

IN THE MATTER OF * **BEFORE THE**
KENNETH ZEIGLER, LCSW-C * **MARYLAND STATE BOARD**
Respondent * **OF SOCIAL WORK EXAMINERS**
License Number 06999 * **Case Number 2018-2500**

* * * * *

FINAL DECISION AND ORDER

On February 8, 2019, the Maryland State Board of Social Work Examiners (“the Board”) issued Charges under the Maryland Social Work Practice Act (the “charges”) against Mr. Kenneth Zeigler (“Respondent”). The charges alleged that Respondent committed misconduct in the practice of social work, violating regulations governing the practice of social work and violating regulations in the Board’s Code of Ethics. *See* Health Occ. (“H.O”) § 19-311(4), (5) and (6), and COMAR 10.42.03.03B(3), .05A, C, and E.

Respondent requested an evidentiary hearing on the charges. The Board delegated to the Office of Administrative Hearings (“OAH”) the case for an evidentiary hearing and a proposed decision. OAH held the evidentiary hearing before an administrative law judge (“ALJ”).

On March 31, 2020, the ALJ issued a proposed decision (“P.D.”). The PD concluded that the Respondent violated sections 19-311(4), and (5) of the Maryland Social Work Practice Act and 19-311(6) by violating COMAR 10.42.03.03B(3) and COMAR 10.42.03.05D. The PD recommended that the Respondent’s license to practice clinical social work be revoked. The Respondent filed exceptions.

On July 10, 2020, a hearing on the Respondent’s exceptions was held before the full Board.

FINDINGS OF FACT

Unless otherwise specifically noted in this decision, the Board adopts the findings of fact, discussion and conclusions of law set forth in the PD (pages 5-28), which are incorporated by reference into this decision. The ALJ's proposed decision is attached as **Exhibit 1**. The findings of fact were proven by the preponderance of the evidence.

Summary of Facts

Respondent was issued a license to practice clinical social work in Maryland on June 15, 1991. As a clinical social worker, the Respondent provides individual and marital counseling services to his clients. Sometime after receiving his license to practice clinical social work, Respondent informed [REDACTED] a Presbyterian Minister that he was available for counseling referrals. [REDACTED] referred a husband and wife (Client A and Client B, respectively) to Respondent for marital counseling around August 2011. Clients A and B were seen jointly by Respondent for marital counseling and individually for individual counseling services. The Respondent continued to provide both joint and individual counseling services to Client A and Client B from 2011 to 2013. In 2013 Client A and Client B separated and Client A and Client B terminated joint counseling services as well as individual counseling services provided by Respondent.

Shortly after terminating counseling services, Client A became suspicious that lines had been crossed between Respondent and Client B. Client A filed a complaint with the Board alleging that during the time that Client A and Client B were receiving joint marital counseling and individual counseling from Respondent, Respondent sent inappropriate texts to Client B and breached confidentiality by disclosing confidential information about Client A to Client B.

The Board investigated Client A's complaint and issued a Letter of Admonishment to Respondent on September 12, 2014. The Board determined that the Respondent's actions constituted a violation of the code of ethics found at COMAR 10.42.03.03B, and that there was probable cause to charge him with violating the Act. In disregard of the Board's admonition, Respondent started dating Client B in 2015, engaged in sexual relations with Client B in 2016 and married Client B in 2018. Upon learning that Respondent and Client B had married, [REDACTED] filed a complaint with the Board.

The Board initiated an investigation into [REDACTED] complaint and interviewed the Respondent on January 19, 2019. In the meeting with the Board's investigator, Respondent stated under oath that he believed it was not appropriate for a social worker to have a sexual relationship with a current or former client. He stated further that engaging in a sexual relationship with a current or former client constitutes a breach of professional ethics. The Board brought charges against Respondent and Respondent contested the matter resulting in a three day trial held before the Office of Administrative Hearings (the "Office"). The Office issued a proposed decision and order to the Board for revocation of the Respondent's license.

DISCUSSION

Respondent timely filed exceptions to the ALJ's proposed decision on April 14, 2020. The Board has considered Respondent's exceptions and find them to be without merit. Respondent willfully chose to violate the code of ethics by entering into a sexual relationship with a former client.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 19-311(4), (5), and (6):

- (4) Commits any acts 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; [and]
- (6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board;

SANCTION

In assessing the appropriate sanction in this case, the Board considered mitigating and aggravating factors under COMAR 10.42.09.05A-B. The Board also considered the minimum and maximum sanctions for each of the violations as stated under COMAR 10.42.09.04A-B. Respondent violated generally accepted standards of the practice of social work. After practicing for nearly 30 years, the Respondent's lack of insight into his misconduct is troubling. The Board believes that the actions of Respondent were intentional, deliberate and grossly negligent; potentially harmful, demonstrate a lack of insight and poor judgment, as well as a disregard for the ethical standards of social work practice that help both practitioners and patients navigate professional and personal boundaries. Thus, the Board upholds the ALJ's decision, and adopts the findings of fact, discussion and conclusions of law in its entirety.

ORDER

It is, on the affirmative vote of a majority of the quorum of the Board, hereby

ORDERED that the Respondent's license to practice as a licensed certified social worker, clinical in the State of Maryland, license number 06999, is hereby **REVOKED**; and it is further

ORDERED that this is a public document.

10/09/2020



Date

Jerry Farrell, 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. §§ 19-313 may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 17-512, 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").

EXHIBIT 1

STATE BOARD OF SOCIAL WORK
EXAMINERS

v.

KENNETH ZEIGLER,
RESPONDENT

LICENSE No.: 06999

* BEFORE RICHARD O'CONNOR,
* ADMINISTRATIVE LAW JUDGE,
* THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: MDH-BSW-87-19-28264

Received
APR 01 2020
Board of Social Work Examiners

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PROPOSED DECISION

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PROPOSED ORDER

STATEMENT OF THE CASE

On February 8, 2019, the State Board of Social Work Examiners (Board) issued Charges Under the Maryland Social Workers Act against Kenneth Zeigler (Respondent) for exploiting a relationship with a client¹ for personal advantage or satisfaction, having a dual personal and professional relationship with a client, committing sexual misconduct with a client, and terminating a professional relationship to enter into a social or sexual relationship with a client, in violation of the Maryland Social Workers Act (Act). Md. Code Ann., Health Occ. §§ 19-101

¹ Code of Maryland Regulations (COMAR) 10.42.03.02B(2) defines the term "client" in the context of social work as "the individual, couple, family, group, or organization to whom the licensee is rendering professional service." The parties, witnesses, and exhibits sometimes used the word "patient" as synonymous with "client" during the hearing.

through 19-407 (2014 & Supp. 2019). Specifically, the Board alleges that the Respondent violated sections 19-311(4), (5), and (6) of the Act by committing acts of gross negligence, incompetence, or 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; and violating regulations adopted under the Act. Md. Code Ann., Health Occ. § 19-311(4), (5), (6) (2014). The regulations allegedly violated are COMAR 10.42.03.03B(3), prohibiting exploiting a relationship with a client for personal advantage or satisfaction, and 10.42.03.05A, C, and E, which, among other things, prohibit sexual misconduct with current or former clients. The charges allege that the Respondent entered into a sexual relationship with and later married a former client.

On October 15, 2019, the Respondent filed a Motion to Dismiss Charges. The State filed a Response on October 25, 2019. On October 28, 2019, I held a hearing on the Motion and, on November 19, 2019, I denied the Motion.

I held a hearing on the merits on December 16 and 17, 2019, and January 8, 2020, at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 19-312 (2014). Steven A. Allen, Esquire, represented the Respondent, who was present each day. Robert J. Gilbert, Assistant Attorney General and Administrative Prosecutor, represented the State. Katherine Vehar-Kenyon, Assistant Attorney General, also represented the State on the first two days of the proceedings.

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 OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 10.42.04; COMAR 28.02.01.

ISSUES

Is the Respondent subject to discipline by the Board for violating sections 19-311(4), (5), or (6) of the Health Occupations Article or for violating COMAR 10.42.03.03B(3) or COMAR 10.42.03.05A, C, or E? If the Respondent committed any such violations, what sanction, if any, is appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The State presented a binder of pre-marked exhibits, as follows, which I admitted into evidence except as noted:

1. The Board's licensing information for the Respondent, 2004 to 2019.
2. Report of complaint and investigation, October 30, 2018.
3. Letter from the Respondent to the Board, April 29, 2014.
4. Letter of Admonishment, September 12, 2014.
5. Complaint by [REDACTED] May 24, 2018.
6. Letter from the Respondent to the Board, July 26, 2018.
7. Certified Copy of Marriage Record, July 3, 2018.
8. The Respondent's treatment records for [REDACTED] sent to the Board in response to a subpoena duces tecum issued to the Respondent on July 11, 2018.
9. [REDACTED] billing records from the Respondent sent to the Board in response to a subpoena duces tecum issued to [REDACTED] on August 31, 2018.
10. The Respondent's billing records for [REDACTED] sent to the Board in response to a subpoena duces tecum issued to the Respondent on August 31, 2018.
11. The Respondent's treatment records for [REDACTED] sent to the Board in response to a subpoena duces tecum issued to the Respondent on December 12, 2018.
12. Not admitted.

13. Transcript of an interview with [REDACTED], August 7, 2018.
14. Transcript of an interview with [REDACTED] August 28, 2018.
15. Transcript of an interview with the Respondent, August 31, 2018.
16. Transcript of an interview with the Respondent, October 5, 2018.
17. Transcript of an interview with the Respondent, January 10, 2019.
18. Charges Under the Maryland Social Workers Act, February 8, 2019.
19. *Vita*, Carlton E. Munson, PhD, LCSW-C.²
20. Complaint Record Review and Evaluation, July 29, 2019.
21. Note from Dr. Munson To Whom It May Concern, October 7, 2019.

The Respondent also presented a binder of pre-marked exhibits (1-12) but did not offer any exhibits as evidence. The binder remains part of the administrative record.

Testimony

The following witnesses testified on behalf of the State:

1. [REDACTED], [REDACTED] of Dayspring Presbyterian Church.
2. Garcia Gilmore, Health Occupation Investigator.
3. Carlton E. Munson, PhD, LCSW-C, accepted as an expert in social work and professional ethics.

The Respondent testified and presented additional testimony from [REDACTED] his wife.³

² LCSW-C stands for Licensed Certified Social Worker-Clinical.

³ This witness's name was [REDACTED] until she and the Respondent married on May 4, 2018. I shall use her former name when referring to events that took place before the marriage.

STIPULATIONS

The parties stipulated as follows:

1. The State has licensed the Respondent to practice social work since 1989.
2. The Letter of Admonishment from the Board to the Respondent dated September 12, 2014 was not a disciplinary action.
3. The Board has not passed any prior disciplinary orders against the Respondent.
4. The Respondent and [REDACTED] were married on May 4, 2018.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent has been licensed as an LCSW-C in Maryland since 1991.
2. At all relevant times, the Respondent has been engaged in the private practice of social work, providing therapy and counseling in Baltimore County, Maryland.
3. The Respondent introduced himself to [REDACTED] who was then at Timonium Presbyterian Church, in the late 1990's and provided information about his availability as a Christian counselor and therapist.
4. [REDACTED] and [REDACTED] a married couple, were members of Timonium Presbyterian Church at the time and were friendly with [REDACTED].
5. [REDACTED] left Timonium Presbyterian Church in 2004 to start Dayspring Presbyterian Church in Glen Burnie. Except for occasional telephone calls, his association with the [REDACTED] ended.
6. In 2011, [REDACTED] called [REDACTED] explaining that he and his wife were having marital problems and requesting a referral for counseling.

7. ██████████ recalled meeting the Respondent some years earlier and referred the ██████████ to the Respondent.
8. ██████████ completed and signed a Client Information form for the Respondent's practice on August 7, 2011.
9. ██████████ completed and signed a Client Information form for the Respondent's practice on August 8, 2011.
10. The ██████████ began meeting with the Respondent as a couple on August 8, 2011.
11. The Respondent administered the Wagner Enneagram Personality Styles Scales (WEPSS) test to ██████████ on August 18, 2011.
12. The Respondent administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) test to ██████████ on August 19, 2011, and to ██████████ on or around the same date.
13. The ██████████ had at least twenty-nine joint therapy sessions with the Respondent between August 2011 and January 2013.
14. ██████████ had individual sessions with the Respondent on January 16, 2012 and August 16, 2012, and possibly on August 11, 2011.
15. The Respondent sent invoices to ██████████ for "Individual Psychotherapy" on September 1, 2011; January 1, 2012; February 1, 2012; and March 1, 2012.
16. The Respondent's invoice of September 1, 2011 also included a charge for an "Individual Assessment."
17. On a health insurance claim form signed on September 1, 2011, the Respondent provided a diagnosis for ██████████ of adjustment disorder, unspecified (code 309.9).

18. The same health insurance claim form also indicated that the Respondent had provided individual or joint therapy to [REDACTED] (code 90806) on three occasions in August 2011.
19. Toward the end of 2012 and in early 2013, [REDACTED] had about twelve individual therapy sessions with the Respondent.
20. Despite the Respondent's counseling, the [REDACTED] marriage deteriorated and ultimately dissolved in 2013.
21. On April 12, 2013, [REDACTED] terminated his relationship with the Respondent.
22. On April 13, 2013, the Respondent acknowledged the termination and told [REDACTED] that he would leave it up to [REDACTED] whether to continue treatment with him.
23. On April 17, 2013, the Respondent had a telephone conversation with [REDACTED] in which he encouraged her to report alleged abusive behavior by [REDACTED] to Child Protective Services or other authorities.
24. On April 20 or 21, 2013, [REDACTED] telephoned the Respondent and complained of [REDACTED] allegedly assaulting her on April 19, 2013. On April 22, 2013, the Respondent, by telephone, encouraged [REDACTED] to be decisive in reporting the incident, and she applied for a protective order the same day.
25. On May 30, 2013, [REDACTED] encountered the Respondent in his office while she was bringing her daughter to counseling with another provider. She and the Respondent discussed her marital situation.
26. On May 30, 2013, [REDACTED] told the Respondent that she did not wish to continue treatment, since she and her husband were now separated.

27. On or about August 14, 2013, [REDACTED] filed a complaint against the Respondent with the Board, alleging that the Respondent had inappropriately sent text messages to [REDACTED] and had breached [REDACTED] confidentiality.

28. The Board investigated the allegations and resolved the complaint by a Letter of Admonishment to the Respondent on September 12, 2014, which included findings that the Respondent had exploited a relationship with a client for personal advantage or satisfaction and had shared a confidence revealed by a client without the client's consent.

29. [REDACTED] filed a lawsuit against the Respondent on or about June 26, 2015.

30. The Baltimore County Circuit Court dismissed the suit with prejudice in November 2015, with no settlement other than that the Respondent agreed not to sue [REDACTED] for making the allegations in the suit.

31. The Respondent's attorneys in both the complaint to the Board and the lawsuit contacted [REDACTED] to obtain information to assist in the Respondent's defense to the allegations.

32. [REDACTED] telephoned the Respondent from time to time in 2014 and 2015 to inquire how his responses to [REDACTED] allegations were proceeding.

33. Around August 2015, the Respondent began seeing [REDACTED] at Brick Bodies in Timonium, where they both worked out.

34. The Respondent also encountered [REDACTED] on the Northern Central Railway (NCR) trail, where they both ran.

35. The Respondent and [REDACTED] developed a social relationship, meeting for coffee or dinner.

36. Over several months, the social relationship changed to a romantic relationship.

37. The Respondent and ██████ began a sexual relationship in June 2016, became engaged in January 2018, and married on May 4, 2018.

38. On May 24, 2018, ██████ filed a complaint with the Board concerning the Respondent's relationship with a former client.

DISCUSSION

The Board has the burden to show by a preponderance of the evidence that the licensee has committed the alleged violations of the Act. COMAR 10.42.04.06C(2). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

The Maryland General Assembly has empowered the Board to adopt rules, regulations, and a code of ethics, and to investigate alleged violations. Md. Code Ann., Health Occ. § 19-205 (2014). The Charges Under the Maryland Social Workers Act allege statutory and regulatory grounds for discipline, as follows:

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;

...

Md. Code Ann., Health Occ. § 19-311(4), (5), (6) (2014).

The State alleges that under section 19-311(6), above, the Respondent violated the following regulations:

COMAR 10.42.03.03 Responsibilities to Clients.

B. The licensee may not:

...

(3) Exploit a relationship with a client for personal advantage or satisfaction.

COMAR 10.42.03.05 Relationships.

A. The licensee may not enter into a dual relationship with a client or an individual with whom the client has a close personal relationship.

...

D. The licensee may not engage in sexual misconduct with either current or former clients.

...

F. The licensee may not terminate professional services or a professional relationship with a client in order to enter into a nonprofessional, social, or sexual relationship with the client or an individual with whom the client has a personal relationship.⁴

At the hearing, the State did not pursue the allegations that the Respondent entered into a dual relationship or that he terminated professional services to begin a social or sexual relationship. The State's presentation centered on paragraph D above, sexual misconduct with a former client.

COMAR 10.42.03.02B(9) defines sexual misconduct as follows:

- (9) "Sexual misconduct" means:
- (a) Inappropriate sexual language;
 - (b) Sexual exploitation;
 - (c) Sexual harassment;
 - (d) Sexual behavior; or
 - (e) Therapeutic deception.

Sexual behavior, in turn, is defined in COMAR 10.42.03.02B(6):

⁴ The charges, filed February 8, 2019, label the last two paragraphs C and E, respectively. The Code of Ethics was revised on May 20, 2019 (46:10 Md. R. 490), adding a new paragraph B to COMAR 10.42.03.05 and renumbering paragraph C to D and E to F. The language of the regulations did not change.

- (6) "Sexual behavior" means:
- (a) A sexual act as specified in Criminal Law Article, §3-301(e) and (g), Annotated Code of Maryland; and
 - (b) Sexual contact as specified in Criminal Law Article, §3-301(f), Annotated Code of Maryland.

Proceeding further down the definitional rabbit hole, section 3-301(d)⁵ of the Criminal Law Article defines sexual act as follows:

(d)(1) "Sexual act" means any of the following acts, regardless of whether semen is emitted:

- (i) anilingus;
- (ii) cunnilingus;
- (iii) fellatio;
- (iv) anal intercourse, including penetration, however slight, of the anus; or
- (v) an act:
 - 1. in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and
 - 2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(2) "Sexual act" does not include:

- (i) vaginal intercourse; or
- (ii) an act in which an object or part of an individual's body penetrates an individual's genital opening or anus for an accepted medical purpose.

Md. Code Ann., Crim. Law § 3-301(d) (Supp. 2019).

Section 3-301(g) defines vaginal intercourse.⁶

(g)(1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted.

(2) "Vaginal intercourse" includes penetration, however slight, of the vagina.

Md. Code Ann., Crim. Law § 3-301(g) (Supp. 2019).

⁵ Section 3-301 was last amended effective October 1, 2016. The definition in COMAR 10.42.03.02B(6)(a) refers to former subparagraph (e).

⁶ I shall assume that the reference to this subparagraph in COMAR 10.42.03.02B(6)(a) remains accurate.

Finally, section 3-301(f) provides the following definition of sexual contact:

(e)(1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.

(2) "Sexual contact" does not include:

- (i) a common expression of familial or friendly affection; or
- (ii) an act for an accepted medical purpose.

Md. Code Ann., Crim. Law § 3-301(f) (Supp. 2019).

Tracing the above statutory and regulatory scheme is not of great import in this case because the parties agree that the Respondent began a sexual relationship with the former [REDACTED] [REDACTED] (now [REDACTED] in 2016 and married her in 2018. The gist of the State's theory of the case is this:

1. [REDACTED] is a former client of the Respondent;
2. The Respondent engaged in sexual behavior with her, which is sexual misconduct under COMAR 10.42.03.05 and prohibited by section 19-311(6) of the Act;
3. The Respondent's relationship with [REDACTED] is also misconduct in the practice of social work and against accepted professional standards in the practice of social work, in violation of sections 19-311(4) and (5) of the Act; and
4. The Respondent exploited his relationship with [REDACTED] for personal satisfaction, as prohibited by COMAR 10.42.03.03B(3).

The State also alleges that the prohibition on sexual relationships with former clients, by its very language, lasts forever and that a social worker may never engage in such a relationship, even long after the professional relationship has ended.

The Respondent defends against the State's allegations in two principal ways: first, he contends that [REDACTED] was never a client, but was merely a collateral source of information

for the Respondent's treatment of her husband. Second, the Respondent maintains that a perpetual ban on relationships, particularly marriage, with a former client is unconstitutional. I shall address each contention in turn.

Is [REDACTED] a former client?

The Respondent and [REDACTED] testified very emphatically that the latter was never a client of the Respondent. In his testimony, the Respondent explained that, after the first one or two meetings with the [REDACTED] and administering the MMPI-2 to both, he identified [REDACTED] as the client. [REDACTED] according to the Respondent, was present to support [REDACTED] but not to engage in therapy; her role was to be a "collaborative source" and provide information that might be useful in [REDACTED] therapy, because it was "helpful to have another voice." When shown Dr. Munson's summary of the [REDACTED] sessions, indicating at least two with [REDACTED] alone, the Respondent explained that those meetings were "to process or strategize the dynamics of the relationship in preparation for the next visit." He was adamant that these sessions with [REDACTED] were not therapy, but rather were "collateral" meetings.

[REDACTED] testified that at the beginning of the therapy sessions, she told the Respondent that the process was for her husband, not herself, and that she would be present for support at her husband's request. She stated that she never considered herself a patient (i.e., client) of the Respondent. She characterized the sessions alone with the Respondent as providing background support for her husband's treatment. [REDACTED] went on to say that her husband hired the Respondent to address his problems, and she did not consider her sessions with the Respondent as seeing a marriage counselor. She acknowledged that she and her husband went together but insisted that her husband was the focus of the therapy.

The Respondent has maintained throughout the investigation of this complaint that [REDACTED] was never a client, stating this to Investigator Gilmore in an interview on August 31, 2018 and in two subsequent interviews.

Other than the testimony from the Respondent and [REDACTED], nothing in the record supports the argument that [REDACTED] was not the Respondent's client. In fact, an analysis of all the evidence overwhelmingly disproves the Respondent's contention that she was merely a collateral source of information.

Dr. Munson, the State's expert, testified very convincingly that the Respondent did not treat [REDACTED] as a collateral or collaborative contact. Dr. Munson has had a doctorate in social work since 1975 and has vast experience in the field, including as a professor at the School of Social Work, University of Maryland at Baltimore, from 1992 to 2019. He also has thirty years of experience as private practitioner of forensic mental health social work and has testified as an expert witness over 100 times. He was the chairperson of the National Association of Social Workers Maryland Chapter Professional Standards Committee for fifteen years.

Dr. Munson testified that the field of social work recognizes "plenty of guidelines" for a therapist who is using a collateral contact to assist in a client's treatment. These criteria include executing a contract with the collateral contact to let him or her know what will happen in therapy and to set limits. An example of the information given to a collateral contact is in Appendix B of Dr. Munson's report (State's Exhibit 20) – it includes four pages of single-spaced type. Additionally, according to Dr. Munson a collateral contact would be charged no fees, would be given no diagnosis, would undergo no testing, and would have no chart. The Respondent presented no evidence to contradict Dr. Munson's criteria for identifying a collateral contact.

Dr. Munson testified very straightforwardly and confidently. He supported his opinions by pointing out documents in the Respondent's records that contradicted the argument that [REDACTED] was a collateral contact, such as her diagnosis, invoices for therapy, and psychological tests. I found his testimony on this point credible and compelling.

The Respondent's records of the [REDACTED] treatment contain no contract with [REDACTED] to provide information as a collateral contact. The Client Information form that she signed indicated her agreement to pay fees for treatment, and on at least three occasions the Respondent sent bills to [REDACTED] for "individual psychotherapy" and an "individual assessment." (State's Exhibit 9.)⁷ The Respondent administered two psychological tests to [REDACTED] the MMPI-2 and the WEPSS, and had her fill out a questionnaire entitled "Talking and Listening Together," which included having her list behaviors that she wished to increase or decrease. According to Dr. Munson, none of this would have been done if she were a collateral contact.

The [REDACTED] initially hoped to have their sessions covered by insurance and asked the Respondent to provide health insurance claim forms. The Respondent's office prepared a claim form for [REDACTED] that included a diagnosis of adjustment disorder, unspecified, under a *Diagnostic and Statistical Manual-5* (DSM-5) code of 309.9. The Respondent testified that he never saw the claim forms until the Board's investigation was underway, and that his staff prepared them, but Dr. Munson pointed out that only an LCSW-C, licensed certified professional counselor, psychologist, or psychiatrist can provide a DSM-5 diagnosis. The Respondent acknowledged that his staff would have asked him for the diagnosis to put on the form. The

⁷ It is unclear whether [REDACTED] actually paid any bills. All the receipts in the record show payments by [REDACTED] although two of the invoices to [REDACTED] include the notation "Payment - [REDACTED]"

claim form for [REDACTED] also included code 90806 as the services provided, which, according to Dr. Munson, means either joint or individual therapy.

The Board subpoenaed the Respondent's treatment records for [REDACTED] which he provided with a cover letter explaining that he did not consider her a client. Other than the documents related to the psychological tests, the records are almost entirely the Respondent's notes of his meetings with the [REDACTED] jointly or with one or the other alone. The notes are headed with the participants' names (e.g., [REDACTED] & [REDACTED]) and include narratives, emotions, and goals shared by both [REDACTED] and [REDACTED]. The notes contain statements and observations by [REDACTED] and [REDACTED] that seem to be about equally balanced as recitations of what they told the Respondent and what each was feeling and focusing on.

Most notably, the records contain no hint that [REDACTED] was a collateral contact rather than a client. According to the notes, she was an equal participant with [REDACTED] in the joint sessions (of which there were at least twenty-nine) and had two or more solo sessions with the Respondent. The notes themselves are a strong indicator that the Respondent was providing counseling to a couple who were trying to come to terms with the problems in their marriage and reach a satisfactory resolution. These records contain no evidence that [REDACTED] was a collateral contact who was providing information to assist in her husband's therapy. On the contrary, the notes show that the therapy was joint marital counseling.

Additionally, the Respondent does not seem to have formulated the defense that [REDACTED] was not a client until recently. As stated in the Findings of Fact, [REDACTED] filed a complaint against him in 2013, alleging inappropriate communications with [REDACTED] and breach of confidentiality. The Board communicated the complaint to the Respondent, who stated his position in a letter to the Board dated April 29, 2014. In that letter, the Respondent wrote that

his understanding of the complaint was, among other things, "that the treatment I provided to both [REDACTED] and [REDACTED] was not working towards a positive resolution of the marriage." (State's Exhibit 3.) If the Respondent truly considered only [REDACTED] his client, this would have been a perfect opportunity to explain to the Board that he did not provide treatment to [REDACTED]. Instead, the Respondent's letter goes on to state the following:

I would like to convey the significance of individual work within the context of joint therapy. At no time did I communicate nor establish with either [REDACTED] or [REDACTED] that we were discontinuing "joint therapy" and moving to "individual therapy" and disrupting the expectation that we were working together towards a healthier marital relationship.

Id. Further on, the Respondent wrote: "[REDACTED] viewed any progress by [REDACTED] personally to be a direct threat to his authority over her and their relationship, thus providing him the distorted perspective that therapy was ineffective." *Id.* These passages convey quite clearly that the Respondent was providing joint marital therapy to the [REDACTED] and that both were his clients. Also, his treatment was helping [REDACTED] make progress, a concept that would be inapplicable to a collateral contact.

Other documents in evidence further undermine the Respondent's contention that [REDACTED] was never his client. During the Board's 2014 investigation, she signed a Consent for Release of Confidential Treatment for "any related information and or comments related to my care." (State's Exhibit 11.) [REDACTED] testified that she believed this related to her husband's care and her interaction, but I do not find her testimony on this point credible. Her comment came during cross-examination, when [REDACTED] was making strenuous efforts to avoid answering the administrative prosecutor's questions and explain away the documentary records that showed she was the Respondent's client.

Also, the Respondent's "ending note" on May 30, 2013, says of [REDACTED] "She has decided to discontinue treatment now that she and her husband [REDACTED] have separated." *Id.* The Respondent tried to characterize this note as meaning that she was now aware that her husband had discontinued treatment, which is a meaning entirely different from the words he wrote at the time. The Respondent also testified that "she has decided to discontinue treatment" does not mean that [REDACTED] was receiving treatment. This illogical statement is not believable.

The evidence is convincing that [REDACTED] was the Respondent's client in 2011 to 2013. The Respondent's contention to the contrary is not supported by any documentary evidence in the voluminous file, and I do not find his or [REDACTED] testimony on this point credible. The documentary record shows without doubt that in 2011 to 2013, both the Respondent and [REDACTED] considered her to be his client and a participant in joint marital counseling. It was not until this investigation began that they tried to twist the words written in the treatment record to mean something different. This attempt was unsuccessful, as those meanings are readily apparent. There can be no serious doubt, based on the evidentiary record, that [REDACTED] is a former client of the Respondent.

Is the perpetual prohibition on a sexual relationship with, or marriage to, a former client unconstitutional?

The Respondent argued that the charges must be dismissed on constitutional grounds, making the following contentions:

1. The charges violate substantive due process under the Fourteenth Amendment because a perpetual ban on the Respondent's ability to marry a former client interferes with the fundamental constitutional right to marry. Statutes and regulations enforcing the ban on marriage must be narrowly tailored and are subject to strict scrutiny.

2. The relevant sections of the Health Occupations Article and the applicable COMAR regulations are unconstitutionally vague because their definitions of sexual misconduct and sexual exploitation do not put the Respondent on notice that marrying a former client would result in sanctions.

3. The regulations allegedly violated deny the Respondent procedural due process under the Fourteenth Amendment by taking his property (i.e., his license to practice social work) without an opportunity to be heard.

4. The regulations are not narrowly tailored for the purpose of furthering a compelling government interest.

In *Obergefell v. Hodges*, the Supreme Court said the following about the right to marry:

Under the Due Process Clause of the Fourteenth Amendment, no State shall “deprive any person of life, liberty, or property, without due process of law.” The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.

...

Applying these established tenets, the Court has long held the right to marry is protected by the Constitution. In *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967), which invalidated bans on interracial unions, a unanimous Court held marriage is “one of the vital personal rights essential to the orderly pursuit of happiness by free men.” The Court reaffirmed that holding in *Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978), which held the right to marry was burdened by a law prohibiting fathers who were behind on child support from marrying. The Court again applied this principle in *Turner v. Safley*, 482 U.S. 78, 95, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), which held the right to marry was abridged by regulations limiting the privilege of prison inmates to marry. Over time and in other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause.

Obergefell v. Hodges, 135 S. Ct. 2584, 2598 (2015) (some citations omitted). In that case, the Supreme Court overturned statutes that prohibited marriage between same-sex couples.

Here, unlike *Obergefell* and the cases cited therein, the statutes the State seeks to apply to the Respondent do not prohibit marriage; they prohibit social workers from having sexual relationships with current or former clients. The Respondent, a recently divorced individual, was free to marry whomever he wished in 2018.⁸ A social worker who marries a former client puts his professional license at risk, but this is not the same as being punished for the act of marriage itself, as was the case in *Obergefell*, *Loving*, and other cited cases. Also, the Board did not investigate this case and refer the matter for prosecution because the Respondent married [REDACTED] [REDACTED] although the marriage may have triggered [REDACTED]'s complaint. The applicable statutes and regulations do not say anything at all about marriage – they prohibit sexual behavior with current or former clients.

Dr. Munson testified that a reasonable social worker would have been aware of the prohibition on sexual relationships with former clients, and I find this to be true. COMAR 10.42.03.05D states quite simply: “The licensee may not engage in sexual misconduct with either current or former clients.” It is true that one must go a step further (to COMAR 10.42.03.02B(9)(d)) to learn that sexual misconduct includes sexual behavior, but most adult humans know what sexual behavior is. Also, COMAR 10.42.03 is entitled the “Code of Ethics” and “governs the professional conduct of social workers licensed by the Board.” COMAR 10.42.03.01. The Respondent was aware of, or should have been aware of, these provisions when he began a romantic relationship with [REDACTED] in 2016. As Dr. Munson testified, if the Respondent felt that some extenuating circumstances excused him from running afoul of the regulations, he could have called the Board, re-read the Code of Ethics, or discussed the matter with colleagues.

⁸ Outside some still-applicable prohibitions, such as those against incest, bigamy, and marrying children.

For the foregoing reasons, I reject two of the Respondent's constitutional arguments – that the Board's action interferes with his fundamental constitutional right to marry, and that the statutes and regulations at issue are unconstitutionally vague.

The Respondent's argument that he has been denied procedural due process rests on his contention that he is prevented from showing that his sexual misconduct with [REDACTED] was not exploitive and thus did not violate COMAR 10.42.03.03B(3) or section 19-311(6) of the Health Occupations Article. In fact, the Respondent did have that opportunity at the hearing; both he and [REDACTED] testified that the Respondent in no way exploited his professional relationship with [REDACTED] to convince her to start dating him or have sex with him. The problem for the Respondent is that, although the statutes and regulations prohibit exploitation, lack of exploitation does not excuse sexual behavior with a former client. Dr. Munson pointed out that most social work clients are vulnerable, and the Code of Ethics is in place, in part, to prevent the perception that a social worker is taking advantage of a client.

I find that the Respondent has been given all the process that he is due. The hearing took three full days, and the Respondent was able to present as much evidence as he wished, cross-examine the State's witnesses at length, and present legal argument. Essentially, his argument is that the Board must amend its statutes and regulations to allow a social worker to present evidence that his relationship with a former client was not exploitive or manipulative. The Respondent has cited no law to support his position on this issue, and I have found none.

Finally, the Respondent raises the constitutional issue that because the Board's statutes and regulations are not narrowly tailored to further a compelling State interest, they must be

overturned. The State's interest is set forth in section 19-102 of the Health Occupations Article, as follows:

- (a) The General Assembly finds that the profession of social work profoundly affects the lives, health, safety, and welfare of the people of this State.
- (b) The purpose of this title is to protect the public by:
 - (1) Setting minimum qualification, education, training, and experience standards for the licensing of individuals to practice social work; and
 - (2) Promoting and maintaining high professional standards for the practice of social work.

Md. Code Ann., Health Occ. § 19-102 (2014). Protecting the public and setting high standards for the practice of social work are compelling State interests.

The main thrust of the Respondent's argument on this point is that the State must adopt less-stringent requirements that do not entail a perpetual ban on intimate relationships with former clients. The Respondent notes that the Code of Ethics of the National Association of Social Workers does not go as far as an outright prohibition:

Social Workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exemption to this prohibition is warranted because of extraordinary circumstances, it is the social workers – not their clients – who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated intentionally or unintentionally.

Code of Ethics, National Association of Social Workers, 1.09(c).

The Respondent also points to the codes of ethics of other occupations, such as that of the Board of Examiners of Psychologists, which, in pertinent part, provides:

- Sexual Misconduct. A psychologist or psychology associate may not:
- (1) Engage in sexual intimacies with a current client;
 - (2) Engage in sexual intimacies with a former client:
 - (a) For at least 2 years after the cessation or termination of professional services; or

(b) After the 2 years following the cessation or termination of professional services if the sexual relationship is exploitative in light of the following factors:

(i) The nature, duration, and intensity of professional services rendered to the client;

(ii) The length of the professional relationship;

(iii) The length of time between the termination of the professional relationship and the initiation of the nonprofessional relationship;

(iv) The mental stability of the psychologist or psychology associate and former client;

(v) The circumstances of termination including, but not limited to, statements, or actions of the psychologist or psychology associate suggesting or inviting the possibility of a post-termination sexual or romantic relationship; and

(vi) The likelihood of adverse impact on the former client.

COMAR 10.36.05.07C.

Somewhat similarly, the Board of Physicians' regulations governing sexual misconduct include the following;

Sexual or Romantic Relationships. A health care practitioner may not engage in sexual behavior with:

(3) A former patient upon consideration of the following factors:

(a) Duration of the health care practitioner-patient relationship;

(b) Nature of the health care services provided;

(c) Lapse of time since the health care practitioner-patient relationship ended;

(d) Extent to which the former patient confided personal or private information to the health care practitioner;

(e) Degree of emotional dependence that the former patient has or had on the health care practitioner;

(f) Extent to which the health care practitioner used or exploited the trust, knowledge, emotions, or influence derived from the previous health care practitioner-patient relationship; and

(g) Whether the health care practitioner-patient relationship was terminated in order to enter into a romantic or sexual relationship.

COMAR 10.32.17.03D.

The three above examples allow a practitioner who desires to enter into a sexual relationship with a former client to present evidence that the relationship is not exploitive, manipulative, or otherwise detrimental to the former patient (or client). But the language of each

provision clearly indicates that such relationships are disfavored and are permitted only in extraordinary circumstances.

The State responded to this argument by acknowledging that the Board's permanent ban on sexual relationships with former clients is stricter than those of other organizations but defended the Board's right to impose such a prohibition based the legislative mandate to protect the public. Maryland has not adopted the Code of Ethics of the National Association of Social Workers, imposing instead its own Code of Ethics as found in COMAR 10.42.03.

I agree with Dr. Munson's testimony that clients who come to social workers for counseling and therapy are often in vulnerable conditions. The evidence in this case establishes that [REDACTED] during counseling, provided a wealth of personal, even intimate, information to the Respondent. She is in the category of persons that the Code of Ethics is designed to protect. The Board is within its mandate to take strict measures to protect clients into the future, after their treatment ends. Courts usually give deference to a board's interpretations of its own regulations. *Finucan v. Maryland Bd. Of Physician Quality Assurance*, 380 Md. 577, 597 (2004); *Adventist Health Care v. Maryland Health Care Comm.*, 392 Md. 103, 119-21 (2006).

Other than providing the codes of ethics of slightly more lenient organizations and agencies, the Respondent did not cite any law supporting his position. I do not find that other agencies' allowing their practitioners to engage in sexual relationships with former clients under stringent circumstances requires that the Board do the same. The Board has made a well-reasoned decision that sexual relations with former social work clients are always detrimental and must be avoided to preserve the welfare of the client and the integrity of the profession. There is no constitutional prohibition against the Board's statutes and regulations.

In summary, I find the Respondent's arguments unpersuasive. The State has shown that [REDACTED] is the Respondent's former client and that the Board's statutes and regulations are constitutionally valid. I also find that the Respondent's having a sexual relationship with a former client violates COMAR 10.42.03.03 and .05, which in turn violated section 19-311(6) of the Health Occupations Article. Dr. Munson's opinion, uncontradicted by the Respondent, was that the Respondent's sexual relationship with [REDACTED] is inconsistent with generally accepted professional standards in the practice of social work and is gross negligence in the practice of social work. I accept these opinions, expressed by a recognized expert in the field of social work and supported by the evidence in the record. Based on this evidence, I find that the Respondent violated sections 19-311(4) and 19-311(5) of the Health Occupations Article.

Sanctions

The Board may impose disciplinary sanctions and/or a monetary penalty against a licensee who is found to have violated the Act. Md. Code Ann., Health Occ. §§ 19-311, 19-311.1 (2014); COMAR 10.42.03.07, COMAR 10.42.09.03. The Board's regulations contain a matrix of sanctions in COMAR 10.42.09.04 and considerations that may mitigate or aggravate otherwise appropriate sanctions in COMAR 10.42.09.05. The State is seeking a disciplinary sanction of revocation of the Respondent's license to practice social work and has not recommended a monetary penalty.

For violations of sections 19-311(4), (5), and (6) of the Health Occupations Article, the matrix in COMAR 10.42.09.04A calls for a minimum sanction of "probation for 1 year, or \$1,000 fine, or both," while the maximum is "revocation, or \$10,000 fine, or both."

COMAR 10.42.09.05 addresses mitigating and aggravating factors, as follows:

Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following aggravating and mitigating factors in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines. These factors may include, but are not limited to, the following:

A. Mitigating Factors:

- (1) The licensee's lack of a prior disciplinary record;
- (2) The licensee self-reported the violation to the Board;
- (3) The licensee's full and voluntary admissions of misconduct to the Board and cooperation during Board proceedings;
- (4) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;
- (5) Timely good-faith effort to make restitution or to rectify consequences of misconduct;
- (6) Evidence of rehabilitation or rehabilitative potential;
- (7) Absence of premeditation to commit the misconduct;
- (8) Absence of potential harm to public or adverse impact; and
- (9) The licensee's conduct was an isolated incident and not likely to recur.

B. Aggravating Factors:

- (1) The licensee has a previous criminal or administrative disciplinary history;
- (2) The violation was committed deliberately or with gross negligence or recklessness;
- (3) The violation had the potential for, or caused, serious patient or public harm;
- (4) The violation was part of a pattern of detrimental conduct;
- (5) The licensee was motivated to perform the violation for financial gain;
- (6) The vulnerability of the clients;
- (7) The licensee lacked insight into the wrongfulness of the conduct;
- (8) The licensee committed the violation under the guise of treatment; and
- (9) Previous attempts at rehabilitation of the licensee were unsuccessful.

C. The existence of one or more of these factors does not impose on the Board or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter.

D. Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

Of the mitigating factors listed above, only the Respondent's lack of a prior disciplinary records applies. The Respondent continues to insist that he committed no misconduct and

testified that he is “not sure he agrees” with the Board’s stance that sexual relations with former clients are perpetually forbidden. He continues to violate that prohibition every day. This indicates that one aggravating factor is present: lack of insight into the wrongfulness of his conduct.

The mitigating and aggravating factors are, therefore, balanced. The Respondent argued that this was, at most, a technical violation committed in good faith. I do not agree that this was a technical violation, such as poor record keeping. The prohibition on sexual relationships with former clients is one of the core tenets of the Code of Ethics, and the Respondent knowingly violated it. Certainly, romantic involvements are emotional, not rational, in nature, but, as Dr. Munson stated, it is up to the social worker to say no when in the Respondent’s position. The Respondent presented no evidence that he attempted to resist the relationship with [REDACTED] or that he sought any professional advice about how he should proceed with her. Also, [REDACTED] had certainly been in a vulnerable state when she was the Respondent’s client. I reject the Respondent’s argument that he committed this violation in good faith.

Considering all the above, the Respondent has presented no valid evidence or argument why his license should not be revoked, as the State proposes. The evidence supports State’s recommendation.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated sections 19-311(4) and (5) of the Health Occupations Article. I further conclude as a matter of law that the Respondent violated section 19-311(6) of the Health Occupations Article by violating COMAR 10.42.03.03B(3) and COMAR 10.42.03.05D. Md. Code Ann., Health Occ. § 19-311 (2014).

I further conclude as a matter of law that the Respondent is subject to a disciplinary sanction of revocation of his license to practice social work for the cited violations. *Id.*; COMAR 10.42.03.07; COMAR 10.42.09.03-.05.

PROPOSED ORDER

I **PROPOSE** that charges filed by the State Board of Social Work Examiners against the Respondent on February 8, 2019, be **UPHELD**.

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

March 31, 2020
Date Decision Issued


Richard O'Connor
Administrative Law Judge

ROC/kdp
#184802

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the State Board of Social Work Examiners within fifteen (15) days after issuance of this decision. COMAR 10.42.04.06D. Within ten (10) days of the filing of exceptions, the opposing party may file an answer. *Id.* The Board will review timely exceptions prior to rendering the final agency decision. Md. Code Ann., State Gov't. §§ 10-216, 10-221 (2014); COMAR 10.42.04.06D-E. The Office of Administrative Hearings is not a party to any review process.

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