

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING
AND SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
MARIE A. NESEMANN, L.C.S.W., : LS0607142SOC
RESPONDENT. :

[Division of Enforcement Case # 04 SOC 025]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Marie A. Neumann, L.C.S.W.
778 Millbrook Drive
Neenah, WI 54956

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
PO Box 8935
Madison, WI 53708-8935

Social Worker Section
Marriage and Family Therapy, Professional Counseling
and Social Work Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Notice of Hearing and Complaint were filed in this matter on July 14, 2006. Prior to the hearing on the formal complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Social Worker 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. Marie A. Neumann, L.C.S.W., Respondent, date of birth September 29, 1948, is licensed by the Social Worker Section as a clinical social worker in the state of Wisconsin pursuant to license number 142, which was first granted August 3, 1993. (Prior to a statutory change effective 11/01/02, Respondent's credential was a certificate as an independent clinical social worker.)

2. Respondent received a master of science degree in social work from the University of Illinois at Urbana Champaign on August 6, 1979.

3. Respondent was granted certification pursuant to the grandparenting provisions of 1991 Wisconsin Act 160, 21(2)(d). For this reason, Respondent did not take the examination otherwise required for certification.

4. Respondent's last address reported to the Department of Regulation and Licensing is 778 Millbrook Drive Neenah, WI 54956.

5. During the events of this matter, Respondent was the Executive Director of REACH Counseling Service (REACH), an outpatient psychotherapy clinic certified by the Department of Health and Family Services, Division of Supportive

Living, Bureau of Quality Assurance, Program Certification Unit (DHFS). REACH has offices in Menasha and Oshkosh. In that position, Respondent was the immediate supervisor of a psychotherapist, who was employed in the Oshkosh office of REACH.

a. The psychotherapist became employed in May 1999 and soon became the Coordinator of REACH's Sexual Abuse Treatment Program (SATP), a comprehensive treatment program for sexual offenders, victims and affected family members.

b. REACH's professionals performed assessments of sexual offenders to determine if the offender was appropriate for treatment at REACH. REACH did not perform evaluations of sexual offenders for use in the court and the treatment assessments were all performed after sentencing had taken place in any criminal proceedings.

c. When first working at REACH, the psychotherapist was practicing under the supervision necessary to acquire the 3000 hours of supervised psychotherapy practice required by DHFS to meet their standards to be qualified as an approved provider of mental health psychotherapy services and for third party payment in outpatient clinics pursuant to Wis. Adm. Code HFS § 61.96(3). Respondent was one of the people providing the supervision. On November 14, 2000, DHFS notified the psychotherapist that she had met their standards to practice as a mental health professional in certified clinics.

6. On June 28, 2000, the psychotherapist had an assessment session with Ms. A, who was then 16 years of age.

a. Ms. A was referred by her mother after Ms. A disclosed that Mr. B, a neighbor about 40 years of age for whom Ms. A provided child care, had been having sexual contact and intercourse with Ms. A since she was 14. Mr. B had recently been charged with 3 counts of 2nd degree sexual assault of a child based on his conduct with Ms. A.

b. The psychotherapist noted that Ms. A had mixed feelings regarding her victimization and that her abuse was extremely controlling and manipulative and did extensive grooming of Ms. A. The diagnoses were: adjustment disorder, acute, with depressed mood; sexual abuse of a child. Posttraumatic stress disorder was to be ruled out.

c. The treatment plan was to encourage Ms. A to talk about and journal her thoughts and feelings related to the sexual abuse. It was also to discuss and process Ms. A's anxiety about the criminal proceedings pending against Mr. B.

7. The psychotherapist provided Ms. A with treatment at 14 sessions from June 28, 2000 through January 3, 2001. Treatment focused on Ms. A's feelings about the abuse, the abuser and the criminal proceeding. The psychotherapist knew the name of Ms. A's sexual abuser. After January 3, 2001, the psychotherapist continued to provide treatment to Ms. A for 10 additional sessions, the last of which was on June 22, 2001.

8. On November 14, 2000, pursuant to a plea agreement, Mr. B entered a plea of guilty/no contest on one count of 2nd degree sexual assault of a child and the other two counts were dismissed but read in for sentencing. As part of the agreement, the district attorney agreed to recommend a sentence of one year in jail with Huber privileges and sex offender treatment. The judge ordered that a presentence investigation be done and set sentencing for January 11, 2001.

9. Although the probation and parole agent assigned to perform the presentence investigation was experienced, he had limited experience in performing presentence investigations of sex offenders. He began the process of the presentence on November 20, 2000 and met with Mr. B on December 5, 2000. On December 5, 2000, the agent had Mr. B sign a Confidential Information Release Authorization, which authorized REACH to release to the agent records of "assessment + o treatment diagnosis" for purpose of "court ordered presentence investigation." That release was provided to REACH.

10. On December 6, 2000, the psychotherapist had a session with Ms. A's parents.

a. The parents told her they had mixed feelings about the plea bargain. They had not wanted Ms. A to have to testify but were concerned that Mr. B would not be punished enough with the recommended sentence.

b. They said they had learned that Mr. B would be sent to REACH for an assessment. They said they had been in touch with probation and parole agent performing the presentence investigation and learned he did not have experience with sex offenders and wanted to have Mr. B assessed by REACH to determine suitability of treatment so he would have that information when writing his report before sentencing.

c. The psychotherapist told the parents that REACH did not typically do pre-sentence assessments because

offenders might use being in treatment as a way to obtain a reduced sentence. The parents asked that REACH do the assessment before sentencing so the agent could have the necessary information to make an adequate recommendation

d. The psychotherapist told the parents that she would have to check with her supervisor and would then give them a decision. Later in the day, the psychotherapist spoke with Respondent who approved REACH performing the assessment. The psychotherapist then called and told the parents that REACH would do the assessment before sentencing.

11. At that time, the psychotherapist was the professional in REACH's Oshkosh office who was performing assessments of adult sex offenders, but there were others there with the competence to do assessments. The psychotherapist also asked Respondent if it was appropriate for the psychotherapist to perform the assessment of Mr. B, while she was treating his victim or whether someone else could do it. Because REACH's assessments were not done for court purposes, the professionals at REACH were not familiar with the issues of conflicts of interest in the forensic area. Respondent said that it would be okay for the psychotherapist to do the assessment, but also said this should be discussed at staffing with the other members of the team. It was then discussed at staffing with the treatment team and the consensus was that it was appropriate for the psychotherapist to perform the assessment.

12. During their January 3, 2001 treatment session, Ms. A read to the psychotherapist the victim's impact statement Ms. A had prepared to read at Mr. B's sentencing. Also on January 3, 2001, the psychotherapist met with Mr. B for his assessment session. Mr. B did not know that the psychotherapist was providing treatment to Ms. A, his victim. Because the psychotherapist did not have Ms. A's consent to do so, the psychotherapist did not disclose to Mr. B that she was treating Ms. A.

13. The psychotherapist prepared a five page progress note of the assessment session, which was consistent with the format and content of an assessment progress note prepared after sentencing. The psychotherapist faxed the note to the probation and parole agent on January 5, 2001. The agent made references to the psychotherapist's note in his presentence investigation report and attached a copy to the report when he filed it with the court. The psychotherapist knew that the agent would use her assessment progress note in writing his presentence investigation report, but did not know that it would be attached to the report and shared with the court.

14. The presentence investigation report recommended probation for at least five years and as conditions of probation: one year in the county jail; responsibility for the costs of counseling for the victim and her family; and successful completion of sex offender treatment. On January 21, 2001, the sentencing judge did not follow the recommendations of the district attorney or the presentence investigation report. Instead, he sentenced Mr. B to ten years in prison. In doing so, the judge made several references to specific portions of the psychotherapist's assessment progress note and quoted extensively from it. The judge did not know that the psychotherapist had been treating Ms. A.

15. After commencing his prison sentence, Mr. B first became aware that the psychotherapist provided therapy to Ms. A prior to, and at the time, she conducted her assessment of him. He began an appeal of his sentence contending this was a conflict of interest which violated his right to due process. On June 11, 2003, the Court of Appeals issued a decision which agreed with Mr. B's position and ordered that Mr. B's case be remanded to the circuit court for re-sentencing. The decision was based on the psychotherapist having a conflict of interest by both providing treatment to Ms. A and conducting an assessment of Mr. B and on the psychotherapist's report of the assessment having been used by the court in sentencing Mr. B.

16. The re-sentencing process caused Ms. A and her family additional emotional distress and on September 30 2003, Mr. B was re-sentenced to four years in prison with credit for 991 days already served.

17. Respondent knew the psychotherapist had an ongoing therapeutic relationship with Ms. A in which the psychotherapist was treating Ms. A for the effects caused by Mr. B's conduct. By authorizing the psychotherapist to perform the assessment of Mr. B, which related to the same conduct, Respondent allowed the psychotherapist to fail to avoid a relationship which created a conflict of interest and which could impair the psychotherapist's objectivity in performing the assessment. There is no evidence that the psychotherapist's conflict had any actual impact on the assessment itself.

CONCLUSIONS OF LAW

1. The Social Worker Section of the Wisconsin Marriage and Family Therapy, Professional Counseling and Social

Work Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 457.26(2) and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by granting the psychotherapist approval to perform the assessment of the sexual offender with the knowledge that the psychotherapist was also providing therapy to his victim, aided and abetted the psychotherapist's failure to avoid a relationship that may impair the psychotherapist's objectivity or create a conflict of interest, and violated Wis. Admin Code § MPSW 20.02(13), and is subject to discipline pursuant to Wis. Stat. § 457.26(2)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Marie A. Neseemann, L.C.S.W., is REPRIMANDED for the above conduct.
2. Respondent shall, within 120 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$1,025.00 pursuant to Wis. Stat. § 440.22(2).
3. Respondent's license is LIMITED as follows:
 - a. Within 180 days of the date of this Order, Respondent shall provide proof sufficient to the Section, or its designee, of Respondent's satisfactory completion of a total of 6 hours of continuing education on the subject of ethics and boundaries issues in clinical supervision, which course(s) shall be completed between the date of this order and June 30, 2007 and shall first be approved by the Section, or its designee.
 - b. Upon Respondent providing proof sufficient to the Section, or its designee, that she has completed the education, the Section shall issue an Order removing this limitation of Respondent's license.
 - c. Respondent is prohibited from applying any of the 6 hours completed to satisfy the terms of this Order toward satisfaction of the continuing education required during the July 1, 2005 through June 30, 2007 registration biennium.
4. All payments, requests and evidence of completion of the education 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
Telephone: (608) 267-3817
5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Section in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that Respondent fails to pay costs as ordered or fails to comply with the ordered continuing education, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.
6. This Order is effective on the date of its signing.

Social Worker Section
Wisconsin Marriage and Family Therapy,
Professional Counseling and Social Work Examining Board

By: Mary Jo Walsh
A Member of the Section

1/31/07
Date

STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING
AND SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
MARIE A. NESEMANN, L.C.S.W., : LS 0607142 SOC
RESPONDENT. :

[Division of Enforcement Case # 04 SOC 025]

It is hereby stipulated and agreed, by and between Marie A. Nesemann, L.C.S.W., Respondent; Robert E. Nesemann of Nesemann Law Office, S.C., Attorney for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement (file 04 SOC 025). Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Section. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Section's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Section, the parties agree not to contend that the Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Section ever assigned as a case advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with the Section's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending that the Section adopt this Stipulation and issue the attached Final Decision and Order.

Marie A. Nesemann, L.C.S.W.
Respondent
778 Millbrook Drive
Neenah, WI 54956

Date

Robert E. Nesemann
Nesemann Law Office, S.C.
Attorney for Respondent
120 N. Morrison Street
Appleton, WI 54911

Date

John R. Zwig
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date