

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CHARITY A. NIKOLAY,
RESPONDENT.

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FINAL DECISION AND ORDER

0003368

Division of Legal Services and Compliance Case No. 14 CPC 025

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

Charity A. Nikolay
7005 Highland Drive, #6
Wausau, WI 54401

Professional Counselor Section
of the Wisconsin Marriage and Family Therapy,
Professional Counseling and Social Work Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Charity A. Nikolay, (dob: May 05, 1980) is licensed in the state of Wisconsin to practice professional counseling, having license number 3727-125, first issued on June 05, 2006, and current through February 28, 2015. Respondent's most recent address on file

with the Wisconsin Department of Safety and Professional Services (Department) is 7005 Highland Drive, #6, Wausau, Wisconsin 54401.

2. Respondent, while separated from her husband, engaged in a sexual relationship with a client.

3. Respondent neither admits nor denies the conduct but has voluntarily agreed to resolve this matter by stipulation and agrees to entry of the Conclusions of Law and Order below.

CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 457.26(2), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent Charity A. Nikolay committed unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(11).

3. As a result of the above violations, Respondent Charity A. Nikolay is subject to discipline pursuant to Wis. Stat. § 457.26(2).

ORDER

1. The attached Stipulation is accepted.

2. The license to practice professional counseling issued to Respondent Charity A. Nikolay, (license number 3727-125) is SUSPENDED as follows:

SUSPENSION

A.1. The license of Charity A. Nikolay (license number 3727-125), to practice as a professional counselor in the state of Wisconsin is SUSPENDED for an indefinite period.

A.2. Respondent shall mail or physically deliver all indicia of Wisconsin licensure to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/index.htm>.

A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active practice as a professional counselor for every year the suspension is stayed, the Section may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Section may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1 The suspension shall not be stayed for the first two years, but any time after two years, the suspension may be stayed upon Respondent providing proof, which is determined by the Section or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for two consecutive years.
- B.2 The Section or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, unnecessary contact with clients outside of normal office hours, providing personal contact information to any client, failing to report non-emergent contact with a client outside of scheduled office hours, and engaging in sexual contact with or in the presence of any client. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Section or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3 This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4 The Section or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Section or its designee.
- B.5 If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, psychotherapy concerning boundaries with a treater acceptable to the Section or its designee ("Treater"). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as

required by this Order, Respondent shall immediately seek approval of a successor Treater by the Section or its designee.

- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Section or its designee, after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in addressing the reasons for the boundary violations, understanding appropriate boundaries with patients and a plan intended to reduce the risk that Respondent will engage in a personal relationship with a client. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater current releases complying with state and federal laws. The releases shall allow the Section, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater and treatment facilities and personnel. Copies of these releases shall immediately be filed with the Department Monitor.

Employment

- C.7. Respondent shall report to the Section any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
- C.8. Respondent shall, when providing treatment to male clients, have the presence of an adult chaperone. Respondent shall create and maintain a calendar that documents the identity of chaperone(s) used each day. Respondent shall make the calendar available to the Department Monitor upon request.
- C.9. Respondent shall NOT provide personal contact information to any client or person who has been a client within the preceding two years. Personal contact information includes but is not limited to telephone numbers, email addresses, home address and social media information.
- C.10. Respondent shall NOT have any non-emergent contact, direct or indirect, through any means with any client, outside of scheduled work hours. In the event that Respondent has emergent contact with a client or previous client outside of established work hours, Respondent shall immediately document the contact and shall report the contact to the Department Monitor and her supervisor at her earliest opportunity, but no later than twenty-four hours after the contact occurred.
- C.11. Respondent shall not engage in any non-professional activities, personal relationship or sexual contact with or in the presence of any client or person who has, within the preceding two years, been Respondent's client or the client in any practice in which Respondent may be employed.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of Treater to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater by Section

- D.4. If the Section or its designee determines the Treater has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Section or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Section on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Section for termination of this Order anytime after five years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, supervision and any other expenses associated with compliance with the terms of this Order.

Costs of Proceeding

- D.8. Before Respondent may petition for a stay of the suspension or modification of any term of this Order, Respondent shall pay costs of \$350.00 to the Department of Safety and Professional Services. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to submit any payment of costs, the Respondent's license (3727-125) may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order is viewed as conduct endangering the public and may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 457.26.

3. This Order is effective on the date of its signing.

PROFESSIONAL COUNSELOR SECTION
OF THE WISCONSIN MARRIAGE AND FAMILY THERAPY,
PROFESSIONAL COUNSELOR AND
SOCIAL WORKER EXAMINING BOARD.

By:

Charles King
A Member of the Section

Date

9/9/14

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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CHARITY A. NIKOLAY,
RESPONDENT.

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STIPULATION

0003368

Division of Legal Services and Compliance Case No. 14 CPC 025

Respondent Charity A. Nikolay and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

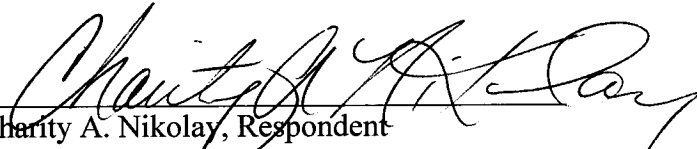
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section). The parties to the Stipulation consent to the entry of the attached Final Decision 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 then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the 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.

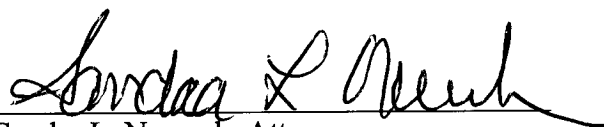
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with deliberations on the Stipulation. Additionally, any such 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 Legal Services and Compliance joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.


Charity A. Nikolay, Respondent
7005 Highland Drive, #6
Wausau, WI 54401
License no. 3727-125

8-5-14
Date


Sandra L. Nowack, Attorney
State Bar Number 1025643
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190
Tel. (608) 266-8098
sandra.nowack@wisconsin.gov

8/11/14
Date