

BEFORE THE IOWA BOARD OF SOCIAL WORK

IN THE MATTER OF:)	CASE NO. 04-015
)	DIA NO. 12SW002
)	
THOMAS CAPSHEW)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
License No. 05890)	DECISION AND ORDER

On February 14, 2005, the Iowa Board of Social Work (Board) and Thomas Capshew (Respondent) entered into a Settlement Agreement and Final Order that indefinitely suspended Respondent's license as a licensed independent social worker (LISW), with no possibility for reinstatement for a minimum period of six (6) months. On January 2, 2012, Respondent filed an Application for Reinstatement of his license. The Board issued a Notice of Hearing on February 28, 2012.

The hearing was held on May 21, 2012 at 10:30 a.m. in the fifth floor conference room, Lucas State Office Building, Des Moines, Iowa. The following members of the Board presided at the hearing: Beth Harms, LISW, Acting Vice-Chair; Katinka Keith, LISW; Mark Hillenbrand, LISW; Dana McCarthy, LBSW; Mark Hudson and Neil Nelsen, Public Members. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Respondent Thomas Capshew appeared and was self-represented. A certified court reporter recorded the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.19(10) and 11.31(3).

Following the hearing, the Board convened in closed executive session to deliberate their decision, pursuant to Iowa Code section 21.5(1)(f)(2011). The administrative law judge was instructed to prepare Findings of Fact, Conclusions of Law, Decision and Order, in accordance with the Board's deliberations.

THE RECORD

The record includes the testimony of Respondent; Frank Valentine; and Exhibits 1-9 (See exhibit index for description).

FINDINGS OF FACT

1. Respondent graduated from law school in 1986 and was licensed as an attorney in the state of Florida. After working as an attorney for several years, Respondent enrolled in graduate school at Florida State University to study social work. Respondent earned his Master's degree in Social Work (MSW) in 1995 and his Ph.D. in Social Work in 1998. After completing his Ph.D., Respondent took a position as a clinical director of crisis hotline in Florida. In 1999, Respondent moved to Iowa to take a position as an Assistant Professor of Social Work at the University of Northern Iowa (UNI). (Respondent testimony; Exhibit 8)

2. On October 25, 2000, the Board issued Respondent license no. 05890 to practice as a licensed independent social worker (LISW) in the state of Iowa. Following his licensure, Respondent continued teaching at UNI and did not engage in private practice as a social worker. Respondent later became a member of the Iowa Board of Social Work. (Respondent testimony; Exhibit 8)

3. On November 22, 2004, the Board filed a Notice of Hearing and Statement of Charges against Respondent. Respondent was charged with engaging in unethical conduct, engaging in sexual activities and sexual contact with a student, engaging in a conflict of interest which interfered with the exercise of professional discretion and impartial judgment, and taking unfair advantage of a professional relationship or exploiting another to pursue his own personal interests. The charges were based on an allegation that Respondent engaged in a sexual relationship with a graduate student in UNI's Department of Social Work from August-November 2003. This was at a time when he was employed as a professor in the department. (Exhibits 5, 7)

4. On February 14, 2005, Respondent and the Board entered into a Settlement Agreement and Final Order to resolve the Statement of Charges. The Settlement Agreement and Final Order stipulated that Respondent's license would be indefinitely suspended until further order of the Board, with no possibility of reinstatement for a minimum period of six (6) months. The Settlement Agreement and Final Order further provided that prior to filing a petition for reinstatement, Respondent was required to undergo a comprehensive, multidisciplinary evaluation by licensed psychologist Gary Schoener. Mr. Schoener was to provide an evaluation report and an initial treatment plan for Respondent, subject to Board approval. Respondent was also required to undergo any treatment recommended by Mr. Schoener. (Exhibit 5)

5. Since the date of the Settlement Agreement and Final Order, Respondent has held a number of consulting and contract positions that did not require a social work license. He has also founded and directed a business that focuses on spiritual healing. Respondent provided four affidavits from persons who worked closely with him in these various positions. The persons signing the affidavits stated that, to the best of their knowledge, Respondent conducted himself in a professional, ethical, and respectful manner in these work settings. (Testimony of Respondent; Exhibit 9)

6. Since March 2011, Respondent has been employed by Community Based Counseling II, National Counseling Group, Inc. in Fredericksburg, Virginia. In this position, Respondent provides in-home services to children and adolescents who are at risk of being placed outside the home, mental health support services to adults in the community with mental health challenges, and co-parenting counseling to divorcing parents. Respondent disclosed the Iowa Board's action against his social work license to this employer at the time he was hired. Respondent's current position does not require a social work license, but he is under consideration for a promotion that would require licensure. The state of Virginia will not grant Respondent a license unless Iowa has reinstated his license. (Testimony of Respondent; Frank Valentine; Exhibit 9)

7. Respondent underwent a comprehensive evaluation by licensed psychologist Gary Schoener in November 2011. Mr. Schoener's evaluation included psychological testing, a five hour interview of Respondent, and some collateral interviews. Mr. Schoener also reviewed the Board's investigative file and Respondent's counseling records from September 2002 through August 2006. On January 3, 2012, Mr. Schoener issued his 14 page written evaluation report. Mr. Schoener concluded, in relevant part, that:

- As a result of Board discipline, self-reflection, feedback from therapists, and analysis, Respondent has accurate insight about the factors which led to the conduct in question;
- There is no evidence of a psychiatric disorder such as an impulse control disorder, either when the events occurred or now;
- There is no evidence that Respondent is a sexual predator; and
- There is no reason to believe that Respondent requires further education or training, boundaries coaching, or rehabilitation.

Mr. Schoener saw no reason to believe that students or clients would be at risk if Respondent's license is restored. Mr. Schoener did recommend that Respondent disclose his disciplinary history and its basis to prospective employers. (Exhibit 8)

CONCLUSIONS OF LAW

"Reinstatement" means the process outlined in 645-11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status. 645 IAC 280.1. A licensee must apply for and be granted reactivation of the license, in accordance with 645 IAC 280.14, prior to practicing social work in this state. 645 IAC 280.15.

645 IAC 11.31 provides, in relevant part:

645-11.31(272C) Reinstatement.

11.31(1) Any person whose license to practice has been...suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of ... suspension,...

11.31(2) If the order of ... suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

...

11.31(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the ...suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

11.31(5) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law. The order shall be published as provided for in this chapter.

The issues before the Board are whether the basis for the suspension of Respondent's license no longer exists and whether reinstatement is in the public interest. In order to reinstate, the Board must be satisfied that the public will be protected and that Respondent is willing and able to comply with all of the statutes and rules governing his practice as a licensed independent level social worker, including all ethical obligations.

The Settlement Agreement stipulated that Respondent's license would be suspended for a minimum period of six (6) months, and his license has now been suspended for more than seven years. The preponderance of the evidence in the record established that Respondent has complied with the terms of the Settlement Agreement and has addressed the issues that led to the suspension of his social work license. It is in the public interest to reinstate Respondent's license. If Respondent chooses to reactivate his social work license in Iowa, his license will be placed on probation for a period of two years, subject to terms and conditions of supervision. The Board determined that some supervision of Respondent's practice was necessary to ensure that he complies with his professional and ethical obligations as a licensed social worker.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License No. 05890, issued to Respondent Thomas Capshew to practice as a licensed independent social worker in the state of Iowa, is hereby REINSTATED. IT IS FURTHER ORDERED that Respondent shall fully disclose his Iowa disciplinary history to any state in which he seeks licensure as a social worker.

In order to practice social work in Iowa, Respondent must reactivate his Iowa license by fully complying with the requirements of 645 IAC 280.14(3)"b." These include, but are not limited to: submission of a reactivation application and payment of the reactivation fee; verification of completion of 27 hours of continuing education within two years of the reactivation application; and verification of passing the appropriate ASWB examination within the last five years *or* verification of continued social work practice at the appropriate level in another state for a minimum of two years immediately preceding the reactivation application.

Upon reactivation, Iowa License No. 05890 shall be placed on probation for a period of two (2) years, subject to the following terms and conditions:

A. Prior to performing any services requiring an Iowa social work license. Respondent shall fully inform the potential employer of his disciplinary history in Iowa by providing the employer copies of the Notice of Hearing and Statement of Charges (11/22/04); the Settlement Agreement and Final Order (2/14/05); and this Decision and Order on Reinstatement. The employer shall provide verification in writing to the Board that the documents were provided by Respondent prior to the date of hire. It is Respondent's responsibility to ensure that the employer's written verification is submitted to the Board.

B. Prior to performing any services requiring an Iowa social work license. Respondent shall submit a practice supervision plan for Board approval. At a minimum, Respondent must obtain supervision from another Iowa licensed independent social worker (LISW) who is approved by the Board. The LISW may be a co-worker or another licensed person who agrees to provide the required supervision. Respondent shall meet on a regular basis with this supervisor to discuss his social work practice and any potential boundary or other ethical issues that he encounters. The supervisor shall be required to provide quarterly written reports to the Board. Respondent shall be responsible for all costs of compliance with the plan of supervision.

C. During the two year probation, Respondent shall provide quarterly written reports to the Board concerning his social work practice and his compliance with his professional and ethical obligations as a licensed social worker.

D. Failure to comply with any of these probationary requirements could result in further disciplinary action against Respondent's license.

Dated this 13th day of June, 2012.



Beth Harms, LISW
Chairperson¹
Iowa Board of Social Work

cc: Sara Scott, Assistant Attorney General, Hoover State Office Building-2nd
(LOCAL)

Thomas Capshew, 210 Taylor Street, Fredericksburg, VA 22405
(CERTIFIED)

Any appeal to the district court from a decision in a contested case shall be taken within 30 days from the date of issuance of this decision.

¹ Ms. Harms was elected Chairperson of the Board following the hearing on May 21, 2012.