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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of Disciplinary Proceedings Against
Kedibonye S. Carpenter

FINAL DECISION AND ORDER
Order No. 0004796

Division of Legal Services and Compliance Case No. 14 RSA 007

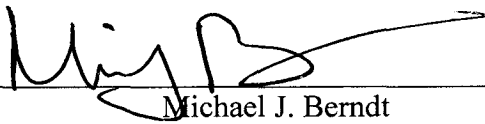
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 5th day of ~~January~~^{July}, 2016.



Michael J. Berndt
Chief Legal Counsel
Department of Safety and Professional Services



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Kedibonye S. Carpenter

DHA Case No. SPS-15-0073
DLSC Case No. 14 RSA 007

PROPOSED DECISION AND ORDER

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

Kedibonye S. Carpenter, by

Matthew Carpenter
1920 State Street
La Crosse, WI 54601

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

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

PROCEDURAL HISTORY

These proceedings were initiated on August 6, 2015, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Complaint against Respondent Kedibonye S. Carpenter (Respondent), alleging that she committed unprofessional conduct under Wis. Admin. Code § SPS 164.01(2)(i) by engaging in false, fraudulent, misleading or deceptive behavior associated with her practice as a substance abuse professional and was therefore subject to discipline under Wis. Stat. § 440.88(6). Following Respondent's filing of her Answer to the Complaint on August 24, 2015, a telephonic prehearing conference was held on September 4, 2015, at which a hearing date and other related deadlines were set.

A contested case hearing was held on December 1, 2015, at which the parties appeared and, with previous authorization by the administrative law judge, Respondent was represented by her husband, Matthew Carpenter, who is not an attorney. Exhibits were received and testimony taken.

FINDINGS OF FACT

1. Respondent was certified in the State of Wisconsin as a substance abuse counselor-in-training (SAC-IT), having certification number 16620-130, first granted June 1, 2012, and expired on February 28, 2015. Respondent has the right to renew the SAC-IT credential one time before February 28, 2020. Respondent is certified in the State of Wisconsin as a prevention specialist, having certificate number 15344-137, first granted on November 5, 2012 and current through February 28, 2017. (Complaint, ¶ 1; Answer)

2. At all times relevant to this proceeding, Respondent was employed part-time as a substance abuse prevention program manager at an educational center, Cooperative Educational Service Agency (CESA), which provides services to school districts and is located in La Crosse, Wisconsin. She was also working part-time as a prevention specialist at a mental health center, Hiawatha Valley Mental Health Center (Hiawatha), also located in La Crosse, Wisconsin. At the time of the hearing in this matter, Respondent was still employed with CESA as a salaried employee but had resigned from Hiawatha in June of 2013. (Complaint, ¶ 3; Answer; Resp. Ex. 111, pp. 1-2; Hrg. Tr., pp. 19, 34, 40, 44, 50-52, 59)

3. CESA employees are informed that they must follow CESA's "a day is a day" rule whereby they may bill and are paid for only a day on any given day, regardless of when they put in the hours or whether they work more than a day. A day is considered seven and a half hours. (Ex. 1, p. 12; Hrg. Tr., pp. 40, 44, 53)

4. On Respondent's CESA timesheet for September 6, 2012, Respondent claimed that she had worked a full day for CESA, including an event she described as "Ho-Chunk meeting and community outreach, WhyTry." Other activities listed for the day were "Prime for Life calls and registrations faxed to CCA, newsletter contact update . . . communicated with Family Zone planning team, Family Zone update, recorded youth information for Why Try, Hmong." (Div. Ex. 1, p. 1; Div. Ex. 4, p. 1; Hrg. Tr., pp. 54-55)

5. On Respondent's Hiawatha timesheet for September 6, 2012, Respondent claimed that she worked for Hiawatha for two hours, from 9:00 a.m. to 11:00 a.m., with activities including "Ho-Chunk Nation prev mtg." Other activities recorded for the two-hour period were "Hmong email connection & meeting set up, plan for the prev mtg update." (Div. Ex. 2, p. 1; Div. Ex., 4, p. 1; Hrg. Tr., pp. 30-31)

6. On Respondent's CESA timesheet for September 27, 2012, Respondent's listed activities included "Youth Leadership Summit all day, Family Night in the Evening," and on Hiawatha's timesheet for the same day, her activities included "Attended the Youth Leadership Summit, Family Night event with Ho-Chunk Nation, Youth Resource plan." (Div. Ex. 4, p. 1) The record does not show how many hours were billed to each employer for this day.

7. On Respondent's CESA timesheet for February 4, 2013, Respondent's activities included "Traveled to CADCA's Leadership forum in Washington D.C.," and on her Hiawatha timesheet for the same day, her activities included "DC for the CADCA Conference." (Div. Ex., 4, p. 4) The record does not show how many hours were billed to each employer for this day.

8. On Respondent's CESA timesheet for February 5, 2013, Respondent's activities included "Attended the CADCA's Leadership Forum in Washington D.C.," and on Hiawatha's timesheet for the same day, her activities included "In Washington D.C. for the Prevention Conference."¹ (*Id.*) The record does not show how many hours were billed to each employer for this day.

9. Hiawatha's office manager, Heather Franzini, had given Respondent permission to bill for her hours at the conference in Washington D.C., even though Respondent was also getting paid for the conference by CESA, but Franzini had informed Respondent that she needed to make sure that she "did so much time for CESA and so much time for Hiawatha" and that she could not get paid by both employers for the same activities. (Hrg. Tr., p. 22)

10. Respondent's timesheets do not specify how much time is devoted to each activity. (Div. Exs. 2, 3, 4; Hrg. Tr., pp. 31-33)

11. CESA was aware that Respondent was also working for Hiawatha during the relevant time period. (Resp. Ex. 101, 106, 115, 116)

12. On July 16, 2012, Respondent sent out a notification by email to a list of contacts including representatives from Ho-Chunk and La Crosse schools, to specifically notify them that she would be working with Hiawatha in its prevention efforts and that she was also still employed with CESA. (Resp. Ex. 106)

13. At some point after Respondent left employment with Hiawatha, Franzini discovered that Respondent had signed in at one or more La Crosse County Prevention Network (LCPN) meetings as a CESA employee and not as a Hiawatha employee. When Franzini and Hiawatha's new prevention specialist attended a LCPN meeting, people at the meeting said, "Wow, we haven't seen anybody from Hiawatha [] in a long time." Respondent had been recording on her time sheets that she was going to the LCPN meetings for Hiawatha, had told Franzini she was doing that, and was being paid to do that. (Hrg. Tr., pp. 20-21)

14. Franzini spoke with her boss and the two of them then talked to Respondent. During the meeting, Respondent admitted that she was getting paid through both CESA and Hiawatha for some of the same events but that she did not think it was wrong to be paid for both places. (Hrg. Tr., pp. 21-22, 24)

¹The Division's exhibits suggest that timesheets for days in addition to those days specifically referenced in the Complaint also contained the same or similar activities for both employers. However, these other dates are not considered here because they were not alleged in the Complaint, they were not specifically referred to by the Division at hearing, and there was no motion to amend the Complaint. I also note that most of these other dates are contained in Exhibit 4, which is CESA's summary of the activities listed in the actual timesheets, and that with respect to the specific dates set forth above, the timesheets included more activities for each day than those activities listed in Exhibit 4. Even considering these other dates, however, the outcome in this matter would not change.

15. Hiawatha alerted CESA of the billing issue. As a result, CESA's director of finance, Wayde Pollack, met with Respondent and the CESA administrator. Respondent stated that she felt justified in her billing based on the hours she was putting in. Pollack explained to her that under the "day is a day" rule, employees get paid for a day no matter how many hours they put in for that day. (Hrg. Tr., pp. 45, 48-49)

16. A meeting was also convened with Respondent, Franzini, Franzini's boss, Pollack and the director of CESA, in which Respondent again expressed her opinion that she was not doing anything wrong and that she was justified in charging both agencies based on the hours she worked. (Hrg. Tr., pp. 24-26, 40, 50)

17. Because of Respondent's billing issues, CESA placed a reprimand letter in Respondent's file, which also clarified that going forward, Respondent would have to get prior approval to work with another agency. (Hrg. Tr., pp. 50-51)

18. Franzini filed a complaint with the Department for what she perceived as double-billing on Respondent's part. (Hrg. Tr., pp. 20-21)

19. Both Franzini and Pollack testified that Respondent was (or is currently) a good employee. (Hrg. Tr., pp. 27, 41)

20. Colleen Mulder, who has worked at CESA for over 15 years and has worked with Respondent there for several years, testified that Respondent has a high level of integrity, and is honest, open, intelligent, warm and personable. She testified that Respondent has excellent communication and presentation skills and that people reacted positively to her presentations. (Hrg. Tr., pp. 62-64)

21. Elizabeth Digby-Britten testified and wrote a letter on Respondent's behalf. Digby-Britten works at the La Crosse Youth and Learning Center and has worked with Respondent for approximately four years. She stated that Respondent always goes above and beyond what is asked of her, even volunteers her time, that the children with whom Respondent works are very excited and engaged during Respondent's presentations, even to the extent that one child began learning about Respondent's native country of Botswana and Respondent's native language. She stated that Respondent is upstanding, trustworthy and "full of integrity." Similar statements were made by other colleagues of Respondent in letters submitted for hearing. (Resp. Exs. 113-115; Hrg. Tr., pp. 70-73)

22. In response to the Division's allegations, Respondent has consistently maintained that she did not bill the same hours to CESA and Hiawatha; rather, she routinely worked more than eight-hour days and charged each employer for different hours worked. Respondent has also maintained that despite her informing the constituents with whom she worked that she worked for both CESA and Hiawatha, many of them thought of her as solely representing CESA, in large part because she had worked there longer than she had worked for Hiawatha. (Resp. Exs. 101-102)

DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Sauter*, 60 F.3d 270, 280 (7th Cir. 1995).

Alleged Violation

Pursuant to Wis. Stat. § 440.88(6), the Department may deny, suspend, or limit the certification of any substance abuse counselor or prevention specialist or reprimand the substance abuse counselor or prevention specialist, for, among other things, unprofessional conduct. Unprofessional conduct is defined by Wis. Admin. Code § SPS 164.01(2)(i) to include the following:

(2) Unprofessional conduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. Misconduct or unprofessional conduct includes the following:

...
(i) 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.

The Division alleges that Respondent billed CESA and Hiawatha for the same hours, and that she thereby committed unprofessional conduct under Wis. Admin. Code § SPS 164.01(2)(i) by engaging in false, fraudulent misleading or deceptive behavior associated with her practice as a substance abuse professional.

The Division has not met its burden of establishing the violation alleged by a preponderance of the evidence. The Division has shown that Respondent entered similar activities for certain days on her timesheets for both employers. However, Respondent has consistently maintained, both in interviews with her employers and in these proceedings, that despite some similar activity descriptions entered on her timesheets, she did not bill the two agencies for the same hours. She has maintained that the activities were sufficient in length to cover the hours for both employers and that the activities listed could be divided to account for the work billed to the respective employers. The Division has not sufficiently rebutted this evidence or shown that, in fact, the same hours were billed to both employers. Notably, the timesheets for CESA and Hiawatha do not show what specific activities correspond to particular hours or parts of hours, and CESA’s timesheets do not list any hours at all, only the percentages of the days worked.

The Division relies heavily on CESA's "a day is a day" rule, under which CESA employees could not bill on any given day for more than a work-day, which according to CESA, is seven and a half hours. However, that rule is irrelevant to the situation here, as it applies to billing *CESA*, not other employers, for more than a full day.

The Division also relies on the fact that Respondent had signed into at least one conference as a CESA employee and not as a CESA *and* Hiawatha employee although Hiawatha was paying her to attend the conference. It also relies on evidence that after Respondent left employment with Hiawatha, some attendees at a LCPN meeting commented to the new Hiawatha employee in attendance that Hiawatha had not been seen at the conferences for a long time. These facts do not establish that Respondent was double-billing, particularly given evidence that Respondent had worked for CESA longer, that people associated her with CESA and that Respondent had sent an email to representatives of organizations with whom she worked specifically informing them that she was working for Hiawatha as well as CESA.

Based on the evidence of record, the Division has not established that Respondent acted in a "false, fraudulent, misleading or deceptive" manner in her billing practices. While employers certainly have the prerogative of prohibiting such billing practices, the record does not establish that Respondent engaged in the type of intentionally dishonest conduct under Wis. Admin. Code § SPS 164.01(2)(i) for which discipline of her professional credential is warranted.

ORDER

For the reasons set forth above, IT IS ORDERED that the Complaint in this matter is dismissed, effective the date the Department signs the Final Decision and Order in this matter.

Dated at Madison, Wisconsin on January 7, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Jennifer E. Nashold
Administrative Law Judge