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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 SAP 03281

<p>North Carolina Addictions Specialist Professional Practice Board, Petitioner,</p> <p>v.</p> <p>James C. McGoogan (LCAS-A No. 21819), Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing before the Undersigned on December 12, 2022, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Catherine E. Lee
Grant Simpkins
Hedrick Gardner Kincheloe & Garofalo, LLP
4131 Parklake Ave, Suite 300
Raleigh, NC 27612

For Respondent: Nicholas J. Dowgul
North State Law
5840 Faringdon Place, Suite B
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ISSUE

Whether Respondent violated the provisions of Chapter 90, Article 5C of the North Carolina General Statutes or any of the rules of the North Carolina Addictions Specialist Professional Practice Board, as set forth in Title 21 Chapter 68 of the North Carolina Administrative Code.

STATUTES AND RULES AT ISSUE

1. N.C. Gen. Stat. § 90-113.44(a)(6), (a)(7), (a)(9), and (a)(10).
2. 21 NCAC 68 .0510(a); 21 NCAC 68 .0601(2)(a), (4)(b), (5)(c), (6)(a), and (7)(d).

EXHIBITS ADMITTED INTO EVIDENCE**Petitioner's Exhibits**

EXHIBIT DESCRIPTION	EX. #
EC # 680-21 Complaint filed by Kate Hayes on 9/1/21	1
McGoogan Response to Complaint	2
Client R4017-2 Drug Screen Report	3
Client R2991-3 Drug Screen Report	4
Client Q1310-03 Drug Screen Report	5
Client R5131-2 Drug Screen Report	6
Client Q0917 Drug Screen Report	7
Client R2757-2 Drug Screen Report	8
Client R5042-2 Drug Screen Report	9
EC # 700-22 Complaint filed by Haley Price on 12/29/21	10
11/5/21 Email from H. Price to R. McDonald	11
McGoogan Time Sheets with Notes 10/3/2021-10/16/2021	12
McGoogan Time Sheets 10/17/2021-10/30/2021	13
McGoogan Emails/Messages attached to Complaint	16
Undated McGoogan Response to Complaint	17

Respondent's Exhibits

EXHIBIT DESCRIPTION	EX. #
Petition for Contested Case Hearing and Request for Designation of ALJ	1
Petitioner Board's Prehearing Statement	2
Respondent's Prehearing Statement	3
EC # 680-21 Complaint Filed by Kate Hayes on 9/1/21	4
Email from Kate Hayes 9/3/21	6
EC # 681-21 Complaint Filed by Kate Hayes 9/7/21	7
Emails from Haley Price 12/30/21	8

WITNESSES

For Petitioner: Kate Hayes (Executive Director-Rowan Treatment Centers)
 Haley Price (Former Office Manager-One Love Community Programs)

For the Respondent: James C. McGoogan

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, the Parties' Proposed Final Decisions, and the entire record in this proceeding, the Undersigned makes the following proposed Findings of Fact and Conclusions of Law.

In making the Findings of Fact, the Undersigned has weighed all the evidence and assessed the credibility of the witnesses. The Undersigned has considered the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, and any interests, bias, or prejudice the witness may have. Further, the Undersigned has carefully considered the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. After careful consideration of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, the credible evidence, and the entire record in this proceeding, the Undersigned makes the following:

Procedural History

1. Petitioner received ethics complaints against Respondent on September 1, 2021 (Ethics Complaint No. 680-21), December 29, 2021 (Ethics Complaint No. 700-21), and March 7, 2022 (Ethics Complaint No. 715-22).
2. On August 29, 2022, Petitioner filed a request for an administrative law judge to preside over the hearing in this case pursuant to N.C. Gen. Stat. §§ 150B-38, 150B-40(e), and 21 N.C.A.C. 68 .0706.
3. On October 25, 2022, Senior Administrative Law Judge Fred Morrison, Jr. conducted a settlement conference with Petitioner and Respondent. The parties did not reach a settlement agreement and this contested case proceeded to an evidentiary hearing before the undersigned Administrative Law Judge on December 12, 2022, in Raleigh, North Carolina.

Parties

4. Petitioner, North Carolina Addictions Specialist Professional Practice Board, is the State's licensing agency for clinical addiction specialists in North Carolina. Petitioner registers, certifies, and licenses substance abuse professionals. N.C. Gen. Stat. § 90-113.32.
5. Respondent is a Licensed Clinical Addiction Specialist – Associate (LCAS-A). T p 136. McGoogan has been a LCAS-A since August 3, 2020. T p 136. Respondent is referred to throughout this Final Decision as a “substance abuse counselor.”

Ethics Complaint No. 680-21

6. In July 2020, Respondent obtained employment at Rowan Treatment Associates (“Rowan”) as a substance abuse counselor. T pp 13, 137. Rowan provides medication assisted opioid treatment for clients with opioid use disorder. T p 13. Rowan provides clients with methadone and buprenorphine maintenance, as well as counseling services, drug screening, and referral services. T p 13.
7. Witness Kate Hayes was a supervisor employed by Rowan. She supervised Steve Collier, Respondent’s immediate supervisor. T p 13. This Tribunal found her to be a credible witness.
8. Respondent’s job responsibilities included counseling approximately 50 clients, collecting drug screens, case management services, and treatment planning. T pp 13-14.
9. Rowan required clients to submit to drug screening as a way to monitor client safety, because Rowan provides methadone and buprenorphine maintenance, which are sedatives. T p 18-20.
10. Substance abuse counselors collected drug screen samples from their assigned clients before submitting the samples to a lab for testing. T p 19. Once a sample was tested, the results were uploaded into MethaSoft, the program Rowan used to track client drug screen results and clinical notes. T p 19.
11. Rowan had been using MethaSoft since 2007. T p 62. Every employee at Rowan had their own login name and password for MethaSoft. T p 20. Respondent testified that his direct supervisor, Mr. Collier, would have known his login information and that counselors would allow others to input information using their login information. T pp 147, 165. The Tribunal did not find Respondent’s testimony credible. Ms. Hayes testified credibly that Respondent should “be the only person that has his login information.” T p 45.
12. When a change is made in a client profile or in the clinical notes of a client profile, MethaSoft tracks which user information was used to make that change. T pp 20-21.
13. Rowan performed random client record audits on a quarterly basis. T p 68. During a periodic audit, Mr. Collier reviewed drug screen results for a particular client (Client R4017) and noticed irregularities. T p 68. Mr. Collier notified Ms. Hayes of the issue, who, in response, reviewed the files for all clients assigned to Respondent. T p 14. An audit of client records, such as the one performed by Ms. Hayes, was only conducted by Rowan “as needed.” T p 54.
14. As a result of her review, Ms. Hayes discovered that the username “J. McGoogan” altered nine drug screen results for seven different clients. T p 15. The altered drug results were as follows:

- a. For Patient R4017-2, on June 30, 2021, Respondent removed positive results of Amphetamines and Benzodiazepines from a drug screen report, and on July 2, 2021, Respondent removed positive results of Cocaine from a drug screen report. Pet. Ex. 3, T pp 24-28.
 - b. For Patient R2991-3, on July 14, 2021, Respondent removed positive results of Amphetamines. Pet. Ex. 4, T pp 28-30.
 - c. For Patient Q1310-03, on April 13, 2021, Respondent removed positive findings of Cocaine from a drug screen report. Pet. Ex. 5, T pp 31-33.
 - d. For Patient R5131-2, on February 19, 2021, Respondent added positive findings of Methadone Metabolite to a drug screen report, and on April 13, 2021, Respondent added positive findings of Methadone Metabolite to a drug screen report. Pet. Ex. 6, T pp 33-37.
 - e. For Patient Q0917, on July 13, 2021, Respondent removed positive findings of alcohol from a drug screen report. Pet. Ex. 7, T pp 37-39.
 - f. For Patient R2757-2, on February 5, 2021, Respondent added findings of Methadone, Benzodiazepines, and Methadone Metabolite to a blood screen test taken to determine the presence of sexually transmitted diseases. Pet. Ex. 8, T pp 39-42.
 - g. For Patient R5042-2, on July 28, 2021, Respondent added findings of Methadone and Methadone Metabolite to a drug screen report. Pet. Ex. 9, T pp 42-44.
15. J. McGoogan was Respondent's user ID for MethaSoft.
16. Respondent testified that other individuals employed by Rowan had access to his MethaSoft login information. T pp 147, 164, 173. He also testified that MethaSoft had "glitches," T pp 175, 201, and that he reported many problems with MethaSoft to Rowan's IT department. T p 146. No record of MethaSoft program difficulties or "glitches," and no IT tickets were introduced into evidence at hearing. T p 172. This Tribunal did not find Respondent's testimony on this matter credible.
17. Respondent was terminated from Rowan, on or about August 23, 2021, for altering drug screen results. T pp 15, 137.
18. Ms. Hayes consulted with the chief operating officer, compliance officer and clinical supervisor of Rowan or Rowan's parent company before filing a complaint against Respondent with Petitioner. T pp 15, 46. The complaint was motivated out of concern for the risk Respondent posed for patients. T p 46.
19. The complaint, filed on September 1, 2021, was assigned Ethics Complaint No. 680-21. The complaint read, "Counselor changed drug screen result information in the record of

seven patients from positive urine drug screen results to negative urine drug screen results. The changes allowed patients to receive take-home medication in larger numbers than would be approved by the clinic physician with drug screen result information. . . .” Pet. Ex. 1, T p 18.

Ethics Complaint No. 700-21

20. In November 2020, Respondent obtained part-time employment at One Love Community Programs (“One Love”). T pp 150-51 One Love provides “outpatient care, . . . medication management, . . . [and] DWI classes.” T p 72. Respondent is still employed by One Love. T p 137.
21. Witness Hayley Price is the former office manager at One Love. Ms. Price was questioned about leaving her employment with One Love and a disciplinary suspension from her work for One Love. T pp 98, 100. This Tribunal considered this in evaluating the credibility of her testimony and found her to be a credible witness.
22. Ms. Price’s position at One Love entailed scheduling substance abuse counselors’ shifts and client visits, reviewing counselors’ timesheets for accuracy and preparing payroll. T pp 71, 76.
23. The timesheets indicated which clients substance abuse counselors saw that week, whether it was an in-person or virtual visit, and what time the visit occurred. T p 71.
24. Respondent and Ms. Price’s direct supervisor is Richard McDonald. Steve Wideman is the direct superior of Mr. McDonald. T p 72.
25. One Love used a notation program, WellSky, in which substance abuse counselors added clinical notes and summaries. T pp 76, 80.
26. Counselors submitted their timesheets to Ms. Price, whose job it was to verify that there were clinical notes in WellSky to match the times of client visits on the timesheets, and to use this information to calculate payroll. T pp 76, 87.
27. If a substance abuse counselor did not put clinical notes in WellSky, Ms. Price could not verify the client visit listed on a counselor’s timesheet had occurred. Ms. Price followed office procedure and ensured that when clinical notes were missing in WellSky, the counselor would not get paid for the that client visit. T pp 76-77, 80.
28. Certain clients at One Love had monthly appointments for medication management. As part of her assigned employment duties, Ms. Price reviewed counselor timesheets to ensure that these clients were visiting One Love monthly. She noticed “that there were clients who had not been seen by” Respondent. When she questioned him about this, Respondent told Price that one client, R.G., “had been MIA for a while.” T p 77.

29. Respondent submitted timesheets for which there were no matching WellSky clinician notes to verify that the client visits had occurred. T pp 86, 90. More specifically, Respondent submitted two (2) timesheets to Ms. Price for services rendered during the month of October 2021. These time sheets noted:

- a. On October 16, 2021, Respondent saw client R.G. for one telehealth session at 6:00 p.m.
- b. On October 1, 2021, Respondent saw client R.G. for one individual therapy session at 7:00 p.m.
- c. On October 13, 2021, Respondent saw client R.G. for one individual therapy session at 12:00 p.m.
- d. On October 15, 2021, Respondent saw client R.G. for one individual therapy session at 6:00 p.m.
- e. On October 22, 2021, Respondent saw client R.G. for one individual therapy session at 6:00 p.m.
- f. On October 22, 2021, Respondent saw client R.G. for one individual therapy session at 6:00 p.m.
- g. On October 29, 2021, Respondent saw client R.G. for one individual therapy session at 6:00 p.m.

Pet. Exs. 12 and 13.

27. On his time sheet for the period of October 17, 2021, through October 30, 2021, Respondent included alleged sessions with client R.G. occurring in early October, although he had not documented these alleged sessions with client R.G. on his timesheets for the period of October 1, 2021, through October 16, 2021. Pet. Exs. 12 and 13, T p 90. Moreover, Respondent told Ms. Price that he had not seen client R.G., yet Respondent submitted timesheets with documented visits with client R.G.

28. Based on what Respondent had told her, Ms. Price reported to Mr. McDonald that Respondent had been paid for client visits for clients who had missing or no notations in WellSky and that had not been seen at One Love. T pp 77-78, Pet. Ex. 11. Thereafter, Ms. Price filed a complaint against Respondent with Petitioner on December 29, 2021. T p 78. The complaint was assigned Ethics Compliant No. 700-21.

Ethics Complaint No. 715-22

29. Respondent obtained employment as a substance abuse counselor for Harmony Recovery Center (“Harmony”) in September 2021. T p 128.

30. Chakeisha McKinney Lyons was also employed by Harmony as a substance abuse counselor. T p 166.

31. A supervisor at Harmony discovered the following messages sent from Respondent to Ms. Lyons:

- a. "lol...just because you see me smile and get along with everyone does not mean that I like them. That's just my personality. And also it's called knowing how far to go with people so that you do not get burnt. Ashley, the tech. told me in front of Cynthia today that I betta stop bothering her asking her questions or she will tell them i am sexual harassing her and I was like wtf. Then she gonna say, I'm just playing. SMH....I don't play like that.. Maybe you need me and you just don't know lol"
 - b. "Because you get tense when you around me and I can help you calm down..lol..you like me too so stop playing"
 - c. "You are a calm person but when I come around you get tense. its ok. I dont bit lolololol...unless you wished to be bite"
Pet. Ex. 16; T p 117.
32. The supervisor filed a complaint with Petitioner regarding these messages on March 7, 2022. The complaint was assigned Ethics Complaint No. 715-22.
 33. Respondent admitted at the hearing that he sent these messages to Ms. Lyons, but stated that they had been taken out of context and that he was friendly with Ms. Lyons. T pp 121, 126.
 34. Ms. Lyons did not testify at the hearing. No employee of Harmony testified at the hearing.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings ("OAH") has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Facts, they should so be considered without regard to the given labels.
2. Petitioner is subject to Article 3A of Chapter 150B. N.C. Gen. Stat. § 150B-38(a)(1).
3. Petitioner properly instructed the Director of OAH to assign an administrative law judge to act as a hearing officer in this contested case. N.C. Gen. Stat. §§ 58-2-55; 150B-40(e).
4. The Undersigned has the authority and duties of a hearing officer of Petitioner, under Article 3A and Petitioner's rules. The Undersigned must make a proposal for final decision on this matter to Petitioner. N.C. Gen. Stat. § 150B-40(e).
5. A Tribunal is not required to find all of the facts shown by the evidence, but only sufficient material facts to support the decision. *In re Custody of Stancil*, 10 N.C. App. 545, 549, 179

S.E.2d 844, 847 (1971); *Green v. Green*, 54 N.C. App. 571, 575, 284 S.E.2d 171, 174 (1981).

6. Petitioner has alleged that Respondent has violated the following statutes and regulations governing licensed clinical addiction specialists:
 - a. N.C. Gen. Stat. § 90-113.44(a);
 - b. 21 N.C.A.C. 68 .0510(a);
 - c. 21 N.C.A.C. 68 .0601(2)(a);
 - d. 21 N.C.A.C. 68 .0601(4)(b);
 - e. 21 N.C.A.C. 68 .0601(5)(c);
 - f. 21 N.C.A.C. 68 .0601(6)(a); and
 - g. 21 N.C.A.C. 68 .0601(7)(d).

N.C. Gen. Stat. § 90-113.44

7. N.C. Gen. Stat. § 90-113.44(a) provides the grounds for which Petitioner may take disciplinary action against a licensed or credentialed addiction specialist. The statute provides, in relevant part, that Petitioner may take disciplinary action if the addiction specialist:
 - (6) Engag[es] in any act or practice in violation of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such violation.
 - (7) [Commits] an act of malpractice, gross negligence, or incompetence while serving as a substance use disorder professional, intern, or registrant.
 - ...
 - (9) Engag[es] in conduct that could result in harm or injury to the public.

8. Thus, to determine if Respondent violated N.C. Gen. Stat. § 90-113.44(a), it is necessary to first determine if Respondent violated of Petitioner's rules, and if Respondent's actions constitute gross negligence, incompetence, or "conduct that could result in harm or injury to the public."

21 N.C.A.C. 68 .0510(a)

9. 21 N.C.A.C. 68 .0510(a) provides that a credentialed addiction specialist "shall treat colleagues with respect, courtesy, and fairness." Petitioner asserts Respondent violated this provision by sending inappropriate messages to Ms. Lyons while employed at Harmony.

10. The Undersigned finds that Petitioner failed to establish that Respondent did not treat his colleague with respect, courtesy, and fairness, as Respondent testified that he did and there was no testimony to the contrary at the hearing.

21 N.C.A.C. 68 .0601

11. 21 N.C.A.C. 68 .0601 provides, in pertinent part:

The following are grounds for discipline:

- (2) fraud or misrepresentation to the public:

(a) knowingly [sic] make [sic] misleading, deceptive, false, or fraudulent misrepresentations in the practice of the profession;

- (4) exploitation of a relationship with client or person served:

(b) participating in or soliciting sexual activity or sexual contact with a current or former client or client of one's agency in violation of Rule .0509 of this Chapter;

- (5) illegal acts or practices:

(c) being an accessory to or participating in dishonesty, fraud, misrepresentation, or any other illegal act involving a client or person served.

- (6) professional incompetency or failure to meet standards of practice:

(a) failure to follow the standards of skill and competence possessed and applied by professional peers credentialed in this State acting in the same or similar circumstances;

- (7) In professional relationships, the following are prohibited:

(d) accepting or charging a fee when no substance use disorder professional services are actually provided; . . .

21 N.C.A.C. 68 .0601(2)(a), (4)(b), (5)(c), (6)(a) and (7)(d).

12. Respondent violated 21 N.C.A.C. 68 .0601(2)(a) and 21 N.C.A.C. 68 .0601(5)(c) by falsifying timesheets. Respondent submitted timesheets containing visits with clients that had not occurred, and for which Respondent had been paid. This constitutes a false or fraudulent misrepresentation in the practice of Respondent's profession as well as a dishonest act involving a client or person served under the relevant rule. This conduct also constitutes a violation of 21 N.C.A.C. 68 .601(7)(d) because Respondent was paid for services to clients he did not render.

13. Petitioner failed to establish that Respondent violated 21 N.C.A.C. 68 .0601(4)(b) because no evidence was presented at hearing that Respondent had sexual contact with a client.
14. Respondent violated 21 N.C.A.C. 68 .0601(5)(c) and (6)(a) by changing nine drug screen results that affected seven different clients. These actions of Respondent violated subsection (5)(c) because these are dishonest acts and misrepresentations. Respondent asserted that he did not change the drug screen results, but his testimony was not credible. His user ID information was used to change the results and the Tribunal is not persuaded that someone else had access to his user ID.
15. Changing drug screen results also violates 21 N.C.A.C. 68 .0601(6)(a) because it endangered clients. At the time the drug screen results were changed, clients were being prescribed sedating medications to aid in their opioid abuse treatment. The prescribing physicians relied on the drug screen results in prescribing such medication, and the amended results allowed clients access to larger quantities of medication than they should have been.

Rule Violations Support Disciplinary Action

16. Respondent violated 21 N.C.A.C. 68 .601(2)(a), (5)(c), (6)(a), and (7)(d). Accordingly, disciplinary action is warranted against him under N.C. Gen. Stat. § 90-113.44(a)(6). Moreover, disciplinary action is warranted under Section 90-113.44(a)(7) and (9) because Respondent changed drug screen results and endangered clients' welfare.
17. Petitioner must consider several factors when determining the nature and severity of the disciplinary action:
 - (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; and
 - (7) other factors which may reflect upon the competency, ethical standards, and professional conduct of the individual.
18. N.C.A.C. 68 .0607. Here, Respondent has had three complaints filed against him within one calendar year, two of which are proven violations of Petitioner's rules. All three complaints were filed within the first two years after Respondent obtained his LCAS-A credential. The act of changing drug screen results and endangering client welfare is a serious violation of the standards governing licensed or credentialed addiction specialists. Respondent is still employed at One Love where he provides substantially similar services.

Accordingly, the likelihood of reoccurring behaviors is possible. In mitigation, no complaints were filed by Respondent's clients.

19. In considering the foregoing, the Undersigned proposes that Petitioner revoke Respondent's license. While none of the complaints lodged against Respondent were by clients, Respondent committed serious violations of the standards governing his profession and endangered those clients.

PROPOSAL FOR DECISION

BASED UPON the foregoing, the Undersigned proposes that Respondent's license be REVOKED.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C. Gen. Stat. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Addictions Specialist Professional Practice Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C. Gen. Stat. § 150B-42.

IT IS SO ORDERED.

This the 11th day of May, 2023.


Linda F. Nelson

Linda F. Nelson
Administrative Law Judge