STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING SECTION

December 6, 2011

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RE: John H. Gagnon, MFT **Petition No. 2010-5035**

Dear Attorney Seeger and Attorney Antonetti:

Enclosed please find a copy of the Final Memorandum of Decision rendered by Hearing Officer Joanne V. Yandow on December 6, 2011 in the above-referenced matter.

Respectfully,

Janice E. Wojick, Hearings Liaison
Public Health Hearing Section, MS#13PHO
Tel. (860) 509-7648 FAX (860) 509-7553

c: Jewel Mullen, M.D., M.P.H., M.P.A., Commissioner
Lynn Rioux, Paralegal Specialist II, Office of the Attorney General
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John H. Gagnon, MFT, First Class Mail

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
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John Gagnon, M.F.T.
Petition No. 2010-5035

December 6, 2011

MEMORANDUM OF DECISION

Procedural Background

On March 15, 2011, the Department of Public Health ("the Department") issued a Summary Suspension Order to John Gagnon, M.F.T. ("respondent"), stating that the Department was summarily suspending respondent's marital and family therapist license number 000012 due to alleged violations of the Connecticut General Statutes ("General Statutes") § 20-195d. Rec. Exhs. 3, 5.

On March 15, 2011, the Statement of Charges ("the Charges") and the Notice of Hearing on the Charges were issued to respondent. The undersigned was appointed by the Commissioner of the Department to be the Hearing Officer to conduct the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an Order. The hearing was scheduled for March 24, 2011. Rec. Exhs. 1, 2, 4, 5.

On March 16, 2011, respondent, through counsel, requested a continuance of the hearing. The request was granted and the hearing was rescheduled for June 22, 2011. Rec. Exhs. 6, 7.

On June 6, 2011, the Department filed a Motion to Deem Allegations Admitted ("Motion"). On June 14, 2011, the undersigned ruled that if respondent failed to file an answer by June 20, 2011, the Motion would be granted. On June 20, 2011, respondent filed an answer. Rec. Exhs. 8, 9, 10.

On June 20, 2011, the respondent filed a request for a continuance of the hearing. The request was granted and the hearing was rescheduled for September 15, 2011. Rec. Exh. 11, 14.

On September 12, 2011, respondent filed a letter. Rec. Exh. 12.

The administrative hearing was held on September 15, 2011, in accordance with General Statutes Chapter 54 and Regulations of Connecticut State Agencies §§ 19a-9-1 *et seq.* Neither

respondent nor his attorney, Stephan E. Seeger,[1] was present; Attorney David Tilles represented the Department. Respondent received sufficient notice of the hearing. Tr. pp. 11-16; Rec. Exhs. 4-7, 11-14

This Memorandum of Decision is based entirely on the record and sets forth findings of fact, conclusions of law, and an order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

Allegations

The Department summarily suspended respondent's license to practice marital and family therapy pursuant to General Statutes §§ 19a-17c and 4-182 based on allegations that the health, safety or welfare of the citizens of Connecticut is in clear and immediate danger and requires emergency action.

The allegations that support the Summary Suspension Order are set forth in the Charges. The Charges are as follow:

FIRST COUNT

1. In paragraph 1 of the Charges, the Department alleges that respondent, of Stamford, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut marital and family therapist license number 000012.

2. In paragraph 2 of the Charges, the Department alleges that on or about August 26, 2005, the Department approved and ordered a Consent Order in Petition Number 2004-0506-027-001 that permanently restricted respondent's marital and family therapist license. Such disciplinary action was based upon respondent's admission that he had made false representations to clients and on his professional website, including false representations that he was an officer in the United States Army, and upon respondent's diagnosis of bipolar disorder.

3. In paragraph 3 of the Charges, the Department alleges that the Consent Order specifically provided that respondent "is permanently forbidden to make any representation by any means whatsoever to any client or patient or prospective client or patient that he possesses any license, credential, certificate, privilege, appointment, affiliation, or membership with any profession, entity, or institution that he does not possess. Respondent agrees that violation of this provision shall be sufficient ground for revocation of his license."

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[1]On March 16, 2011, Attorney Seeger emailed the Department that he was representing respondent. Attorney Seeger filed respondent's answer and requests for continuances. To date, Attorney Seeger has not filed a withdrawal of his appearance. Rec. Exhs. 7, 10, 11.

4. In paragraph 4 of the Charges, the Department alleges that on or about January 30, 2011, in violation of the above-described permanent restriction on his license, respondent falsely represented to persons whom he believed were prospective patients that he serves, or had served, in the United States Army.

5. In paragraph 5 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of the Consent Order, and subjects respondent's license to revocation or other disciplinary action authorized by the General Statutes of Connecticut, §§ 19a-17 and 20-195d.[2]

SECOND COUNT

6. In paragraph 6 of the Charges, the Department alleges that paragraphs 1-4 are incorporated into the Charges by reference as if set forth in full.

7. In paragraph 7 of the Charges, the Department alleges that respondent has been diagnosed with bipolar disorder.

8. In paragraph 8 of the Charges, the Department alleges that respondent's bipolar disorder, and/or other occupationally disabling emotional disorder(s) and/or mental illness, individually and/or collectively, do and/or may affect his ability to practice marital and family therapy.

9. In paragraph 9 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut § 20-195d(2).

Findings of Fact

1. At all times referenced in the Charges, respondent, of Stamford, Connecticut, held Connecticut marital and family therapist license number 000012. Rec. Exh. 10.

2. On August 26, 2005, the Department approved and ordered a Consent Order in Petition Number 2004-0506-027-001 ("the Consent Order") that permanently restricted respondent's marital and family license. Such disciplinary action was based upon respondent's admission that he had made false representations about his personal and professional credentials to clients and on his professional website, including false representations that he was an officer in the United States Army, and respondent's admission that he had been diagnosed with bipolar disorder and such condition does and/or may impair respondent from practicing safely and effectively without proper treatment. Dept. Exh. 1.

[2] At hearing, a motion to amend paragraph 5 of the Charges to delete an incorrect reference to probation was granted. On September 15, 2011, pursuant to the Hearing Officer's order, the Department filed the written amendment. The document was entered into the record marked Record Exhibit 15. Tr. pp. 38-41, 44-45; Rec. Exhs. 1 and 15

3. The Consent Order specifically provided that respondent "is permanently forbidden to make any representation by any means whatsoever to any client or patient or prospective client or patient that he possesses any license, credential, certificate, privilege, appointment, affiliation, or membership with any profession, entity, or institution that the does not possess. Respondent agrees that violation of this provision shall be sufficient ground for revocation of his license." Rec. Exh. 10; Dept. Exh. 1.

4. Respondent never held any rank in the United States Army. Dept. Exhs. 1 and 10.

5. On or about January 30, 2011, respondent falsely represented to persons whom he believed were prospective patients that he serves, or had served, in the United States Army. Dept. Exhs. 2, 4 (under seal), and 10.

6. Respondent's false representation on or about January 30, 2011, as stated above, is a violation of the Consent Order and the permanent restriction on his license and is sufficient ground for revocation of respondent's license. Dept. Exh. 1.

7. Respondent has been diagnosed with bipolar disorder with a prior episode consistent with hypomanic delusional status. Dept. Exhs. 1, 2, 3 (under seal), 4 (under seal), and 5 (under seal).

8. Respondent's bipolar disorder, and/or other occupationally disabling emotional disorder(s) and/or mental illness, individually and/or collectively, do and/or may affect his ability to practice marital family therapy. Dept. Exhs. 1, 2, 3 (under seal), 4 (under seal), and 5 (under seal).

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services,* 288 Conn. 790 (2008); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981). The Department sustained its burden of proof with regard to the allegations set forth in paragraphs 1-9 of the Charges, as set forth below.

In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut marital and family therapist license number 000012. Respondent admits this paragraph.

Regarding paragraph 2 of the Charges, the Department sustained its burden of proof in establishing that on August 26, 2005, the Department approved and ordered a Consent Order that permanently restricted respondent's marital and family license. Such disciplinary action was based upon respondent's admission that he had made false representations to clients and on his

professional website, including false representations that he was an officer in the United States Army, and upon respondent's diagnosis of bipolar disorder. The Consent Order clearly supports this allegation. Dept. Exh. 1. Although respondent only admitted the allegation in part, respondent failed to offer any evidence regarding a denial and, moreover, respondent failed to appear at the hearing.

In paragraph 3 of the Charges, the Department alleges that the Consent Order specifically provided that respondent "is permanently forbidden to make any representation by any means whatsoever to any client or patient or prospective client or patient that he possesses any license, credential, certificate, privilege, appointment, affiliation, or membership with any profession, entity, or institution that he does not possess. Respondent agrees that violation of this provision shall be sufficient ground for revocation of his license." Respondent admits this paragraph.

A preponderance of the evidence establishes the allegation in paragraph 4 of the Charges that on or about January 30, 2011, in violation of the Consent Order and the permanent restriction on his license, respondent falsely represented to persons whom he believed were prospective patients that he serves, or had, served, in the United States Army. On January 30, 2011, the NBC television show *Dateline* aired a segment that revealed that undercover producers had gone into respondent's office pretending to be patients and that respondent stated that he had been in the United States Army. A reporter later questioned the respondent about the mistruth and respondent admitted that he lied when he stated to the undercover producers that he had been a member of the United States Army. Dept. Exhs. 2 and 10. In a letter to the Department, respondent confirms the misrepresentations he made to *Dateline*. Dept. Exh. 9. It is unclear as to when respondent made the false claim to the undercover producers because neither the taped production nor the Department investigator's notes identify when the meeting took place. Although there is insufficient evidence to determine the date that the undercover producer met with respondent, it is clear that it happened by January 30, 2011, the date the segment aired. Respondent denies the allegation. Respondent offered no evidence regarding his denial and, moreover, failed to appear to appear at the hearing.

Paragraph 5 of the Charges alleges that respondent's conduct as described in Paragraph 1-4 of the Charges constitutes violations of the terms of the Consent Order, and subjects respondent's license to revocation or other disciplinary action authorized by the General Statutes

§§ 19a-17[3] and 20-195d[4]. The Consent Order permanently forbids respondent from making any representation by any means whatsoever to any client or prospective client that he possess any license, credential, certificate, privilege, appointment, affiliation, or membership with any profession, entity, or institution that he does not possess. In the Consent Order, respondent agrees that violation of this provision shall be sufficient ground for revocation of his license. Respondent is not, and has not been, a member of the United States Army. Clearly, when respondent told the undercover producers he was a member of the United States Army, respondent violated the Consent Order. Such a violation is sufficient ground for revocation of respondent's license.

Paragraph 6 of the Charges is the first of the allegations under the Second Count. Paragraph 6 incorporates paragraphs 1-4 of Charges as if set forth in full. As set forth above, a preponderance of the evidence establishes paragraphs 1-4.

In paragraph 7 of the Charges, the Department alleges that respondent has been diagnosed with bipolar disorder. Respondent admits the allegation.

A preponderance of the evidence establishes the allegations in paragraph 8 of the Charges that respondent's bipolar disorder, and/or other occupationally disabling emotional disorder(s) and/or mental illness, individually and/or collectively, do and/or may affect his ability to practice marital and family therapy. Respondent agreed to undergo a psychiatric evaluation by Jerome M. Schmitt, M.D. Dept. Exhs. 2 and 5 (under seal). In a letter dated January 6, 2011, Dr. Schmitt stated that respondent would need ongoing external review of his practice to assure maximum chance of safety of the clientele. Respondent denies this allegation. However, as stated above, respondent failed to offer any evidence or appear at hearing.

A preponderance of the evidence established the allegations in paragraph 9 of the Charges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes § 20-195d(2).[5] Respondent's actions in carrying out professional functions, as set forth in the Charges, were incompetent and negligent.

Based on the foregoing, a preponderance of the evidence establishes that respondent violated the Consent Order and the General Statutes.

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[3] General Statutes § 19a-17 authorizes the Department to take disciplinary action.

[4] General Statutes § 20-195d sets forth grounds for disciplining marital and family therapists and states, in part:

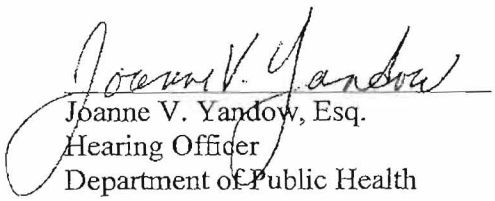
> The department is authorized to conduct investigations and take disciplinary actions as set forth in section 19a-17 for any of the following reasons: ... (2) illegal conduct, incompetence or negligence in carrying out professional functions ....

[5] The Department did not allege that respondent violated General Statutes § 20-195d(3) which authorizes disciplinary action for any occupationally disabling emotional disorder or mental illness.

Order

Based on the record in this case, the above findings of fact and conclusions of law, and pursuant to the authority vested in General Statutes §§ 19a-17 and 20-195d, respondent's marital and family therapist license number 000012 is hereby **REVOKED**.

So ordered.



Joanne V. Yandow, Esq.
Hearing Officer
Department of Public Health

12/6/11
Date

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing final Memorandum of Decision was sent this 6th day of December, 2011 certified mail return receipt requested and by E-Mail to:

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