

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA BOARD OF
LICENSED PROFESSIONAL
COUNSELORS

IN THE MATTER OF:
ROBERT C. MCCARTER, JR.,
No. 1724
Respondent.

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FINAL DECISION

The North Carolina Board of Licensed Professional Counselors ("Board") heard this cause on October 18, 2018. A Notice of Hearing was served on Respondent on September 4, 2018, notifying him that the hearing would take place on October 18, 2018, at 9:00 a.m., or as soon thereafter as possible, at the Office of the Board of Licensed Professional Counselors at 7D Terrace Way in Greensboro, North Carolina 27403. Respondent was present and represented by Jason L. Walters, David & Hamrick, LLP. Ms. Sondra C. Panico, Assistant Attorney General, appeared on behalf of the Board.

At the hearing of this matter, which was in closed session, the Board heard testimony from [REDACTED] S., [REDACTED] R., Carl Randall Yardley, and Robert C. McCarter and accepted exhibits into evidence. After hearing closing arguments, the Board retired into an executive session to deliberate, during which deliberations it made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Board finds, by a preponderance of the evidence, that the following facts are true and relevant:

1. At all relevant times the Respondent was a licensed professional counselor supervisor licensed by the Board. (T p 143).
2. On July 2, 2018, a charge letter was issued against Respondent. (Board Exhibit Number 2).
3. Respondent was served with the Notice of Hearing in this matter, dated September 4, 2018. (Board Exhibit Number 1).
4. [REDACTED] S. filed a complaint with the Board against Respondent. (Board Exhibit Number 3). She testified that she stood by her complaint.
5. Respondent provided counseling services to [REDACTED] S. from September 2008 through September 2010. (Board Exhibit Number 4).

6. In her complaint, [REDACTED] S. stated that Respondent was her counselor and during counseling sessions he often told her that she needed to "expand her boundaries" with men. He would sit next to her on the couch during their sessions and get close to her, explaining that this would make her feel more comfortable around men. He also complimented her clothing and would dwell on her sex life. (Board Exhibit Number 3).
7. In her complaint, [REDACTED] S. stated that in her last session with Respondent he told her how pretty she looked and then he rolled his chair over to the couch, where she was sitting, and was facing her with their knees touching. He then put his hands on her legs and started sliding his hands up toward her crotch area and looked at her and asked, "how would you feel if I licked your asshole?" [REDACTED] S. thought that it must be some kind of test and then said, "Well, my first thought is e-coli." Then Respondent said we would be in the shower and asked, "wouldn't you love to have sex with me in the shower?" (Board Exhibit Number 3).
8. It was at that point that [REDACTED] S. realized that she needed to leave and she ran to the door and tried to open it, but it was locked. As she was pulling on the door handle Respondent grabbed her hips from behind and began thrusting his erect penis into her back. She started screaming at him to stop and he finally opened the door. The last thing she remembered that she said to him was, "do you realize that I will have to have therapy because of you, my therapist?" (Board Exhibit Number 3).
9. [REDACTED] S. testified that she saw Respondent for counseling services as a result of an abusive father and as she grew older she developed a fear and distrust of men. (T pp 14-15).
10. [REDACTED] S.'s intake form for counseling with Respondent she marked that her concerns were: depression, anxiety, fear, mental abuse from boyfriend, child's one-sided love for father. (Board Exhibit Number 4, page 10).
11. Ms. S. testified that she saw Respondent for about one year in counseling. She explained how she was not sure how long she saw him because so much was going on in her life at the time. (T pp 16-17).
12. Ms. S. explained that in counseling he told her that she needed to learn to be intimate with people. (T p 18). Then he started to move physically closer to her. He would sit beside her on the couch and ask her "how do you feel now?" and if she was okay with it he would move closer to her. (T pp 18-19).
13. During sessions, Respondent would tell Ms. S. that she looked beautiful. She didn't question it because she thought he was trying to build up her confidence. She thought this was part of therapy. (T p 19).

14. Then Respondent started to touch [REDACTED] S. He put his hand on her left leg and asked how she felt. At some point he told her that she needed to expand her boundaries. (T p 20). She explained that he was trying to break down the walls she had built. (T p 20).
15. [REDACTED] S. explained that she specifically asked for a Christian counselor and that she and Respondent would discuss the Bible. (T pp 20-21). She knew he was a deacon in his church, so she trusted him. (T p 21).
16. Ms. S. described her last session with Respondent, which was consistent with her written complaint. She explained that they had been doing a lot of work to help her try to be more accepting of men in her life. She was sitting on the couch and he was sitting in a roller chair. He turned the chair around and was looking out the door through a peephole, which was the first time she noticed that there was a peephole. (T p 21).
17. Respondent then rolled his chair over to the couch and they were sitting face to face. He then put his hands on [REDACTED] S.'s legs and they were sitting knee to knee. She thought that this would be her breakthrough moment where he was going to tell her something and it would be an "ah-ha" moment that would change her life. He then looked at her with his hands on her legs and said, "How would you feel if I licked your asshole?" (T p 22).
18. [REDACTED] S. explained that she thought it was a test to see how she was going to respond. She explained, "[w]ell my first thought is E. coli because I'm a mother and it sounds so repulsive." (T p 22).
19. Respondent replied, "no, no. We would be in the shower." [REDACTED] S. still thought it was part of the test and asked him what he meant. He said we would be having sex in the shower. Respondent explained, "you know you would love to have sex with me in the shower." (T pp 22-23).
20. Then Ms. S. described feeling suspended in time where she was trying to balance that she trusted this person to help her with feeling like something was wrong with her. But then she realized that it wasn't right, that what Respondent was doing was unacceptable. (T p 23)
21. Ms. S. then stood up and went toward the door and was trying to open it but it wouldn't open. She didn't know if you could lock the door from the inside, but she could not get it to open. She was pulling at the door. Then Respondent grabbed her hips and he was grinding his penis into her back. (T p 23).
22. [REDACTED] S. then said, "Rob, how can you do this. . . How can you do this to your family?" She remembers that the last thing she said to him was, "do you realize I'm going to have to have therapy because of you, my therapist?" and that's when he opened the door and let her out. (T pp 23-24).

23. Ms. S. never went back to counseling with Respondent after that. (T p 24).
24. Ms. S. explained that she didn't report this incident when it happened because she didn't want to hurt Respondent's family. She was also worried about her son, it is a small town and if this came out she was worried that her son would be bullied or have to suffer. She didn't want this incident to affect him. (T p 25).
25. Ms. S. explained that she knew the Respondent's wife because his wife owned a dog grooming shop. (T pp 25-26).
26. Ms. S. also explained that about one year after the incident with Respondent she saw Respondent at the grooming shop and he put his arm around his wife and talked to Ms. S. like nothing had happened. After that, Ms. S. called Respondent and left a message on his voice mail asking that if he ever saw her not to look at her or acknowledge her. (T pp 34-35).
27. Ms. S. decided to file the complaint with the Board after such a long period of time had passed because her son is in college and in a safe environment and would not suffer any consequences if she reported it. Also, her pastor at church presented a sermon on the MeToo movement. After his sermon she wrote her pastor a letter. (T p 28).
28. Following the sermon, Ms. S. reported Respondent to the EAP program, but she did not want to tell them his name because she didn't want to destroy his family. (T p 33).
29. Ms. S. wrote a letter to Respondent's wife. (T p 33; Board Exhibit Number 4, p 35). She then left a message on Respondent's voice mail telling him that either he tells his wife what happened, or they go together to tell her. She explained that in her voice mail she told him to write a letter to the Board admitting what he did or pay \$10,000 to Mecklenburg Community Church. (T pp 35-36). She wanted the money to be used for the house her church built to help girls in the Philippines who are being sex trafficked. She thought that if the money could save one girl from being a victim then it was worth it. (T pp 26, 38). She explained that she was looking for something good to come out of something evil. (T p 83).
30. When Respondent did not pay Mecklenburg Community Church, [REDACTED] S. talked to Respondent on the phone and told him that she was going to tell his wife what he did. During the call, he told her that she was special to him. She responded that he had ruined her life. Then he said, "So now you want to ruin mine?" (T p 45).
31. After Respondent did not give the money to the church, [REDACTED] S. had her friend deliver the letter to Respondent's wife, in which she explained what Respondent had done to her. Her friend was also going to deliver a letter to Respondent, but as they walked into his building Ms. S. saw Respondent. She was very angry when she saw him. (T p 39).

32. Ms. S. explained that she disclosed what Respondent did to her because she didn't want anyone else to go through this, but in her heart she wished he had sent the money for the house for the girls in the Philippines. (T pp 45, 84).
33. ██████ S. explained that she is absolutely sure about what Respondent did to her. She remembers what she was wearing, she remembers his hands on her thighs and how his hands were going up toward her crotch. She remembers what he was wearing and how they were sitting. She remembers the peephole and the door handle. (T p 44).
34. ██████ S. explained that after ending counseling with Respondent she saw a female therapist for about 4 or 5 months. (T p 61). She did not remember her name. (T p 63).
35. Ms. S. explained that she saw other mental health professionals, including a marriage counselor, with her husband. (T p 65).
36. The Board determined that Ms. S.'s testimony regarding Respondent's conduct to be credible.
37. ██████ R█████ testified that ██████ S. is his mother. He is a student in college at Western Carolina University. (T p 94).
38. Mr. R█████ explained that he knows the Respondent because he counseled his mother when he was young and on occasion he went into their sessions. (T p 95).
39. Mr. R█████ testified that when he was 11 years old his mother told him that during one of her sessions with Respondent he locked the door so that she couldn't leave and then he grinded against her and said he would do bad things to her in the shower. He told her he would lick her rear end. That was all she told him. (T p 95).
40. Mr. R█████ remembers his mother telling him this because she was upset when she told him, and you don't forget something like this. (T p 96).
41. Mr. R█████ testified that he saw Respondent again during his senior year of high school. Respondent was making a presentation during one of Mr. R█████ classes and it made Mr. R█████ feel uncomfortable. He texted his mother and told her that Respondent was there. (T p 96). Ms. S's testimony is consistent with Mr. R█████ testimony about this. (T pp 29-30).
42. After seeing Respondent at school, Mr. R█████ and his mother discussed what Respondent had done to her again and she was very upset about it. He had no reason to doubt his mother. (T p 97).

43. Carl Randall Yardley testified at the hearing. (T p 100). He is a licensed private investigator and has been conducting investigations for the Board for approximately 7 years. (T p 101).
44. Mr. Yardley explained that he interviewed Respondent who stated that he treated [REDACTED] S. for depression. Mr. Yardley explained that Respondent denied all of the allegations in the complaint. (T pp 102-103).
45. Respondent told Mr. Yardley at one point "out of the blue" in the interview that [REDACTED] S. commented to him "I think you just want me to give you a blow job." (T p 103). [REDACTED] S. denied ever saying this to Respondent. (T p 89).
46. Mr. Yardley said that Respondent never followed up with Ms. S. about this statement nor did he recommend transferring her to another counselor. Respondent told Mr. Yardley that he didn't talk to her at all about this statement. This statement was not in Respondent's session notes. (T pp 103-104).
47. Respondent told Mr. Yardley that he worked with [REDACTED] S. on cognitive behavioral therapy and neuro-linguistic programming theories. Mr. Yardley explained that in the review of Respondent's notes they don't include the structure that is typical in notes completed by mental health therapists. Specifically, they are very anecdotal and do not reflect subjective/objective comments about process or comments about goals. (T pp 104-105).
48. Respondent also told Mr. Yardley that he did not have a counseling or treatment plan. (T p 106).
49. Respondent told Mr. Yardley that he provided Ms. S. with cognitive behavioral therapy, but Mr. Yardley could not find any indication that he had training in that area. Respondent told Mr. Yardley that he some experiences in his graduate program but Respondent was not able to identify what they were. (T p 107).
50. Mr. Yardley reviewed Respondent's transcripts and he did not find that he had any education in cognitive behavioral therapy or in neuro-linguistic programming. (T p 109).
51. Respondent submitted a list of continuing education courses that he completed (T p 127). He provided a one-hour course in cognitive behavioral intervention.
52. Respondent gave Ms. S. a diagnosis of major depression, recurrent. He did not change this diagnosis throughout his treatment of Ms. S. (T pp 111-112, 155).
53. Mr. Yardley explained that in his interview with Respondent, Respondent stated that he believed that the complaint was a function of Ms. S. having borderline personality disorder, however, he never diagnosed her with such a disorder. (T pp 131-133).

54. Mr. Yardley reviewed Respondent's session notes and found that there was no termination session at all, there was just an abrupt ending to therapy. (T p 132).
55. Respondent testified about his education. He received a master's degree in school psychology and worked as a school psychologist and then was certified as a school counselor. (T pp 139-140, 146, 183-184, Board Exhibit Number 11).
56. Respondent took courses in counseling technique after receiving his bachelors' degree in non-degree seeking coursework that was not part of his master's program. (T p 141).
57. Respondent was a school psychologist for 32 years. He retired in 2013. (T p 143). He has had a private practice since 2003. (T p 144).
58. Respondent explained that he uses an "eclectic" approach in counseling, not really focused on one technique, but he tends to primarily use cognitive behavioral therapy and neurolinguistics programming. (T p 148).
59. Respondent explained that Ms. S. was referred to him through her company's EAP program. (T p 164). He denied all of the allegations made in Ms. S's complaint. (T p 164).
60. Respondent stated that he had a peephole in the door in his office. (T p 165).
61. Respondent recalled seeing Ms. S. in his wife's grooming shop after he ended counseling with her. (T p 170).
62. Respondent testified that last year he did a presentation for a class and Mr. R [REDACTED] was in the class. (T p 171). He didn't recognize Mr. R [REDACTED] until Mr. R [REDACTED] told Respondent who he was. (T p 172).
63. Respondent received a letter from Optum, Ms. S.'s insurance provider, requesting records of services to Ms. S. (T p 173). At that time, he learned about Ms. S's allegations against him. (T p 174). Optum never sent Respondent any conclusions about the complaint that Ms. S. filed with them. (T p 193). The representative from Optum that communicated with Respondent told him that patients make complaints all the time and that he probably wouldn't hear anything from them. (T p 193).
64. Respondent did not have a termination session with Ms. S. She was in counseling with him for two years and didn't return and he never followed up with her. (T pp 185-186).
65. Respondent agreed that Ms. S. came to see him in counseling for relationship issues. She discussed intimacy with him. (T p 188).

66. Respondent said that Ms. S. said to him, "you think I should just give you a blow job." He never followed up with her about it, did not include it in his notes nor did he include in his notes that he received any consultation about her statement. (T pp 188-189). The Board finds Respondent's statement about what Ms. S. said to him not to be credible.
67. In Respondent's response he stated, "especially in this day of guilty until proven innocent of the #MeToo movement." (T p 192). He stated that he absolutely feels that this complaint is because of the MeToo movement. (T p 192).
68. Respondent agreed that relationship and intimacy issues were discussed in therapy with Ms. S. (T pp 193-195).
69. Respondent stated that he is competent in cognitive behavioral therapy because he did readings, talked to others, and went to workshops. (T p 195). He acknowledged that he did not have a master's degree in counseling, nor had he taken a course in cognitive behavioral therapy, psychopathology or diagnosis. (T p 203, Board Exhibit Number 11).
70. Respondent acknowledged that his session notes did not include interventions or clinical strategies. (T pp 196-197).
71. Respondent submitted to the Board some of Ms. S's Facebook postings. (Board Exhibit Number 6). He explained that his wife and her friend gave him those postings. (T p 197). He admitted that he told his wife about Ms. S.'s allegations and his wife told her friend. He did not consider this to be a violation of Ms. S.'s confidentiality. (T p 201).
72. Respondent was asked about the supervised practice and he stated that his supervisor did not review his sessions to determine whether he was conducting cognitive behavioral therapy in a competent manner. (T pp 205-206).
73. Respondent was not aware that he was required to provide pretermination counseling and recommend other service providers when necessary, and he did not do so with Ms. S. (T p 207).
74. The Board finds Respondent's denials of Ms. S's complaint and his explanations in his testimony not to be credible.

CONCLUSIONS OF LAW

- I. The Board has jurisdiction of the subject matter of this contested case and over the Respondent.
- II. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(9), insofar as he has been guilty of immoral, dishonorable, unprofessional or unethical conduct as defined in this subsection

or in the current code of ethics of the American Counseling Association, which warrants the disciplinary action taken by the Board.

III. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(10), insofar as he has practiced professional counseling in such a manner as to endanger the welfare of clients. Specifically, his conduct endangered the welfare of Ms. S., who was his client. This violation alone warrants the disciplinary action taken by the Board.

IV. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(12), insofar as he has practiced counseling outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience. Specifically, Respondent did not demonstrate competence in cognitive behavioral therapy based on his education, training or supervised experience. This violation alone warrants the disciplinary action taken by the Board.

V. The Respondent's conduct violated N.C. Gen. Stat. § 90-340(a)(14), insofar as he has harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee. This violation alone warrants the disciplinary action taken by the Board.

VI. The Respondent's conduct violated A.1.c. of the American Counseling Association Code of Ethics, which states that counselors and their clients work jointly in devising counseling plans that offer reasonable promise of success and are consistent with the abilities, temperament, developmental level, and circumstances of clients. Counselors and clients regularly review and revise counseling plans to assess their continued viability and effectiveness, respecting clients' freedom of choice. Specifically, Respondent did not create a counseling plan for Ms. S. This violation warrants the disciplinary action taken by the Board.

VII. The Respondent's conduct violated A.4.a. of the American Counseling Association Code of Ethics, which states that counselors act to avoid harming their clients and to minimize or to remedy unavoidable or unanticipated harm. This violation alone warrants the disciplinary action taken by the Board.

VIII. The Respondent's conduct violated A.5.a. of the American Counseling Association Code of Ethics, which states that sexual and/or romantic counselor-client interactions or relationships with current clients, their romantic partners, or their family members are prohibited. This prohibition applies to both in person and electronic interactions or relationships. Respondent's conduct with Ms. S. violated this provision. This violation alone warrants the disciplinary action taken by the Board.

IX. The Respondent's conduct violated C.2.a. of the American Counseling Association Code of Ethics, which states that counselors practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Respondent did not practice within the boundaries of his competence in providing cognitive behavioral therapy to Ms. S. This violation alone warrants the disciplinary action taken by the Board.

NOW, THEREFORE, the NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS ORDERS:

- I. The license of the Respondent, Robert C. McCarter, Jr., is hereby REVOKED.
- II. Respondent shall turn in his license to practice counseling in North Carolina to the Board no later than February 11, 2019. He shall mail his original license to: Stefon Plummer, North Carolina Board of Licensed Professional Counselors, Post Office Box 77819, Greensboro, North Carolina 27417.
- III. No later than February 11, 2019, Respondent shall terminate services to all his patients/clients and make provisions for the appropriate transition of his patients/clients to another therapist, as appropriate. Respondent shall also cease to engage in any other activities that meet the definition of the practice of counseling in N.C. Gen. Stat. § 90-330(a)(3). Respondent shall provide a signed affidavit (a written statement made under oath or affirmation taken before a person having authority to administer such oath or affirmation) to the Board no later than February 11, 2019, attesting that he has terminated and transferred all of his patients/clients by February 11, 2019. He shall further attest that he is no longer engaged in the practice of counseling in any way.
- IV. If the Board finds that Respondent is continuing to practice counseling, the Board will seek an injunction in Superior Court against Respondent.
- V. The Board shall maintain this Final Decision as a public record pursuant to N.C. Gen. Stat. §§132-1 and 90-340(f) and shall provide copies to the American Counseling Association and the National Board of Certified Counselors, and to other agencies or individuals as required by law.

This the 17th day of January, 2019.

NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL COUNSELORS

BY:



DENAUVU M. ROBINSON, ED.D., LPCS
BOARD CHAIRPERSON

APPEAL

Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision may commence their appeal by filing a Petition for Judicial Review in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. The party seeking review must file the petition within 30 days after being served with a written copy of this Final Decision.

CERTIFICATE OF SERVICE

I, Stefon Plummer, do hereby certify that I have this day served a copy of the foregoing FINAL DECISION upon the following by depositing a copy of same in the United States mail, postage prepaid addressed as follows:

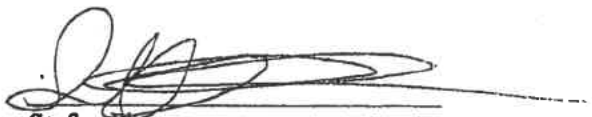
Robert McCarter, Jr.
32 North Main Street
Belmont, NC 28012

I do further certify that I have this day served a copy of the foregoing upon the following by depositing a copy of same in the United States mail, first class, postage prepaid:

Jason L. Walters
Davis & Hamrick, LLP
Post Office Drawer 20039
Winston-Salem, NC 27120

Sondra C. Panico
Assistant Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602-0629

This the 22th day of January, 2019.



Stefon Plummer
Board Administrator