

IN THE MATTER OF:)
)
MARK POWERS, LPC,)
Respondent.)

FINAL DECISION

The North Carolina Board of Licensed Professional Counselors ("Board") heard this cause on February 27, 2014. A Notice of Hearing was served on Respondent on January 22, 2014, notifying him that the hearing would take place on February 27, 2014, at 9 a.m., or as soon thereafter as possible, at the Wingate Inn located at 1542 Mechanical Blvd, in Garner, North Carolina. Respondent appeared on his own behalf before the Board. Ms. Sondra C. Panico, Assistant Attorney General, appeared on behalf of the Board.

At the hearing of this matter, the Board heard testimony from Randy Yardley, Board investigator, North Carolina Board of Licensed Professional Counselors, and from Respondent, and accepted exhibits into evidence in a public session. After hearing the closing arguments, the Board retired into an executive session to deliberate, during which deliberations it made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Board finds, by a preponderance of the evidence, that the following facts are true and relevant:

1. At all relevant times the Respondent was a professional counselor licensed by the Board.
2. The Ethics Review Committee of the Board issued a charge letter against Respondent alleging that he sent inappropriate text messages that were of a sexual nature to a client. (Board Exhibit Number 2).
3. Randy Yardley, Board Investigator, investigated the complaint in this matter. On or about April 19, 2013, the complaint was filed by Michelle Harris, a consumer rights officer with Partners Behavioral Health Management. She reported that client X's husband reported to her that Respondent had been exchanging sexually explicit emails and text messages with client X. (Board Exhibit Number 5).
4. Client X's treatment records establish that she met with Respondent from on or about September 25, 2012, through February 19, 2013, while Respondent was employed with Agency A. (Board Exhibit Number 7). After client X ended her counseling relationship with Respondent at Agency A, she scheduled an appointment to transition to see Respondent at his new agency, Agency B. There was an assessment scheduled on April

- 22, 2013, with Respondent at Agency B. (Board Exhibit Number 5). Client X was in the process of transitioning to Respondent at his new agency. (T p 29).
5. Mr. Yardley met with the husband of client X who provided Mr. Yardley with the cell phone which contained the text messages between Respondent and client X. Client X confirmed that she and Respondent were texting each other and that the texting began in February, 2013. (Board Exhibit Number 9).
 6. Mr. Yardley transcribed the text messages sent between Respondent and client X. Some of the excerpts are provided below. (Board Exhibit Number 9)
 7. Respondent: "time for a cold shower" "First I need to see u with ur top off." "Think I want to start with ur top then work my way down." "Alright I think im gonna try the cold shower thing. Make sure u erase these texts."
 8. Respondent: "Just checking in. Let me get a shower."
Client X: "Ok can I join u? ill make it worth ur while promise!"
Respondent: "Ha ha. Come on in. Ur being bad already."
 9. Respondent: "What u gonna wear to bed?"
Client X: "A little sagetti strap short nighty why? What u wearing to bed?"
Respondent: "I'm naked tonight."
 10. Client X: "Good cuz I cant get that image of u out of my head of u laying in that bed nacked."
Respondent: "I'm on my back right now."
Client X: "That's good if I was there then I could just climb on top of u then."
Respondent: "U wanna ride me?"
 11. Respondent denied that he ever texted client X. Respondent explained that he only gave client X his cell phone number because he was changing employment and he wanted her to know about that. (T pp 14, 23).
 12. Respondent told Mr. Yardley that on March 26, 2013, he telephoned client X about her not calling him anymore and that it was a call made her professional reasons. However, records from Verizon establish that on March 26, 2013, after 11 pm client X called Respondent and the call lasted for 50 minutes. (Board Exhibit 11).
 13. Mr. Yardley met with Respondent who told him that client X had a crush on him but that he did not respond to it and that when he told her that relationship could not take place she was upset with him. (Board Exhibit Number 4).

14. Records subpoenaed from Verizon establish that during the period from February through April 2013, client X sent Respondent approximately 386 texts and Respondent sent client X approximately 274 texts. (Board Exhibit Number 11).
15. The Board finds the testimony of Respondent in which he denies that he texted client X or that they had an inappropriate relationship not to be credible.
16. The Board finds that Respondent engaged in an inappropriate relationship with a client when he sent inappropriate text messages to client X that were of a sexual nature while she was his client and while she remained a client as she was transitioning to see him at his new agency.

CONCLUSIONS OF LAW

- I. The Board has jurisdiction of the subject matter of this contested case and over the Respondent.
- II. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(9), which alone warrants the disciplinary action taken by the Board.
- III. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(13), which alone warrants the disciplinary action taken by the Board,
- IV. The Respondent's conduct violated A.5a of the American Counseling Association Code of Ethics, which alone warrants the disciplinary action taken by the Board.
- V. The Respondent's conduct violated A.5c of the American Counseling Association Code of Ethics, which alone warrants the disciplinary action taken by the Board.

NOW, THEREFORE, the NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS ORDERS:

- I. The license of the Respondent, Mark Powers, is hereby REVOKED.
- II. Respondent shall turn in his license to practice counseling in North Carolina to the Board no later than thirty days after he receives a copy of this Order. He shall mail his license to: North Carolina Board of Licensed Professional Counselors, Post Office Box 1369, Garner, North Carolina 27529-1369.
- III. No later than thirty days from Respondent's receipt of this Final Decision, Respondent shall terminate services to all of his patients/clients and make provisions for the appropriate

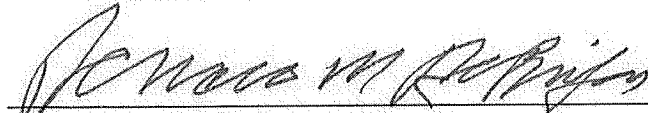
transition of his patients/clients to another therapist, as appropriate. Respondent shall also cease to engage in any other activities that meet the definition of the practice of counseling in N.C. Gen. Stat. ' 90-330(a)(3). Respondent shall provide a signed affidavit (a written statement made under oath or affirmation taken before a person having authority to administer such oath or affirmation) to the Board no later than thirty days after the execution of this Final Decision attesting that he has terminated and transferred all of his patients/clients within the thirty day period. He shall further attest that he is no longer engaged in the practice of counseling in any way.

IV. The Board shall maintain this Final Decision as a public record pursuant to N.C. Gen. Stat. ' ' 132-1 and 90-340(f) and shall provide copies to the American Counseling Association and the National Board of Certified Counselors, and to other agencies or individuals as required by law.

This the 22 day of April, 2014.

NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS

BY:



DENAUVO ROBINSON, PH.D., LPC
BOARD CHAIRPERSON

APPEAL

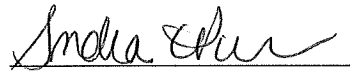
Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision may commence their appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of this Final Decision.

CERTIFICATE OF SERVICE

I, Sondra C. Panico, Assistant Attorney General, do hereby certify that I have this day served a copy of the foregoing **ORDER** upon the following by depositing a copy of same in the United States mail, postage prepaid addressed as follows:

Mark Powers
1534 Mayfair Drive
Conover, NC 28613

This the 24th day of April, 2014.



Sondra C. Panico
Assistant Attorney General