

IN THE MATTER OF	*	BEFORE THE
STEPHEN SCHAFFNER, LCPC	*	STATE BOARD OF
Respondent	*	PROFESSIONAL
License Number:	*	COUNSELORS
LC3972	*	AND THERAPISTS
	*	Case Number: 2012-95

* * * * *

FINAL ORDER OF REVOCATION¹

On November 30, 2015, the Maryland State Board of Professional Counselors and Therapists (the "Board"), issued a Notice of Intent to Revoke (the "Notice") the clinical professional counseling license of **STEPHEN SCHAFFNER, LCPC** (the "Respondent"), license number LC3972 based on his violation of Md. Code Ann., Health Occ. § 17-101, *et seq.* (2014 Repl. Vol.).

The Board notified the Respondent of its intent to revoke his license based on his violation of the Act, specifically:

17-509. Denial, probation, suspension or revocation of certificate applicant or holder.

Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or certificate to any applicant, place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license of any licensee or a certificate of any certificate holder if the applicant, licensee, or certificate holder:

...

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

¹ This Order of the Board supersedes the June 20, 2014 Consent Order and the October 6, 2014 Order for Summary Suspension of the Respondent's license to practice clinical professional counseling.

The Respondent received the Notice on December 8, 2015. The Respondent was notified that failure to request a hearing within thirty days of the date he received the Notice would result in the Board signing this Final Order of Revocation. The Respondent's hearing request was due on or before January 8, 2016. The Respondent failed to request a hearing.

FINDINGS OF FACT

The Board finds the following:

1. On or about April 21, 2011, the Respondent was initially licensed by the Board as a Clinical Professional Counselor.
2. On or about June 20, 2014, the Respondent entered into a Consent Order with the Board that imposed a minimum six-month suspension of his license² in resolution of charges of unprofessional or immoral conduct, violating the code of ethics and related rules and regulations.
3. On October 1, 2014, the federal government indicted the Respondent in the United States Court for the District of Maryland ("United States District Court") in Criminal Case Number JFM-14-0460, with ten felony counts including: one count of Conspiracy to Sexually Exploit a Child in violation of 18 U.S.C. § 2251 (a) and (e); and nine counts of Sexual Exploitation of a Child in violation of 18 U.S.C. § 2251(a) ("Indictment"). The victim of the crimes was a six-week old male infant.

² The intent of the Consent Order was that if the Respondent complied with the terms and conditions, the suspension would be temporary and could be terminated as early as six months from the date of execution, and subsequently the Respondent would be placed on two years of probation.

4. On October 6, 2014, based on the Indictment, pursuant to Md. Code Ann., State Gov't § 10-226 (c)(2)(i), the Board summarily suspended the Respondent's license, concluding that the public health, safety or welfare imperatively required emergency action. The Board provided the Respondent with an opportunity to appear before the Board for a post-deprivation show cause hearing. The Respondent failed to request a post-deprivation hearing within 30 days of service of the Order for Summary Suspension, and the Board continued the suspension.

5. On or about March 16, 2015, the Respondent pled guilty to two counts of the Indictment: Count 1 - Conspiracy to sexually assault a child in violation of 18 U.S.C. § 2251(a) and (e); and Count 10 - Sexual exploitation of a child in violation of 18 U.S.C. § 2251(a).

6. The Respondent (identified below as "Defendant") pled guilty to the following elements of each offense, agreeing that the Government would prove each element if the case proceeded to trial:

Count 1 - Conspiracy to Sexually Exploit a Child

- a. Two or more persons agreed to sexually exploit a child;
- b. The Defendant was a party to or member of that agreement; and
- c. The Defendant joined the agreement or conspiracy knowing of its objective and intending to join together with at least one other conspirator to achieve that objective.

Count 10 - Sexual Exploitation of a Child

- a. The Defendant employed, used, persuaded, induced, enticed or coerced an individual to assist any other person to take part in sexually explicit conduct for the purpose of producing a visual depiction of such conduct;
- b. A person in the visual depiction was a minor;
- c. The Defendant knew or had reason to know that such visual depiction would be mailed or transported across state lines or in foreign commerce; or that the visual depiction was produced using materials that had been mailed,

shipped, or transported across state lines or in foreign commerce by any means.

7. On or about July 9, 2015, the United States District Court sentenced the Respondent to 35 years of confinement in a federal facility for Conspiracy to Sexually Exploit a Child in violation of 18 U.S.C. § 2251 (a) and (e); and Sexual Exploitation of a Child in violation of 18 U.S.C. § 2251(a).

8. In Maryland, it is well established by the Court of Appeals that there is a “fundamental distinction” in determining whether a crime constitutes one of moral turpitude for purposes of a licensing board as compared to credibility issues on cross-examination at a criminal trial. *Ricketts v. State*, 291 Md. 701, 712 (1981). The *Ricketts* Court cited *Brun v. Lazzell*, 172 Md. 314, 322 (1937), as standing for the proposition that a dentist engaging in the intentional act of indecent exposure constituted a crime of moral turpitude for purposes of determining that he had violated the ethical standards of his profession. See also, *Stidwell v. Maryland State Board of Chiropractic Examiners*, 144 Md. App. 613 (2002) (conviction for solicitation constitutes a crime of moral turpitude for purposes of massage therapist license).

9. In the following disciplinary matters adjudicated by the Maryland Board of Physicians under Health Occ. § 14-404(b), the Board has found non-traditional crimes to involve moral turpitude: *In the Matter of Rosario G. Guerzon, M.D.*, BPQA Case #93-0727 (common law assault, which involved an arrest and charge for sexual intercourse with a 14 year-old); *In the Matter of William Lightfoote, II, M.D.*, BPQA Case # 93-0725 (failure to remain at the scene of traffic accident); *In the Matter of Michael Q. Stearns, M.D.*, BPQA Case #95-0611 (assault and battery, which involved sexual touching of a

patient) and *In the Matter of Keith-Jan Lindemann, M.D.*, MBP Case #2005-0481 (inappropriate sexual touching of a 10 year old).

10. In this pending disciplinary action before the Board, it is clear that a crime involving sexual contact with a 6 week-old infant involves moral turpitude, defined generally as, "the offense is so base, vile, and shameful as to leave the offender not wanting in depravity." *Lazzell*, 172 Md. at 321. The case law is supportive of this premise. *Mehboob v. Attorney General of the United States*, 549 F.3d 272 (3rd. Cir. 2008) (misdemeanor indecent assault was crime of "moral turpitude," subjecting alien to removal...where society's rules of morality were violated by the touching of a child under sixteen years of age by a person four or more years older for purpose of arousal or sexual gratification); and *Castle v. I.N.S.*, 541 F.2d 1064, 1066 (4th Cir.1976) (a man's carnal knowledge of a fifteen year old girl, not his wife, is so basically offensive to American ethics and accepted moral standards as to constitute moral turpitude *per se*).

11. Based on the totality of circumstances, sufficient justification exists for the Board to find that the Respondent's guilty plea to two criminal counts involving both 18 U.S.C. § 2251 (a) and (e) and subsequent sentencing, constitutes evidence that the Respondent was convicted of a felony and a crime involving moral turpitude in violation of Health Occ. § 17-509(10).

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, the Board finds by a preponderance of the evidence and concludes that the Respondent violated Health Occ. § 17-509(10).


ORDER

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

ORDERED that the Respondent's license to practice as a certified professional counselor is hereby **REVOKED**; and it is further

ORDERED that this Order is a **PUBLIC DOCUMENT**, pursuant to Md. Code Ann., Gen'l Prov. §§ 4-101 *et seq.* (2014).

1-15-2016
Date


Carol A. Deel, LCPC, LCMFT, Chair
Maryland State Board of Professional
Counselors and Therapists

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 17-512 (2014 Repl.Vol.), you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this Order and shall be made as provided for judicial review of a final decision in Md. Code Ann. State Gov't §§ 10-201 *et seq.* (2014 Repl. Vol.) and Title 7, Chapter 200 of the Maryland Rules.