

BEFORE THE IOWA BOARD OF SOCIAL WORK

IN THE MATTER OF:)	DIA NO. 08DPHSW019
)	
EMILY A. DONOVAN)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
)	[FOLLOWING REMAND]

On August 26, 2008, the Iowa Board of Social Work (Board) sent Emily Donovan (Applicant) a preliminary notice of intent to deny her application for a license to practice social work at the independent level. The Applicant appealed and an evidentiary hearing was held on November 10, 2008. The Board issued its Findings of Fact, Conclusions of Law, Decision and Order denying the license application on February 9, 2009. (State Exhibit 10)

The Applicant filed a Petition for Judicial Review in Polk County District Court. The District Court concluded that the Board improperly applied its interpretation of the term "diagnosis" with the force of law, without previously subjecting the interpretation to public inspection and indexing in accordance with the Iowa Administrative Procedures rulemaking process. On July 29, 2009, the Court reversed and remanded the Board's decision. The Court instructed the Board to determine whether the Applicant has performed diagnoses under supervision as required by the Code, without reference to the Diagnostic and Statistical Manual of Mental Disorders, 4th Ed. (DSM-IV). (State Exhibits 11-14)

On April 19, 2010, the following members of the Board heard the appeal on remand: David Stout, LMSW, Chairperson; Katinka Keith, LISW; Beth Harms, LISW; David Stone, LISW; Krista Mattson, LBSW; and Mary Tasler, public member.¹ The Applicant appeared and was represented by attorney Becky Knutson. Assistant Attorney General Heather Adams represented the state. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and drafted the Board's decision, consistent with their deliberations. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2009).

¹ All of the Board members, including the two members who did not preside at the initial hearing, reviewed the entire record of the initial hearing, including the transcript.

THE RECORD

The record includes the testimony of the Applicant, State Exhibits 1-14 and Applicant Exhibits A-AA. State Exhibit 9 is the transcript from the initial hearing.

ISSUE

Has the Applicant proven that she was practicing social work at the master's level (i.e. providing diagnosis and treatment of mental and emotional disorders or conditions) in her supervised practice at the Heartland AEA?

FINDINGS OF FACT

Applicant's Educational Background and Recent Work Experience

1. The Applicant earned a Bachelor of Social Work Degree from the University of Iowa in 2001 and a Master of Social Work degree from the University of Iowa on May 11, 2005. The Applicant is currently licensed as a master level social worker in the state of Iowa. (Exhibit 9, p. 36; Exhibit 3; Exhibit A)

2. The Applicant was initially employed by the Heartland Area Education Agency (AEA) in November 2005 as a School Social Worker. Since 2006, the Applicant has been a member of Heartland's Challenging Behavior and Autism Team. (Exhibit 9, p. 38) The core of the team consists of the social worker, the school psychologist, and educational consultants. The team also includes the teacher associate, the student, the student's parents, and the school administrator. (Exhibit 9, pp. 42-43) The Challenging Behavior and Autism Team works with students with autism and with students who have the most severe behaviors. (Exhibit 9, pp. 38). The Applicant works with children from birth to third grade in 12 school districts. (Exhibit 9, p. 38, 78) There is no specific job description for the Applicant's current position, but her duties are reflected in several different job descriptions at the Heartland AEA 11. (Exhibit 9, p. 39; Exhibit 3; Exhibits B-D)

The Written Application for LISW Licensure and Initial Denial

3. On June 23, 2008, the Applicant filed an Application for Social Work Licensure at the independent level. In her application, she provided the following description of her

most recent social work practice as a Behavior and Autism Specialist for the Heartland AEA:

Conduct functional behavioral assessments, develop behavior interventions & use progress monitoring to make data-based decisions. Connect families to community resources, present & facilitate trainings for Heartland and school staff on behavior & strategies for working with children with autism.

The application included a Supervision Plan Summary and a Supervision Report signed by the Applicant's supervisor, Diann Jenison, LISW and School Social Worker at Heartland AEA 11. Ms. Jenison documented that she directly supervised the Applicant in weekly meetings from May 1, 2006 through May 1, 2008 for a total of 165 hours. In addition, Ms. Jenison affirmed on the application that the Applicant:

- Was in a position performing psychosocial assessment, diagnosis, and treatment;
- Had satisfactorily completed the goals and objectives that were established at the onset of supervision and fulfilled the requirements as outlined in the Board's administrative rules regarding supervision; and
- Had adhered to the Board's administrative rules, including rules of conduct.

Ms. Jenison recommended that the Applicant be allowed to sit for the ASWB clinical level examination. (Testimony of Applicant; Diann Jenison; Exhibit 3)

4. The Applicant's Supervision Plan Summary identifies the following steps for increasing her therapeutic practice skills:

1. Improve assessment skills and make appropriate community referrals.
2. Develop appropriate/effective assessment tool for early childhood referrals.
3. Conduct Functional Behavioral Assessments using RIOT procedures for assessment and problem identification (R=review academic, medical, and mental health records, I=interview student, teachers, parents, O=observe student behavior in multiple settings and compare with same-aged peers, T=test using Ages & Stages questionnaires, assist with ADOS (-Autism diagnostic for educational diagnosis of Autism))

4. Develop appropriate behavioral intervention plans using progress monitoring to make data based decisions before altering a behavior intervention plan.
5. Utilize treatment integrity checklists to check for reliability and validity of behavior interventions.
6. Conduct a structural analysis to help determine function of behavior.
7. Participate in a functional analysis.

(Testimony of Diann Jenison; Applicant; Exhibit 3)

5. On August 26, 2008, the Board issued its Preliminary Notice of Intent To Deny Licensure to the Applicant on the basis that the Applicant was not providing diagnosis and treatment of mental and emotional disorders or conditions, under supervision, in her position at Heartland AEA. (Exhibit 5) The Applicant filed a Notice of Appeal. (Exhibit 6)

Further Information In Support of Application

6. At the initial hearing before the Board, the Applicant supplemented her written application with her own testimony. She also presented testimony from her supervisor, Diann Jenison, as well as testimony from Jim Clark, who is a thirty year employee of the Heartland AEA. Mr. Clark is also licensed as an independent social worker. Diann Jenison and Jim Clark both emphasized that the Applicant is a highly professional, thorough, and talented social worker. In their opinion, the Applicant provides psychosocial assessment, diagnosis, and therapy in her position at Heartland AEA. (Testimony of Applicant; Diann Jenison; Jim Clark) The Applicant also submitted Exhibits A-W at the initial hearing. At the hearing on remand, the Applicant provided further testimony and additional exhibits X-AA.

Psychosocial Assessment

7. The Applicant uses a number of assessment tools to define a student's problem behavior and the function of that behavior. She conducts Functional Behavioral Assessments using RIOT procedures (review, interview, observe, test). The Applicant begins by performing record review and looking at how long the behavior has been occurring, how long it has been impacting academics, and how it impacts the children and staff around the student. If possible, she interviews the student. She interviews all

of the teachers and people who work with the student and the parents. (Exhibit 9, pp. 18-19, 51-52)

The Applicant provided an example of one of her completed Functional Behavior Assessments (Exhibit H), which was for a student with self-injurious behaviors. A functional behavior assessment is an assessment of the history of student behavior across settings. The Applicant explained that the two main functions of behavior are to escape attention/escape a demand or to gain attention/gain access to a preferred object. There can also be multiple functions present in a single behavior. In order to define the function of the student's behavior, the Applicant collects information about the student's behavior from a variety of sources, including her own direct observation of the student in the educational environment. The Applicant considers the A-B-C (antecedent-behavior-consequence) data. The "antecedent" is what happens right before the behavior occurs, and the "consequence" is what happens right after the behavior. The Applicant writes the Functional Behavior Assessment, which defines and describes the function of the student's behavior in detail so that everyone who is working with the student has the same definition of the function of the behavior. (Exhibit 9, pp. 58-59; Exhibits H, Z; Testimony of Applicant)

8. The Applicant and her team may also use "functional analysis" in the most severe cases when the function of the behavior cannot be determined using the Functional Behavior Assessment and the A-B-C process. Exhibit J is an example of a Functional Analysis Summary completed by the Applicant with her team members. This was the only Functional Analysis that the team completed the previous year. The Functional Analysis is implemented by setting up scenarios between the student and an adult. When the problem behavior is observed, the adult reinforces the problem behavior in an attempt to determine what maintains the behavior in the student's daily environment. In Exhibit J, five conditions (free play, diverted attention/contingent attention, tangible, and demand escape) were implemented for approximately five minutes each. Based on this process, the team determined that the student's self-injurious behaviors occurred most often when he was denied access to preferred items. (Testimony of Applicant; Exhibit 9, pp. 62-64)

9. In addition to the RIOT procedures and functional analysis, the Applicant may also use other tools to assess students. These include the ABLLS-R (Assessment of Basic Language and Learning Skills-Revised), the AEPS (Assessment, Evaluation, and Programming System for Infants and Children), the ASQ (Ages & Stages

Questionnaires), the Verbal Behavior Assessment Form, and the Social Skills Rating System. (Applicant Exhibits L-Q, U-W; Exhibit 9, pp. 66-72). If the Applicant sees a lot of red flags for depression (or other mental or emotional disorders) during the assessment process, she will advise the parents that they may take her assessments and seek further treatment or opinion from another professional. (Exhibit 9, p. 52)

Diagnosis

10. Many (if not most) students are referred to the Applicant without a diagnosis of any mental health/emotional condition or disorder. (Exhibit 9, pp. 23, 51) At the initial hearing, the Applicant testified that a diagnosis is "just a label," and it "doesn't guide our treatment." (Exhibit 9, p. 51) She explained that they can't give diagnoses in the school setting because:

"it's irrelevant because we don't do treatment based on the diagnosis, we do it based on the function of the behavior. But it would also put a liability on the school district if I gave a student a diagnosis. It would either require the school district or Heartland AEA to pay for those services, that's why those get referred out.

(Exhibit 9, p. 52).

11. The Applicant does provide the Conners' Rating Scale, which is used to identify Attention Deficit Hyperactivity Disorder, at the request of the student's parents or teachers. However, the Applicant does not score the Conners' Rating Scale and does not determine if the student has ADHD. The parents may take the completed forms to their child's physician or the forms may be placed in the student file. (Exhibits R, S; Exhibit 9, pp. 29, 71) The Applicant does not use the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) to diagnose students. (Testimony of Applicant; p. 83)

The Applicant's team will sometimes make an "educational" diagnosis of autism using the ADOS (Autistic Diagnostic Observation Schedule), which looks at some but not all criteria of autism. The educational diagnosis of autism is provided by the team and not by the Applicant. The team takes a behavior and developmental history and completes a verbal behavior assessment form for the student. The team then sets up play situations for the child for 45 minutes to one hour to look for traits like imaginative play

skills, social communication, and social behavior. At the conclusion, the team prepares a written report with recommendations for treatment. (Exhibit G; Exhibit 9, pp. 22-24, 53-57, 92-95)

Both Diann Jenison and Jim Clark testified that they believe that the Applicant provides assessment and diagnosis on a regular basis in her position at the Heartland AEA. (Exhibit 9, pp. 18-19; 102) Mr. Clark described psychosocial assessment as "gathering relevant information in order to make decisions" and agreed that bachelor level social workers may provide psychosocial assessments. (Exhibit 9, pp. 101-102) Mr. Clark further testified that "assessment leads to diagnosis, which is *an understanding of the underlying cause of behavior.*" (Exhibit 9, p. 101, emphasis supplied).

Treatment

12. After identifying the student's problem behavior and its function, the Applicant develops the treatment or "Behavior Intervention Plan" for the student. (See Exhibit I) The Behavior Intervention is designed to teach the student a replacement behavior for the student's maladaptive/problem behavior. The Applicant will initially work one-on-one with the student to apply the interventions, which are usually behavior modification techniques. In severe cases, the Applicant may work with the student one-on-one all day for a week. The Applicant also teaches or models the techniques for the teacher/teacher's aide in the student's classroom. She will also return to the classroom for progress monitoring until the teacher or teacher's aide who is in the classroom is ready to take over applying intervention techniques in the Behavior Intervention Plan. The goal is for the Applicant to "fade out" as those in the classroom learn to effectively apply the interventions. The Applicant will return to work with the student individually as needed. (Exhibit 9, pp. 60-62, 86-87; Testimony of Diann Jenison; Applicant)

13. The Applicant provided an example of a Behavior Intervention Plan for a student with self-injurious behavior who had both a Functional Behavior Assessment and a Functional Analysis. (Exhibit I). The Behavior Intervention Plan included Functional Communication Training, i.e. teaching the student the appropriate way to communicate his needs and desires by using functional signs and a communication bracelet. The plan also included "neutral blocking" outside of the teaching sessions whenever the student displayed self-injurious behaviors. Neutral blocking involved providing minimal attention while the adult physically places his or her hand in a position to

block the self-injurious behavior. The plan further called for "direct instruction" techniques to increase the student's compliant behavior. For the first five minutes of each day, the adult would provide the student his preferred object/activity along with high rates of positive attention. A timer or verbal prompt alerts the student that play time was over and it is time for work. The student is initially presented very simple demands with high rates of reinforcement for completing the demand. Following each successful response, the student is given access to his preferred objects for 30 seconds, with a quick rate between work and tasks. The student was never allowed to escape a demand. (Exhibit 9, pp. 62-63; Exhibit J)

14. The Applicant and her supervisor both identified the Behavior Intervention Plan as the treatment or therapy provided by the Applicant. (Exhibit 9, p. 19; Testimony of Applicant) When the Applicant's supervisor was asked what type of therapy the Applicant provided, she responded "I'm thinking what we do is more behavior modification." (Exhibit 9, p. 24).

CONCLUSIONS OF LAW

The Iowa legislature mandates licensure for social workers in Iowa and has specified requirements for three levels of permanent licensure: bachelor social worker, master social worker, and independent social worker.² The practice of social work means the professional activity of licensees which is directed at enhancing or restoring people's capacity for social functioning, whether impaired by environmental, emotional, or physical factors, with particular attention to the person-in-situation configuration.³

The social work profession represents a body of knowledge requiring progressively more sophisticated analytic and intervention skills, and includes the application of psychosocial theory methods to individuals, couples, families, groups, and communities.⁴ However, the practice of social work does not include the making of a medical diagnosis, or the treatment of conditions or disorders of a biological etiology except treatment of conditions or disorders which involve psychosocial aspects and conditions.⁵

² Iowa Code sections 154C.2; 154C.3 (2009).

³ Iowa Code section 154C.1(3)(2009).

⁴ *Id.*

⁵ *Id.*

The legislature has established licensure for social workers at three different levels: bachelor, master, and independent.⁶ A licensed bachelor social worker (LBSW) is qualified to provide psychosocial assessment and intervention through direct contact with clients or referral of clients to other qualified resources for assistance, including but not limited to performance of social histories, problem identification, establishment of goals and monitoring of progress, interviewing techniques, counseling, social work administration, supervision, evaluation, interdisciplinary consultation and collaboration.⁷

A licensed master social worker (LMSW) is qualified to perform the practice of a bachelor social worker and provide psychosocial assessment, **diagnosis, and treatment**, including but not limited to performance of psychosocial histories, problem identification and evaluation of symptoms and behavior, assessment of psychosocial and behavioral strengths and weaknesses, effects of the environment on behavior, *psychosocial therapy* with individuals, couples, families, and groups, establishment of treatment goals and monitoring progress, differential treatment planning, and interdisciplinary consultation and collaboration.⁸

A licensed independent social worker is qualified to perform the practice of a master social worker as a *private practice*.⁹ “*Private practice*” means social work practice conducted only by an LISW who is either self-employed or a member of a partnership or of a group practice providing diagnosis and treatment of mental and emotional disorders or conditions.¹⁰

Pursuant to the authority delegated by Iowa Code section 154C.4, the Board has promulgated rules governing the licensure and practice of social workers at 645 IAC chapters 280 and 282. The Board’s rules provide the following relevant definitions:

“*Clinical services*” means services provided by an LMSW or LISW which involve the professional application of social work theory and methods in

⁶ *Id.*

⁷ Iowa Code section 154C.1(3)(a)(2007).

⁸ Iowa Code section 154C.1(3)(b)(2007)(emphasis supplied).

⁹ Iowa Code section 154C.1(3)(c)(2007)(emphasis supplied).

¹⁰ Iowa Code section 154C.1(4)(2007); 645 IAC 280.1.

diagnosing, assessing, treating, and preventing psychosocial disabilities or impairments, including emotional and mental disorders.¹¹

"*Psychosocial therapy*" means a specialized, formal interaction between an LMSW or LISW and a client in which a therapeutic relationship is established and maintained to assist the client in overcoming or abating specific emotional, mental, or social problems and achieving specified goals for well-being. Psychosocial therapy is a form of psychotherapy which emphasizes the interface between the client and the client's environment. Therapy is a planned, structured program based on a diagnosis and is directed to accomplish measurable goals and objectives specified in the client's individual treatment plan.¹²

Requirements for licensure as a social worker at the independent level include, in part, possession of a master's or doctoral degree in social work, passing an examination, and having engaged in the practice of social work under supervision for at least two years as a full-time employee.¹³ "*Supervision*" means the direction of social work practice in face-to-face sessions.¹⁴

Supervision shall be provided by a social worker licensed at least at the level of the social worker being supervised and qualified to practice without supervision, unless the board determines that such supervision is unobtainable or that supervision by another qualified professional is appropriate. The legislature has specifically authorized the board to determine "additional standards for supervision."¹⁵

Pursuant to this authority, the Board has promulgated an administrative rule which provides that the supervised practice of an LISW applicant shall be the equivalent of two years of full-time post-master's social work degree practice at the master's level performing psychosocial assessment, *diagnosis and treatment*.¹⁶ The Board's rules require 110 hours of direct, face-to-face supervision over the two-year period and prescribe the manner in which the supervision must be obtained. The Board's rules

¹¹ 645 IAC 282.1.

¹² Id.

¹³ Iowa Code section 154C.3(1)(c)(1)-(4)(2007).

¹⁴ Iowa Code section 154C.1(5)(2007).

¹⁵ Iowa Code section 154C.3(5)(2007).

¹⁶ 645 IAC 280.6(1)(a).

further require that the supervisor establish and maintain a plan of supervision throughout the supervisory period which includes a number of required elements, including the goals and objectives for the "clinical work experience."¹⁷

The Board has a statutory duty to ensure that applicants for licensure at the LISW level are qualified to independently provide diagnosis and treatment of mental and emotional disorders in a self employed setting prior to their licensure. The supervised practice is a key element in determining that the LISW applicant is qualified. The applicant has the burden to establish that he or she has performed master level work for two years under supervision. The master's level work must include diagnosing mental and emotional disorders and conditions and providing psychosocial therapy, based on a diagnosis.

The Applicant's written application did not include a statement that she provided diagnosis or therapy during her two-year period of supervision. (Exhibit 3) She supplemented her application with testimony and exhibits at two hearings. The hearing record established that the Applicant's position is highly specialized and involves the performance of functional behavior assessments, functional analysis, behavior interventions, progress monitoring, connecting families with community resources, and providing special training to school staff. There is no question that the Applicant is a highly talented and dedicated social worker who exhibits high ethical standards. The Applicant is an expert in the techniques that she uses, which are apparently highly effective.

The Applicant maintains that the assessment process that she uses in her position as a member of the Behavior and Autism team at the Heartland AEA constitutes diagnoses. The Board disagrees. Upon review of the entire record, the Board remains unable to conclude that the Applicant diagnoses mental or emotional disorders or conditions. Although the Applicant occasionally assists her team in providing an *educational* diagnosis of autism, she is not providing an autism diagnosis for the student. The Applicant and her witnesses urge the Board to conclude that the Applicant's functional assessment of a student's problem behavior constitutes diagnosis. However, the varieties of behavior assessment tools utilized by the Applicant are more closely aligned to psychosocial assessment than they are to diagnosis of mental or emotional disorders or conditions.

¹⁷ 645 IAC 280.6(3).

One of the Applicant's witnesses, Jim Clark, defined psychosocial assessment as the gathering of relevant information to make a decision. He conceded that bachelor level social workers can perform psychosocial assessment. (Exhibit 9, pp. 101-102) Mr. Clark further testified that assessment leads to diagnosis, which he defined as an "understanding of the underlying cause of behavior." (Exhibit 9, pp. 101-102). The Board agrees that at least one purpose of diagnosis is to identify or define the underlying cause of the behavior. However, the Functional Behavior Assessment and Functional Analysis conducted by the Applicant and her team do not determine the underlying cause or root of the student's problem behavior. The student's problem behavior is not viewed as an expression of mental or emotional disorder. Rather, the student's behavior is analyzed through the rather narrow perspective of gain/rewards and escape/losses. In the journal article submitted by the Applicant as Exhibit Y, the authors noted the central importance of functional analysis to behavioral assessment and intervention. The authors asserted that this approach can be a powerful *addition* to traditional diagnosis, and suggested a melding of the DSM and functional analysis systems. (Exhibit Y, pp. 1178, 1186) However, the article does not go so far as to characterize the use of functional assessment or the use of functional analysis, by themselves, as constituting diagnosis.

Another key hallmark of master level social work is the provision of psychosocial therapy¹⁸ based on a diagnosis. The Applicant and her supervisor initially appeared to concede that the treatment that they provide is not guided by a diagnosis and that diagnosis is irrelevant to their treatment. It is now clear that the Applicant contends that her behavior intervention plans are based on a diagnosis (the function of the behavior) and that they constitute psychosocial therapy. The Board has concluded that the Applicant's determination of the function of the behavior is not a diagnosis. However, even if the definition of the function of the behavior was considered a diagnosis, the Applicant's treatment cannot reasonably be characterized as "psychosocial therapy."¹⁹

The Board recognizes that the Applicant's behavior intervention plans are thorough and are based on the data derived during the Functional Behavior Assessment process. There is no question that the Applicant is an expert in applying these techniques.

¹⁸ 645 IAC 282.1(2007).

¹⁹ See 645 IAC 282.1.

Nevertheless, the Applicant's behavior intervention plan essentially focuses on behavior modification, not therapy. The Applicant teaches and models an appropriate replacement behavior for the student through very narrow and specific teaching/interventions. After the Applicant implements and tests the Behavior Intervention Plan to ensure that it is working in the classroom, she teaches and delegates implementation of the plan to the student's teachers and/or aides, who are not licensed master level social workers. The performance of psychosocial therapy cannot be delegated to a person who is not properly licensed at the master's or independent level. In addition, the goals of the Behavior Intervention Plans are essentially problem solving and skill building. These goals fit squarely within the definition of counseling.²⁰ The Applicant has failed to establish that the design and implementation of Behavior Intervention Plans to address maladaptive behavior in the educational setting constitutes psychosocial therapy.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Preliminary Notice of Intent to Deny Applicant Emily A. Donovan licensure to practice independent social work is hereby AFFIRMED.

This findings of fact, conclusions of law, decision an order is approved by the board on May 27, 2010.

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.

²⁰ "Counseling" means a method used by licenses to assist clients in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns. 645 IAC 282.1.