subpoena Duces Tecum, 6/2/17
8. Correspondence w/attachment from Baltimore Trauma Response Team (BTRT) to Investigator Gilmore, 6/5/17
9. Correspondence from Investigator Gilmore to BTRT, 6/5/17
10. Subpoena Duces Tecum, 6/8/17
11. Subpoena Duces Tecum, 6/21/17
12. Subpoena Duces Tecum, 6/22/17
13. Investigator Gilmore's Memo to File, 6/27/17
14. Investigator Gilmore's Memo to File, 7/11/17
15. Investigator Gilmore's Memo to File, 7/12-13/17
16. Subpoena Duces Tecum, 5/31/17 w/Transcript of Complainant's Interview, 6/6/17
17. Correspondence from Investigator Gilmore to "For the Record" 6/6/17
18. Subpoena Duces Tecum, 6/8/17 w/Transcript of Dr. Humphrey, 6/2/17
19. Correspondence from Investigator Gilmore to "For the Record", 6/21/17
20. Order of Reinstatement, 4/9/10
21. License Verification Information, 5/17/17
22. Notice of Hearing, 8/8/18

State's Witnesses:

1. Garcia Gilmore
2. [REDACTED] Witness A
3. [REDACTED] Witness B

A full evidentiary hearing was held. Deborah Smith, Assistant Attorney General, presented the State's case. Exhibits 1 – 22 were admitted into evidence and the testimony of three witnesses was entered into the record. The hearing was uncontested due to the Respondent's failure to appear. Therefore, the facts were not in controversy.

III. FINDINGS OF FACT

The Board makes the following findings of fact based upon the entirety of the record:

1. The Respondent was initially licensed as a licensed social worker ("LCSW") on February 19, 1994. The Respondent's license expires on October 31, 2019.

2. At all times relevant, the Respondent was licensed as a social worker in the State of Maryland.

3. The Respondent was a volunteer for a non-profit organization, hereinafter "Facility A," which provided trauma services to crime victims and families.

4. On or about June 2, 2016, the Board received a Complaint from, a program manager, hereinafter "Witness A," of a mental health facility, hereinafter "Facility B," alleging that the Respondent attempted to solicit a referral fee for referring clients to Facility B.

5. After receiving the Complaint, the Board opened an investigation. The Board's investigation and determination are discussed *inter alia*.

The Board's Investigation

6. In furtherance of its investigation Board staff interviewed Witness A, who stated that he received a phone call on or about May 31, 2016, from the Respondent.

7. According to Witness A, the Respondent identified himself as a social worker at Facility A and stated that he wanted to set up a system to refer clients to Facility B for a fee.

8. Witness A stated that he did not recall accepting any prior referrals from Facility A, and that he had never had a social worker ask for a fee to refer a client to Facility B's program.

9. Witness A stated that his supervisor advised him to follow-up on the phone call and inform the Respondent's supervisor that he was attempting to solicit a referral fee.

10. When Witness A was not able to locate Facility's A's supervisor, he filed a Complaint with the Board.

11. In furtherance of its investigation Board staff interviewed the manager of Facility A, hereinafter "Witness B." Witness B stated that the Respondent was a volunteer at Facility A, and not an employee.

12. Witness B stated that the Respondent began volunteering in 2015, and that he participated in trainings but did not provide any clinical services for client families.

13. Witness B stated that the Respondent did not have the authority to solicit or accept referral fees on behalf of Facility A, and that he had not instructed the Respondent to solicit referral fees.

14. Witness B also stated that he was not contacted by Facility B, regarding its complaint that the Respondent attempted to solicit a referral fee and that Facility B did not inform him of the complaint.

15. In response to a Board subpoena for documents related to the Respondent's employment with Facility A, Witness B, provided a copy of a Letter of Commitment signed by the Respondent,

16. The letter of commitment describes the responsibilities between the Respondent and Facility A, but does not authorize the Respondent to solicit fees on behalf of Facility A.

17. Witness B stated that the Respondent's volunteer status with Facility A had already been terminated.

18. On or about June 21, 2017, the Board mailed a letter to the Respondent requesting that he appear at an interview before the Board. The interview was scheduled for June 29, 2017, at 10:00 a.m., and the Respondent agreed to attend the interview. On June 27, 2017, the Respondent contacted Board staff and stated that he was unable to attend the interview.

19. Board staff informed the Respondent that he needed to provide ten days notice before rescheduling an interview, and that his failure to appear without obtaining an extension would be considered a failure to cooperate with the Board's investigation.

20. On June 29, 2017, the Board sent the Respondent another subpoena and requested that he appear at the Board on July 11, 2017. On July 11, at 8:25 a.m. The Respondent was contacted to confirm his attendance, but he insisted that he would not be able to attend.

21. The Respondent was advised to request a postponement and provide the Board with his available dates for an interview. The Respondent did not contact the Board for a postponement and did not provide any alternative interview dates.

22. Board staff attempted to contact the Respondent on his cell phone on July 12 and 13, 2017, and left voice mail messages reminding him that the Board had not received his written request for postponement.

23. The Respondent's conduct, as described above constitutes, in whole or in part, a violation of one or more of the following provisions of H.O. § 19-311:

- (4) Commits any act of gross negligence, incompetence, or misconduct in the practice of social work; and/or
- (5) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work; and/or
- (6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board; and/or
- (16) Fails to cooperate with a lawful investigation conducted by the Board.

24. The Respondent's conduct, as alleged constitutes, in whole or in part, violation of one or more of the following provisions of COMAR 10.42.03.03:

B. The licensee may not:

- (1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;
- (3) Exploit a relationship with a client for personal advantage or satisfaction; [or]
- (6) Engage or participate in an action that violates or diminishes the civil or legal rights of a client;
- (8) Share a fee or accept or give something of value for receiving or making a referral[.]

IV. DISCUSSION

Pursuant to section 19-311 of the Act, the Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the Board finds, by a preponderance of the evidence, that the licensee committed any of the enumerated acts. The Board considered whether the Respondent committed the following violations of the Act: misconduct in the practice of social work; engaging in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work; violating any provision of title 19 or the regulations governing the professional standards in the practice of social work; and failing to cooperate with a lawful investigation conducted by the Board. See H.O. § 19-311.

The State's Case

Three Witnesses testified at the hearing. All three witnesses were credible. Witness Garcia Gilmore, the Board's investigator, testified that he subpoenaed the Respondent for an interview and sent notices for a case resolution conference and the hearing by certified and regular mail. The certified mail receipt confirmed that the Respondent received the subpoena and the notices. Yet, the Respondent failed to appear at the designated date and time. The Respondent also failed to contact the Board to schedule alternative dates.

Witness A, a Program Manager at Facility B, testified at the hearing. Witness A stated that on May 31, 2016 the Respondent contacted Facility B by telephone and identified himself as a social worker who would like to refer a client. Witness A spoke directly to the Respondent on the telephone. According to Witness A, the Respondent requested to speak with someone who he could arrange a system whereby the Respondent would send referrals to Facility B and in turn he would receive a stipend or

payment for the referrals. Witness A informed the Respondent that he was not aware of a referral fee system or arrangement. When Witness A discussed the Respondent's request with his supervisor, she told him to file a complaint with the Board. On June 2, 2016, Witness A submitted a complaint to the Board.

The State also called Witness B, the President and CEO of Facility A, to testify at the hearing.² Witness B explained that he was not aware that the Respondent had contacted any organization seeking a referral fee. He stated that the Respondent was not authorized to make referrals on behalf of Facility A to any organizations. After learning there was an issue with the Respondent soliciting a referral fee, the Respondent's employment with Facility A was terminated.

The Respondent's Case

The Respondent did not appear at the hearing; therefore, no evidence was offered to rebut the State's case.

Analysis of the Evidence

Based upon the testimony and the evidence presented at the hearing, the State proved by a preponderance of the evidence that the Respondent contacted Facility B and solicited a referral fee.

The uncontested evidence before the Board was that the Respondent violated pertinent provisions of the Act and COMAR as set forth in H.O. § 19-311 (4), (5), (6), (16), as well as COMAR 10.42.03.03 by engaging in misconduct stemming from his attempt to collect a fee for all referrals made to Facility B. The Board finds that these violations of the Act and COMAR most appropriately fall within COMAR 10.42.09.04 A

² At all times relevant to this proceeding the Respondent worked for Facility A.

(4), (6), (7), and (17), of the Board's sanctioning guidelines. The range of potential sanctions under these provisions includes reprimand to revocation and/or a minimum fine of \$100 to a maximum fine of \$5,000.

The Respondent's actions were not aligned with the law and regulations governing the minimum acceptable practice standards within the social work profession. In considering an appropriate sanction for the Respondent's license, the Board took into account evidence that: a) the Respondent contacted Facility B independently and of his own volition; b) the Letter of Commitment outlining the Respondent's duties at Facility A did not authorize the Respondent to make referrals; c) the Respondent's expressed desire to participate in a practice that is not permitted in the social work profession or by his employer; c) Respondent's expressed desire to seek an opportunity to exploit client relationships for personal gain; d) the Respondent's expressed desire to engage in a scheme to collect a fee for referrals that might very well diminish the civil or legal rights of a client; and the lack of any evidence to the contrary. The Respondent's active pursuit of an opportunity to participate in such unethical conduct certainly affects his ability to render safe and appropriate services to clients.

The Board also considered documentary evidence showing similar past misconduct by the Respondent. The Board took notice that on June 29, 2005 the Respondent plead guilty in the Circuit Court for Frederick County, Maryland, to one count of Felony Medicaid Fraud, in violation of Md. Crim. Law Code Ann., § 8-509. The Respondent was ordered to pay restitution in the amount of \$92,000.00 to the Maryland Department of Health and was sentenced to five (5) years in prison, with all but nine (9) months stayed. On June 30, 2006, as a result of his conviction, the Respondent

surrendered his license to practice social work. His license was reinstated on April 9, 2010.

The Respondent's conduct demonstrates a proclivity to engage in behavior that reflects poorly on the practice of social work and that serves no useful purpose in the social work profession. Indeed, his actions are indicative of a conscious disregard for the statutes and regulations in place to ensure social work services are rendered to the public safely and properly. Thus, the most appropriate sanction is revocation of his license to practice social work in the State of Maryland.

V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that a preponderance of the evidence presented to the Board shows that the Respondent violated Md. Code Ann., Health Occ. H.O. § 19-311 (4), (5), (6), and (16) as well as COMAR 10.42.03.


VI. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent's license to practice as a licensed certified social worker, clinical in the State of Maryland, license number 08197, is hereby **REVOKED**; and it is further

ORDERED that this Order is a **PUBLIC DOCUMENT** under Md. Code Ann., State Gov't § 10-617(h) (2009 Repl. Vol.).

12/14/18
Date


Sherryl Silberman, LCSW-C
Board 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. §§ 19-311 may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 19-313, 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").