



Half an Evaluation: Full Loss of License



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Regulatory boards are charged with assessing the initial and continued eligibility for licensure of those seeking and renewing the credential that recognizes the right to practice a regulated profession. Social work boards must continuously understand their mission of regulating the profession in the interest of public protection. As part of the ongoing assessment, social work boards review and approve applicants for licensure and renewal. At times, and if allowed by statute, an applicant or licensee's mental and physical capabilities may be relevant to licensure eligibility and/or continued eligibility. Such an evaluation may not always result in an assessment that is demonstrative of the fitness of the applicant/licensee. Consider the following.

In July 2010, a licensed clinical social worker (Licensee) pleaded guilty to two counts of simple assault, both misdemeanors. The assault charges originated from allegations that the Licensee had an affair with a former client and later went to the client's house, where she assaulted both the client and the client's husband. As a result of these criminal guilty pleas, the Pennsylvania Bureau of Professional Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists, and Professional Counselors (Board)

issued an
Immediate
Temporary
Suspension

Counsel's
Column

(ITS) order, removing the Licensee from practice until such time as a hearing could be held to determine the continued status of her license.

During the ITS period, the Board and Licensee negotiated a 180-day suspension of her license. During that 180-day suspension period, the Pennsylvania Department of State (Department) on July 12, 2011, issued an Order Compelling the Mental and Physical Examination of the Licensee. The Licensee attended two examinations with an examiner. However, the examiner was unable to render an opinion as to the Licensee's mental or physical condition because the Licensee had not provided all requested records and responses to direct questions.

As a result of this inconclusive report, the Department sought an entry of an administrative default judgment against the Licensee. Further, the Department sought an order suspending her license to practice until such time as she complied with the July 2011 order to submit to a mental and physical examination. In October 2011, the Board granted the Department's motion for a default judgment but dismissed with prejudice that part of the Department's motion to

compel submission to an evaluation. As part of this October 2011 order, the Board concluded that the Licensee was in default of the July 2011 Department order. The Board, however, did not suspend the Licensee indefinitely, finding that the Department order did not specify whether the evaluation was for drug addiction or mental incompetence. On November 1, 2011, the Board reinstated the Licensee's license.

Later in November 2011, the Department issued the Licensee a notice of formal disciplinary proceedings being initiated against her license based on the criminal convictions and the events leading up to such convictions. The Board conducted a hearing in February 2013 whereby the Department presented the testimony of law enforcement officers and an expert in ethical standards. The Licensee testified on her own behalf and refuted the description of the conduct that resulted in the criminal convictions. The Licensee's testimony was held to be impermissible because it attempted to challenge events that were already substantiated in the criminal proceedings. The Board concluded that the guilty pleas established the commission of crimes of moral turpitude under the Social Workers Act (Act); that such crimes related to the practice of social work; that such acts violated the Act based on the National Association of Social Workers (NASW) Code; and that the Licensee failed to submit to the ordered evaluation. Consequently, the Board revoked the social work license of the Licensee. The Licensee appealed.

On appeal, the Court first addressed whether the criminal convictions

constituted crimes of moral turpitude. The Court noted that the Board defined crimes of moral turpitude as those that involve "anything done knowingly contrary to justice or good morals." The Court focused on the Licensee's state of mind and held that her "intentional appearance at the home" of the client and husband indicated an element of *mens rea* and, thus, was persuaded to find that the crime was one of moral turpitude as distinguished, for example, from a spontaneous scuffle. The Court concluded that the Board did not err by finding that the simple assault convictions constituted crimes of moral turpitude.

The Court also found that the notice provided to the Licensee that she lacked "good moral character" was sufficient to alert her to the violations of the Act and therefore complied with due process principles. The Licensee argued that the evidence did not support a finding that she had violated various sections of the NASW Code—specifically the section stating that the social worker's primary responsibility is the well-being of the client and that the social worker should not engage in physical contact with a client if such contact has the potential to cause psychological harm to the client. But the Licensee failed to present legal arguments or pertinent legal citations in support of such claims. The Court therefore held that the Licensee waived these claims.

Finally, the Licensee argued that the Board erred when it determined that she failed to provide requested medical information to the examiner. She argued that she attended two lengthy examinations and

provided the requested information orally. The Court noted, however, that the Licensee did not contest the allegations that her medical records were not produced. Noting a refusal to direct the production of the relevant medical records, the Court held that the administrative record supported a finding that the Licensee failed to submit to an examination in a manner that would allow for an accurate evaluation. Based upon its conclusions, the Court affirmed the Board's act revoking the social worker's license.

Many important, relevant factors determine one's eligibility or fitness to become and remain licensed as a social worker. Some attributes may be difficult to ascertain. If applicants or licensees thwart legitimate efforts by the Board to assess their physical and mental capabilities to safely and effectively practice, such uncooperative actions may constitute grounds for adverse action.

Collaso v. Bureau of Professional & Occupational Affairs, 2016 Pa. Commw. Unpub. LEXIS 461