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STATE OF WISCONSIN
BEFORE THE PROFESSIONAL COUNSELOR SECTION
EXAMINING BOARD OF SOCIAL WORKERS,
MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

ANDREW R. BOS, JR., C.P.C.,

FINAL DECISION AND ORDER

RESPONDENT

LS0105171CPC

The parties to this action for the purposes of § 227.53, Stats., are:

Andrew R. Bos, Jr., C.P.C.

7920 Ronson Ave.

Jenison, MI 49428

Professional Counselor Section

Wisconsin Examining Board of Social Workers,

Marriage & Family Therapists and Professional Counselors

PO Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

PO Box 8935

Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in this matter, subject to the approval of the Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Andrew R. Bos, Jr., Respondent, date of birth July 31, 1960, is certified by the Professional Counselor Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors as a professional counselor in the state of Wisconsin, pursuant to certificate number 2346, which was first granted November 28, 1995.
2. Respondent's last address reported to the Department of Regulation and Licensing is 7920 Ronson Ave., Jenison, MI 49428.
3. Respondent has moved to the state of Michigan and is not practicing under his professional counselor certificate in the state of Wisconsin.

4. Respondent received a master of divinity degree, with emphasis in pastoral counseling, in 1982, from Trinity Evangelical Divinity School, Deerfield, Illinois. Respondent's academic program in obtaining that degree was evaluated by the Section, using the criteria in Wis. Adm. Code § SFC 14.01, and found to be equivalent to a masters degree in professional counseling.

5. At all times material to this matter, Respondent practiced as a professional counselor at Crossroads Counseling Associates in Plover, Wisconsin.

COUNT I

6. From 1992, when Ms. A was 19 years of age, to a time in 1995, Respondent provided Ms. A with psychotherapy and counseling services on a regular basis. Among other things, Ms. A's therapy addressed issues related to Ms. A's history of having been sexually abused. Ms. A also saw Respondent for psychotherapy on September 24, 1996.

7. Ms. A contends that:

a. In late 1997, she was again experiencing emotional stresses and felt that her life was falling apart. She recognized that she required professional assistance and called Respondent and made an appointment to see him for professional services on November 24, 1997.

b. Ms. A went to Respondent's office and during the appointment:

- Respondent had alcohol, which he provided to her and which they consumed together.
- Respondent asked her to show him her bare breasts and she did so.
- Respondent engaged in sexual intercourse with her.
- They scheduled another appointment, which she elected not to keep.

8. Respondent contends that:

a. Ms. A called him at his office and asked if she could stop by to say hello while she was in town on November 24, 1997.

b. Because he was not providing her with professional services, he asked her to stop by during his break period and she did so.

c. He had no physical contact with Ms. A.

d. Ms. A brought alcohol, which she consumed and offered to him and which he declined.

e. Ms. A went into the bathroom and came out holding the bra she had been wearing, had the front of her top unbuttoned and asked "Don't you like these?" referring to her breasts, which were partially exposed.

9. On June 8, 1998, Ms. A reported her contentions to the Village of Plover Police Department. On December 23, 1998, Respondent was charged in Portage County Wisconsin Circuit Court, case number 98CF00251, with one count of violating § 940.22(2), Stats., Sexual Exploitation by Therapist, a Class C Felony, for allegedly having sexual contact with Ms. A on or about November 24, 1997. A jury trial was held on January 8, 2001, and Respondent was found **not guilty** of the charge.

10. One of the elements of the crime, with which Respondent was charged, is that the sexual contact must take place during a period of time that a psychotherapist-client relationship existed.

11. Respondent provided the police with a copy of his entire treatment record regarding Ms. A, including his one page hand written notes of the September 24, 1996 session, which he contended was the last professional contact. There was no indication in that note that the professional relationship was terminated.

12. At the trial, Respondent placed into evidence another copy of the notes of the September 24, 1996 session. That copy of the notes was identical to the version he had provided to the police, except for the following language which had been added at the bottom: "No follow-up scheduled – today apparently a one-time consult – no need for another intake – client describes reasons related to \$ constraints."

13. Under cross examination, Respondent admitted that he had added the language to the note in preparation for the preliminary hearing in March 1999, two and one half years after the original portion of the note was written.

COUNT II

14. In April 1998, Ms. A went to a Marshfield, Wisconsin psychologist to obtain professional services.

15. The psychologist obtained a valid consent to release health care records from Ms. A, which authorized Respondent to provide the psychologist with Respondent's clinical record of Ms. A.

16. The psychologist sent the consent to release health care records to Respondent and requested copies of Ms. A's clinical record. Although Respondent told the psychologist that he would provide the psychologist with the records, Respondent has never done so. Both Respondent and the psychologist sought ethical opinions regarding the records request because the psychologist intended to provide the records to Ms. A, once they were received by the psychologist.

17. § 146.83, Stats., required Respondent to provide his treatment records regarding Ms. A to the psychologist upon receiving the valid release and provides in subparagraph (4) that:

"No person may do any of the following:

. .

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent." (emphasis added)

18. Respondent violated § 146.83(4), Stats., which is a law, the circumstances of which substantially relate to the practice under Respondent's certification.

COUNT III

19. In April or early May 1998, after receiving the consent to release health care records from the psychologist, Respondent called Ms. A and left the following message on her answering machine:

"Boy, [Ms. A's first name], you're a popular girl. I had to wait quite a many beeps to get that last one. Andy here. Um, calling about a release of information I got from your new head shrink. Wanted to ask you some questions about what you want me to send her or didn't want me to send her. To make sure you understood, uh, that the FBI tracks all of this information once its in the mail. And to share with you my delusion, my fantasy and delusion about taking over the world and installing you as the Prime Minister. Um, oh and I need to tell you that uh, you've hurt my feelings uh, real badly and I can't go on any longer. This is Andy. My number is 715-344-7811. I will be in session until oh bedoopiedoopiedoopie, um, about 6:30, 7:00. Uh, so if you want to give me a call you can. If you don't want to give me a call that's fine, cause I, I hate people that don't want to talk on the phone anyway. But I hope you're doing well, and uh, blah, blah, blah. And uh, I'm done now. I have to go."

CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has jurisdiction over this matter pursuant to § 457.26(2), Stats.

2. The Professional Counselor Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.

3. By adding language to a treatment note two and one half years after it was originally written and not annotating it as a "late entry," as described in **Count I**, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § SFC 20.02(18) for having failed to maintain adequate records relating to services provided a client in the course of a professional relationship and is subject to discipline pursuant to § 457.26(f), Stats.

4. By failing to provide the records as described in **Count II**, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § SFC 20.02(2) for having failed to provide records as required by § 146.83, Stats., in circumstances which substantially relate to practice under the credential and is subject to discipline pursuant to § 457.26(f), Stats.

5. By leaving the telephone message as described in **Count III**, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § SFC 20.02(22) for having engaged in gross negligence in practice under his certificate and is subject to discipline pursuant to § 457.26(f), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the surrender of the certificate of Andrew R. Bos, Jr., as a professional counselor in the state of Wisconsin is hereby accepted, effective immediately.

2. If Respondent ever petitions the Section for certification as a professional counselor:

a. Respondent shall satisfy all requirements for that credential which are then required by statute and administrative rule.

b. Respondent shall notify the Division of Enforcement (Division) of the request and the Division shall have the opportunity to apprise the Section of all allegations and information contained in the investigative file.

c. If the Section believes that it will be of assistance to the Section in responding to Respondent's petition:

i. Respondent shall, at his own expense, have undergone an assessment by a mental health care practitioner, who has not treated Respondent.

ii. The practitioner performing the assessment must have been approved by the Section or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the assessment being performed.

iii. Respondent shall provide the Section with the practitioner's written report and provide the Section with the opportunity to discuss the evaluation and findings with the practitioner.

d. Following the presentation of information by the Division and review of any assessment requested by the Section, the Section may in its sole discretion elect to certify Respondent, with or without limitations, or to deny Respondent's petition.

e. If Respondent believes that the Section's denial of certification is inappropriate or that any limitation imposed by the Section is inappropriate, Respondent may seek a class 1 hearing pursuant to § 227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Section's decision is arbitrary or capricious. The denial of certification or limitations on Respondent's certification shall remain in effect until there is a final decision in Respondent's favor on the issue.

f. Any petition for certification or request for approval of an evaluator, therapist, supervisor or educational program required by this order shall be mailed, faxed or delivered to:

Department Monitor

Department of Regulation And Licensing

Division of Enforcement

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

Fax (608) 266-2264

The rights of a party aggrieved by this Decision to petition the Section for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 17th day of May, 2001.

Colleen James

Chairperson

