IN THE MATTER OF	*	**BEFORE THE MARYLAND**
SCOTT M. BERGER, LCPC	*	**STATE BOARD OF PROFESSIONAL**
RESPONDENT	*	**COUNSELORS AND THERAPISTS**
License Number: LC2378	*	**Case Number: 2014-40**

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ORDER FOR SUMMARY SUSPENSION

The Maryland State Board of Professional Counselors and Therapists (the "Board") hereby **SUMMARILY SUSPENDS** the license of **SCOTT M. BERGER, LCPC** (the "Respondent"), License Number LC2378, to practice professional counseling in the State of Maryland. The Board takes such action pursuant to its authority under Md. Code Ann., State Gov't ("S.G.") § 10-226(c)(2) (2009 Repl. Vol.), concluding that the public health, safety, or welfare imperatively requires emergency action.

The Board bases its action on the pertinent provisions of The Maryland Professional Counselors and Therapists Act (the "Act"), codified at Md. Code Ann., Health Occ. ('Health Occ.")§§ 17-101 et seq. (2009 Repl. Vol. & 2013 Supp.), which are as follow:

> § 17-509. Denial, probation, suspension or revocation of certificate applicant or holder
>
> Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or certificate to any applicant, place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license of any licensee or a certificate of any certificate holder if the applicant, licensee, or certificate holder:
>
> (3) Provides professional services:
>
> (i) While under the influence of alcohol;
>
> . . .
>
> (7) Makes a willful misrepresentation while counseling or providing therapy;

(8) Violates the code of ethics adopted by the Board;

. . .

(13) Violates any rule or regulation adopted by the Board;

. . .

(16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy.

The Board's pertinent regulations under Code Regs. Md. ("COMAR") include:

10.58.03.03 Professional Competence.

A. A counselor shall:

(1) Practice only within the boundaries of a counselor's competence, based on education, training, supervised experience, and professional credentials;

. . .

***10.58.03.04* Ethical Responsibility.**

A. A counselor shall:

. . .

(14) Take reasonable precautions to protect clients from physical or psychological trauma.

. . .

***10.58.03.08* Records, Confidentiality, and Informed Consent.**

A. A counselor shall:

(1) Maintain the privacy and confidentiality of a client and a client's records;

. . .

(5) Provide sufficient information to a client to allow a client to make an informed decision regarding treatment, including the following:

. . .

(e) The right of a client to withdraw from treatment at any time, including the possible risks that may be associated with withdrawal; and

. . .

***10.58.03.09* Sexual Misconduct.**

A. A counselor may not engage in sexual misconduct with a client or supervisee. Sexual misconduct includes but is not limited to:

(1) Inappropriate sexual language;

(2) Sexual exploitation;

(3) Sexual harassment;

(4) Sexual behavior; and

(5) Therapeutic deception.

B. Concurrent Sexual Relationships. A counselor may not engage in either consensual or forced sexual behavior with:

(1) A client;

. . .

E. Sexual Harassment.

(1) A counselor may not sexually harass a:

(a) Client;

. . .

F. Therapeutic Deception. A counselor may not:

(1) Engage in sexual activity with a client or an individual in a close personal relationship with a client, on the pretense of therapeutic intent or benefit;

. . .

***10.58.03.10* Physical Contact.**

A. A counselor engaging in nontraditional treatment modalities using physical contact with a client shall document in a client's record:

. . .

(3) A copy of the informed consent, signed and dated by the client and the counselor which addresses:

(a) The risks and benefits of the physical contact treatment modality;

(b) The objective or objectives and intended outcome or outcomes of the proposed treatment;

(c) Available alternative interventions; and

(d) A description of the physical contact which may be reasonably anticipated by a client in the course of the proposed treatment.

***10.58.03.11* Sanctions.**

A. A counselor who engages in sexual misconduct with a client or supervisee is subject to sanctions by the Board.

B. A sanction constitutes the minimum disciplinary measure and does not preclude the Board from imposing additional penalties as it considers appropriate to an individual case.

C. The Board shall advise professional associations of a reprimand, suspension, or revocation of a license or certificate on the grounds of sexual misconduct.

. . .

F. A lack of knowledge, or misunderstanding of an ethical responsibility, is not a defense against a charge of unethical conduct.

INVESTIGATIVE FINDINGS

The Board has reason to believe that the following facts are true:[1]

1. At all times relevant to this Order, the Respondent was licensed to practice as a professional counselor in the State of Maryland. The Respondent was

[1] The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the summary suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

initially licensed on or about March 6, 2007, under license number LC2378, and his license is current through January, 2015.

2. At all times relevant to this Order, the Respondent operated a professional counseling practice out of his home in Columbia, Maryland (the "Home Office").

3. On or about June 11, 2014, the Board received a complaint (the "Complaint") from a female client of the Respondent (the "Complainant"). In the Complaint, the Complainant stated that the Respondent had grabbed her leg and held it tightly, inflicting pain, and refusing to release it despite her repeated pleas. In addition, the Complainant stated that during a session the Respondent had physically restrained her and exposed himself to her. The Complainant also alleged that the Respondent had consumed alcohol during a session and later lied about doing so, claiming that the Complainant was "seeing things."

4. On or about June 13, 2014, the Complainant submitted a Petition for Peace Order (the "Petition") in the District Court of Maryland for Howard County. In the Petition, the Complainant reiterated that the Respondent had touched her inappropriately, restrained her when she attempted to withdraw, and exposed himself to her at his Home Office. The same day, the Petition was granted.

5. On or about June 30, 2014, the Board received a second complaint (the "Second Complaint") forwarded by the Complainant's health insurance company. The Second Complaint, based on the Complainant's statements to the insurance company regarding the Respondent's actions, reiterated most of the allegations of the original Complaint.

6. Based on the allegations contained in the Complaints and the Petition, the Board began an investigation.

7. In furtherance of the investigation, the Board's investigator obtained relevant documents from the Respondent and the Complainant's Psychiatrist (the "Psychiatrist"), and conducted interviews with relevant parties.

8. On or about June 17, 2014, the Board's investigator interviewed the Complainant under oath. Also present and under oath during that interview were the Complainant's partner (the "Partner") and the trainer of the Complainant's service dog (the "Trainer"). These two men witnessed some of the events described and/or the impact on the Respondent of the Respondent's actions.

9. On or about June 30, 2014, the Board's investigator interviewed the Respondent under oath.

10. A summary of the investigative findings is set forth *infra*.

General Background

11. On or about April 21, 2013, the Complainant and the Respondent signed an "Outpatient Services Contract," (the "Contract").

12. Along with the Contract, the Complainant completed an intake form describing her background. The Complainant indicated that she was raised in foster care, and her goal in pursuing counseling was "to remember that I want to stay alive." She also indicated that she was in a 31-year relationship with the Partner.

13. While engaged in counseling with the Respondent, the Complainant was also seeing the Psychiatrist, who was managing her medication. Her diagnosis was posttraumatic stress disorder ("PTSD").

14. The Respondent's PTSD apparently stemmed from severe sexual and physical abuse sustained during her childhood in foster care, including rape. In addition, the Complainant was present at the 2013 Boston Marathon terrorist bombing.

15. From approximately April, 2013 until June, 2014, the Complainant saw the Respondent approximately twice per week for professional counseling services, with sessions often lasting three or four hours according to the Respondent. However, the Respondent's treatment notes indicate that the sessions lasted only 75-80 minutes.

16. Part of the reason for the extreme length of the sessions was a rule that the Respondent confiscated the Complainant's car keys upon arrival at each session. During his interview with the Board's investigator, the Respondent stated that the session continued on until "I felt she was ready to drive safely and securely."

17. At times, when the Complainant requested her car keys, the Respondent refused to return them: "I would say, well, here's the time where we have to call [the Partner]. Either you do it or I do it. And then she became terrified and said, no." The Respondent denied however, keeping her at the Home Office against her will, stating, "If she wanted to go, she could have gone, but not with her keys."

April 10, 2014 Incident

18. On or about April 10, 2014, the Respondent consumed bourbon whiskey during a counseling session with the Complainant. According to the treatment notes from the session, "we have been working on her throat for the past couple of weeks since she had a memory of Nancy [one of the Complainant's childhood sexual abusers] pouring bourbon down her throat." During the session, the Respondent produced a bourbon bottle and took a swig directly from the bottle.

19. During his interview with the Board's investigator, the Respondent stated that Nancy had drunk bourbon and raped the Complainant, and he wanted to show the Complainant that "not everyone who drinks bourbon is a monster."

20. Later that day, the Partner contacted the Respondent by telephone to inquire why the Complainant had returned from the session in such a disturbed state. The Respondent denied to the Partner that he had drunk bourbon and claimed that the Complainant was "having a relapse" of dissociative delusions. On hearing this, the Partner stated his intention to take the Complainant to the hospital.

21. However, the Respondent later confessed to the Partner that he had drunk bourbon during the session, and that the Complainant was not imagining things. The Respondent explained that he lied in order to avoid possibly losing his professional license if his drinking were revealed.

22. During his interview with the Board's investigator, the Respondent admitted drinking during the counseling session and then lying about it, stating, "I guess I did deny it, yeah." The Respondent decided to confess because, "I heard how excruciating[ly] painful it was for her. . . .the idea that [the partner] said I didn't drink bourbon and so she thought . . . she was going crazy . . ."

23. However, the Respondent minimized the significance of his drinking bourbon during the counseling session. When asked, "Did you admit to him [the Partner] that you had drunk bourbon in front of her?", the Respondent answered, "A sip, a little sip – not drinking –".

May 30, 2014 Incident

24. On or about May 30, 2014, the Respondent, the Complainant, the Trainer, and the Complainant's service dog travelled to Washington, D.C. to meet with a staff member at a mental health facility specializing in the treatment of PTSD (the "Facility"). The Complainant agreed to the trip at the suggestion of the Respondent, who had been urging the Complainant to adjust the medication prescribed for her by the Psychiatrist.

25. En route to the Facility, the Respondent reached back from the driver's seat into the backseat where the Complainant was seated. The Respondent then grabbed the Complainant's leg and held it tightly to the point of pain, and refused requests from the Complainant and the Trainer to release it. The Respondent replied that the Complainant must learn to deal with such contact.

26. At another point in the journey, the Respondent instructed the Complainant to tell the Trainer details, previously divulged to him in counseling sessions, regarding her private sexual fears or aversions.

27. During his interview with the Board's investigator, the Respondent explained that he initiated the meeting at the Facility because he "became convinced that she needed some kind of medication." In fact, the Complainant was receiving psychiatric care from a licensed psychiatrist. However, despite admitting to having no expertise on which to base his medical advice, the Respondent concluded that she was not getting "the right psychiatric care." However, the Respondent stated that he preferred not to give his specific recommendation regarding psychiatric medication "on the record."

28. The Respondent explained grabbing the Complainant's ankle on the way back from Washington, D.C., while the Respondent was driving, by stating that the Complainant began to "dissociate." The Respondent then held her ankle "because she was not going to leave my car in a dissociated state, because – and I didn't want to spend another two hour[s] bringing her down." He denied that the Trainer or the Complainant asked him to release his grip.

29. The Respondent also denied instructing the Complainant to reveal her private sexual fears to the Trainer.

June 3, 2014 Incident

30. Before her scheduled June 3, 2014 appointment, the Complainant determined to terminate counseling with the Respondent. When the Complainant so informed the Respondent, the Respondent replied that the Complainant would be dead in a few days if she terminated. Per their usual routine, the Respondent held the Complainant's car keys during the session.

31. The Respondent then changed his pants and underwear in close proximity to the Complainant. The Respondent then began to touch the Complainant's back under her shirt and touched the Complainant's breasts over the bra. When the Complainant pulled away, she witnessed his exposed erect penis. The Respondent then held the Complainant's arms, preventing her from leaving, and instructed her to repeat that nothing inappropriate had happened and to ask him for help. Only after she complied did he return her car keys and allow her to leave.

32. During his interview with the Board's investigator, the Respondent denied exposing himself, stating that he took Cialis[2], and that he touched the Complainant as part of a therapeutic modality known as "tactile therapy." The Respondent denied engaging in "exposure therapy," stating, "What I'm doing is not exposure therapy. . . .My tact was the exact opposite." However, the Respondent's treatment notes indicate on June 3, 2014, he "did some exposure therapy" to address issues with the Complainant's back.

33. During his interview with the Board's investigator, the Respondent repeatedly asserted that the Complainant never once objected to his touching her and claimed to have permission to physically touch the Respondent. However, the

[2] Tadalafil (Cialis) is a medication used to treat erectile dysfunction taken either daily or on an as needed basis.

Respondent failed to obtain proper written consent required by law and professional ethics before engaging in physical contact with the Complainant. Later in the interview, the Respondent admitted that the Complainant "would pull away at times" when he touched her body, and "there were many times where I could see where she was distraught."

Confidentiality Breaches

34. According to the Contract, the document "contains important information about my professional services. . . . When you sign this document, it will represent an agreement us." The Contract then states that the "psychotherapy" the Respondent will provide "varies depending on the personalities of the psychologist and patient, and the particular problems you bring forward." The Contract states, "In general, the privacy of all communications between a patient and a psychologist is protected by law, and I can only release information about our work to others with your written permission."

35. During his interview with the Board's investigator, the Respondent admitted that he failed to obtain any of the required written releases before divulging confidential information about the Respondent to others including the Partner, the Trainer, the Psychiatrist, or the Respondent's wife, who was often present in the Home Office during counseling sessions, or the staff member at the Facility.

36. The Respondent stated, "I don't have releases, no. . . . I guess I should have, but. . . . I don't have them." He also stated, "It was a mistake. I own up to it, it was a mistake."

CONCLUSIONS OF LAW

Based on the foregoing investigative findings, the Board concludes as a matter of law that the public health, safety, or welfare imperatively requires the immediate

suspension of the Respondent's license to practice professional counseling in Maryland, pursuant to Md. Code Ann., State Gov't § 10-226(c)(2) (2009 Repl. Vol.).

ORDER

It is this 4th day of August, 2014, by a majority of the Board considering this matter:

ORDERED that pursuant to the authority vested in the Board by Md. State Gov't. Code Ann. § 10-226(c)(2), the Respondent's license to practice professional counseling in the State of Maryland is hereby **SUMMARILY SUSPENDED**; and it is further

ORDERED that the Respondent may request a postdeprivation show cause hearing to show cause as to why the suspension should not be continued. A request for a hearing must be in writing and be made **WITHIN THIRTY (30) DAYS** of service of this Order. If no such written request is made, the suspension will continue indefinitely. The written request should be made to: Tracey DeShields, Executive Director, Maryland State Board of Professional Counselors and Therapists, 4201 Patterson Avenue, Baltimore, Maryland, 21215, with copies mailed to: Christopher Anderson, Administrative Prosecutor, Health Occupations Prosecution and Litigation Division, Office of the Attorney General, 300 West Preston Street, Suite 201, Baltimore, Maryland 21201, and Ari Elbaum, Board Counsel, Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201, and it is further

ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board his original professional counseling license LC2378, and any wallet card, wall certificate, or other official indicia of licensure; and it is further

ORDERED that this is a Final Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. Vol.).

8/4/2014
Date

Tracey DeShields, Executive Director
Maryland State Board of Professional
Counselors and Therapists