

**NORTH CAROLINA
HENDERSON COUNTY**

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
FILE NO. 19 SAP 05152**

NORTH CAROLINA ADDICTIONS SPECIALIST)
PROFESSIONAL PRACTICE BOARD,)
Petitioner)

v.)

CHARLES GARDIN,)
CADC Certificate No. 21532)
Respondent)

FINAL DECISION
EC No. 569-19

THIS RECORD IS SEALED.

THIS CAUSE came on to before the North Carolina Addictions Specialist Professional Practice Board ("the Board") on July 17, 2020, as regularly noticed for hearing for consideration of the Record in the above referenced matter; and the Proposal For Decision entered by the Honorable David F. Sutton on April 21, 2020.

The Board, having reviewed the Record, and having heard the arguments of counsel, adopts the Findings Of Fact, Conclusions Of Law, and proposed discipline provided for in the Proposal For Decision, and makes the following:

FINDINGS OF FACT

1. Petitioner North Carolina Addictions Specialist Professional Board, known as "North Carolina Substance Abuse Professional Practice Board" until January 1, 2020 ("the Board"), was established by G.S. 90-113.32, and is recognized as the registering, certifying, and licensing authority for substance abuse professionals. The Board was established under the North Carolina Substance Use Disorder Practice Act, G.S. 90-113.30 *et seq.* ("the Practice Act"), 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.

2. Respondent Charles Gardin ("Gardin") is a citizen and resident of Transylvania County, North Carolina; and is neither a minor nor an incompetent person.

3. On June 18, 2019, Gardin received, from the Board, certification as a Certified Substance Abuse Counselor (CSAC No. 21532) (Pet. Ex. 1).

4. Effective January 1, 2020, the Practice Act was amended, and as part of those amendments, the title "Certified Substance Abuse Counselor" was changed to "Certified Alcohol And Drug Counselor". Therefore, Gardin is currently certified by the Board as a Certified Alcohol And Drug Counselor ("CADC"), CADC No. 21532.

5. Client X is a citizen and resident of Transylvania County, North Carolina; and is neither a minor nor an incompetent person.

6. Client X has known Gardin for much of her life, as he was a relative of her Father's best friend, and she considering him an individual in whom she could place trust. (Tran. p. 18).

7. Client X began using alcohol and marijuana when she was a teenager, about the time that she aged out of the foster care system. From alcohol, Client X "graduated" to opiates and heroin (Tran pp. 18-19)(See also, Substance Abuse History produced by Gardin, part of Pet. Ex. 3).

8. During a period which included from October 10, 2016 through February 7, 2017, Gardin was employed at Serenity Falls Counseling ("Serenity Falls") in Brevard, North Carolina.

9. On October 10, 2016, Client X presented at Serenity Falls for treatment. Client X provided a Substance Abuse History which included weekly marijuana use from the time she was 15; alcohol three (3) times a week from the time she was 13; Cocaine on three (3) occasions; tranqs and Benzos daily from the time she was 12; Hallucinogens twice a year from the time she was 16; narcotics daily from the time she was 15; and tobacco daily from the time she was 16. (See Substance Abuse History produced by Gardin and made part of Pet. Ex. 3.)

10. During the period from October 10, 2016 through February 7, 2017, Client X was a client at Serenity Falls; and part of a therapy group, run by Gardin, that met twice a week. (Pet. Ex. 3, p. 2).

11. During the time Client X was receiving services at Serenity Falls, Gardin would always offer Client X a ride home; would sometimes provide rides to group; would provide small amounts of money and cigarettes on a friendly basis; and was someone Client X could call, since Gardin would always do what he could to help her out. (Trans. p. 23). Client X did not consider Gardin as a counselor, *per se*, and more of a family friend. (Trans. p. 25).

12. During 2019, Client X and Gardin interacted on a friendly basis, and Client X went to Gardin's house, which is about 2 blocks from her house, on 4 or 5 occasions. (Trans. p. 25). Gardin was always supportive and Client X felt that she could talk to him; and get his help for rides and the like. (Trans. pp. 25-26).

13. Based upon the family relationship, the counseling relationship, and her experiences with Gardin, Client X felt that she could trust him. (Trans. pp. 26).

14. During the first of the 4 or 5 occasions that Client X went to Gardin's house, he provided her with alcohol; they just talked, and Gardin took her home. The second, third and fourth times, Gardin again provided Client X with alcohol and they just talked about things that were bothering Client X until Gardin again took her home. (Trans. pp. 27-28). During these initial visits, Gardin asked several times if they could become more intimate, and Client X laughed off the suggestions. (Trans. p. 28).

15. Beginning on March 15, 2019, Client X began receiving substance abuse Counseling, in connection with a DWI, from Kathleen Mallet ("Mallet"), a Certified Substance Abuse Counselor ("CSAC") licensed by the Board since 2000 or 2001 (Trans. pp. 63-64); later licensed by the Board as a Licensed Clinical Addictions Specialist ("LCAS"), and licensed by the Licensed Professional Counselor Board as a Licensed Professional Counselor ("LPC"). (Trans. pp. 64-65, 67).

16. Client X presented to Mallet with an alcohol use disorder; an opiate use disorder; and Mallet had recommended an inpatient program at Black Mountain Treatment Center, where, unfortunately, Client X could not enroll because of her active stomach cancer. (Trans. pp. 67-68).

17. During the period from March 2019 through August 11, 2019, Client X participated in DWI class with Mallet; group therapy; and attended 12 step meetings. (Trans. p. 68). Client X had setbacks, and had difficulty remaining sober. (Trans. p. 69).

18. On August 10, 2019, Client X got into an argument with her fiancé; was very upset, and she texted Gardin to see if they could "hang out", to which Gardin agreed. (Trans. p. 29). Gardin picked up Client X and when they went back to his house, he had two unopened bottles of vodka, which Gardin knew, from his history with Client X, was Client X's drink of choice. (Trans. pp. 29, 31).

19. Client X drank quite a bit as she talked with Gardin, and she asked if she could stay the night and walk home in the morning. Gardin, having an extra bedroom; a bed and towels set up, agreed. (Trans. p. 29).

20. At the time Client X asked to stay, she was intoxicated, but was not concerned about Gardin and was comfortable with the thought of spending the night. (Trans. p. 30).

21. Client X and Gardin talked about her relationship, and she drank, until she went to bed and sleep. (Trans. p. 32).

22. Client X woke up with Gardin between her legs, performing oral sex upon her, and naked from the waist down. (Trans. p. 32). Client X reacted by asking what Gardin was doing and asking him to stop. (Trans. p. 32). When she was awakened, Client X was still intoxicated. (Trans. p. 33).

23. Gardin had oral and vaginal intercourse with Client X; over Client X's

objections; and when he finished, he left the room, telling Client X to lock up before she left. (Trans. p. 32).

24. When Gardin left, Client X showered at least twice; she locked up Gardin's house, and sent home and showered again. (Trans. p. 34).

25. Gardin contacted Client X and asked her if she had gotten home alright, and Client X said "Yes, thank you. Thank you for letting me stay the night." (Trans. p. 34).

26. The next morning (August 12, 2019), Client X contacted Mallet to discuss the previous night's events with her. (Trans. p. 34). More specifically, Client X called Mallet crying; asked if she could come in to see Mallet, and then dropped by Mallet's office. (Trans. p. 71).

27. Client X told Mallet that she had a fight with her boyfriend; that she called Gardin for support; that she considered him a friend; that she went to his house; that Gardin had given her alcohol (vodka) at his house; that she had drank two pints and gotten intoxicated; that she asked to spend the night because she was intoxicated and wanted to sleep it off; that she had trusted Gardin; that she was upset that he got her intoxicated, when he knew she had an alcohol problem; and that he had sex with her when she was inebriated and after she told him to stop. (Trans. pp. 72-73). Mallet made notes of her meeting with Client X, which were introduced as part of Pet. Ex. 4.

28. The OAH Judge found Client X to be credible during her testimony at the hearing of the Contested Case; and could find no reason for Client X to fabricate the incidents, involving Gardin, that she testified about at hearing.

29. While there are inconsistencies in Client X's recollections – between her testimony, her no contact order case filings, and as given to Mallet; such as whether she had two (2) pints of vodka or one (1) and a little more; how many times she showered before leaving Gardin's house; and that the date used in the no contact order application differs from the date the incident occurred – those inconsistencies are explained by the fact that she was intoxicated during the incident; passage of time before filing the no contact order case; and that Client X was and continues to be an addict.

30. Gardin has previously been reprimanded by the Board.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE BOARD MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. Gardin's suggestions to Client X, in 2019, that they become more intimate is soliciting sexual activity or sexual contact with a former client, in violation of Rule 68. 0509 of Chapter 21 NCAC and 21 NCAC 68 .0601(4)(b); is a failure to follow the standards of skill and competence possessed and applied by professional peers certified in this state in same or similar circumstances, in violation of 21 NCAC 68 .0601(6)(a), and engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public, in violation of 21 NCAC 68 .0601(6)(e).

2. Gardin's performance of oral sex on Client X, and vaginal penetration, is sexual contact with a former client, in violation of Rule 68. 0509 of Chapter 21 NCAC and 21 NCAC 68 .0601(4)(b); is a failure to follow the standards of skill and competence possessed and applied by professional peers certified in this state in same or similar circumstances, in violation of 21 NCAC 68 .0601(6)(a), and engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public, in violation of 21 NCAC 68 .0601(6)(e).

3. Gardin's provision of alcohol to Client X, who he knew was in recovery, is a failure to follow the standards of skill and competence possessed and applied by professional peers certified in this state in same or similar circumstances, in violation of 21 NCAC 68 .0601(6)(a), and engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public, in violation of 21 NCAC 68 .0601(6)(e).

4. Gardin is subject to the Practice Act and the rules promulgated thereunder. The Board has jurisdiction over the person of the Gardin and the subject matter of this proceeding.

5. Pursuant to the provisions of the 21 NCAC 68 .0101 et seq., and the provisions of the General Statutes cited above, including G.S. 90-113.44, grounds exist to discipline Gardin relating to the facts and circumstances set forth above, up to and including permanent revocation of all of Gardin's licenses and certifications.

6. Giving no consideration to the prior Reprimand by the Board, the appropriate discipline to impose against Gardin is permanent revocation of all licenses and certifications issued by the Board, including his certification as a Certified Alcohol And Drug Counselor (CADC No. 21532).

NOW, THEREFORE, IT IS THE JUDGMENT OF THE BOARD as follows:

1. Gardin's certification as a Certified Alcohol And Drug Counselor (CADC No. 21532) is permanently revoked.

2. The record in this case (not to include the Final Decision) shall remain sealed.
3. This Final Decision is effective upon the date executed by the President of the Board.

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 27 day of July, 2020.

**NORTH CAROLINA ADDICTIONS SPECIALIST
PROFESSIONAL PRACTICE BOARD**

By: 
Flo Stein, Chair