

BEFORE THE IOWA BOARD OF SOCIAL WORK

| | | |
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| IN THE MATTER OF: |) | DIA NO. 12SW007 |
| |) | CASE NO. 11-048 |
| |) | |
| KEITH SUTHERLAND |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| Respondent |) | DECISION AND ORDER |

On September 17, 2012, the Iowa Board of Social Work (Board) filed a Notice of Hearing and Statement of Charges charging Keith Sutherland (Respondent) with four counts:

Count I: Failing to maintain sufficient, timely, and accurate documentation in client records, in violation of 645 IAC 282.2(5);

Count II: Engaging in a dual relationship with a client, in violation of 645 IAC 282.2(8)(a)(1);

Count III: Engaging in an impermissible professional conflict of interest, in violation of 645 IAC 282.2(8)(b)(2); and

Count IV: Violation of a regulation, rule, or law of this state or another state, or the United States, which relates to the practice of social work, including, but not limited to the rules of conduct found at 645 IAC 282.2, in violation of 645 IAC 283.2(12);

The hearing was held on December 3, 2012 at 1:13 p.m. in the fifth floor conference room, Lucas State Office Building, Des Moines, Iowa. The following members of the Board presided at the hearing: Katinka Keith, LISW, Vice-Chairperson; Mark Hillenbrand, LISW; Krista Lindholm, LMSW; Dana McCarthy, LBSW; and Neil Nelsen and Mark Hudson, public members. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Respondent Keith Sutherland failed to appear for hearing.¹

¹ The Board is authorized to proceed with the hearing and render a decision in the absence of a party who fails to appear following proper service of notice. 645 IAC 11.6(1)"b"; 645 IAC

Assistant Attorney General Sara Scott represented the state. A certified court reporter recorded the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.19(10).

Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate their decision. 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 Patrick Schmitz, Tamara Adams, and State Exhibits 1-6 (See exhibit index for description).

FINDINGS OF FACT

1. On October 30, 1998, the Board issued Respondent license number 05141 to practice as a licensed independent social worker (LISW) in the state of Iowa. Respondent's license expires on December 31, 2012. (Exhibit 6)
2. Patrick Schmitz is the Executive Director of Plains Area Mental Health, Inc. Respondent was employed as a therapist by Plains Area Mental Health for approximately four years, from 2007 until December 2011. On December 30, 2011, Mr. Schmitz filed a complaint against Respondent relating to Respondent's treatment of a female client in November 2011. Mr. Schmitz included documentation of his investigation with his complaint. (Testimony of Patrick Schmitz; Exhibit 4)
3. The testimony and documentation provided by Patrick Schmitz established the following chronology of events:
 - Respondent saw the client for an initial appointment on November 3, 2011 and for additional appointments on November 8 and November 10, 2011. Respondent asked the client to schedule another appointment with him;
 - Beginning on November 11, 2011, Respondent began sending daily text messages of a personal nature to the client. In the text messages, Respondent asked the client about what she was doing and about her

11.21(1). Respondent was properly served with the Statement of Charges and Notice of Hearing by restricted certified mail on September 26, 2012. (Exhibit 3)

- plans for the day. Respondent told the client that he really wanted to speak to her and urged her to be sure she was scheduled for an appointment. Respondent also suggested setting the client up for a date;
- On November 13, 2011, Respondent called and left a voice mail message for the client stating that he could swing by her place to help her out. (The client saved this voice mail and shared it with Schmitz.) Respondent called again and told the client that he was outside her apartment and asked if the client needed assistance. The client asked Respondent to go away and told him it was not appropriate for him to come to her residence.

(Testimony of Patrick Schmitz; Exhibit 4)

4. After receiving these text messages and telephone calls, the client asked Plains Area Mental Health to schedule an appointment for her with a female therapist instead of Respondent. The client was given an appointment for November 16, 2011 with Cindy Prather, LMHC. At this appointment, the client told Prather about the personal text messages and phone calls she received from Respondent and showed Prather the text messages on her cell phone. The client asked Prather if this was normal therapist behavior. Prather notified her immediate supervisor about the situation. (Testimony of Patrick Schmitz; Exhibit 4)

5. The client's mother also called Plains Area Mental Health and left a voice mail message for Patrick Schmitz expressing concern about Respondent's communications with her daughter. Schmitz conducted an internal investigation, which included a review of Respondent's documentation for his therapy sessions with the client. Schmitz discovered that Respondent had not completed the initial intake documentation for this client, which should have been completed by the time of the second session. Respondent also had not documented progress notes for any of the therapy sessions. The agency's policy required progress notes to be completed within 24 hours of the session. (Testimony of Patrick Schmitz; Exhibit 4)

Schmitz interviewed the client and had the text messages from Respondent transcribed. Plains Area Mental Health generally does not permit therapists to exchange text messages with clients or to communicate with clients outside of their scheduled sessions unless the client is in crisis. (Testimony of Patrick Schmitz; Exhibit 4)

6. Schmitz met with Respondent on December 20, 2011 and provided Respondent with a letter summarizing the investigation and his concerns. The letter informed Respondent that the investigation substantiated violations of the Center's standard of care and the NASW Code of Ethics with respect to conflicts of interest, maintaining client records, and upholding the integrity of the social work profession. During this meeting, Respondent admitted text messaging the client but did not admit going to her apartment. Respondent admitted that his contacts with the client were inappropriate. Respondent was terminated from his position with Plains Area Mental Health, Inc. (Testimony of Patrick Schmitz; Exhibit 4, p. 37-38)

7. The Board referred the complaint filed by Patrick Schmitz to the Department of Inspections and Appeals (DIA) for further investigation. DIA Investigator Tamara Adams interviewed Respondent, Respondent's supervisor, Cindy Prather, and the client. Respondent admitted that he gave the client his personal cell phone number and admitted calling and texting her daily after their third session. Respondent also admitted going to the client's apartment because she told him that her ex-husband was there and refused to leave. Respondent obtained the client's address from her intake information. Respondent told Investigator Adams that the client was the same age as his daughter and he wanted to "save her" and be a hero. Respondent told Adams that he did not discuss the client's case with his supervisor because it was "incriminating." Respondent also admitted that during his third session with the client he offered to introduce her to one of his wealthy older clients. Respondent told Adams that he had a "terrible lapse in judgment." (Testimony of Tamara Adams; Exhibit 5)

CONCLUSIONS OF LAW

The Iowa legislature has directed the Board to adopt rules relating to standards required for licensees engaged in private practice as a social worker and standards for the professional conduct of all licensees.²

The Board has adopted rules establishing "Grounds for Discipline" for licensed social workers at 645 IAC 283.2. 645 IAC 283.2(12) provides that the board may impose any of the disciplinary sanctions provided in rule 645-283.3 when the board determines that the licensee has violated a regulation, rule, or law of this

² Iowa Code section 154C.4(1), (2)(2011).

state, another state, or the United States, which relates to the practice of social work, including but not limited to, the rules of conduct found in 645 IAC 282.2.

The Board has adopted rules prescribing “Rules of Conduct” for licensed social workers at 282 IAC 282.2. 645 IAC 282.2 provides in relevant part:

...

282.5 *Record keeping.*

a. A licensee shall maintain sufficient, timely, and accurate documentation in client records. A licensee’s records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

b. A licensee who provides clinical services in any employment setting, including private practice, shall maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.

...

282.8 *Dual relationships and conflicts of interest.*

a. “Dual relationship” means that a licensee develops or assumes a secondary role with a client, including but not limited to a social relationship or business association. For purposes of these rules, “dual relationship” does not include a sexual relationship...

(1) Current clients. A licensee shall not engage in a dual relationship with a client.

...

b. Conflicts of interest.

...

(2) A licensee shall not continue in a professional relationship with a client when the licensee has become emotionally involved with the client to the extent that objectivity is no longer possible in providing the required professional services.

COUNT I

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(5) when he failed to properly document his three therapy sessions with the client in November 2011. Respondent failed to complete the required intake

documentation following the client's initial therapy session, and he did not complete any documentation for the next two therapy sessions. The three therapy sessions with the client were all approximately one hour in length and should have been properly and fully documented. Respondent's employer required session notes to be completed the same day as the session. Proper and timely documentation of therapy sessions is necessary to ensure the client receives effective treatment and continuity of care.

COUNTS II, III, and IV

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(8)(a)(1) [Count I] when he engaged in an improper dual relationship with the client. The dual relationship was proven through credible evidence that Respondent: repeatedly sent text messages of a personal nature to the client, attempted to initiate conversations of a personal nature, went to the client's residence to "save" her from her ex-husband, and offered to introduce the client to one of his older wealthy clients.

These same actions demonstrated that Respondent violated 645 IAC 282.2(8)(b)(2) [Count II] by continuing in a professional relationship with the client after he had developed an impermissible conflict of interest. The preponderance of the evidence clearly established that Respondent had become emotionally involved with the client to the extent that he could no longer be objective in providing professional services to her. Respondent recognized that his actions were inappropriate and unethical, but he failed to take action to withdraw as therapist for the client. It appears that Respondent would have continued in his therapist role if the client had not reported his conduct.

Pursuant to 645 IAC 283.2(12), the Board is authorized to discipline Respondent for his violations of the Board's rules of conduct, including the prohibition of dual relationships and conflicts of interest. [Count IV].

SANCTION

The Board has determined that these serious violations of the rules of conduct require remedial education on the topics of ethics, dual relationships, professional boundaries, and conflicts of interest. In addition, Respondent's practice must be closely monitored for a period of one year to ensure that he is practicing in full conformance with the rules of conduct.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 05141, issued to Respondent Keith Sutherland, is hereby placed on probation for an indefinite period of no less than one (1) year, subject to the following terms and conditions:

A. Respondent shall complete nine (9) hours of continuing education on the topics of ethics, dual relationships, conflicts of interest, and professional boundaries, in addition to any other continuing education courses required for license renewal. These nine (9) hours of continuing education shall be pre-approved by the Board and shall be completed within six (6) months of the issuance of this Decision and Order. Respondent shall provide the Board with written verification of his completion of the continuing education.

B. Respondent's social work practice shall be monitored by another licensed independent social worker (LISW), approved by the Board, for a minimum period of one year. Any costs associated with the practice monitor and/or the practice monitoring plan shall be paid by Respondent. Respondent shall submit the name and curriculum vitae of his proposed practice monitor within thirty (30) days of the issuance of this Decision and Order. The Board approved practice monitor shall submit a written monitoring plan to the Board for its approval. The practice monitor will be required to provide the Board with quarterly written reports concerning Respondent's practice and Respondent's compliance with the Board's rules of conduct, including but not limited to issues relating to dual relationships, professional boundaries, conflicts of interest, and record keeping. Respondent shall fully cooperate with the practice monitor and shall fully comply with the practice monitoring plan.

C. Respondent shall file written quarterly reports with the Board reporting on his progress in completing the required continuing education, his current employment and social work practice, his working relationship with his practice monitor, and his compliance with the Board's rules of conduct.

D. Respondent shall provide his current employer with a copy of this Decision and Order, within ten (10) days of its issuance, and shall provide this Decision and Order to any new employer prior to accepting any new position as a social worker. Respondent's employer(s) shall promptly provide written verification to the Board that they have received and reviewed this Decision and Order.

E. Only those months when Respondent is involved in the active, monitored practice of social work will count towards completion of the one year term of probation. Respondent may apply to the Board to be released from probation after he has demonstrated one full year of compliant social work practice, as verified by his Board-approved practice monitor.

IT IS FURTHER ORDERED that any violation of the terms of this Decision and Order or the terms and conditions of probation will be grounds for further discipline, up to and including license suspension or revocation.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$82.50 for the court reporter fees. The total fees of \$157.50 shall be paid within thirty (30) days of issuance of this decision.

Dated this 9th day of January, 2013.



Katinka Keith, Vice-Chairperson
Iowa Board of Social Work

cc: Sara Scott, Assistant Attorney General (LOCAL)
Keith Sutherland, Respondent (RESTRICTED CERTIFIED)

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon

by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.