

IN THE MATTER OF
MARVIN UNDERWOOD
Applicant, CSC-AD

* BEFORE THE MARYLAND
* BOARD OF PROFESSIONAL
* COUNSELORS AND THERAPISTS
* Case Number: 2018-018

* * * * *

CONSENT ORDER

On or about February 20, 2018, the Maryland State Board of Professional Counselors and Therapists (the "Board") notified **MARVIN UNDERWOOD** (the "Applicant") (D.O.B. 4/1/1954), of its intent to rescind the Applicant's Alcohol and Drug Trainee Employment Authorization (the "Trainee Authorization") and to deny his Application for Certification as a Certified Supervised Counselor – Alcohol and Drug (CSC-AD) (the "CSC-AD Application") pursuant to the Maryland Professional Counselors and Therapists Act (the "Act"), codified at Md. Code Ann., Health Occ. II ("Health Occ.") §§ 17-101 *et seq.* (2014 Repl. Vol. & 2017 Supp.).

The Board based its intent to rescind the Applicant's Trainee Authorization and to deny the Applicant's CSC-AD Application on the following provisions of the Act:

§ 17-404. Requirements for certified supervised counselor -- Alcohol and drug.

- (a) In general. -- To qualify as a certified supervised counselor-alcohol and drug, an applicant shall:
 - (1) Be of good moral character[.]

§ 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:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant, licensee, or certificate holder or for another;
- (6) Willfully makes or files a false report or record in the practice of counseling or therapy;
- (8) Violates the code of ethics adopted by the Board;
- (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;
- (13) Violates any rule or regulation adopted by the Board; [and]
- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy[.]

Pursuant to Health Occ. §17-509(8) & (13), shown above, the Board bases its intent to rescind the Applicant's Trainee Authorization and to deny the CSC-AD Application on the following provision of the Code of Ethics adopted by the Board, codified at Code Md. Regs. ("COMAR") 10.58.03 *et seq.*:

COMAR 10.58.03.04 Ethical Responsibilities.

B. A counselor may not:

- (2) Participate in dishonest, fraudulent, or deceitful activity in the capacity of a counselor.

In addition, the Board bases its intent to deny on the terms of the Applicant's *Alcohol and Drug Trainee Employment Authorization* (the "Authorization"), which provides:

"AUTHORIZED TRAINEES WHO VIOLATE THE MARYLAND PROFESSIONAL COUNSELORS AND THERAPISTS CODE OF ETHICS MAY NOT RECEIVE FURTHER CONSIDERATION FOR CERTIFICATION OR LICENSURE."

On or about May 4, 2018, the Respondent attended a Case Resolution Conference at the Board's office. Subsequently, the Respondent agreed to enter into this Consent Order to resolve the charges issued in this case.

FINDINGS OF FACT

The Board finds the following facts:

I. Background

The Authorization

1. On or about September 20, 2016, the Board granted the Applicant the Trainee Authorization until January 1, 2018. The Trainee Authorization permitted the Applicant to practice alcohol and drug counseling pending completion of the requirements for certification in alcohol and drug counseling.

The CSC-AD Application

2. On or about September 18, 2016, the Board received the Applicant's CSC-AD Application.

3. The CSC-AD Application required the Applicant to answer the question:

Have you ever [been] charged with a crime, pled guilty, nolo contendere, or been convicted of or received probation before judgment of any criminal act (excluding traffic violations) in any state? (*including Maryland*)

4. In response the Applicant answered YES.

5. Below the question was the following instruction:

If "yes" provide the following information: *True Test Copy of Disposition of charges or case issued by the court from the state where the criminal act occurred. Explanation of charges and/or case. Use separate sheet if necessary. Include the Date of Conviction [emphasis in original]*

6. Below this instruction, the Applicant wrote "Balto., MD ... Child Abuse" but offered no further explanation or documentation.

7. The Applicant affixed his notarized signature to the CSC-AD Application, and thereby affirmed the following oath:

I do hereby affirm that all statements made herein are true and correct to the best of my knowledge and belief.

8. Based on the Applicant's acknowledgement on the CSC-AD Application that he had criminal history, the Board began an investigation.

Board Investigation

9. The Board's investigator obtained records that indicated that on or about August 5, 1997, in the Circuit Court for Baltimore City, the Applicant pleaded guilty to and was convicted of the following offenses, which he failed to properly disclose from the Board: Child Abuse, Sex Offense – 2nd Degree, and Indecent Exposure.

10. In addition, the Applicant had a history of other criminal charges, including sex offenses and assault, which he failed to disclose.

11. On or about November 10, 2016, when asked to explain the criminal history uncovered by the Board's investigator, the Applicant submitted a letter to the Board.

12. In the letter, the Applicant stated that his convictions resulted from his "inappropriate conduct over a short period of time" with his stepdaughter, who was 13 years old at the time.

CONCLUSIONS OF LAW

13. Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Applicant's conduct as described above constitutes violations of the Act and a basis on which to rescind the Applicant's Trainee Authorization and to deny the CSC-AD Application. Specifically:

The Applicant falsely answered on his CSC-AD Application that his only criminal history consisted of one charge/conviction for "child abuse," and omitted his history of multiple criminal charges and convictions. The Applicant's false answer on his CSC-AD Application constitutes: fraudulently or deceptively attempting to obtain a license or certificate, in violation of Health Occ. § 17-509(1); willfully making or filing a false report or record in the practice of counseling or therapy, in violation of Health Occ. § 17-509(6); violating the code of ethics and a rule or regulation adopted by the Board -- i.e. participating in dishonest, fraudulent, or deceitful activity in the capacity of a counselor, in violation of COMAR 10.58.03.04B(2) -- in violation of Health Occ. §§ 17-509(8) & (13); and immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy, in violation of Health Occ. § 17-509(16).

The Applicant's conviction for 2nd degree sexual offense constitutes: being convicted of a felony, in violation of Health Occ. § 17-509(10).

The Applicant's false answers on his CSC-AD Application and his criminal history as described above demonstrate that he lacks good moral character, in violation of Health Occ. § 17-404(a)(1).

The Applicant's violation of the Code of Ethics adopted by the Board, specifically COMAR 10.58.03.04B(2), as described above, constitutes a violation of the terms of the Applicant's Authorization, as cited above.

ORDER

Based on the foregoing, it is this 15th day of June, 2018, by the Board hereby:

ORDERED that the Applicant is **REPRIMANDED**; and it is further

ORDERED that the Applicant is **FINED** in the amount of \$500, payable in installments of \$50/month for ten months; and it is further

ORDERED that from the effective date of the Consent Order, the Applicant shall be placed on **PROBATION** for a period of at least **FIVE (5) YEARS**, and continuing until the Applicant has successfully completed the following probationary conditions:

1. Within six (6) months of the effective date of the Consent Order, the Applicant shall enroll in and complete an in-person course in professional ethics, approved in advance by the Board, equivalent to at least 4 continuing education (CE) credits;
2. Prior to accepting employment with any employment that includes counseling in any capacity, the Applicant shall present a complete copy of the Consent Order to the prospective employer.
3. Prior to signing a supervision agreement with any Board-approved supervisor, the Applicant shall present a complete copy of the Consent Order to the prospective supervisor;
4. The Applicant shall report to the Board within 48 hours any criminal charge filed against him, and keep the Board fully updated regarding the outcome of each charge, within 48 hours of any disposition;
5. Upon the Applicant's conviction for any criminal charge, except minor traffic violations, the Applicant's certification shall be immediately summarily suspended;
6. Upon the Applicant's conviction for any criminal felony charge, the Applicant's certification shall be immediately revoked;
7. The Applicant shall not provide therapy or counseling to minors or work in any professional capacity authorized under his certification with minors;
8. The Respondent shall within 48 hours, inform the Board in writing of any new counseling-related employment, including his new position, and the names and contact information for any new supervisors or employers, and shall immediately supply the Board with any additional information the Board requests

regarding his new employment situation;

9. The Respondent shall within 48 hours, inform the Board in writing if he begins any independent counseling-related practice and shall immediately supply the Board with any additional information the Board requests regarding his new practice situation; and

10. The Applicant shall, at all times, comply with the Act; and it is further

ORDERED that no part of the training or education that the Applicant receives in order to comply with the Consent Order may be applied to his continuing education credits required for certification; and it is further

ORDERED that the Applicant shall at all times cooperate with the Board, any of its agents or employees, and with the Board-assigned inspector, in the monitoring, supervision, and investigation of the Applicant's compliance with the terms and conditions of the Consent Order; and it is further

ORDERED that the Applicant shall be responsible for all costs incurred under the Consent Order; and it is further

ORDERED that after a minimum of five (5) years from the effective date of the Consent Order, the Applicant 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. The Board shall grant termination if the Applicant has fully and satisfactorily complied with all the terms and conditions of the Consent Order and there are no pending investigations or complaints related to the findings of fact in the Consent Order; and it is further

ORDERED that if the Applicant allegedly fails to comply with any probationary

condition no. 5, the Applicant shall be summarily suspended, and given notice and an opportunity for a post-deprivation show cause hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall subsequently be an evidentiary hearing before the Board; and it is further

ORDERED that if the Applicant allegedly fails to comply with any probationary condition no. 6, the Applicant shall be immediately revoked, and given notice and an opportunity for a post-deprivation show cause hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall subsequently be an evidentiary hearing before the Board; and it is further

ORDERED that if the Applicant allegedly fails to comply with any other term or condition of the Consent Order, the Applicant shall be given notice and an opportunity for a hearing. If, in its sole discretion, the Board determines that there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Applicant shall be given a show cause hearing before the Board; and it is further

ORDERED that after the appropriate hearing, if the Board determines that the Applicant has failed to comply with any term or condition of the Consent Order, the Board may reprimand the Applicant, place the Applicant on probation with appropriate terms and conditions, or suspend or revoke the Applicant's license to practice dentistry in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Applicant; and it is further

ORDERED that the Consent Order shall be a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 et seq. (2014).

June 15, 2018
Date

Risa Ganel, MS
Risa L. Ganel, MS, LCMFT
Board Chair
Maryland State Board of Professional
Counselors and Therapists

CONSENT

By this Consent, I, Marvin L. Underwood, agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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 other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having consulted with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and I understand its effect.

5/25/18
Date

Marvin L. Underwood
Marvin L. Underwood, The Respondent

NOTARY

STATE OF Maryland

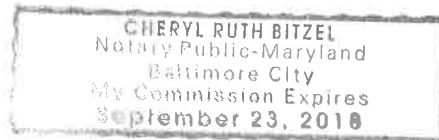
CITY/COUNTY OF: Baltimore

I HEREBY CERTIFY that on this 25th day of May 2018,
before me, a Notary Public of the State and County aforesaid, personally appeared
Marvin L. Underwood and gave oath in due form of law that the foregoing Consent Order
was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal:

Ch Ruth Bitzel

Notary Public



My commission expires: 09/23/2018