

BEFORE THE IOWA BOARD OF SOCIAL WORK EXAMINERS

IN THE MATTER OF:) DIA NO. 07DPHSW001
)
)
) FINDINGS OF FACT,
KRISTEN LEE MALAKE) CONCLUSIONS OF LAW,
)
) DECISION AND ORDER

On August 11, 2003, the Iowa Board of Social Work Examiners (Board) and Kristen Lee Malake (Respondent) entered into a Settlement Agreement and Final Order accepting the voluntary surrender of Respondent's social work license. On January 22, 2007, Respondent filed an Application for Reinstatement. The Board issued a Notice of Hearing on February 6, 2007.

The hearing was held on May 14, 2007 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: Joyce Westphal, LISW, Chairperson; Katinka Keith, LISW; David Stout, LMSW; and Mary Tasler, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Respondent Kristen Lee Malake was self-represented. Assistant Attorney General Heather Adams represented the state. A certified court reporter recorded the hearing. The hearing was closed to the public, pursuant to Iowa Code sections 21.5(1)(a); 272C.6(1)(2007), and 645 IAC 11.19(10).

Following the hearing, the Board convened in closed executive session to deliberate their decision, pursuant to Iowa Code section 21.5(1)(f)(2007). 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 and the following exhibits:

State Exhibit 1: 645 IAC 11.31; 641 IAC 280.14-280.15
State Exhibit 2: Application for Reinstatement
State Exhibit 3: Statement of Charges, 5/29/03

- State Exhibit 4: Settlement Agreement and Final Order, 8/11/03
State Exhibit 5: Investigative Report, 1/31/03

FINDINGS OF FACT

1. On June 22, 2001, the Board issued Respondent license number 304-05968 to practice as a licensed master social worker in the state of Iowa. (State Exhibit 3) For approximately six months from April 2002 until October 2002, Respondent was employed as a social worker team leader by a mental health center. Respondent had administrative duties and provided client therapy. While employed in this position, Respondent engaged in an unethical dual relationship and a sexual relationship with client #1. (State Exhibits 3, 5; Testimony of Respondent)

2. On May 12, 2003, the Board filed a Statement of Charges alleging that Respondent engaged in an unethical dual relationship and a sexual relationship with a client, in violation of Board statutes and rules. On August 11, 2003, Respondent and the Board entered into a Settlement Agreement and Final Order. Respondent agreed to voluntarily surrender her social work license and further agreed that any application for reinstatement would be subject to the provisions of 645 IAC 11.31 and that Respondent would be required to submit evidence demonstrating, to the Board's satisfaction, that the basis for the surrender of her license no longer exists and that it is in the public interest for her license to be reinstated. (State Exhibits 1, 3, 4)

3. On January 22, 2007, Respondent filed an Application for Reinstatement. She attached continuing education credits for the following courses: Women's Health, 6 credits; Eating Disorders, 3 credits; Loss of Control, 3 credits; Riding the Waves, 12 credits; and Ethics, 3 credits. Respondent also attached a letter from Mark Preston, M.D., who has been her treating psychiatrist for the past five years. Dr. Preston reported that he had treated Respondent primarily for chronic mild depression and anxiety. Dr. Preston reports one psychiatric hospitalization, related to "some secondary problems with over drinking." Dr. Preston wrote that in his opinion, Respondent's psychiatric problems in the past three years have not precluded her from working in the capacity of a licensed,

clinical social worker. He believes that she is psychiatrically stable to return to a social work position. (State Exhibit 2)

4. Respondent reports that she has had a long history of mental illness and was in therapy in Iowa City for approximately three years prior to moving to Des Moines. Respondent has not had any therapy since before the ethical violations leading to the surrender of her license, although she has been under Dr. Preston's care for medication management. When she surrendered her social work license, Respondent's mental health was unstable due to depression, anxiety, personal relationship issues, and alcohol abuse. After her psychiatric hospitalization, Respondent saw Dr. Preston on a regular weekly or bi-weekly basis for a period of time. Currently, Respondent sees Dr. Preston every six months for medication management. She is currently taking Zoloft, 150 mg, once per day. Respondent has not had any treatment for alcohol abuse and does not attend Alcoholics Anonymous (AA) or any other support groups. She reports that she has been sober since October 2002. (Testimony of Respondent; State Exhibit 2)

5. Respondent has been employed full-time by a daycare for the past four years. If her license is reinstated, Respondent is hoping to use her social work skills to work with children. Since surrendering her license, Respondent has had one child and is expecting a second child. (Testimony of Respondent; State Exhibit 2)

6. Kimberly Andeway is Respondent's sister and has a bachelor's degree in social work. Ms Andeway testified that she sees Respondent twice a month and speaks to her on the phone several times a week. Ms Andeway testified that Respondent stopped drinking a few months after her psychiatric hospitalization. (Testimony of Kimberly Andeway)

CONCLUSIONS OF LAW

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 voluntary surrender of Respondent's license no longer exists and whether reinstatement is in the public interest. Engaging in a dual relationship and engaging in a sexual relationship with a client are extremely serious professional boundary violations. The Board's primary responsibility is protection of the public. In order to reinstate Respondent's license, the Board must be satisfied that Respondent will comply with all of the statutes and rules governing her practice as a licensed master level social worker, including all ethical obligations. However based on this record, Respondent has failed to take adequate remedial steps to ensure that she will not commit similar violations in the future.

It is clear that complicated mental health and substance abuse issues contributed to Respondent's unethical behavior and boundary violations. However, even though Respondent has practiced as a licensed master level social worker and had therapy for mental health issues a number of years ago, she has now chosen to address her serious professional boundary issues solely through medication management and limited visits with a psychiatrist. Based on her testimony, Respondent does not appear to appreciate the necessity or importance of obtaining appropriate professional therapy to identify and resolve the issues that enabled her to commit these ethical violations. For example, while Respondent blames her alcohol abuse for at least some of her very poor choices, she has not sought any treatment for her substance abuse and has not participated in any of the readily available structured support groups designed to help problem drinkers maintain sobriety. Respondent asks the Board to

believe that she can resolve this serious problem on her own without any therapeutic or behavioral intervention.

In addition, Respondent demonstrated little insight into the complex mental health issues that contributed to her very serious professional boundary violations. Even though she is a clinical social worker, Respondent displayed little understanding of the issues of transference and counter-transference. While Respondent recognized that she has "always had a tendency to become overly involved with her clients", she offered little assurance that she would be able to maintain appropriate professional relationships in the future. Respondent naively suggested that she would avoid future professional boundary issues altogether by shifting her focus to working with children. However, this raises great concern for the Board because children and their parents are especially vulnerable client populations.

In summary, Respondent has failed to carry her burden to show that the reason for the voluntary surrender of her social work license no longer exists or that it is in the public interest for her license to be reinstated. 645 IAC 11.31(4).

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for reinstatement of license number 304 05968 to practice social work at the master's level, filed by Kristen Lee Malake, is hereby DENIED.

IT IS FURTHER ORDERED that before Respondent files a second Application for Reinstatement, she must:

- A. Obtain a comprehensive evaluation from a Board-approved mental health practitioner with expertise in professional boundary issues. Respondent shall also obtain a substance abuse evaluation from a Board approved provider or facility. The Board approved evaluator(s) shall prepare a written treatment plan(s) for Board approval.
- B. Respondent shall fully comply with all treatment recommendations approved by the Board for a minimum period of six (6) months.
- C. Respondent shall obtain a written recommendation from her approved treatment provider(s) that she is ready to safely return to the practice of social work.

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This findings of fact, conclusions of law, decision and order are approved by the board on June 13, 2007.

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 the decision by the Board. 645 IAC 11.29.