

IN THE MATTER OF
DONNY WENDELL SMITH
License Number: 08197

* BEFORE THE MARYLAND
* STATE BOARD OF
* SOCIAL WORK EXAMINERS
* Case Number: 926

Respondent

* * * * *

ORDER OF REINSTATEMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This case arose out of charges brought by the Maryland State Board of Social Work Examiners (the "Board") against Donny Wendell Smith, ("Respondent"), License No. 08197, under the Maryland Social Workers Act (the "Act"), Md. Health Occ. Code Ann. ("HO") §§ 19-101 *et seq.* (1994), pursuant to its authority under HO § 19-311. The charges were brought under the following provision of HO § 19-311:

- (8) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[;].

The Board's investigation revealed that, on June 29, 2005, Respondent pled guilty in the Circuit Court for Frederick County, Maryland, to one count of Felony Medicaid Fraud, in violation of Md. Crim. Law Code Ann. § 8-509. Respondent was ordered to pay restitution in the amount of \$92,000.00 to the Maryland Department of Health and Mental Hygiene. On or about June 29, 2005, Respondent was sentenced to five (5) years in prison, with all but nine (9) months stayed.

As a result of the Board's investigation and charges, Respondent surrendered his Maryland social work license to avoid further prosecution of the aforementioned

charges. Respondent's Letter of Surrender was accepted by the Board on June 30, 2006.

By virtue of the Letter of Surrender, Respondent agreed that he may not petition the Board for reinstatement of his license before June 1, 2009. Respondent further agreed that if he applied for reinstatement of his license, he must:

- (1) Provide proof to the Board that Respondent has maintained his continuing education units and meet the continuing education requirements that are set forth in the regulations;
- (2) Take and pass a Board-pre-approved, one-on-one, ethics tutorial of 10-12 weeks duration, which would not count towards his continuing education requirements; and
- (3) Understand that the Board may set any additional terms and conditions on Respondent's reinstated license, which may include probation and supervision.

On January 1, 2010, Respondent made a written petition to the Board for the reinstatement of his Maryland social work license. At that time, Respondent provided proof to the Board of his completion of continuing education requirements and also an ethics tutorial with Paul H. Ephross, Ph.D. Respondent submitted his final paper for the tutorial, entitled "Ethical Responsibilities in the Practice of Social Work." In addition, Respondent served his court-imposed sentence, paid the restitution in full and completed his probation with the court on July 21, 2008.

On March 12, 2010, the Board considered Respondent's Petition for Reinstatement. The Board voted to grant Respondent's petition as contained in this Order of Reinstatement, upon Respondent completing the following:

- (1) Submits to the Board the name of a Board-approved, registered supervisor; and
- (2) Pays to the Board the reinstatement fee of \$325.00.

At its meeting on April 9, 2010, the Board ratified and adopted this Order of Reinstatement.

II. FINDINGS OF FACT

The Board adopts and incorporates by reference the Letter of Surrender, which was accepted by the Board June 30, 2006, and the facts as set out above in the "Procedural History and Factual Background" section of this Order of Reinstatement. The Letter of Surrender is attached and incorporated herein as Exhibit A.

III. CONCLUSIONS OF LAW

The Board adopts and incorporates by reference the conclusions of law in the Letter of Surrender and also as set out above in the "Procedural History and Factual Background" section of this Order of Reinstatement.

When a social worker applies for reinstatement of a license that has been surrendered as a result of a disciplinary investigation and in order to avoid prosecution of charges, it is his or her burden to demonstrate to the Board that the criteria for reinstatement have been met. Furthermore, reinstatement is a discretionary act on the part of the Board. The decision of the Board is final, and no appeal right for judicial review arises from said decision.

In considering a petition for reinstatement, health occupation boards in Maryland have been guided by the factors used by the Court of Appeals in attorney license reinstatement cases, which are:

1. The nature and circumstances of petitioner's original misconduct;
2. Petitioner's subsequent conduct and reformation;
3. His present character; and
4. His present qualifications and competence to practice [social work].

See Matter of Kahn, 328 Md. 698, 699 (1992), *citing* In re Braverman, 271 Md 196,199-200 (1974).

Upon consideration of the above factors, the Board finds that the reinstatement of Respondent's social work license with conditions is appropriate at this time.

IV. CONCLUSION

For the reasons stated above, the Board has concluded to reinstate Respondent's license to practice social work with the specific conditions as set out in this Order of Reinstatement.

V. ORDER

Based upon the foregoing, it is this 9th day of April, 2010, by a majority of the full authorized membership of the Board, hereby

ORDERED that the Maryland social work license of Donny Wendell Smith is **REINSTATED**; and it is further

ORDERED that Respondent shall be placed on **PROBATION** for a period of **ONE (1) YEAR OF SOCIAL WORK PRACTICE**, beginning when Respondent returns to the practice of social work, subject to the following terms and conditions:

1. Respondent shall be supervised by a Board registered and pre-approved licensed social worker supervisor, who will monitor all aspects of Respondent's social work practice.

2. The supervisor shall be provided with the charging document, the Letter of Surrender, attached as Exhibit A, and this Order of Reinstatement.

3. Respondent shall meet with the supervisor on a monthly basis for the probationary period.

4. Respondent shall ensure that the supervisor submits reports to the Board on a quarterly basis that address Respondent's participation in evaluative supervision.

5. The first of the quarterly reports shall be due to the Board within ninety (90) days from the date that Respondent returns to the practice of social work in Maryland.

IT IS FURTHER ORDERED that if Respondent fails to comply with the terms and conditions of this Order of Reinstatement, it shall be deemed a violation of probation, and Respondent may be subject to additional charges by the Board; and it is further

ORDERED that while Respondent's license is on probation, he may not mentor or supervise other social workers or participate in field instruction; and it is further

ORDERED that there will be no early termination of probation; and it is further

ORDERED that there shall be no automatic termination of probation after one (1) year, and Respondent must petition the Board in writing for termination of probation and full reinstatement of his license without restrictions or conditions. If Respondent has satisfactorily complied with all conditions of probation, there are no outstanding complaints or other disciplinary actions pending against Respondent, and the Board-

approved supervisor's reports have been, in the opinion of the Board, favorable for Respondent, the Board shall terminate probation. If Respondent fails to make any such petition, then the probationary status shall continue indefinitely, subject to the terms and conditions set forth in this Order of Reinstatement; and it is further

ORDERED that Respondent shall abide by the laws and regulations regarding the practice of social work. Failure to do so shall constitute a violation of probation and of this Order of Reinstatement and may subject Respondent to further disciplinary action by the Board. The Board, after notification to the Respondent, and an opportunity for a hearing, may take immediate action and may impose any lawful disciplinary sanctions it deems appropriate, including but not limited to suspension or revocation of Respondent's social work license. The burden of proof for any action brought against Respondent as a result of a breach of the conditions of this Order of Reinstatement shall be on Respondent to demonstrate compliance with this Order of Reinstatement; and it is further

ORDERED that Respondent's failure to fully comply with the terms and conditions of this Order of Reinstatement shall be deemed a violation of probation and of this Order of Reinstatement, and that upon such violation the Board may impose any discipline that it might have imposed for Respondent's actions in this case; and it is further

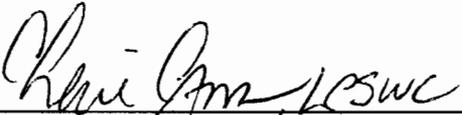
ORDERED that the burden of proof shall be on Respondent to demonstrate compliance with this Order of Reinstatement and the terms and conditions of probation, except for any new charges issued by the Board that are unrelated to this case, and it is further

ORDERED that any violation of this Order of Reinstatement by Respondent shall constitute unprofessional conduct; and it is further

ORDERED that Respondent is responsible for all costs associated with carrying out the provisions of this Order of Reinstatement and the terms and conditions of probation; and it is further

ORDERED that this Order of Reinstatement is a final order of the Maryland Board of Social Work Examiners and, as such, is a PUBLIC DOCUMENT and is reportable to any entity to which the Board is obligated by law to report, and is disclosable under the Maryland Public Information Act, Md. State Gov't Code Ann. §§ 10-611 *et seq.*; and it is further

ORDERED that this Order of Reinstatement shall be effective as of the date that it is signed by the Board.



Cherie Cannon, LCSW-C
Chairman
Maryland State Board of Social Work
Examiners