IN THE MATTER OF	*	**BEFORE THE MARYLAND STATE**
DANA CARLOS GONZALES, RCYCP	*	**BOARD FOR THE CERTIFICATION**
Respondent	*	**OF RESIDENTIAL CHILD CARE**
Certificate Number: Y00535	*	**PROGRAM PROFESSIONALS**
	*	**CASE NUMBER: 18-001**

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CONSENT ORDER

On October 19, 2017, the Maryland State Board for Certification of Residential Child Care Program Professionals ("the Board") issued a "Notice of Intent to Summarily Suspend Certificate" ("Intent to Summarily Suspend") to **DANA CARLOS GONZALES, RCYCP** (the "Respondent"), Certificate Number Y00535, which notified the Respondent that the Board was considering summarily suspending the Respondent's certificate to practice as a Residential Child and Youth Care Practitioner ("RCYCP") in the State of Maryland pursuant to the Administrative Procedure Act (the "APA"), Md. Code Ann., State Gov't II § 10-226(c)(2) (2014 Repl. Vol. and 2016 Supp.).

The Intent to Summarily Suspend also informed the Respondent that a show cause hearing was scheduled for October 27, 2017 at 10:00 a.m., in order to provide the Respondent with an opportunity to present oral argument as to why the Board should not summarily suspend the Respondent's RCYCP certificate. The Board held a show cause hearing before a quorum of the Board on October 27, 2017; the Respondent, and the Administrative Prosecutor, Kelly Cooper, Staff Attorney, were present at the show cause hearing.

On October 27, 2017, the Board issued "Charges under the Maryland Certification of Residential Child Care Program Professionals Act" ("Charges") which notified the

Respondent that the Board was charging his RCYCP certificate with violations of the Maryland Certification of Residential Child Care Program Professionals Act (the "Act"), Md. Code Ann., Health Occ. II ("H.O.") §§ 20-101 *et seq.* (2014 Repl. Vol. and 2016 Supp.), specifically:

> § 20-313. Investigations; complaints; sanctions; prohibited acts
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> (b) Subject to the hearing provisions of § 20-314 of this subtitle, the Board may deny a certificate to any applicant, reprimand any certified program administrator or certified residential child and youth care practitioner, place any certified program administrator or certified residential child and youth care practitioner on probation, or suspend or revoke a certificate if the applicant, certified program administrator, or certified residential child and youth care practitioner:
>
> (4) 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;
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> (8) Willfully makes or files a false report or record while performing the duties of a program administrator or residential child and youth care practitioner[.]

On December 8, 2017, the Respondent attended a Case Resolution Conference ("CRC") in an effort to resolve the pending charges in lieu of an evidentiary hearing. As a result of the CRC, the Respondent agreed to enter into this Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

The Board finds that:

1. On or about August 26, 2015, the Respondent signed a notarized Affidavit for Applicants Seeking RCYCP Certification. The document asks:

   I swear or affirm under the penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Plead guilty to (whether or not resulting in a conviction)

. . .

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;

2. Rape or other sexual assault;

3. Physical, sexual, emotional abuse and/or neglect of a minor;

. . .

6. Sexual misconduct with a minor;

. . .

11. Assault, battery, or any violent offense involving a minor;

. . .

13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;

. . .

2. The affidavit continues with, "Except the following (list all incidents, locations, descriptions, and date). If none, write NONE." The Respondent did not provide any information; however, this section is starred.

3. The Respondent was required to undergo a criminal history records check prior to being granted certification. The check was conducted through the Criminal Justice Information System ("CJIS"). The Board received a criminal background report from CJIS on September 8, 2015, which revealed no criminal history.

4. On or about September 10, 2015, the Respondent submitted a Certification

Application for Residential Child and Youth Care Practitioner (the "Application").

5. In the Respondent's Application, the Respondent answered "Yes" to the question "Have you pled guilty, to, nolo contendere, been convicted of, or received probation before judgement for any criminal act (excluding misdemeanor traffic violations)?"

6. The Application instructed the Respondent to submit a written explanation for any "Yes" answers, as well as, submit a copy of the arrest and charges, court record and final disposition.

7. The Respondent did not submit a written explanation or any documents pertaining to a criminal act.

8. On September 16, 2015, the Board received an employment verification[1] from the Respondent indicating he was hired at a residential child care program (the "Residential Child Care Program") on August 18, 1988.[2]

9. On September 30, 2015, the Respondent was issued a certificate to practice as a Residential Child and Youth Care Practitioner ("RCYCP") in the State of Maryland under Certificate No. Y00535. The Respondent's certificate is currently active and scheduled to expire on September 30, 2017.

10. On or about September 20, 2017, the Respondent submitted to the Board a

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[1] This form is used for applicants who were employed in a residential child care facility prior to October 1, 2013 under the "grandfathered" clause. The "grandfathered" clause allowed individuals with a minimum of two (2) years experience to apply for the initial certification in 2014 without requiring a RCYCP training and exam. Effective October 1, 2015, all individuals working with children in a Residential Child Care Facility need to complete a RCYCP training and exam to be certified.

[2] By letter dated May 23, 2008, the Secretary of the State of Maryland Department of Human Resources granted the Residential Child Care Program's Administrator/CEO's request to "grandfather" the Respondent's employment with the Residential Child Care Program rather than barred the Respondent's employment "under the 2004 promulgation of revised residential child care regulations."

Residential Child and Youth Care Practitioners Renewal Form (the "Renewal Application"). In the Respondent's Renewal Application, the Respondent answered "Yes" to question "Have you pled guilty, nolo contendere, or been convicted of, or received probation before judgement for any criminal act (excluding misdemeanor traffic violations)?"

11. A second CJIS check was conducted as part of the Respondent's Renewal Application. The state portion of the CJIS report dated August 9, 2017, revealed no criminal history.

12. By letter dated August 18, 2017, the Department of Public Safety and Correctional Services ("DPSCS") notified the Board that the CJIS "inadvertently failed to disclose certain criminal history" for the Respondent's background check.

13. On or about September 21, 2017, upon the Board's request, the Respondent submitted a written narrative regarding his criminal history which stated:

> The incident occurred around 1AM. I went to see my daughter after leaving a Bar. While there I got into [a] conversation with the babysitter. We went upstairs into the bathroom and engaged into [*sic*] sexual activity. My daughters [*sic*] mother came home and caught us in the bathroom. She called the police, I was placed under arrest and originally charge [*sic*] with rape. I served prison time for statutory rape. The victim was 14 yrs [*sic*] old.

14. As part of it's investigation, the Board obtained certified records from the Court of Common Pleas Pennsylvania Branch.

15. A review of the records showed that on or about April 14, 1985, in the Court of Common Pleas (Case No. 268-1985) a Criminal Complaint ("Complaint") was filed against the Respondent. The Complaint charged the Respondent with: 1) Rape, 2) Statutory Rape, 3) Involuntary Deviate Sexual Intercourse, and 4) Aggravated Assault.

16. According to the Affidavit of Probable Cause:

> [The Juvenile Victim], age 13, . . . reported that between the hours of 0315 & 0330 on Sunday April 14, 1985, she was babysitting . . . . At this time one of the girls she was watching opened an outside door and left [*sic*] [the Respondent], into the residence. [The Juvenile Victim] said that she had been sleeping on the floor when this occurred and she woke up when she heard [the Respondent] talking. [The Respondent] ask[ed] [The Juvenile Victim] where the bathroom was. [The Respondent] pulled [The Juvenile Victim] into the bathroom and pulled her pants down and then pulled his own pants down. [The Respondent] told her that "you better not scream or I will hit you in the mouth." [The Juvenile Victim] said that [the Respondent] made her perform oral sex on him then he held her down by her arms and had sexual intercourse with her.
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> [The Witness] . . . stated that she came home at approximately 0330 hrs. [on] 4/14/1985 and heard crying coming from the bathroom. She heard [The Juvenile Victim] crying from the bathroom and heard her say that [the Respondent] had her in there. [The Witness] said that [the Respondent] would not open the door for her and she had to push it open. When she got the door part way open she saw [the Juvenile Victim] laying on the floor crying with her pants pulled part way down. She said that [the Juvenile Victim] was saying . . . "it hurts!" [The Witness] said that her seven year old daughter . . . told her that she saw [the Respondent] pull [the Juvenile Victim] into the bathroom.

17. On or about September 9, 1985, the Respondent pled guilty to, and was found guilty of, Statutory Rape. On or about October 2, 1985, the Respondent was sentenced to imprisonment for a period of not less than eighteen (18) months and not more than one hundred and twenty (120) months.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the Maryland Certification of Residential Child Care Program Professionals Act, specifically:

> § 20-313. Investigations; complaints; sanctions; prohibited acts
>
> (b) Subject to the hearing provisions of § 20-314 of this subtitle, the

Board may deny a certificate to any applicant, reprimand any certified program administrator or certified residential child and youth care practitioner, place any certified program administrator or certified residential child and youth care practitioner on probation, or suspend or revoke a certificate if the applicant, certified program administrator, or certified residential child and youth care practitioner:

(4) 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;

(8) Willfully makes or files a false report or record while performing the duties of a program administrator or residential child and youth care practitioner[.]

III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of the Board considering this case:

ORDERED that the Board **RESCINDS** the "Notice of Intent to Summarily Suspend Certificate" issued to the Respondent on October 19, 2017; and it is further

ORDERED that the Respondent's certificate to practice as a Residential Child and Youth Care Practitioner ("RCYCP") in the State of Maryland is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent's RCYCP certificate shall be placed on **PROBATION** for a minimum period of **TWO (2) YEARS**. As conditions of probation, the Respondent must comply with the following terms and conditions:

1. The Respondent shall provide the Board a written list of all locations where he practices as a RCYCP and shall notify the Board in writing within seven (7) days whenever there are changes.

2. The Respondent's practice shall be supervised by an on-site supervisor (the "Supervisor") at his place of practice, subject to the following terms:

a. **Within fifteen (15) days** from the date the Board executes this Consent Order, the Respondent shall submit the name and contact information of the Supervisor for purposes of obtaining Board approval to serve as Supervisor for his practice for the entire two (2) year period of probation. The Respondent shall provide the Supervisor with a copy of the charging document, Consent Order, and any other documents the Board deems relevant to his case. The Respondent understands and agrees that the Board may terminate any Supervisor and require that another Supervisor be designated.

b. The Respondent shall ensure that the Supervisor notifies the Board, in writing, **within ten (10) days** of the Board's approval, of his/her acceptance of his/her supervisory role.

c. The Supervisor shall hold face-to-face meetings with the Respondent on a monthly basis. At these meetings, the Supervisor shall review and discuss any issues that are similar to the charging document, as well as, discuss and review any employment related issues with the Respondent. The Supervisor shall review the Respondent's employment to determine the Respondent's compliance with standards for a RCYCP.

d. The Supervisor shall submit quarterly written reports to the Board, which shall include but not be limited to the issues discussed at the monthly meetings, complaints raised regarding the Respondent, employment issues discussed, and his/her assessment of the Respondent's compliance with standards for a RCYCP.

e. The Respondent shall have sole responsibility for ensuring that the Supervisor submits the required quarterly reports to the Board in a timely manner.

f. The Board has sole authority to implement any changes in the supervision and retains all authority to approve any changes in the supervision.

g. In the event that the Supervisor discontinues supervising the Respondent for any reason, the Respondent shall immediately notify the Board and submit a replacement candidate to serve as his Supervisor under the terms specified above.

3. The Respondent shall practice in accordance with the laws and regulations governing the operation of a RCYCP in Maryland;

AND IT IS FURTHER ORDERED that after the conclusion of the **TWO (2) YEAR** probationary period, the Respondent may submit a written petition to the Board requesting termination of probation; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a hearing before the Board, may impose any appropriate sanction under the Act, including probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of 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. and 2017 Supp.).

12/8/17
Date

Nicole Smith, CRCCPA
Nicole Smith, CRCCPA, Board Secretary
Maryland Board for Certification of Residential Child Care Program Professionals

CONSENT

I, Dana Carlos Gonzales, acknowledge that I have had the opportunity to consult with legal counsel before signing this document. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF BALTIMORE

I HEREBY CERTIFY that on this 8th day of DECEMBER, before me, Notary Public of the State and City/County aforesaid, **Dana Carlos Gonzales** personally appeared, and made oath in due form of law that signing the foregoing Consent Order of Probation was the voluntary act and deed of **Dana Carlos Gonzales.**

AS WITNESSETH my hand and notarial seal.

SEAL

Patricia Morris English
Notary Public

My Commission Expires: 22 SEPT 2018

PATRICIA MORRIS ENGLISH
NOTARY PUBLIC STATE OF MARYLAND
County of Baltimore
My Commission Expires September 22, 2018

other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge the Findings of Fact and Conclusions of Law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order, voluntarily and without reservation, and I fully understand and comprehend the language, meaning, terms, and effect of this Consent Order.

12/8/17
Date

Dana Carlos Gonzales
Dana Carlos Gonzales, Y00535