

The hearing was held on May 13, 2013 at 12:25 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: Mark Hudson, public member, Chairperson; Mark Hillenbrand, LISW; Amy Courneya, LISW; Valerie Huntley, LISW; Dana McCarthy, LBSW; and Neil Nelsen, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Respondent Brian C. Nedoba failed to appear for hearing.¹ 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)(2013) 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)(2013), 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 Missy Santman, Judy Lentzkow, Kimberly Groves, Marvin Firch, and State Exhibits 1-32 (See exhibit index for description).

FINDINGS OF FACT

1. On January 2, 1991, the Board issued Respondent license number 00690 to practice as a licensed independent social worker (LISW) in the state of Iowa. Respondent's license expired on December 31, 2012. (Exhibit 9)
2. Respondent was employed providing mental health services through Wheaton Franciscan Health Services in Waterloo, Iowa from April 23, 2001 until his termination on January 3, 2012. (Testimony of Missy Santman; Exhibit 11, p. 41)
3. On September 21, 2011, Respondent made sexually explicit comments to client #1 during a therapy session. Respondent also commented on client #1's appearance and

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 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)

shared other inappropriate personal information with her. Client #1 left Respondent's office after he was called out to sign some papers for client #2. Client #1 told her mother about Respondent's improper comments, and they reported the comments to Respondent's employer. Client #1 never returned to Respondent for further services.

The Clinic Operations Director for Psychiatry interviewed client #1 and felt that the client's report of sexually explicit comments was credible. Client #1 reported that Respondent did not "seem himself that day." She further reported that Respondent's comments made her very uncomfortable and fearful. Although Respondent denied making the improper comments, his employer concluded that he was less credible than the client. (State Exhibits 9-12; 17-19; Judy Lentzkow, Kimberly Groves testimony)

4. On September 21, 2011, client #2 went to the clinic to pick up paperwork that Respondent was supposed to have signed for her. The receptionist interrupted Respondent's therapy session with client #1 to ask him about the paperwork. Respondent was upset to have been disturbed and told client #2 that it was the fault of her family practice physician that the papers had not been signed. Respondent also told client #2 "your problem is you should have seen a psychiatrist." When client #2 told Respondent that she was upset that he made this comment in front of another patient, Respondent offered to walk client #2 to her car. He then asked client #2 where she liked to eat, and he offered to take client #2 and her husband out to dinner to make up for the situation. Respondent also commented to client #2 that she was "looking great" and that she probably wanted to look good for her husband. Client #2 reported that this was not Respondent's usual behavior. Client #2 did not return to Respondent for further treatment following this encounter. (State Exhibits 11, 20)

5. On September 27, 2011, one of Respondent's clients commented to the receptionist that Respondent would probably fail a breathalyzer test. After two co-workers also smelled alcohol on Respondent he was asked to submit to an alcohol test, as permitted by his employer's Reasonable Suspicion Drug and Alcohol Testing Policy. Respondent's alcohol breathalyzer test came back with a positive result of .11 blood alcohol. Respondent was immediately placed on medical suspension. (State Exhibits 12, 23, 24; Judy Lentzkow testimony)

Later that afternoon, some of Respondent's co-workers found beer cans and vodka bottles in Respondent's office. Photographs were taken of these items. Respondent later admitted to an investigator that he had been drinking alcohol before work and

while working. Respondent admitted that it was not appropriate to drink alcohol while working but told the investigator that he did not think it affected his judgment. (State Exhibits 11, 12, 13; Kimberly Groves testimony)

6. On October 16, 2011, Respondent self-reported his alcohol impairment to the Impaired Practitioner Review Committee (IPRC). Respondent signed an initial agreement on December 23, 2011 and agreed that records and treatment notes would be forwarded directly to the IPRC if additional information was needed. Respondent also agreed to provide releases authorizing full disclosure of information concerning his participation in treatment, progress, prognosis, and ability to return to or remain in practice. The IPRC asked Respondent to provide his treatment records, including evaluations, treatment summaries and aftercare recommendations. The final submission deadline for these records was February 28, 2012. Respondent failed to provide the treatment records. The IPRC deemed Respondent non-compliant and referred his case to the Board for enforcement action on December 7, 2012. (State Exhibit 31; Testimony of Marvin L. Firch)

7. During the Board's investigation of these matters, it was discovered that Respondent also had the following alcohol related convictions:

- On February 28, 2011, Respondent pled guilty to Operating While Intoxicated (OWI)-1st in Howard County District Court. Respondent received a deferred judgment and was placed on unsupervised probation for one year. (Exhibits 11, 28; Kimberly Groves testimony)
- On April 26, 2012, Respondent pled guilty to OWI-2nd in Tama County District Court. Respondent was sentenced to serve two years at a facility for the treatment of drunk drivers and was required to pay a fine. (Exhibits 11, 30; Kimberly Groves testimony)

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

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

The Board has adopted rules establishing “Grounds for Discipline” for licensed social workers at 645 IAC 283.2. The board may impose any of the disciplinary sanctions provided in rule 645-283.3 when the board determines that the licensee is guilty of any of the following acts or offenses:

...

283.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

...

283.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee’s ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

283.2(12) Violation of a regulation, rule, or law of this 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.

...

283.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e. acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

...

b. ...making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.

283.2(31) Violations of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner review contract with the impaired practitioner review committee.

645 IAC 282.2 establishes rules of conduct for licensed social workers. 645 IAC 282.2(13)“1”(a) relates to impairments and provides that a licensee shall not practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician. 645 IAC 282.2(8) requires licensees to avoid dual relationships and conflicts of interest with clients. 645 IAC 282.2(16) prohibits licensees from sexually harassing clients or engaging in verbal conduct of a sexual nature.

The preponderance of the evidence established that Respondent is habitually intoxicated and unable to practice social work with reasonable skill and safety, in violation of 645 IAC 283.2(6)"a." [Count I] Respondent was drinking alcohol and intoxicated while providing services to clients on September 27, 2011, as demonstrated by the reports of a client, his coworkers, the presence of alcoholic beverages containers in his office, and his positive alcohol test. This count is further substantiated by Respondent's two convictions for Operating While Intoxicated and his self-report of alcohol abuse to the Impaired Practitioner's Review Committee (IPRC).

The preponderance of the evidence further established that Respondent was convicted of crimes (Operating While Intoxicated) that affect his ability to practice within the profession of social worker, in violation of 645 IAC 283.2(11). [Count II] OWI convictions may indicate that a licensee is unable to control their alcohol consumption, which raises concerns that the person's abuse of alcohol may adversely impact their social work practice. The evidence in this record clearly demonstrates that Respondent's social work practice was adversely affected by his abuse of alcohol.

The preponderance of the evidence further established that Respondent engaged in unethical conduct, in violation of 645 IAC 645 IAC 283.2(29), when he made lewd and lascivious remarks to client #1 and made improper remarks to client #2 on September 21, 2011. [Count III]

The preponderance of the evidence further established that Respondent 645 IAC 282.2(13) and 283.2(12) when he provided services to clients while intoxicated or under the influence of alcohol and when he made improper comments to clients. [Counts IV and V] Respondent was drinking alcohol and intoxicated while providing services to clients on September 27, 2011, as demonstrated by the reports of a client, his coworkers, the presence of alcoholic beverages containers in his office, and his positive alcohol test.

The preponderance of the evidence further established that Respondent violated 645 IAC 283.2(31) when he violated the terms of an initial agreement with the Impaired Professionals Review Committee (IPRC) by failing to provide a copy of his treatment records upon request. [Count VI]

DECISION AND ORDER

The number and nature of the violations, as well as Respondent's failure appear for hearing, require the Board to suspend Respondent's social work license indefinitely.

IT IS THEREFORE ORDERED that license number 00690, issued to Respondent Brian C. Nedoba, is hereby INDEFINITELY SUSPENDED. IT IS FURTHER ORDERED that the Board will not consider reinstating Respondent's license until he has:

- Provided an up-to-date mental health and substance abuse evaluation by a Board approved facility or provider;
- Completed all recommendations for treatment and aftercare; and
- Provides satisfactory proof that he is safe to return to the practice of social work.

If Respondent's license is reinstated, it will immediately be placed on PROBATION for a minimum period of three (3) years. The probationary conditions shall include, but not necessarily be limited to: substance abuse monitoring, including urinalysis and a worksite monitor.

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 \$192.50 for the court reporter fees. The total fees of \$267.50 shall be paid within thirty (30) days of issuance of this decision.

Dated this 18th day of June, 2013.

A handwritten signature in black ink, appearing to read 'Mark Hudson', written over a horizontal line.

Mark Hudson, Chairperson
Iowa Board of Social Work

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

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.