



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

OFFICE OF COMMISSIONER

Ernest C. Garlington, Inmate # 334928
Garner Correctional Institution
50 Nunnawauk Road
Newtown CT 06470

CMRRR# 91 7108 2133 3932 0555 2157
First Class Mail
Faxed to Counselor Wynkoop @203-270-1826

RE: Ernest C. Garlington, P.C.

Petition No. 2007-1207-046-005

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued April 23, 2010, by Hearing Officer Stacy Owens, is hereby adopted as the final decision of the Commissioner of the Department of Public Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

5-17-2010
Date


J. Robert Galvin, M.D., M.P.H., M.B.A.
Commissioner

- c: Henry Salton, Assistant Attorney General
Michael J. Purcaro, Management Team Leader, Administrative Branch
Wendy H. Furniss, Branch Chief, Healthcare Systems
Jennifer Filippone, Section Chief, Practitioner Licensing and investigations
Matthew Antonetti, Principal Attorney, Legal Office



**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE**

Ernest Garlington, PC
License No.: 001206

Petition No.: 2007-1207-046-005

PROPOSED MEMORANDUM OF DECISION

Procedural Background

On September 3, 2009, the Department of Public Health (“the Department”) issued a Statement of Charges (“the Charges”) against Ernest Garlington, professional counselor (“respondent”). Rec. Exh. 1. The Charges allege grounds for disciplinary action pursuant to §20-195ee(2) of the Connecticut General Statutes (“the Statutes”). On November 9, 2009, the Department issued a Notice of Hearing (“the Notice”). In the Notice the Commissioner of the Department appointed the undersigned as Hearing Officer in this matter to preside at the hearing, to rule on all motions, and to recommend findings of fact, conclusions of law, and order. Rec. Exh. 1.

The first day of hearing was held on December 10, 2009, in accordance with Chapter 54 of the Statutes and §19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies (“the Regulations”). Respondent appeared *pro se*; Attorney Leslie Scoville represented the Department. The Department made a Motion to Deem the Allegations Admitted. The Motion was denied, as respondent answered all allegations on the record.

During the December 10, 2009 hearing, respondent made a Motion for Continuance of the hearing to allow him additional time to secure counsel. The Motion was granted. The next day of hearing was held on January 21, 2010. Respondent was not present and was not represented by an attorney; Attorney Leslie Scoville appeared on behalf of the Department. Both parties were given the opportunity to present evidence and argument on all issues and to conduct cross-examination.

This Proposed Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer’s recommended findings of fact, conclusions of law and 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 (M.D. Tenn 1985).

Allegations

1. In paragraphs 1, 4, 7 and 10 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut professional counselor license number 001206, and that said license lapsed on January 31, 2008 due to nonrenewal.

Count One

2. In paragraph 2 of the Charges, the Department alleges that on about November 21, 2007, respondent was convicted of Conspiracy to Commit Assault in the First Degree, which is a Class B Felony.

Count Two

3. In paragraph 5 of the Charges, the Department alleges that on about November 21, 2007, respondent was convicted of Inciting Injury to Persons or Property, which is a Class C Felony.

Count Three

4. In paragraph 8 of the Charges, the Department alleges that on about November 21, 2007, respondent was convicted of Assault in the Second Degree, which is a Class D Felony.

Count Four

5. In paragraph 11 of the Charges, the Department alleges that on about November 21, 2007, respondent was convicted of Conspiracy to Commit Murder, which is a Class A Felony.
6. In paragraphs 3, 6, 9 and 12 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §20-195e(2) of the Statutes.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut professional counselor license number 001206. Dept. Exh. A.
2. On November 21, 2007, respondent was convicted of Conspiracy to Commit Assault in the First Degree, which is a Class B Felony. Dept. Exh. A.
3. On November 21, 2007, respondent was convicted of Inciting Injury to Persons or Property, which is a Class C Felony. Dept. Exh. A.
4. On November 21, 2007, respondent was convicted of Assault in the Second Degree, which is a Class D Felony. Dept. Exh. A.
5. On November 21, 2007, respondent was convicted of Conspiracy to Commit Murder, which is a Class A Felony. Dept. Exh. B.

Conclusions of Law and Discussion

Section 20-195ee(2) of the Statutes provides in pertinent part that:

The Commissioner of Public Health may take disciplinary action set forth in section 19a-17 against a professional counselor for . . . conviction of a felony. . . .

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 and Addiction Services*, CV-95-0705601, 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).

In this case, a preponderance of the evidence establishes that respondent was convicted of several felonies. Although respondent denies the allegations as set forth in the Charges, the Department sustained its burden of proof by producing reliable and probative evidence. The Department produced an investigative record, official court documents, judicial database case records, and newspaper articles detailing respondent's actions and felony convictions.

Respondent offered no evidence or witnesses to refute the reliability of the evidence presented by the Department. Therefore, in accordance with §20-195ee(2) of the Statutes, the Commissioner is authorized to take disciplinary action against respondent's professional counselor license for his felony convictions.

In determining the penalty, §46a-81 of the Statutes provides that §§ 46a-79 to 46a-81 “. . . shall prevail over any other provisions of law . . . which purport to govern the suspension or revocation of a license . . . on the grounds of conviction of a crime.” Therefore, since a revocation may be appropriate in this case, these provisions must also be considered in determining whether a revocation may be ordered.

While §46a-80(a) of the Statutes prohibits state agencies from “disqualifying” a person to practice a profession for which a license is required based on prior conviction of a crime; subsection (b) permits state agencies to take action against a license based on a conviction, if the agency determines that the person is not suitable for the licensed profession, after considering the following factors:

- (1) the nature of the crime and its relationship to the job for which the person has applied;
- (2) information pertaining to the degree of rehabilitation of the convicted person; and
- (3) the time elapsed since the conviction or release.

In accordance with §20-195aa, professional counseling is defined, in pertinent part, as:

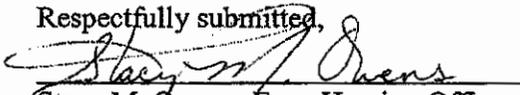
...the application, by persons trained in counseling, of established principles of psycho-social development and behavioral science to the evaluation, assessment, analysis and treatment of emotional, behavioral or interpersonal dysfunction or difficulties that interfere with mental health and human development. . . .

In this case, the nature of the convictions bears a direct relationship to respondent's ability to practice as a Professional Counselor. The very principles that govern respondent's licensure -- *i.e.*, the application of behavioral science to interpersonal difficulties -- are the very principles he failed to demonstrate through his own poor judgment and character, as evidenced by his convictions for assault, inciting injury to persons or property, and conspiracy to commit murder. While respondent, by virtue of his license, is entrusted with providing individuals the counseling and guidance required to address their "emotional, behavioral and interpersonal dysfunction or difficulties," the nature of respondent's crimes establishes that respondent is not equipped to apply principles of psycho-social development and behavioral science with adequate skill, safety and understanding. Moreover, despite the reliable evidence presented, as well as the fact that respondent is currently serving a 33-year sentence that commenced in 2007, respondent denies his convictions, demonstrating the absence of any degree of rehabilitation at this point. Finally, while the acts occurred in 2003, the convictions occurred less than three years ago. Given respondent's failure to take responsibility for his actions, an insufficient amount of time has elapsed since his conviction to render him suitable for practice.

Order

Based on the record in this case, the above findings of fact and conclusions of law, and pursuant to §§19a-17, 20-195ee, and 46a-80(b) of the Statutes, this Hearing Officer respectfully recommends to the Commissioner that he revoke respondent's license number 001206 to practice as a professional counselor in the State of Connecticut

Respectfully submitted,


Stacy M. Owens, Esq., Hearing Officer

4/23/2010
Date

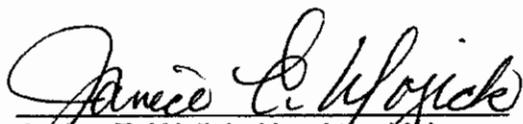
CERTIFICATION

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 17th day of May 2010, certified mail return receipt requested and first class mail to:

Ernest C. Garlington, Inmate # 334928
Garner Correctional Institution
50 Nunnawauk Road
Newtown CT 06470

and by E- Mail to:

matthew.antonetti@ct.gov
Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
Hartford CT 061343-0308


Janice E. Wojick, Hearings Liaison