

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND
PROFESSIONAL COUNSELORS
STATE OF MONTANA

Docket No. CC-04-0053-SWP
Hearings Bureau Case No. 1306-2004

IN THE MATTER OF THE PROPOSED)
DISCIPLINARY ACTION AGAINST THE)
LICENSE OF CRAIG SIMMONS,)
LCS License No. 19.)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

In this matter, the Business Standards Division (BSD) of the Department of Labor and Industry seeks imposition of sanctions against the license of Craig Simmons, alleging violations of Mont. Code Ann. § 37-1-316(9) (revealing confidential information obtained as a result of a professional relationship without the consent of the recipient of services), Mont. Code Ann. § 37-1-316(18) (engaging in conduct that does not meet generally accepted standards of practice), and Mont. Code Ann. § 37-22-401 (disclosure of information acquired from clients consulting a therapist in a professional capacity).

Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on August 2, 2005. Lorraine Schneider represented the BSD. Craig Simmons represented himself. Simmons, Diana Longdon, licensed clinical social worker, Lavelle Potter, BSD compliance specialist, Derik R., former clients Katherine R., Kate C., Jacqui B. and John S. all testified under oath.¹ Having considered the evidence and arguments presented, the hearing examiner finds that the licensee violated professional standards and recommends that his license be sanctioned. This recommended decision is based on the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

¹ The reference to first name and last name initial of the client witnesses in the decision corresponds to the transcribed record made in the proceeding. While none of the witnesses asserted any privacy right in this matter, the hearing examiner has nonetheless referred only to the last initial to lessen the likelihood of any untoward impact upon the clients' privacy rights as a result of testifying in this case.

1. At all times pertinent to this matter, the licensee has been a licensed clinical social worker, holding license number 19.

2. In 1996, Katherine R. met Simmons. Katherine became a close friend of the licensee because of the licensee's friendship with her husband, Derik R., and because Katherine, Derik and Simmons all attended the same church. Katherine and Simmons interacted in various church programs such as the "Walk to Emaeus" and the "Chrysalis" programs.

3. In 1998, despite the close personal relationship, Katherine R. began seeing Simmons professionally. At the inception of their therapist/client relationship, Simmons conceded to Katherine R. that he probably should not treat her. He also remarked to her, however, that he could do her some good. As a result, Katherine R. elected to engage Simmons as a counselor.

4. During one therapy session, Simmons remarked to Katherine R. that he was treating Jacqui B. for the same issues afflicting Katherine. Simmons identified Jacqui B. by name to Katherine and also disclosed to Katherine the issues for which he was treating Jacqui B. Jacqui B. never authorized Simmons to disclose anything about her treatment to anyone. Katherine stopped counseling with Simmons in 1999.

5. Derik R. met Simmons in 1994. Derik was never a patient of Simmons. Simmons disclosed to Derik R. the names of clients and issues for which he was treating those clients.

6. Kate C. engaged Simmons as a counselor between 1997 and 1999. Kate began in couple's therapy but eventually ended up in individual therapy with Simmons. During some of the individual therapy sessions, Simmons revealed to Kate the names of other clients that Simmons was treating, including Jacqui B., Mark D. and another patient. Simmons also told Kate about the issues for which he was treating these three patients. Neither Jacqui B. nor Mark D. knew Kate.

7. Simmons treated Jacqui B. as a patient during the early 1990s and then again during the later part of the 1990s. Simmons and Jacqui B. were married in May 2000. Prior to the marriage, and while still treating Jacqui, Simmons disclosed the names of clients he was treating, including Kate C., Mark D. and John S. He also disclosed to Jacqui B. the issues for which he was treating these patients.

8. Simmons treated John S. between 1992 and 1998. John never authorized Simmons to release any information to anyone. Indeed, Simmons' breach of confidentiality was a concern to John. At the inception of their professional relationship, John obtained assurances from Simmons that Simmons would not reveal to anyone that he was treating John. Nonetheless, Simmons identified both John and the issues for which he was being treated to Katherine R. and Derik R.

9. After engaging in the conduct that is the subject of the instant licensing proceeding, Simmons entered into a sexual relationship with a client while treating that client. This unprofessional conduct was sanctioned by the Board of Social Work Examiners and Professional Counselors and Simmons' license was placed on probation for a period of two years between 2002 and 2004.

10. Diana Longdon, a Montana licensed clinical social worker, testified in this matter regarding appropriate limits (also known as boundaries) regarding a therapist's disclosure of client information. Her background, training and education in clinical social work established her expertise in the area. Longdon testified that a therapist's sharing information about the relationship outside of the therapy context is inappropriate because doing so can harm the therapist/client relationship and prove damaging to the client.

III. CONCLUSIONS OF LAW

A. *The Licensee Committed Acts of Unprofessional Conduct.*

1. The Board of Social Work Examiners and Professional Counselors has the authority to license clinical social workers and to discipline licensees who engage in unprofessional conduct. Mont. Code. Ann. §§ 37-1-307 and 37-22-201. The Department of Labor and Industry is charged with providing legal, investigative, and other staff services to the Board. Mont. Code Ann. § 37-1-101.

2. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

3. Mont. Code Ann. § 37-22-401 prohibits a therapist from disclosing information acquired from clients consulting with the therapist in a professional capacity.

4. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

5. The testimony of Katherine R., Derik R., Kate C., Jacqui B. and John S. demonstrates by a preponderance of the evidence that the licensee over a period of years shared confidential information about clients with other clients. This information included not only the specific names of clients but also the specific issues for which those clients were being treated. This conduct was in violation of Mont. Code Ann. § 37-1-316(9) and (18) as well as Mont. Code Ann. § 37-22-401.

B. The Appropriate Sanction is Suspension and Probation.

6. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may suspend a licensee's license, impose probation, and levy a fine not to exceed \$1,000.00.

7. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

8. BSD has argued for imposition of a three year suspension. However, BSD has not provided any evidence that such a long period of suspension is necessary either to protect the public or to ensure the licensee's rehabilitation. Instead, the sanction sought by BSD seems wholly punitive. It is true that the licensee has been sanctioned for other conduct. However, as the licensee correctly points out, that conduct occurred after the conduct which is the subject of this case.

Moreover, BSD has not provided any details at all about the subsequent conduct that would tie the conduct of the present case to that subsequent case.² Imposition of a three year suspension would for all practical purposes be the death knell of the licensee's practice. In the absence of a showing that the public cannot be protected short of imposing a three year suspension, the hearing examiner is unwilling to impose what amounts to a defacto revocation.

9. What the licensee's conduct does show, however, is a sustained practice of sharing confidential information about clients with other clients. The licensee had to be aware of the impropriety of such conduct, yet he repeatedly engaged in that conduct for several years. The protection of the public and the treatment of the licensee demands an extended period of suspension, probation, and remedial education. In addition, once the licensee's suspension is lifted, and while he remains on probation, his practice must be regularly monitored to ensure his compliance with professional standards.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the board enter its order placing Simmons on probation for a period of five years with the terms:

(1) That Simmons' license shall be suspended for a period of 12 consecutive months beginning upon the entry of the final order in this matter;

(2) That Simmons shall, at his own expense, enroll in and successfully complete remedial education within 12 months of the entry of the final order issued in this matter, the type of education and the number of hours of education to be determined by the Board of Social Work Examiners and Professional Counselors;

(3) That Simmons shall comply with any monitoring of his practice implemented by the Board, including entering into any contracts or agreements with appropriate entities as required by the Board. Simmons shall provide such documentation or access to case files as deemed appropriate by the Board. Simmons shall also provide case files or disclose any information or undertake any action required by the Board with respect to monitoring;

² It appears to the hearing examiner that the root of the licensee's problems in this case and the other case stem from his failure to avoid "dual relationships;" that is, engaging the client in a professional relationship and at the same time engaging the client socially outside the professional relationship. As Longdon noted, that type of conduct is to be avoided. Record Transcript, Page 21, lines 2 through 20. Here BSD failed to detail any facts whatsoever, let any facts about the other case, that would give the hearing examiner a sufficient basis to find that the conduct in each case stemmed from the licensee's inability to refrain from dual relationships and thus tie both the subsequent case and this case together for purposes of aggravation. Had BSD done so, the hearing examiner might well have agreed that the licensee's license to practice should be suspended for three years.

(4) That Simmons shall obey (a) all provisions of Title 37, Chapters 1 and 22, Montana Codes Annotated, (b) all provisions of Title 24, Chapter 219, and (c) and all requirements or directives imposed by the Board; and

(5) That in the event Simmons fails to comply with any of the above terms and conditions of his probation, that his license be revoked.

DATED this 6th day of September, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.