

Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

RHETT E. MCCARTY,)

Respondent.)

No. 11-1960 PS

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045¹ gives us jurisdiction.

On February 19, 2013, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings and Disciplinary Order with Joint Proposed Findings Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. ~~*Buckner v. Buckner*, 912 S.W. 2d 65, 70~~ (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 337.035.2(2), (4), (5), (6) and (15). We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110.

SO ORDERED on March 1, 2013.


KAREN A. WINN
Commissioner

¹Statutory references are to RSMo Supp. 2012 unless otherwise noted.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

FEB 19 2013

ADMINISTRATIVE HEARING
COMMISSION

STATE COMMITTEE OF)
PSYCHOLOGISTS)
)
Petitioner,)
)
v.) No. 11-1960 PS
)
RHETT E. McCARTY)
)
Respondent.)

**JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF
FACTS, WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE
HEARING COMMISSION AND THE STATE COMMITTEE OF
PSYCHOLOGISTS, AND DISCIPLINARY ORDER WITH JOINT
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the
Administrative Hearing Commission ("AHC") and pursuant to the terms of
§ 536.060, RSMo,¹ as it is made applicable to the Commission by § 621.135,
RSMo, Rhett E. McCarty ("McCarty") and the State Committee of
Psychologists ("the Committee") hereby waive the right to a hearing of the
above-styled case before the AHC and, additionally, the right to a disciplinary
hearing before the Committee pursuant to § 621.110, RSMo, and jointly
stipulate to the facts and consent to the imposition of disciplinary action

¹ Statutory citations are to Revised Statutes of Missouri 2000, unless
otherwise noted.

against McCarty's psychologist's license for violations of statutes set forth below.

McCarty acknowledges that he has received and reviewed copies of the Complaint and First Amended Complaint filed by the Committee in this case, and the parties submit to the jurisdiction of the AHC.

McCarty acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the AHC prior to the entering of its order; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial Commissioner concerning the complaint pending against him; and the right to a ruling on questions of law by a Commissioner. Being aware of these rights provided McCarty by operation of law, McCarty knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Committee of Psychologists, and Disciplinary Order with Joint Proposed

Findings of Fact and Conclusions of Law (“Joint Stipulation”) and agrees to abide by the terms of this document as they pertain to McCarty.

Based upon the foregoing, the Committee and McCarty jointly stipulate to the following and request that the AHC adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the AHC’s Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

Facts Common to Counts I and II

1. The State Committee of Psychologists (“the Committee”) is an agency of the State of Missouri created and established pursuant to § 337.050, RSMo, for the purpose of upholding and carrying out the provisions of §§ 337.010 - .093, RSMo, as amended, relating to psychologists.

2. The Respondent (“McCarty”) was licensed by the Committee as a licensed psychologist, License Number 01691 (“License”). McCarty’s License was issued on or about December 5, 1994 and was current and active at all relevant times herein.

3. On or about July 2, 2012, McCarty returned his License to the Committee.

4. Beginning in August, 1995 Evergreen Health Center, P.C., located at 1859 South Jefferson Avenue, Lebanon, Missouri 65536 (“Evergreen”) provided psychological counseling services.

5. From about October, 1995 to about August, 2008 Evergreen contracted with McCarty for McCarty to provide psychological counseling services through Evergreen, as an independent contractor (“the Contractual Relationship.”)

6. During the Contractual Relationship, Evergreen provided McCarty with support services, including office space, furniture, billing, and reception services.

7. From about August 22, 2008 through about April 5, 2012, McCarty provided psychological counseling services to clients as a solo practitioner.

8. During the period from about September 17, 2008 through about April 5, 2012, McCarty was a Medicare and Medicaid provider, submitting claims to those health care benefit programs for psychotherapy services he claimed to have provided to his clients

9. When McCarty submitted claims to Medicare and Medicaid, he certified that the services he provided were medically indicated and necessary for his clients’ health, and that those services were personally furnished by McCarty or by an employee under his immediate personal supervision.

10. The majority of claims McCarty submitted to Medicare and Medicaid from about September 17, 2008 through about April 5, 2012, indicated that McCarty provided psychological services at his clients' homes.

Count I - Health Care Fraud

11. Paragraphs 1 through 10 above are incorporated by reference in Count I.

12. From about September 17, 2008 through about April 5, 2012, McCarty submitted, or caused to be submitted, certain claims to Medicare and Medicaid for psychotherapy services that he did not provide.

13. During various times between about September 17, 2008 and about April 5, 2012, McCarty submitted, or caused to be submitted, claims to Medicare and Medicaid for daily or near-daily psychotherapy services allegedly provided to nineteen clients.

14. McCarty did not provide daily or near-daily psychotherapy to those nineteen clients between about September 17, 2008 and about April 5, 2012.

15. During certain periods of time between about September 17, 2008 and about April 5, 2012, McCarty did not see clients for psychotherapy services more frequently than once a week.

16. Between about September 17, 2008 and about April 5, 2012, McCarty submitted, or caused to be submitted, claims to Medicare and

Medicaid totaling \$1,912,300.00 for psychotherapy services allegedly provided to nineteen clients.

17. McCarty was paid \$1,276,334.99 for the claims for psychotherapy services for nineteen clients he submitted or caused to be submitted to Medicare and Medicaid between about September 17, 2008 and about April 5, 2012.

18. Between about September 17, 2008 and about April 5, 2012, McCarty was paid by Medicare and/or Medicaid on claims for nineteen clients he submitted or caused to be submitted for services he did not actually provide to those nineteen clients.

19. For the conduct described in Count I above, on or about May 23, 2012, a grand jury indictment was filed against McCarty in the United States District Court for the Western District of Missouri, charging him with one count of Health Care Fraud in violation of 18 U.S.C. §§ 1347 and 2, in the matter styled *United States of America v. Rhett E. McCarty*, Cause Number 12-00158-01-CR-W-HFS.

20. On or about August 16, 2012, McCarty entered a plea of guilty to one count of Health Care Fraud in violation of 18 U.S.C. § 1347, a Class C felony, in Cause Number 12-00158-01-CR-W-HFS.

Count II – Forgery/Uttering a Forged Writing

21. Paragraphs 1 through 20 above are incorporated by reference in Count II.

22. During the period from about January 1, 2009 through about April 5, 2012, McCarty used a billing service to submit claims for psychotherapy services to Medicare and Medicaid on his behalf.

23. McCarty provided documents to that billing service, including sign-in sheets purportedly reflecting the signatures of his clients.

24. Between about January 1, 2009 and about April 5, 2012, McCarty falsely made and forged, or caused another to falsely make and forge, signatures on sign-in sheets for five clients.

25. Between about January 1, 2009 and about April 5, 2012, McCarty submitted, or caused to be submitted, claims to Medicare and Medicaid totaling \$618,875.00 for psychotherapy services for five clients (this amount is included in the amount McCarty was paid for psychotherapy services set forth in Count I above).

26. McCarty was paid \$418,507.70 for the claims for psychotherapy services for five clients he submitted or caused to be submitted to Medicare and Medicaid between about January 1, 2009 and about April 5, 2012 (this

amount is included in the amount McCarty was paid for psychotherapy services set forth in Count I above).

27. For the conduct described in Count II above, on or about May 23, 2012, a grand jury indictment was filed against McCarty in the United States District Court for the Western District of Missouri, charging him with one count of Forgery/Uttering a Forged Writing in violation of 18 U.S.C. §§ 495 and 2, in the matter styled *United States of America v. Rhett E. McCarty*, Cause Number 12-00158-01-CR-W-HFS.

28. On or about August 16, 2012, McCarty entered a plea of guilty to one count of Forgery/Uttering a Forged Writing in violation of 18 U.S.C. § 495, a Class C felony, in Cause Number 12-00158-01-CR-W-HFS.

Counts III - VII

29. Counts III - VII of Petitioner's First Amended Complaint are hereby dismissed with prejudice as to refileing.

JOINT PROPOSED CONCLUSIONS OF LAW

30. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo (Cum. Supp. 2011) and § 337.035.2, RSMo.

31. Title 18 U.S.C. § 1347 defines the crime of Health Care Fraud as follows:

(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice--

(1) to defraud any health care benefit program; or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program,

in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.

(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

32. Title 18 U.S.C. § 495 defines the crime of Forgery/Uttering a

Forged Writing as follows:

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with

intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined under this title or imprisoned not more than ten years, or both.

33. Administrative Rule 20 C.S.R. 2235-5.030 sets forth the Ethical Rules of Conduct pertaining to the practice of psychology in Missouri.

34. Administrative Rule 20 C.S.R. 2235-5.030(1)(D), Violations, states: “[a] violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action or denial of either original licensure, reinstatement or renewal of licensure.”

35. Administrative Rule 20 C.S.R. 2235-5.030(11), of the Ethical Rules of Conduct for Missouri psychologists, concerning remuneration, sets forth the disciplinary rules concerning remuneration for services performed by Missouri psychologists. Rule 20 C.S.R. 2235-5.030(11)(B)4, Improper Arrangements, states in part: “[t]he psychologist shall not bill for services that are not rendered. . . .”

36. Administrative Rule 20 C.S.R. 2235-5.030(13), of the Ethical Rules of Conduct for Missouri psychologists, concerning violations of law, sets

forth the disciplinary rules concerning violations of law by Missouri psychologists. Rule 20 C.S.R. 2235-5.030(13)(A), Violations of Applicable Statutes, states: “[t]he psychologist shall not violate any applicable statute or administrative rule regarding the practice of psychology.”

37. Administrative Rule 20 C.S.R. 2235-5.030(13), of the Ethical Rules of Conduct for Missouri psychologists, concerning violations of law, sets forth the disciplinary rules concerning violations of law by Missouri psychologists. Rule 20 C.S.R. 2235-5.030(13)(B)4, Use of Fraud, Misrepresentation or Deception, states: “[t]he psychologist shall not use fraud, misrepresentation or deception in . . . [b]illing clients or third-party payors. . . .”

38. Section 337.035, RSMo, sets forth the grounds for which a psychology license may be disciplined, and states in part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person’s certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a

criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

...

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

...

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

39. McCarty's conduct alleged in Count I constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-

5.030(11)(B)4 in that McCarty billed for services that he did not render to nineteen clients during the time those nineteen were clients to whom McCarty provided professional psychological services.

40. McCarty's conduct alleged in Count II constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-5.030(11)(B)4 in that McCarty falsely made and forged, or caused another to falsely make and forge, the signatures of five clients on sign-in sheets McCarty submitted or caused to be submitted to Medicare and/or Medicaid for the purpose of receiving payment for professional psychological services.

41. McCarty's conduct alleged in Count I constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-5.030(13)(A) in that McCarty violated any applicable statutes and/or administrative rules regarding the practice of psychology by billing for services that he did not render to nineteen clients.

42. McCarty's conduct alleged in Count II constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-5.030(13)(A) in that McCarty violated any applicable statutes and/or administrative rules regarding the practice of psychology by falsely making and forged, or causing another to falsely make and forge, the signatures of five clients on sign-in sheets McCarty submitted or caused to be submitted to

Medicare and/or Medicaid for the purpose of receiving payment for professional psychological services.

43. McCarty's conduct alleged in Count I constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-5.030(13)(B)4 in that McCarty used fraud, misrepresentation, and/or deception in billing nineteen clients and/or third-party payors during the time that those nineteen were clients to whom McCarty provided professional psychological services.

44. McCarty's conduct alleged in Count II constitutes cause to discipline his License for violating Administrative Rule 20 C.S.R. 2235-5.030(13)(B)4 in that McCarty used fraud, misrepresentation, and/or deception in billing nineteen clients and/or third-party payors during the time that McCarty falsely made and forged, or caused another to falsely make and forge, the signatures of five clients on sign-in sheets McCarty submitted or caused to be submitted to Medicare and/or Medicaid for the purpose of receiving payment for professional psychological services.

45. Cause exists to discipline McCarty's License pursuant to § 337.035.2(2) because as alleged in Counts I and II, he entered a plea of guilty in a criminal prosecution under the laws of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under Chapter 337, RSMo, for any offense an

essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude.

46. Cause exists to discipline McCarty's License pursuant to § 337.035.2(4) because his conduct alleged in Counts I and II constitutes obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation.

47. Cause exists to discipline McCarty's License pursuant to § 337.035.2(5) because his conduct alleged in Counts I and II constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by Chapter 337, RSMo.

48. Cause exists to discipline McCarty's License pursuant to § 337.035.2(6) because his conduct alleged in Counts I and II constitutes violations of any provision of Chapter 337, RSMo, or of any lawful rule or regulation adopted pursuant to Chapter 337, RSMo.

49. Cause exists to discipline McCarty's License pursuant to § 337.035.2(15) because his conduct alleged in Counts I and II constitutes unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the Committee and filed with the Secretary of State.

JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the Disciplinary Order entered by the Committee in this matter under the authority of § 621.110, RSMo:

I. DISCIPLINE IMPOSED

McCarty's License as a Missouri licensed psychologist, License Number 01691, is immediately REVOKED. McCarty returned his License to the Committee on or about July 2, 2012.

II. GENERAL CONDITIONS

A. If the Committee determines that McCarty has violated a term or condition of his discipline, or has otherwise failed to comply with the provisions of Chapter 337, RSMo, which violation would be actionable in a proceeding before the Committee, the Administrative Hearing Commission or a Circuit Court, the Committee may elect to pursue any lawful remedies or procedures afforded to it, and is not bound by this Joint Stipulation and its selection of remedies concerning such violation.

B. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

C. Each party to this Joint Stipulation agrees to pay their own fees and expenses incurred as a result of this case, its litigation, and its settlement.

D. McCarty hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under Title 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this Paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

E. The parties to this Joint Stipulation understand that the Committee will maintain this Joint Stipulation as an open record of the Committee as provided in Chapters 337, 610 and 620, RSMo, as amended.

F. This Disciplinary Order will become effective immediately upon the issuance of the Consent Order of the AHC in this matter, without further action by either party.

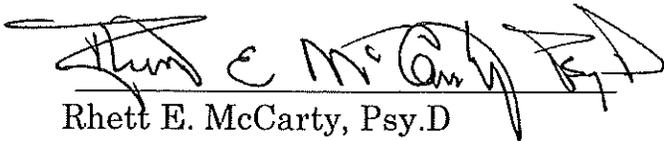
In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Committee of Psychologists, and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law, and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by the Committee in the above-styled action.

One (1) signature page follows

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LICENSEE:

COMMITTEE:



Rhett E. McCarty, Psy.D
License Number 01691



Pam Groose
Executive Director
State Committee of Psychologists

Date: 1/30/13

Date: 2-11-13

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