

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Department of Public Health,  
Bureau of Substance Addiction Services  
Petitioner

v.

Docket No. PH-20-0250

Diante Ellis,  
Respondent

Appearance for Petitioner:

Matt A. Murphy, Esq.  
Office of the General Counsel  
Department of Public Health  
250 Washington Street  
Boston, MA 02108

Appearance for Respondent:

Diante Ellis, *Pro se*

Administrative Magistrate:

James P. Rooney

**Summary of Decision**

The Department of Public Health seeks to summarily suspend and revoke the license of a drug and alcohol counselor for sexually inappropriate comments made during therapy sessions. Unopposed motion to grant Department summary decision is allowed.

**DECISION**

On June 2, 2020, the Department of Public Health, Bureau of Substance Addiction Services, issued a Notice of Agency Action that summarily suspended, and proposed to revoke, Diante Ellis's alcohol and drug counselor license (LADC). This action was based on an

investigator's report of conversations with three female clients of Mr. Ellis who each said he made sexually inappropriate comments during counseling sessions.

I gave Mr. Ellis time to find an attorney, something he was ultimately unable to do. He then agreed to proceed without an attorney. I also gave the Department, which had lost contact with its witnesses, time to locate them. The Department was ultimately able to locate only one of the three complaining witnesses.

In January 2024, the Department informed me that the Division of Occupational Licensure had held a full hearing on Mr. Ellis's social worker license and that the hearing concerned the same allegations that the Department was raising here. The Department proposed that it be given until August 23, 2024 to file a motion for summary decision. I agreed with this schedule and gave Mr. Ellis until September 25, 2024 to file a response to the motion.

The Department filed a motion asserting that the statements the three clients made about Mr. Ellis's behavior are undisputed. It bolstered its position by attaching the decision in the parallel case concerning Mr. Ellis's social worker license. At that hearing, one of the clients testified (client #3), as did Mr. Ellis, who was represented by counsel. The Board of Registration of Social Workers accepted the tentative decision issued by administrative magistrate Ernest Sarason, Jr. and revoked Mr. Ellis's social worker license.

Mr. Ellis did not file a response to the Department's summary decision motion and, according to the Department, he has not appealed the decision revoking his social worker license.

### Discussion

The Department based its motion on the statements reported to it by three of Mr. Ellis's clients who each maintain he engaged in inappropriate sexually inappropriate comments during their counseling sessions. The Department asserts that these are uncontested. Although Mr. Ellis contested these statements in the Division of Occupational Licensure hearing, failure to respond to the motion for summary decision means they are uncontested here.

The Department may suspend or revoke the license of a drug and alcohol counselor if it has "just and sufficient cause." M.G.L. c. 111J, § 6. The statements allegedly made by Mr. Ellis would appear to provide sufficient cause for the Department to summarily suspend his LADC license and to revoke it.

As noted above, the Department had lost contact with two of its witnesses. Mr. Ellis had treated the remaining witness, who is referred to as Client 3, for substance abuse disorder. After a session with Mr. Ellis, she told the program director of the facility that she did not want to continue with him as her counselor because of the sexual references in his conversation. During the Division of Occupational Licensure hearing, she described Mr. Ellis's statements to include telling her she was beautiful, asking her if she was having sex with her "baby's daddy," asking if she had a boyfriend, and asking her if she owned any sex toys.<sup>1</sup> Such comments have no apparent utility in a therapy session involving someone taking Suboxone in an effort to treat substance abuse disorder. As Magistrate Kenneth Bresler commented in another drug counselor case, "When a patient undergoes therapy, the therapy should not make the patient wary of further

---

<sup>1</sup> These are among Mr. Ellis's tamer statements. I am not including some of his rawer comments to the three clients.

therapy.” *Department of Public Health v. Landry*, PH-23-0408, Decision at 20 (Div. Admin. L. App., Apr. 4, 2024).

Client 3’s testimony came in a different administrative matter. Massachusetts has not decided to make an administrative decision in one matter binding in another administrative matter before a different agency. However, the State Administrative Procedure Act makes admissible the “kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.” M.G.L. c. 31A, § 11(2). Client 3’s testimony in the Division of Occupational Licensure hearing was under oath and subject to cross-examination by Mr. Ellis’s lawyer. Mr. Ellis himself testified. The magistrate in that case believed Client 3. This is the sort of information that a serious person would find sufficiently reliable when considering a serious matter.

Clients 1 and 2 did not testify at the Division of Occupational Licensure hearing, although their statements about Mr. Ellis were admitted. The magistrate noted that Mr. Ellis was not told the identity of these two women. However, he was told about Client 1’s drug use history, her living situation, and that she had engaged in prostitution to pay for drugs. One of the comments Mr. Ellis allegedly made was in reference to prostitution: “You shouldn’t have sex for any reason other than [desire].” Another comment referred to her living situation, by saying that she should just have sex with her boyfriend, but not become involved in a relationship. He also allegedly told her, “[w]hat if I locked the door and said you can’t leave without giving me a blow job?”

The Department’s motion referred to Client 2, who was also being treated with Suboxone, noticing that she saw Mr. Ellis cancel an appointment with a male client in order to

hold a session with her. She felt uncomfortable throughout the session. In her statement admitted at the Division of Occupational Licensure hearing, she said she did nothing to spark sexual conversation, but that Mr. Ellis asked her what she would do for sex and, just as with Client 1, asked her what she would do if the office door was locked and he tried to take advantage of her.

The administrative magistrate who conducted the Division of Occupational Licensure hearing acknowledged the general unreliability of anonymous hearsay, but concluded that he should still give Client 1's and 2's statements some weight because they were made to an experienced investigator who prepared a report of her investigation, Mr. Ellis's counsel had ample opportunity to examine the investigator about her report, the two women did not know each other, and their statements were consistent with Client's 3's testimony regarding similar inappropriate statements.

### **Conclusion**

While I am inclined to give the statements of the two clients with whom the Department has lost contact less weight, the fact that Mr. Ellis chose not to contest any of these statements here and the similarity of the statements given by the three clients leads me to conclude that Mr. Ellis repeatedly made sexual comments that were inappropriate in drug counseling sessions. Further, Mr. Ellis has not contested entry of summary decision. I therefore grant the Department's motion for summary decision and uphold the Department's decision to summarily

suspend Mr. Ellis's drug and alcohol license and to permanently revoke it.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***James P. Rooney***

James P. Rooney

First Administrative Magistrate

Dated: January 3, 2025