

NORTH CAROLINA
COUNTY OF BUNCOMBE

BEFORE THE NORTH CAROLINA SUBSTANCE
ABUSE PROFESSIONAL PRACTICE BOARD
15 SAP 05997

NC Substance Abuse Professional Practice Board Petitioner, v. Anne Romine Sherry, Respondent.	FINAL DECISION EC NO. 322-14
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THIS CAUSE came on to be heard before the North Carolina Substance Abuse Professional Practice Board on September 9, 2016 and December 9, 2016, as regularly noticed for hearing to consider the Proposal For Decision entered on July 22, 2016; the Notice served by Petitioner on July 28, 2016, and Respondent's response and contentions.

Petitioner North Carolina Substance Abuse Professional Practice Board ("Petitioner" or "the Board") was represented by Nelson G. Harris, Harris & Hilton, P.A., Raleigh, North Carolina.

Respondent Anne Romine Sherry ("Respondent" or "Sherry") was represented by Sean Devereux, Devereux & Banzhoff PLLC, Asheville, North Carolina.

The Board, having reviewed the materials of record, and having heard the arguments of counsel, unanimously concluded that the Proposal For Decision should be adopted with the additions, corrections and modifications reflected herein.

The Board hereby adopts and/or makes the following STIPULATED FACTS:

STIPULATED FACTS

1. Petitioner North Carolina Substance Abuse Professional Practice Board (the Board or NCSAPPB), was established by N.C. Gen. Stat. § 90-113.32, and is recognized as the registering, certifying, and licensing authority for substance abuse professionals described in the Chapter 90, Article 5C of the North Carolina General Statutes ("the Practice Act") and the corresponding Rules at 21 North Carolina Administrative Code, Chapter 68. The Board was established to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of credentialed substance abuse professionals, to provide for the establishment of standards for the education of credentialed substance abuse professionals, and to ensure the availability of credentialed substance abuse professionals of high quality to persons in need of these services. The Board, under authority granted by the Practice Act, regulates Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant registration, certification or licensure. (Stipulated Fact; Petitioner's Exhibit 20).

2. On July 23, 2009, Anne Romine Sherry ("Respondent" or "Sherry") was licensed by the Board as a Licensed Clinical Addiction Specialist ("LCAS"), LCAS License No. LCAS-1482. (Stipulated Fact, Petitioner's Exhibit 20).

3. On April 15, 2011, Sherry was licensed by the Board as a Certified Clinical Supervisor ("CCS"), CCS Certificate No. 531. (Stipulated Fact, Petitioner's Exhibit 20).

4. Sherry has been and is been engaged in the practice of substance abuse counseling in and around Buncombe County, North Carolina. (Stipulated Fact, Petitioner's Exhibit 20).

5. Mark O'Connell ("O'Connell") is the First Commitment Project Director, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, North Carolina Department, of Health and Human Services ("DHHS"). (Stipulated Fact, Petitioner's Exhibit 20).

6. The First Commitment Evaluation Process is a legislatively approved process whereby initially only PhD psychologists and physician psychiatrists were permitted to perform First Commitment Examinations in connection with individuals who might be in need of psychiatric commitment to a state or other psychiatric facility. (Stipulated Fact, Petitioner's Exhibit 20).

7. Ultimately, the General Assembly permitted qualified individuals having the license of clinical addiction specialist ("LCAS") certification, and who passed a test developed by three (3) licensed clinical social workers ("LCSWs") ("the Qualification Test") to conduct First Commitment Evaluations. (Stipulated Fact, Petitioner's Exhibit 20).

8. It is important, given the possibility that individuals could be involuntarily committed, that only qualified individuals be able to carry out the First Commitment work. (Stipulated Fact, Petitioner's Exhibit 20).

9. On or prior to February 14, 2012, Sherry obtained a copy of several qualification tests from Mary "Molly" Richardson ("Molly"), one of the three (3) LCSWs developing the qualification test. (Stipulated Fact, Petitioner's Exhibit 20).

The Board hereby adopts and/or makes the following FINDINGS OF FACT:

FINDINGS OF FACT

1. Prior to 2008, the Legislature approved five (5) pilot sites, including Smoky Mountain Center ("Smoky Mountain"), that would train and support licensed clinical social workers ("LCSWs"); master's level psychiatric nurses; and licensed clinical addictions specialists ("LCASs") to be able to do First Commitment Evaluations. (O'Donnell, T1, p. 56-57).

2. In order to be certified, LCASs were required to take approximately 12 separate training modules, pass an examination [the Qualification Test]; and finish a number of evaluations

under the supervision of a PhD psychologist or physician. (O'Donnell, T1, pp. 57-59).

3. For some time period prior to 2008 through 2010, three (3) individuals were primarily responsible for developing the Qualification Test: Molly Richardson ("Richardson"); Doug Trantham ("Trantham") and Barbara Hallisey ("Hallisey"). (O'Donnell, T1, p. 59).

4. O'Donnell became the First Commitment Evaluation Project manager in 2008. (O'Donnell, T1, p. 56). When O'Donnell became the project manager, one version of the Qualification Test had been utilized from April 2004 to 2008 [Pilot Version 4-04] (O'Donnell, T1, p. 61). In June 2008, the Qualification Test was modified, and again, in August 2008, one of eighty questions was changed [Pilot Version 6-08]. The 2008 version of the Qualification Test was used, without additional change, until 2014. (O'Donnell, T1, p. 62).

5. At all times relevant to the events giving rise to this contested case hearing, there were no directives in place which mandated how the various versions of the Qualification Test were to be kept for security reasons prior to, and following, administration of the Qualification Test. (Richardson, T1, p. 189). Additionally, no evidence was presented that there now exist any directives for maintaining the security of the Qualification Test.

6. On occasion, Richardson would proctor the Qualification Test, and when she did, she gave out copies of the test to the test takers and then collected the same at the end of the test. (Richardson, T1, p. 144). When O'Donnell proctored the Qualification Test, he handed out numbered copies, and retrieved the tests and the answer sheets at the end of each setting. (O'Donnell, T1, p. 63).

7. Study materials were made available to individuals preparing for the Qualification Test. (Richardson, T1, p. 199).

8. The Qualification Test had a reputation as being a tough test. (Lyons, T1, pp. 47).

9. Richardson was employed by Smoky Mountain from about 2004 through 2010. (Richardson, T1, p. 132).

10. During most of the time Richardson was employed by Smoky Mountain, Smoky Mountain provided Crisis Services through, among other units, a Mobile Crisis unit. (Richardson, T1, p. 136).

11. Sherry became one of Richardson's three (3) Mobile Crisis team leaders in July of 2009. (Richardson, T1, p. 138).

12. As a Mobile Crisis team leader, Sherry supervised five (5) clinicians. (Sherry, T2, p. 339).

13. In 2010, the State of North Carolina mandated that Smoky Mountain divest itself of all service delivery functions, and Appalachian Community Services ("Appalachian") was created to handle the service delivery function formerly performed by Smoky Mountain. Most of the

staff providing services at Smoky Mountain transitioned directly into employment with Appalachian, without changing their job function, or even their office. (Richardson, T1, p. 136-137).

14. At the time of the transition from Smoky Mountain to Appalachian, Richardson was the director of Emergency Services, supervising three (3) Mobile Crisis teams as well as a 24/7 crisis services dispatch. (Richardson, T1, p. 137).

15. Shortly after the transition from Smoky Mountain to Appalachian Community Services, Richardson left her position, and, in August of 2010, Sherry took her position as Mobile Crisis Director. (Richardson, T1, pp. 148-149, 152). (Sherry, T2, pp. 355, 357). (O'Donnell, T1, p. 66-67; Petitioner's Ex. 14).

16. Because Sherry was taking her position, Richardson assumed that Sherry would also, as Richardson had done, administer the Qualification Test, and, therefore, Richardson sent Sherry a copy of the Qualification Test. (Petitioner's Ex. 14).

17. Other than to Sherry; and to Trantham, Hallisey and O'Donnell in connection with test development, Richardson did not provide a copy of the First Commitment Qualification Test to anyone. (Richardson, T1, pp. 156-157).

18. As of February 14, 2012, Sherry, in her position as Mobile Crisis Director at Appalachian, was under pressure to have individuals certified to administer the First Commitment Evaluation Test; with the pressure coming from doctors, hospital ER directors, and community leaders where hospitals were being overrun with long wait times. (Petitioner's Ex. 15; Sherry Depos. p. 37-38). (Generally, Sherry, T2, pp. 342-349, 364). (Sherry, T2, p. 378).

19. As of February 14, 2012, Sherry had three (3) Mobile Crisis team leaders under her direct supervision, including Dina Paul Richison ("Paul") and Keith Christensen ("Christensen"). (Sherry, T2, pp. 386-387).

20. On February 14, 2012, neither Christensen or Paul were certified to perform First Commitment Evaluations, although they were effectively doing the evaluations and then getting someone to sign off on their work. (Petitioner's Ex. 15, Sherry Depos. p. 38). (Sherry, T2, pp. 363-364).

21. Sherry, knowing that Paul was not properly certified by the State, approved Paul's making First Commitment Evaluations because Sherry felt Paul was qualified to do so. (Sherry, T2, p. 365). Similarly, even though Christensen was not certified by the State, Sherry did not have any qualms about Christensen making determinations about who needed to be committed involuntarily and who did not. (Sherry, T2, p. 367).

22. Further, Sherry, and other individuals, performed the work of a First Commitment Evaluator prior to receiving formal certification. Sherry considered herself "infinitely more qualified" than emergency room doctors to perform the evaluations because she interacted with the individuals requiring evaluation on a more regular basis than doctors. (Sherry, T2, Generally, pp.

342-350).

23. On February 14, 2012, Sherry received an email ("the Burgess Email") from Thelma Elizabeth Burgess ("Burgess"). In the Burgess Email, Burgess provided information concerning the IVC First Assessor Exam to be held that Friday, February 17, 2012, at the Lord Auditorium in Asheville. (Lyons, T1, p. 28). (Petitioners Ex. 13, 4th page).

24. On February 14, 2012, Sherry forwarded the Burgess Email to Christensen and Paul because both were intending to, and already signed up to, take the Qualification Test at the Friday, February 17, 2012 setting noticed in the email; and it contained the information necessary for them to get to the test location. (Sherry, T2, pp. 389-393).

25. Sherry considered the First Commitment Qualification Test to be a formality. (Petitioner's Ex. 15; Sherry Depos. p. 42) (Sherry, T2, p. 381); if not a joke. (Sherry, T2, p. 396).

26. Sherry attached to the Burgess Email, which she forwarded to Christensen and Paul, the following documents:

Attachment #1 - Pilot Version 6-08, Civil Commitment Training Competency Evaluation;

Attachment #2 - Pilot Version 4-04, Civil Commitment Training Competency Evaluation;

Attachment #3 - Involuntary Commitment Exam Multiple Choice Sheet.

Attachment #4 - Alternative Pilot Version 4-04, Civil Commitment Training Competency Evaluation.

Pilot Version 4-04 was the version of the First Commitment Qualification Test used from April 2004 into 2008. (O'Donnell, T1, p. 61). Pilot Version 6-08 was the version of the First Commitment Qualification Test used from 2008 through 2014; except that one question had been changed in August of 2008. (O'Donnell, T1, p. 61-63). (See also, Trantham, T2, p. 435).

27. Sherry noted to Christensen and Paul, in the email by which she forwarded the Burgess Email, and to which she attached Pilot Version 6-08 and Pilot Version 4-04 (hereinafter "the Original Email"), the following:

**I cannot promise this is the same test, most likely is.
Please make sure you do not score 100, you can
miss up to 17 questions are something and no one
does well on this test.**

This is major, major, major hush, hush!!!

(Petitioner's Exhibit 13)

28. The email from Sherry to Christensen and Paul, with attachments ("the Original Email") was widely disseminated to several individuals other than Christensen and Paul. (Petitioner's Exhibits 1-10).

29. After receipt of the Original Email, Paul took and passed the First Commitment Qualification Test. Paul does not re-call the exact date she took the Qualification Test except that she is certain that she did not take the Qualification Test in February 2012. (Goodman, T1, p. 119; Paul, T2, p. 294).

30. Sherry has no specific recollection of sending the Original Email, although she does not deny doing so. Sherry believed the Qualification Test was a formality because she and others, including Paul and Christensen, were performing the work required of the First Commitment Evaluation and doctors were signing off on the prepared paperwork. Sherry acknowledged that she now realizes it was not her place to make a determination regarding the importance of the Qualification Test. (Sherry, T2, p. 381)

31. Sherry is also licensed by the North Carolina Board of Licensed Professional Counselors (NCBLPC). The NCBLPC has also investigated this matter. (*In the Matter of Anne Sherry, LPC, Respondent No.1506*) On or about December 2, 2015, Ms. Sherry entered into a Consent Order with the NCBLPC, which provided, in pertinent part that:

- a. Sherry admitted that her conduct violated Section E. 10 (maintaining assessment security) of the American Counseling Association Code of Ethics (2005) as well as N.C. Gen. Stat. § 90-340(a)(9) and (13);
- b. Sherry's license as a Licensed Professional Counselor was suspended for a period of four months;
- c. Sherry is required to complete 12 hours of continuing education course work from a Board-approved continuing education sponsor in the area of ethics for LPCs;
- d. Sherry is subject to supervision for a period of two years provided by a Board-approved supervisor.

(Sherry, T2, pp. 334-336).

32. Sherry has been and is engaged in the practice of substance abuse counseling in the Western Counties of North Carolina (Buncombe, Haywood, Jackson, Macon, Swain, Clay and Cherokee) since 2007. (Sherry, T2, pp. 331-340).

33. Sherry is regarded within the mental health community as a skilled clinician and as a passionate and tireless advocate for an underserved and vulnerable population. (Trantham, T2, pp.408-410; Richardson, T1, pp. 166-167).

Based upon the foregoing STIPULATED FACTS and FINDINGS OF FACT, the Board makes the following:

CONCLUSIONS OF LAW

1. The North Carolina Substance Abuse Professional Practice Board is a body duly organized under the laws of the State of North Carolina, and particularly Chapter 90, Article 5C of the North Carolina General Statutes ("the Practice Act") and the corresponding Rules at 21 North Carolina Administrative Code, Chapter 68.

2. The Board was established to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of credentialed substance abuse professionals, to provide for the establishment of standards for the education of credentialed substance abuse professionals, and to ensure the availability of credentialed substance abuse professionals of high quality to persons in need of these services. The Board, under authority granted by the Practice Act, regulates Board-credentialed persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant registration, certification or licensure.

3. The Board is the proper party to bring this proceeding, and to enter a Final Decision on the Proposal For Decision, the Notice, and the other matters of record.

4. Respondent is licensed and certified to practice substance abuse counseling in North Carolina, and is subject to the Practice Act and the rules promulgated thereunder. The Board has jurisdiction over the person of Respondent and the subject matter of this proceeding.

5. N.C. Gen. Stat. § 90-113.44 sets forth grounds for disciplinary action as follows:

(a) Grounds for disciplinary action for an applicant or credentialed professional include:

...(9) Engaging in conduct that could result in harm to the public.

6. The dissemination of the Qualification Test to Christensen and Paul by Sherry was an attempt to bypass the process and procedures the State believes are necessary to ensure that individuals certified to perform First Commitment Evaluations are in fact qualified to do so. Doing so exposed the public to potential harm or injury, in that individuals who might not be qualified to perform First Commitment Evaluations, and who might have failed the Qualification Test, nevertheless might become certified to perform evaluations.

7. Sherry is subject to discipline for having violated N.C. Gen. Stat. § 90-113.44 (a)(9).

8. Pursuant to 21 NCAC 68.0605, Sherry is subject to discipline up to and including revocation of her license as a Licensed Clinical Addiction Specialist; and revocation of her license and certification as a Certified Clinical Supervisor.

9. 21 N.C.A.C. 68.0607, sets forth the following factors to be considered when determining the nature and severity of the disciplinary sanctions to be imposed:

- (1) The relative seriousness of the violation as it relates to assuring the citizens of North Carolina a consistently high standard of professional service and care;
- (2) The facts of the particular violation;
- (3) Any extenuating circumstances or other countervailing considerations;
- (4) The number and seriousness of prior violations or complaints;
- (5) Whether remedial action has previously been taken;
- (6) Likelihood of reoccurrence; or
- (7) Other factors which may reflect upon the competency, ethical standards, and professional conduct of the individual.

10. Prior to the initiation of the First Commitment Evaluation Project, and continuing thereafter, the commonly accepted practice promulgated by the doctors authorized to perform the First Commitment Evaluations, was for Sherry and other individuals similarly situated as she, to perform the First Commitment Evaluations, prepare the necessary paperwork, and have the doctors sign off on the evaluation.

11. The Qualification Test was the formal conclusion of the process permitted by the General Assembly to allow individuals other than doctors and eligible psychologists the ability to perform First Commitment Evaluations.

12. The Qualification Test was not held in high regard by the Department of Health and Human Services, the agency responsible for the development and the administration of the Qualification Test as of February 14, 2012, as evidenced by only two versions of the Qualification Test being utilized from 2004 through 2014, and that there were no directives in place providing for the security of the Qualification Test.

Nevertheless, there is no evidence that security of the Qualification Test was breached, except by Sherry, in her email of February 14, 2012.

13. Regardless, it is clear from the tone expressed by Sherry in the Original E-mail that she was aware of the importance and difficulty of the Qualification Test, but even so, chose to substitute her own judgment for the judgment of the State and assist individuals in passing the Qualification Test so that she, in her position as Mobile Crisis Director, would benefit. In doing so, Sherry caused a potential harm to the public, and called into question her sense of ethics.

14. Sherry has spent the better part her career since 2009 providing critical counseling services to those individuals in society most in need of such services, but lacking the resources to obtain the same.

15. Sherry has acknowledged that substituting her judgment for that of the State was wrong.

16. There has been no evidence presented that there have been any prior violations by Sherry or complaints made against her, and it is not likely that Sherry will ever repeat the actions giving rise to this contested case.

17. Pursuant to 21 N.C.A.C. 68.0606, the disciplinary action imposed by another professional organization may be considered when imposing disciplinary sanctions.

18. The terms of discipline made a part of the Consent Order entered into by Sherry and the North Carolina Board of Licensed Professional Counselors (NCBLPC) on or about December 2, 2015, after the NCBLPC had also investigated an ethics complaint containing the same allegations which are the subject matter of this contested case hearing, are proper to consider when determining the terms of discipline to be imposed by the North Carolina Substance Abuse Professional Practice Board.

19. North Carolina General Statutes § 90-113.33 provides that, when the Board exercises its authority to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined.

20. Petitioner has not proven by a preponderance of the evidence that charging the costs of the investigation and hearing to Sherry is justified.

21. Sherry's license as a Licensed Clinical Addictions Specialist (LCAS No. 1482) and her certification as a Certified Clinical Supervisor (CCS No. 531), should be permanently revoked.

WHEREFORE, based upon the foregoing STIPULATED FACTS, FINDINGS OF FACT and CONCLUSIONS OF LAW, it is ORDERED as follows:

DECISION

1. Sherry's license as a Licensed Clinical Addictions Specialist (LCAS No. 1482) is permanently revoked;

2. Sherry's certification as a Certified Clinical Supervisor (CCS No. 531) is permanently revoked.

NOTICE

To obtain judicial review of this Final Decision, the entity or individual seeking review must file a petition within thirty (30) days after service of a written copy thereof, with the Clerk of Superior Court of the County where the entity is headquartered, or the individual resides.

This the 16th day of December, 2016.



Selbert M. Wood, Jr., President
North Carolina Substance Abuse Professional
Practice Board