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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **KENNETH SIECZKOWSKI, R.S.A.**,
Respondent

FINAL DECISION AND ORDER
Order No. _____
ORDER 0001230

Division of Enforcement Case Nos. 08 RSA 037 and 10 RSA 038


The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

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

Dated at Madison, Wisconsin on the 21st day of November, 2011.



Michael J. Berndt
Department of Safety and Professional Services



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **KENNETH SIECZKOWSKI, R.S.A.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0022

Division of Enforcement Case Nos. 08 RSA 037 and 10 RSA 038

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

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PROCEDURAL HISTORY

These proceedings were initiated on February 15, 2011, when the Department of Regulation and Licensing, Division of Enforcement, (the "Division"), filed a formal Complaint against Respondent Kenneth Sieczkowski, alleging that he (1) failed to keep any records of services with respect to an attempted intervention he provided to a client, for which he charged a

(significant) fee; and (2), refused to refund an “unearned” fee after another client determined that his intervention services would not be needed, in violation of Wis. Admin. Code § RL 164.01(2).

On or about April 8, 2011, Respondent Sieczkowski filed an Answer to the Division’s Complaint, admitting that he did not keep any records with respect to the first attempted intervention, or refund his fee for the second intervention, which he asserts he expressly advised J.D. was non-refundable. His Answer, however, denies any violations of Wis. Admin. Code RL § 164.01(2), as Respondent contends he was never engaged to perform any services as a substance abuse counselor.

A Prehearing Conference was held by telephone on April 14, 2011, Amanda Tollefsen, administrative law judge, presiding. The parties agreed that all factual allegations could be stipulated, and the only questions that remained were (1) whether the Department of Regulation and Licensing had jurisdiction over this matter, (2), if so, whether Respondent’s admitted conduct constituted “unprofessional conduct,” as defined in Wis. Admin. Code RL § 164.01(2), and (3) if so, what discipline was appropriate. Because these questions are of a purely legal nature, the undersigned administrative law judge determined that there was no need for a contested case hearing, and a briefing schedule was ordered.

As of June 23, 2011, the parties’ briefs were all received. The parties furthermore filed a Stipulation of Facts on June 29, 2011.

STIPULATED FACTS

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Kenneth A. Sieczkowski (“Respondent”) was born on August 17, 1966, and is licensed to practice as a substance abuse counselor in the state of Wisconsin pursuant to license number 132 13092. This license was first granted on March 7, 2003.
2. Respondent’s most recent address on file with the Wisconsin Department of Regulation and Licensing is Intervention and Counseling Services S.C., 15090 Tulane Court, Brookfield, Wisconsin 53005.
3. Respondent holds no credential in any counseling related field other than the substance abuse counselor credential issued by the Department of Regulation and Licensing.
4. At all times relevant to this proceeding, Respondent was self-employed as a substance abuse counselor and as an interventionist in Brookfield, Wisconsin. An “interventionist” is an individual who helps identify the appropriate people in an addict’s life who will be most influential as part of the team that will enable the addict to accept treatment; the interventionist educates and trains the group of people who will participate in the intervention with the addict, and facilitates the interventions.

5. Respondent is a member of the Association of Intervention Specialists, and a member of the board of directors of the Association of Intervention Specialists.

6. The Association of Intervention Specialists advertises itself as a network of interventionists, all of whom hold either a certificate as a counselor from the National Association of Addiction Professionals or a state recognized certification or license in a counseling related field.

7. Respondent has never held a certificate from the National Association for Addiction Professionals.

8. Exhibit A to the parties' June 29, 2011, Stipulation of Facts is an accurate printout of pertinent parts of the website of the Association of Intervention Specialists.

9. Exhibit B to the parties' June 29, 2011, Stipulation of Facts is an accurate printout of the "about us" page of Respondent's website, ICS, Interventions for Recovery.

10. The initials CADCIH refer to "Certified Alcohol and Drug Counselor III," a certificate of the non-governmental, membership organization California Association of Alcoholism and Drug Counselors.

11. The initials CSAC refer to "Clinical Substance Abuse Counselor," a certificate of the non-governmental organization of California Association of Alcoholism and Drug Abuse Counselors.

12. Wisconsin has no laws or Administrative rules regulating intervention education or facilitation.

13. No Wisconsin law or Administrative rule directs interventionists to chart records of their activity.

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14. On or about May 29, 2008, R.H. hired Respondent for a fee of \$3,800.00 to attempt to arrange an "intervention" with family members to persuade T.H., the estranged husband of R.H., to seek treatment for alcoholism.

15. Respondent informed R.H. that the \$3,800.00 fee was non-refundable, and not contingent on T.H.'s ultimate decision regarding treatment for alcoholism.

16. Respondent communicated with R.H., other family members and T.H.'s therapist in attempts to persuade T.H. to enter inpatient treatment.

17. T.H.'s family members ultimately declined to participate in an intervention and T.H. decided to continue in outpatient care.

18. Respondent never entered into a counseling relationship with T.H., nor was he requested to do so.

19. Respondent does not maintain records of intervention activities [and did not maintain contemporaneous records of his intervention activities with respect to T.H].

20. Exhibit C to the parties' June 29, 2011, Stipulation of Facts is Respondent's response to the Division's request for records of his activities in pursuit of his engagement by R.H. Exhibit C was compiled from Respondent's recollection and a review of the telephone logs.

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21. On or about November 1, 2010, J.D. hired Respondent, for a fee of \$3,500.00, to attempt to arrange an "intervention" with family members to persuade A.D., the son of J.D., to seek treatment.

22. Respondent advised J.D. on the intervention process and the goal of getting A.D., the son of J.D., to voluntarily enter and remain in treatment.

23. J.D. was advised by Respondent that the fee of \$3,500.00 was non-refundable and not contingent on the success or failure of any treatment options.

24. On or about November 2, 2010, A.D. voluntarily checked himself into a treatment center.

25. On or about November 3, 2010, J.D. had a meeting with Respondent for approximately two (2) hours to discuss A.D., his treatment, and available options for future successful treatment.

26. Respondent never entered in to a counseling/therapy relationship with A.D. or J.D., nor was he requested to do so.

27. J.D. subsequently sought a refund of Respondent's retainer fee. Respondent refused because his agreed engagement was for a non-refundable fee of \$3,500.00.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.88.

2. The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence. Wis. Stat. § 440.20(3). *See also*, Wis. Admin. Code HA 1.17(2), (“[u]nless the law provides for a different standard, the quantum of evidence for a hearing decision shall be by the preponderance of the evidence.”).

3. “Preponderance of the evidence” is defined as the greater weight of the credible evidence. Wis. Admin. Code § HA 1.01(9).

4. Pursuant to Wis. Stat. § 440.88(6), “the department [of Regulation and Licensing] may... revoke, deny, suspend, or limit under this subchapter the certification of any substance abuse counselor, clinical supervisor, or prevention specialist or reprimand the substance abuse counselor, clinical supervisor, or prevention specialist, for practice of fraud or deceit in obtaining the certification *or any unprofessional conduct, incompetence, or professional negligence.* (Emphasis added).

5. Wis. Admin. Code § RL 164.01(2) defines “unprofessional conduct” as “... any practice or behavior that violates the minimum standards of the profession necessary for the protection of health, safety, or welfare of a patient or the public.”

6. Wis. Admin. Code § RL 164.01(2)(b) further defines “unprofessional conduct” to include, “Violating or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse counselor.”

7. Wis. Admin. Code § RL 164.01(2)(i) further defines “unprofessional conduct” to include, “Engaging in false, fraudulent, misleading or deceptive behavior associated with the practice as a substance abuse professional, including advertising, billing practices, or reporting or falsifying or inappropriately altering patient records.”

8. Wis. Admin. Code § RL 164.01(2)(o) further defines “unprofessional conduct” to include, “Obtaining or attempting to obtain anything of value from a patient without the patient’s consent.”

9. Wis. Admin. Code § RL 164.01(2)(p) further defines “unprofessional conduct” to include, “Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of practice.”

10. Wis. Admin. Code § RL 164.01(2)(t) further defines “unprofessional conduct” to include, “Failing to maintain adequate records relating to services provided a patient in the course of a professional relationship.”

11. The respondent’s failure to keep records of any services performed for R.H. in exchange for his fee as an interventionist, as described in ¶¶ 14-20 of the Findings of Facts, does not constitute unprofessional conduct per Wis. Admin. Code § RL 164.01(2), as alleged by the Division.

12. The respondent’s refusal to refund J.D.’s retainer after meeting with him on only one occasion for approximately two (2) hours, as described in ¶¶ 21-27 of the Findings of Fact, does constitute unprofessional conduct per Wis. Admin. Code § RL 164.01(2).

DISCUSSION

Violations of Statutes and Administrative Code:

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The burden of proof in this case was on the Division. As such, it was required to prove, by a preponderance of the evidence, that Respondent Sieczkowski’s failure to keep contemporaneous records of his *intervention* activities with respect to T.H., (for which he billed \$3,800.00), was unprofessional conduct within the meaning of Wis. Admin. Code § RL 164.02, UNPROFESSIONAL CONDUCT SUBSTANCE ABUSE PROFESSIONALS. (See Complaint, ¶ 13, Division’s May 26, 2011, Memorandum, p. 1). It has not.

While it is true that Wis. Admin. Code § RL 164.01(2)(t) defines “unprofessional conduct,” in the *substance abuse counseling* profession to include “Failing to maintain adequate records relating to services provided to a patient in the course of a professional relationship,” (see Division’s Memorandum, p. 6), it is undisputed that there is no Wisconsin law or Administrative rule that directs *interventionists* to chart records of their activity. (Findings of Fact, ¶ 13). The question thus becomes whether Respondent’s failure to chart records with respect to intervention activities he performed for T.H. subject him to discipline under the professional standards that govern the practice of substance abuse counseling, specifically, Wis. Admin. Code § 164.02(2).

The Division argues that it does, maintaining: (1) that the “law of professional licensing” accounts for conduct outside the practice of a particular credential to subject licensees to professional discipline in its rules – specifically in the existence of rules that make it misconduct for a licensee to violate or to aid and abet the violation of any law or rule substantially related to

their practice (Division's Memorandum, pp. 2-3, *see also* Wis. Admin. Code § RL 164.02(2)(b)¹, Conclusion of Law ¶ 6); (2) the purpose of professional licensing, and of the above rule in particular, is to protect the public from an unacceptable risk of harm (Division Memorandum pp. 3-4); and, (3) that Respondent's advertisement of his intervention business on his website identifies that he is a board registered Clinical Substance Abuse Counselor, and that he is a BRI-II² (which status requires a state counseling license), falsely leading Wisconsin consumers to believe that the state approves of his conduct as an interventionist. (Division's Memorandum, pp. 5-6, 7).³

Naturally, the Respondent disagrees, contending that because there are no statutes, rules or decisions that require *interventionists* to maintain records of persons to whom they provide intervention services, or that prohibit them from negotiating flat fees for intervention services, the Division has no jurisdiction to take action against Sieczkowski's license. (Respondent's June 17, 2011, Memorandum, pp. 2-3)

While the administrative law judge agrees with the Division that there are circumstances under which a credential holder's conduct in another field can warrant discipline under Wis. Admin. Code § RL 164.02(2) – most notably in the violation of laws or rules substantially related to the practice of substance abuse counseling (RL 164.01(2)(b)), *but also* under the “minimum standards” language of RL 164.01(2) – she does not believe this is one of those circumstances.

Respondent's Conduct Did Not Violate RL 164.01(b)

Respondent's failure to contemporaneously keep records of his intervention activities with respect to T.H. involved no violation of law or rule, much less one that was substantially related to the practice of substance abuse counseling. As such, it did not violate Wis. Admin. Code § RL 164.02(2)(b). As explained by Respondent,

... Any inference that the [RL 164.01(2)(b)] is met because the roles of interventionist and substance abuse professional are related must fail because (1) the rule unequivocally requires a violation... and (2) this position, if taken, would completely miss the distinctions in goals and systemic approaches between the two roles.... A substance abuse professional delves into matters such as emotions and triggers to engage in substance abuse in order to break the cycle of abusive behavior; thus, extensive record keeping is necessary to monitor patients' progress. An interventionist has no need for such records, as his role is simply to facilitate the conversation among the people gathered for the intervention, easing

¹ Defining “unprofessional conduct” to include, “Violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional....”

² “Board Registered Interventionist of the Highest Level.” (*See Division's Exhibit C*).

³ The Division relies on this same reasoning to argue that Respondent's conduct in retaining an “unearned fee,” with respect to J.D. also subjects him to discipline under Wis. Admin. Code § RL 164.02(2). *See infra*.

the lines of communication with hope that the target of the intervention comes to the realization of the consequences of his actions.”

(Respondent’s Memorandum, p. 5, *see also* Division’s Exhibit E, p. 1).⁴

Respondent’s Conduct Did Not Violate the Minimum Standards of the Substance Abuse Counseling Profession (RL 164.02)

Though the Division maintains that because “character ...is the implicit basis for [RL 164.02(2)(b)’s] “substantially related” analysis,” there is no need to wait for a conviction (or, assumedly, any other violation/s of rule or law) in order to recognize obvious character flaws in licensees and take appropriate action⁵, (*see* Division’s Memorandum, pp. 3-5, *see also supra*), it provides no authority to support this premise.

Rather, the operative law in the instant case – as agreed by both parties – reads merely that “unprofessional conduct comprises any practice or behavior that violates the minimum standards of the [*substance abuse counseling*] profession *necessary for the protection of the health, safety, or welfare of a patient or the public.*” (Wis. Admin. Code § 164.01(2), *see also* Division’s Memorandum, pp. 1, 6, Respondent’s Memorandum, p. 1).

The Division has not convinced the undersigned administrative law judge that Respondent’s conduct in failing to keep contemporaneous records of his intervention activities with respect to T.H. rises to this level.

The undisputed facts reveal simply that Respondent: (1) contracted with R.H. to attempt to arrange an intervention for T.H.; (2) charged a non-refundable, flat fee of \$3,800 to do so – and did not bill for services actually rendered; (3) attempted to arrange an intervention for T.H.; and (4) did not keep contemporaneous records of his intervention activities, but upon the Division’s request for such, provided a list of dates on which he asserted he had provided some service in furtherance of his agreement with R.H. (Exhibit E). (*See* Findings of Fact, ¶¶ 14-16). It is further undisputed that Respondent did not enter into any sort of counseling relationship with T.H. (Findings of Fact ¶ 18)⁶, and that there are no Wisconsin laws or rules that direct interventionists to chart records of their activity, or that prevent them from negotiating flat fees for their intervention services. (Findings of Fact ¶¶ 12-13). In fact, the uncontested evidence demonstrates that interventionists do not have the same need to keep records as substance abuse counselors do, as the role of an interventionist is simply to facilitate the conversation among the people gathered for the intervention, and not to engage in a continuing counseling relationship aimed at breaking the cycle of abusive behavior. (Respondent’s Memorandum, p. 5, *see also*

⁴ The Division does not challenge this distinction. In fact, it does not address Respondent’s failure to keep records of his intervention activities with respect to T.H. on rebuttal at all. (*See* June 23, 2011, Reply Memorandum).

⁵ The Division argues that “[t]he conflict between Respondent’s apparent character and the [purpose of his license] is quite enough basis for the state to act against his license....” (Division’s Memorandum, p. 5).

⁶ An interventionist’s clients are the families and friends seeking to conduct an intervention, not addicted person who is target of intervention. (Respondent’s Memorandum, p. 8).

supra at p. 7). There is further evidence in the record that flat fees are necessary in light of the sensitive nature of interventions, and the unlikelihood of satisfying all parties. (Respondent's Memorandum, p. 6).

In light of these facts, the Division's argument that "Respondent's ... failure to make even cursory records of what he [did] for his *clients* in his intervention business was misuse of his substance abuse counselor license *because it demonstrate[d] that he ha[d] little concern for the welfare of the persons who [were] the subject of his proposed interventions*⁷," is completely unconvincing: The Respondent has demonstrated that there was no reason, financial or therapeutic, for him to keep records of his attempts to arrange an intervention for T.H. for, and no rule or law to lead him to believe that he had to. While RL 164.01(2)(t) does highlight the need for a substance abuse counselor licensee to "[fail] to maintain adequate records relating to services provided to a *patient* in the course of professional relationship," Respondent's failure to do so in a separate profession in which he treated no "patients," but merely contacted family members in an attempt to arrange an intervention does not constitute behavior that violates the minimum standards of the substance abuse counseling profession necessary for the protection of the health, safety, and welfare of the public: His failure to keep contemporaneous records of his intervention activities with respect to T.H. was reasonable in light of his goals, and in no way posed a danger to the public. As such, his conduct does not violate the minimum standards of the substance abuse counseling profession, even though said profession requires something different in *its* practice.

The fact that Respondent advertised that he is board-certified Clinical Substance Abuse Counselor, and a BRI-II (which status requires a state counseling license), on his website does not alter this conclusion. As Respondent's actions unequivocally did not violate the minimum standards of the substance abuse profession, it does not matter whether the public may have believed that the state approved of his intervention activities. (*But see infra*).

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At issue in this case was whether Respondent's conduct in failing to return a non-refundable fee paid to him to arrange an intervention, after it was determined, one day after the receipt of said payment, that the intended recipient had voluntarily checked himself into a treatment, was unprofessional conduct within the meaning of Wis. Admin. Code § RL 164.01(2)

While the burden of proof in this case was again the Division, and the ultimate question again involved a determination of whether acts Respondent committed outside of the practice of substance abuse counseling could subject him to discipline under the rules regulating substance

⁷ As stated in footnote 5, an interventionist's clients are the families and friends seeking to conduct an intervention, and not the addicted person who is target of intervention

abuse counselor licenses⁸, the facts involved in the instant case support a different result from Case No. 08 RSA 037.

As explained in the preceding section, RL 164.02 provides that “unprofessional conduct comprises *any practice or behavior* that violates the minimum standards of the [*substance abuse counseling*] profession necessary for the protection of the health, safety, or welfare of a patient or the public.” (Emphasis added). The undersigned administrative law judge logically reads this language to include practices or behavior outside the substance profession, so long as said practice or behavior violates minimum standards of substance abuse counselor profession. (*See supra* at p. 7).

Applying the facts of this case to the above standard, the administrative law judge finds that Respondent’s conduct violated the minimum standards of the substance abuse counseling profession. Indeed, the undisputed facts show that: (1) Respondent was hired by J.D. on November 1, 2010, to attempt to arrange an intervention for J.D.’s son A.D, for a fee of \$3,500.00; (2) A.D. voluntarily checked himself into a treatment center on November 2, 2010, without the aid of Respondent’s services; (4) Respondent and J.D. thereafter met on November 3, 2010, “for approximately (2) hours” to discuss A.D., his treatment, and available options for future successful treatment – and ultimately concluded that no intervention was necessary; and (4) J.D. subsequently sought a refund of Respondent’s retainer, which Respondent refused because his agreed engagement was for a non-refundable fee of \$3,500.00. (*See Findings of Fact ¶¶ 21, 24-25, 27*).

Respondent stresses that his failure to refund his retainer, while maybe not what the prosecutor or even the administrative law judge would have done, did not violate RL 164.01(2) because; (1) he informed J.D. that his fees were non-refundable in advance, and (2) there is nothing in RL 164.01(2) that prohibits interventionists or substance abuse counselors from negotiating non-refundable flat fees, which he asserts are necessary in light of the sensitive nature of interventions, and the unlikelihood of satisfying all parties.⁹ (Respondent’s Memorandum, pp. 6-8, 9, *see also supra* at p. 8). The administrative law judge is not convinced by these arguments:

While it very well may be the case that RL 164.01(2) does not prohibit interventionists, or even substance abuse counselors, from negotiating non-refundable flat fees for services rendered, (*see supra* at p. 8), that is not the situation presented here, where Respondent laid claim to his full retainer fee even though he provided no intervention services. In essence, Respondent received \$3,500.00 (or \$1,750/hour) for an “approximately two hour” consultation which concluded in the determination that his services were no longer necessary. (*See Findings of Fact ¶ 25, Answer ¶ 16*). To suggest that this is anything other than a windfall is disingenuous. There is risk, there is profit, and there is theft. Respondent’s conduct borders the latter. It is this aspect

⁸ As noted in footnote 3, the parties rely on the same arguments as in Case No. 08 RSA 037 to support their respective positions.

⁹ Respondent additionally maintains that RL 164.01(2) does not apply to his work as an interventionist.

of his conduct which leads the administrative law judge to conclude that Respondent's failure to return his "non-refundable" retainer violates the minimum standards of the [substance abuse counseling] profession *necessary for the protection of the health, safety, or welfare* of a patient or the public. (RL 164.01(2)).

Though the administrative law judge cannot speak to each and every "minimum standard" of the substance abuse profession, it is clear that the profession requires, at a minimum, that its licensees deal fairly with their clients when it comes to fees. (See Wis. Admin. Code §§ RL 164.01(2)(i),(o), and (p), Conclusions of Law ¶¶ 7-9). It additionally requires that its licensees refrain from harming their patients or the public. (RL 164.01(2)). Respondent's retainer of a fee when he rendered no intervention services (and minimal other services), was incredibly unfair and financially harmful to his client. That he sees no problem with keeping his retainer when he performed no intervention services (and minimal other services) is incredibly unfair and financially harmful to the public. For both these reasons, his failure to return at least part of the retainer fee he received to perform an intervention, when it immediately became apparent that no intervention was necessary, does not meet the minimum standards for licensees of the substance abuse counseling profession.¹⁰

The fact that Respondent's conduct was performed while engaging as an interventionist, and not as a substance abuse counselor, is of little consequence. As his actions clearly demonstrate a "practice or behavior that violates the minimum standards of the [substance abuse counseling] profession necessary for the protection of the health, safety, or welfare of a patient or the public," they violate RL 164.01(2). Moreover, Respondent advertises his Substance Abuse Counselor license on his intervention business' website (and in fact, relies on it to maintain his BRI-II status), leading consumers to believe that the state approves of his intervention business practices. While this may not bring his actions within the province of RL 164.01(2)(b)(including as unprofessional conduct the violation of any rule or law substantially related to the practice of substance abuse counseling), it does bring the respondent's actions within the RSA Board's consideration.

Appropriate Discipline:

As discipline for Respondent's *alleged* violations, the Division recommended revocation of his substance abuse counselor license. (Division's Memorandum, p. 8). In support of its recommendation the Division references the three purposes of discipline (protection of the public, deterrence of similar conduct by other licensees, and rehabilitation of the licensee – *see infra*), and argues that:

¹⁰ The Division argues that Respondent's conduct was made worse by fact that he took a pledge to safeguard the best interest of his [intervention] clients. (Division's Memorandum, p. 5, *see also*, Respondent's Exhibit D, Association of Interventionist Principals, Ethical Principals). It is unclear whether the Division is suggesting that Respondent violated a rule, (here, Ethical Principal 7) "substantially related to practice as a substance abuse counselor," in violation of RL 164.01(2)(b). Regardless, the administrative law judge finds that Respondent violated the minimum standards of the substance abuse counseling profession for the reasons stated above.

Given Respondent's insistence... that he has no obligation to treat his intervention clients with the regard to which his [substance abuse counseling] clients are entitled, it is clearly best that he not be licensed. Without a license as a substance abuse professional, *caveat emptor* will actually be a permissible standard for Respondent's dealings with his clients because there will be no indication that the State has approved his practice...."

(*Id.*)

While the Division notes that "Revocation does nothing to rehabilitate Respondent," it argues that "there is no reason to believe that he is open to rehabilitation, and therefore no reason to diminish either the public protection or deterrence goals of profession discipline. (*Id.* at p. 9).

Despite its sharp words, the Division offers little in the way of support for this premise, or its ultimate recommendation of revocation.

The respondent notes this in his response, and counters that the Division's demand for revocation is unfounded, accurately identifying that;

"Of the five listed proceedings against licenses of substance abuse counselors in the past ten years¹¹, three professionals had their licenses revoked. Two of those persons had been convicted of sexual assault crimes [*In re Schneider*, Order 000774 (March 25, 2011), *In re Adamski* LS097201 (July 17, 2009) (July 17, 2009)]. The third revocation involved a professional who had begun a sexual relationship with a client. See *In re Frenette*, LS810310RSA (October 30, 2008). Another professional voluntarily surrendered her license for beginning such a relationship. *In re Lepp*, Complaint 2000-06 (October 16, 2000). In the lone case not involving clearly criminal behavior, *In re Steber*, LS0704203 (April 20, 2007), the substance abuse professional was accused of failing to keep his records up to date, having unsigned prescriptions in his possession and providing services to two clients for no charge, [and was given a reprimand].

(Respondent's Memorandum, pp. 10-11).

The Respondent further maintains that cases involving other professions similarly reflect that egregious behavior is required to warrant discipline beyond reprimand. (*Id.* at p. 11, see also *Daniels v. Wisconsin Chiropractic Examining Board*, 2008 WI APP 59, 309, Wis. 2d 485, 750 N.W.2d 951 (Chiropractor's license revoked for repeated violations involving fraudulent and misleading the Board regarding this tax evasion conviction); *Krahenbuhl v. Wisconsin Dentistry*

¹¹ Assumedly, on the Wisconsin Department of Safety and Professional Services' Website, under "Reports of Decisions for Profession, Substance Abuse Counselors."

Examining Board, 2006 WI App 73, 292, Wis. 2d 154, 713 N.W.2d 152 (Dentist's license revoked after fraud conviction for performing unnecessary procedures); *Noessen v. DRL*, 2008 WI App. 52, 311 Wis. 2d 237, 751 N.W.2d 385 (Pharmacist reprimanded for refusing to fill or transfer prescriptions for oral contraceptives). In light of these cases, he asserts that even a reprimand would be too harsh a punishment for Sieczkowski's conduct.

In the absence of any evidence from the Division showing; (1) why "there is no reason to believe that the Respondent is open to rehabilitation" and, (2) that revocation has been upheld as the appropriate discipline in cases with similar circumstances to the Respondent's; the ALJ agrees with the Respondent that the Division's "demand for revocation is unfounded, and unjustified by the facts." (See Respondent's Memorandum, p. 11). In fact, the ALJ notes that even in cases where a nurse has diverted a patient's *pain medications* without the patient's consent, the Board (of Nursing) has historically imposed only an indefinite suspension, that can be stayed if and when certain conditions are met. (See e.g. In re Disciplinary Proceedings Against Christele Williams, DOE Case No. 09 NUR 217; In re Disciplinary Proceedings Against Zetisha Kayde, DOE Case No.08 NUR 102).

Rather, the ALJ finds that in light of all three purposes of discipline, and the diversion cases noted above, the most appropriate discipline for Respondent is indefinite suspension until such time as he completes continuing education in the subject of ethics and financial relationships, and demonstrates that he has achieved a minimally competent understanding of ethical financial arrangements with clients to the Department of Regulation and Licensing.

As referenced above, the three purposes of discipline are to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Sieczkowski's conduct in refusing to refund any part of the \$3,500 fee he received *to perform an intervention*, when it was determined, one day later, that no intervention would be necessary, demonstrates a readiness to take unfair advantage of his clients. His failure to recognize that this situation was different from other "interventions" in which he had negotiated a flat fee further demonstrates that, without rehabilitation, his conduct is likely to be repeated. Suspending Respondent Sieczkowski's license until he completes reeducation in this area, is thus not only logical, but required in light of the above purposes of discipline. It will further serve as a signal to other substance abuse licenses that they cannot treat clients unfairly even if (1) the fee they negotiate is "non-refundable," or (2) their clients are not substance abuse counseling patients.

Assessment of Costs

The ALJ's recommendation and the Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder are based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a “program revenue” agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).

Respondent Sieczkowski cooperated in these proceedings, but refused to acknowledge any wrongdoing. Of the two counts charge, the more serious one was proven, while the less serious one was not. Balancing these factors with the fact that the Department of Regulation and Licensing is a “program revenue” agency, the administrative law judge finds that Respondent Sieczkowski should pay two-thirds of the costs associated in investigating and prosecuting this matter.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Kenneth Sieczkowski to practice substance abuse counseling in the State of Wisconsin be and is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME.**

The suspension on Respondent Sieczkowski’s license will continue until he provides the Department of Regulation and Licensing with proof that he has completed continuing education in the subjects of ethics and financial relationships (in an amount to be determined by the Department), and has been assessed as competent in these areas by the Department.

IT IS FURTHER ORDERED that Respondent Sieczkowski shall pay two-thirds of the recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

**Department Monitor
Department of Regulation and Licensing
Division of Enforcement**

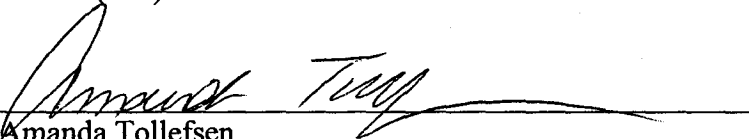
**P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Kenneth Sieczkowski.

Dated at Madison, Wisconsin on July 25, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Amanda Tollefsen
Administrative Law Judge

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