

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

**Department of Public Health,
Bureau of Substance Addiction Services,
Petitioner**

v.

Docket No. PH-23-0408

**Karen Landry,¹
Respondent**

Appearance for Petitioner:

Tracy J. Ottina, Esq., Prosecutor²
Department of Public Health
Office of the General Counsel
250 Washington Street, 8th Floor
Boston, MA 02108

Appearance for Respondent:

Patrick Hanley, Esq.
Butters Brazilian
420 Boylston Street, 4th Floor
Boston, MA 02116³

Administrative Magistrate:

Kenneth Bresler

¹ The respondent's name appears on some documents as Karen Thornton and Karen Thornton Landry, including DPH's notice of agency action. With the respondent's permission, I have changed the name of this appeal to "Karen Landry," the name she uses now. I use "Karen Landry" even if the document I cite reads "Karen Thornton."

² In addition to Ms. Ottina, Jessica Uhing-Luedde represented DPH until she withdrew her appearance on September 11, 2024.

³ After I issued my decision on summary suspension in this appeal, *DPH v. Landry*, PH-23-0408, on April 4, 2024, Joshua A. Lewin, Esq., withdrew as Ms. Landry's lawyer, and Mr. Hanley appeared.

SUMMARY OF DECISION

Petitioner Department of Public Health may permanently revoke respondent Karen Landry's alcohol and drug counseling license because she used intimidating language toward a patient and engaged in a dual relationship with that patient, but not on other grounds.

DECISION

The respondent, Karen Landry, appeals the proposed revocation by the Department of Public Health (DPH), Bureau of Substance Addiction Services (BSAS), of her license as a Licensed Drug and Alcohol Counselor I (LADC I).

I held a hearing on October 4 and 5, 2023 by Webex, which I recorded. The witnesses were Erica Weil, Director of the Quality Assurance and Licensing at BSAS; Nashira Muniz, a compliance officer (investigator) at BSAS; Patient A; and Ms. Landry.

In October 2023, I admitted exhibits for this appeal and two other appeals by Ms. Landry. (I heard the other two appeals, PH-22-0414 and PH-23-0133, which are related to each other, on October 3 and 4, 2023.) I admitted Petitioner's Exhibits 1 through 111, and Respondent's Exhibits 1 through 108. While some exhibits clearly belong to this appeal or jointly to the other two appeals, some exhibits are for all three appeals.

Many, if not most, exhibits were not the subject of testimony or argument, either oral or written. The significance of many, if not most, exhibits is not apparent on their face. I have considered each exhibit (except for the ones whose relevance I explicitly questioned at the hearing), even if I do not write about them in this decision.

Under this docket number, Ms. Landry originally faced both DPH's summary suspension of her license and DPH's proposed permanent revocation of her license. To speed the process of the summary suspension, the parties gave oral closing arguments on October 5, 2023 and waived briefs. On April 4, 2024, I ruled that DPH may summarily suspend Ms. Landry's license. This

decision is about DPH's proposed permanent revocation.

Transcripts of the three days of hearing did not arrive at the Division of Administrative Law Appeals until February 21, 2024, which delayed my decisions on both on the summary suspension and this one on the proposed revocation of Ms. Landry's license.

The parties submitted briefs on the proposed revocation on July 8 and 10, 2024. The delay between the hearing and the submission of briefs was due in part to preparation of transcripts and the withdrawal of the lawyer who represented Ms. Landry at the hearing.

Ms. Landry's brief attempts to introduce new and irrelevant information blaming her former husband for her conduct. Appending a document to a post-hearing brief is not a way to introduce evidence. I strike and exclude from evidence Appendix 2 of her brief, as well as note 10 on page 39 of her brief, which is related.

Findings of Fact

Ms. Landry

1. On December 14, 2018 DPH's Bureau of Substance Addiction Services issued an LADC I license to Ms. Landry. (Pet. Ex. 19, p. 268)⁴

Ms. Landry's counseling services to Patient A

2. In March 2022, Ms. Landry began providing couples therapy to a patient designated as Patient A and her boyfriend, designated as Person 1. (Pet. Ex. 22, p. 293; Pet. Ex. 21, p. 281)

3. When couples therapy ended, Ms. Landry provided Patient A with individual therapy. (Pet. Ex. 21, p. 281; 10-5-23 Tr. 110)

4. Patient A sought therapy about moving on from her relationship with Person 1,

⁴ In this decision, page numbers after exhibit numbers are Bates numbers, not any page number that may appear within an exhibit.

depression, anxiety, food anxiety, and daily stressors. (Tr. 110-11)

5. Patient A did not seek therapy with Ms. Landry for substance use. (Tr. 111)

6. Patient A testified that Ms. Landry asked her about substance use during the intake process but not during therapy. (Tr. 111) Ms. Landry's progress notes for Patient A, which I discuss below, indicate otherwise.

Ms. Landry's counseling progress notes of Patient A

7. Although Patient A did not seek therapy for substance use, Ms. Landry's counseling progress notes for Patient A carry two diagnoses: Cannabis abuse, uncomplicated; and Post-traumatic stress disorder, chronic. (*E.g.*, Pet. Ex. 111, p. 1195) Ms. Landry's discharge summary note, dated July 12, 2023, carries the same two diagnoses. (Resp. Ex. 111, p. 1243)

8. Ms. Landry's April 28, 2022 Counseling Progress Note read: "Will smoke weed as means of relaxing....Feels differently about weed than alcohol." (Pet. Ex. 111, p. 1193)

9. Ms. Landry's July 12, 2022 Counseling Progress Note for Patient A read: "Smoking pot less. Still nightly but not as much at work." (Pet. Ex. 111, p. 1202)

10. Ms. Landry's September 20, 2022 Counseling Progress Note for Patient A mentioned "her use of pot to 'shut off' at end of day." (Pet. Ex. 111, p. 1208)

11. Ms. Landry's April 26, 2023 Counseling Progress Note for Patient A noted her "repeated pattern of unhealthy choices. IE nightly smoking, smoking for stress relief." (Pet. Ex. 111, p. 1235) Presumably, Patient A was smoking marijuana.

12. Ms. Landry's June 15, 2023 Counseling Progress Note for Patient A read: "Reports a drink relaxes her but mostly weed helps best for sleep." (Pet. Ex. 111, p. 1241)

13. Ms. Landry's July 12, 2023 Discharge Summary Note noted that Patient A "[u]tilized marijuana daily. Mostly for sleep to help with racing thoughts before bedtime[;] however[,] on

many occasions she will get high before work.” Patient A admitted one time to smoking marijuana before a therapy session. (Pet. Ex. 111, p. 1243)

Ms. Landry, Ms. Landry’s family member, and Patient A

14. Patient A worked as a personal trainer at a gym where Ms. Landry’s family member worked out. Patient A taught the family member in group classes. (10-5-23 Tr. 108, 142)

15. At Ms. Landry’s first or second one-on-one session with Patient A, Patient A mentioned the gym where she worked. Ms. Landry said something like: “Oh, my family member works there.” Ms. Landry named her family member and Patient A said that she knew her. (Pet. Ex. 22, p. 295)

16. Although the precise chronology is unclear from the record, Ms. Landry’s family member eventually became a gym employee. Patient A worked side by side with and trained Ms. Landry’s family member as an employee. In October 2022, Patient A became the supervisor of Ms. Landry’s family member. (Pet. Ex. 22, p. 295; 10-5-23 Tr. 108, 112, 142-43)

17. Patient A told the DPH investigator the following: Ms. Landry had invited Patient A for Thanksgiving 2022. After Ms. Landry did so, Patient A told Ms. Landry’s family member that she was a patient of Ms. Landry. The family member said that she didn’t care and Ms. Landry said that she didn’t care as long as Patient A didn’t care. (It is unclear what the topic of unconcern was: Patient A’s being Ms. Landry’s patient; or Patient A’s having been invited for Thanksgiving.) (Pet. Ex. 22, p. 295; 10-5-23 Tr. 112-13, 156)

18. Ms. Landry denied inviting Patient A for Thanksgiving and testified that her family member did so. (10-5-23 Tr. 175-76)

19. On Thanksgiving, November 24, 2022, Ms. Landry’s family member texted Patient A: “did you wanna come for dessert?” (Resp. Ex. 105) (parties stipulated that this was text from

Ms. Landry's family member) Patient A texted back: "I'm going to stay home! Thank you though." The text ended with two of the same emoji: a smiling face blowing a kiss. (Resp. Ex. 105)

20. During therapy sessions, Patient A occasionally discussed the work performance of Ms. Landry's family member, said that she would look out for Ms. Landry's family member, and said that she would continue to train and mentor Ms. Landry's family member. (Pet. Ex. 22, p. 297)

21. Ms. Landry occasionally asked Patient A about her family member's performance at work. (Pet. Ex. 22, p. 297; 10-5-23 Tr. 157)

22. Ms. Landry's family member was not performing well at work and Patient A became less comfortable discussing personnel matters with Ms. Landry. (Pet. Ex. 22, p. 297) The performance of Ms. Landry's family member was a stressor for Patient A, but Patient A stopped discussing this stressor with Ms. Landry. (10-5-23 Tr. 115)

23. The performance issues of Ms. Landry's family member included these: She had been asked to provide a note from a doctor and did not; had not been wearing a uniform and had been admonished for it; and had been speaking to gym clients unprofessionally about Patient A, including saying that Patient A was crazy, as she was seeing a therapist. (Pet. Ex. 22, p. 297)

24. The gym reduced the work hours of Ms. Landry's family member. (Pet. Ex. 22, p. 297)

25. On or around Sunday, June 25, 2023, around 9:00 p.m. (10-5-23 Tr. 120, 124), Ms. Landry texted Patient A:⁵

⁵ To provide the background for this text, Ms. Landry testified as follows: Her family member had called in sick that morning. Patient A told the family member that she needed to have a doctor's note before she returned to work. The family member said that her condition was

Hey, you know I'd say this to you if you told me about it in person, regardless of who the employee was. But BETWEEN YOU AND I, I am saying it now; be VERY careful what you[']re saying is required from staff in order for them to work again after they can out.⁶ Especially if it's for health reasons. You could unknowingly be violating HIPAA.⁷ If it's not an employee policy, they⁸ aren't using earned time, and it doesn't have anything to do with health insurance or a health condition or sickness causing the employee to be out for 3 or more days, it is a HIPAA violation to ask for or require a Drs note. It is also a violation of employee right[s] for an employer to withhold shifts from an employee until a Drs note is given, it is looked at as discipline for asking for or taking time. In this employee[']s case, they don't earn sick time. If they don't earn sick time, and receive no benefits like that, then them calling out is just that. Them calling out. They still can't have their future scheduled shifts taken away. Unless it's been signed off as her understanding [of] the policy upon hire.....She⁹ doesn't know that I know all this legal stuff (I've been an advocate with the public defender's office and used to argue these in courts, plus I HAVE to know HIPAA laws for my own business and take a test every year)....I am telling you so that if she does go to you or [other employee], you don't lose your job for violating HIPAA and employee laws.

Her father and step mom asked if I had heard what [the family member]'s boss told her¹⁰ and they were livid, saying that you can't do what you did that's illegal.

[Unclear emoji] I let them know I'm sure it's a liability thing,¹¹ and we don't know what the policy is, [Ms. Landry's family member] needs to find out.

I'm so sorry to text you all this, I'm in a tough spot¹² but hope you see.

Looking out for both of you[.]¹³

(Pet. Ex. 24, p. 306)

26. Patient A considered the text chaotic, inappropriate, and unprofessional. It made Patient A extremely anxious. When she received the text, she put her phone down because she

chronic and she had an old note from her doctor. Patient A told the family member that she needed an updated note from her doctor specifying her condition. (10-5-23 Tr. 162)

⁶ It is unclear what Ms. Landry was trying to convey. I assume that that "can out" meant "call out," as in "call out sick."

⁷ Health Insurance Portability and Accountability Act.

⁸ Presumably, the employee.

⁹ Presumably, Ms. Landry's family member.

¹⁰ What the boss told Ms. Landry's family member is unclear.

¹¹ It is unclear what Ms. Landry meant.

¹² It is unclear what tough spot Ms. Landry meant, although she may have meant trying to deal with her family member's father and stepmother.

¹³ Presumably, Patient A and Ms. Landry's family member.

did not know what to do with the text. (10-5-23 Tr. 116-18; Pet. Ex. 22, p. 297)

27. Although Ms. Landry had routinely texted Patient A to check in on her, Ms. Landry's nighttime text was unusual; its length was also unusual. (Pet. Ex. 22, p. 297)

28. On or around June 26, 2023, probably on the morning after Ms. Landry texted her, Patient A felt compelled to tell her supervisor at the gym that Ms. Landry was her therapist. She felt that Ms. Landry's text had put her in a very awkward position. She felt embarrassed. (10-5-23 Tr. 117-18)

29. On June 27, 2023, Patient A emailed Ms. Landry:

I am going to cancel our therapy session for tomorrow and the future, due to conflict of interest. Thank you so much for everything you have taught and supported me through. I am forever grateful.

(Pet. Ex. 23, p. 301; Pet. Ex. 24, p. 309)

30. Also on June 27, 2023, Ms. Landry emailed Patient A in part:

I'd like to still meet during that time if possible. I beleive [*sic*] this¹⁴ you, your mental health, and this issue[] are too important for us not to address, process and have closure [on] so that we both move forward in the healthiest way possible.... As your therapist, I completely agree that this was an unfortunate situation, and I have done my own inner processing since. Sad, because I believe we work well together. Proud of all you HAVE accomplished thus far.

(Pet. Ex. 23, p. 300; Pet. Ex. 24, p. 309; Pet. Ex. 34, p. 492)

31. This email took Patient A aback. She did not feel comfortable at the prospect of sitting and chatting with Ms. Landry after Ms. Landry's texts. (10-5-23 Tr. 126)

32. Also on June 27, 2023, Patient A emailed Ms. Landry: "I appreciate it but I am going to have to decline." (Pet. Ex. 23, p. 300; Pet. Ex. 24, p. 309; Pet. Ex. 34, p. 491)

33. On or about June 30, 2023, Patient A terminated Ms. Landry's family member from

¹⁴ Ms. Landry may have meant "that."

her job at the gym. (Pet. Ex. 22, pp. 296;10-5-23 Tr. 118)

34. Soon after Ms. Landry's family member lost her job at the gym, possibly on the afternoon of that day, Ms. Landry discharged Patient A from therapy (even though Patient A had already decided not to continue consulting with Ms. Landry as a therapist). (Pet. Ex. 22, p. 296; 10-5-23 Tr. 119)

35. On June 30, 2023, Ms. Landry emailed Patient A in part:

Please allow this email as confirmation I will no longer be able to provide you with therapy services as of the week of June 26, 2023, and as such our therapeutic relationship has been officially terminated. This came as a result of your sharing with my family member that I was your therapist, and since, has resulted in an unfortunate conflict of interest for us both....Please also allow this email to serve as confirmation I have offered you the opportunity to meet for a final session[,] as well as offered to refer you to alternate therapists, which you declined.¹⁵

....

I wish you all the best life has to offer, and hope you 'always know your worth'.¹⁶ It has been a pleasure working with you (and [name deleted]!).¹⁷ I am so proud of all the hard work you have accomplished in our short time together.

(Pet. Ex. 23, p. 300; Pet. Ex. 24, p. 309; Pet. Ex. 34, p. 491)

36. On July 1, 2023, Ms. Landry emailed Patient A about the logistics of ending their therapy relationship. She added:

On a personal note, It's unfortunate [name of gym] chose to end my family member's employment and bring your confidential relationship with me into the conversation. I had sent you the original info in a therapeutic attempt to inform and thus protect you from possible harm and additional work stress. I know how good you are at and value your job, and now I fear [name of gym] will have no choice but to let you go for the multiple violations, if they don't let her¹⁸ back. She doesn't qualify for unemployment and needs a job to live(which is on [name

¹⁵ The record does not seem to show that Patient A declined a referral.

¹⁶ The source of this quotation is unknown. Presumably, Ms. Landry used it in therapy with Patient A.

¹⁷ Patient A's emotional support dog. (Pet. Ex. 111, p. 1205)

¹⁸ Presumably, Ms. Landry's family member.

of gym] for not providing you with a policy and handbook for employees...¹⁹they sort of fed you to the wolves when you took over, and they never gave her anything to sign etc., so you had no choice but to wing it, I mean, how could you know that asking for a drs note would be violating a law?) It wasn't my choice to share with her I was your therapist, and I beleive [*sic*] this subsequently up ended both our relationship, and led to her unemployment. I'm still confused as to why that was the only solution [name of gym] offered, being that there were no prior issues and you were doing great work. Just know I am always open to helping you, if you choose to in the future.”

(Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490)

37. Patient A felt that Ms. Landry's email of July 1, 2023 put a lot of blame on Patient A. She felt that the situation was chaotic and she did not understand it. (10-5-23 Tr. 127)²⁰

38. Patient A felt that Ms. Landry had been manipulative and unprofessional and had threatened her and her livelihood. (Pet. Ex. 22, p. 296) She felt that Ms. Landry's messages were excessive, threatening to her job, purposefully hurtful, and designed to interfere with professional decisions that Patient A had been told to make. (10-5-23 Tr. 128-29)

39. Ms. Landry's messages generated anxiety and depression in Patient A. She did not want her therapist to be a source of anxiety and depression. (10-5-23 Tr. 128)

40. Patient A's experience with Ms. Landry has made her uncomfortable in seeking another therapist because she felt that Ms. Landry crossed boundaries. (10-5-23 Tr. 136)

41. Because of Ms. Landry's actions, Patient A has had thoughts of suicide, does not feel safe, and has had issues with her performance at work. (Pet. Ex. 21, p. 297; 10-5-23 Tr. 71)

DPH's Notice of Agency Action and Ms. Landry's emails to patients

42. On July 28, 2023, DPH issued a Notice of Agency Action, in which DPH summarily suspended Ms. Landry's LADC1 license; and proposed to permanently revoke it. (Pet. Ex. 19)

¹⁹ Ellipses in original.

²⁰ In his closing argument, Ms. Landry's lawyer admitted that the situation was chaotic. (10-5-23 Tr. 236)

(Again, this decision is about the proposed revocation.)

43. Regarding intimidating behavior, DPH found “particularly alarming” Ms. Landry’s alleged

use of intimidating language such as “now I fear [name of gym, Patient A’s employer] will have no choice but to let you go for the multiple violations, if they don’t let [my family member] back,” and insinuation that the Patient violated the Health Insurance Portability and Accountability Act (HIPAA) and other laws....

(Pet. Ex. 19, p. 270)

44. Regarding ethical and boundary violations, DPH alleged that Ms. Landry’s “egregious violations of ethical standards... demonstrate a lack of regard for the integrity of the patient-client relationship.” (Pet. Ex. 19, pp. 270-71)

45. DPH alleged that Ms. Landry

violated ethical standards and the National Association for Addiction Professionals (NAADC) Code of Ethics by failing to maintain the boundaries of a counseling relationship, by engaging in a multiple/dual relationship, and by engaging in a personal relationship with a current or former client virtually.

(Pet. Ex. 19, p. 268)

46. As examples of Ms. Landry’s alleged ethical violations, DPH cited her alleged

continuing to see a patient without proper documentation and informed consent after learning of a clear and serious dual relationship, discussing her family member’s work performance during therapy sessions and in text messages from her personal device, [and] requesting that the patient spend the Thanksgiving holiday with her and her family member, the subject of the conflict of interest....

(Pet. Ex. 19, pp. 270-71)

47. DPH cited three provisions in NAADAC’s Code of Ethics, Principle I: The Counseling Relationship:

Principle I-11 Multiple/Dual Relationships: Addiction professionals shall make every effort to avoid multiple relationships with a client. When a dual relationship is unavoidable, the professional shall take extra care to ensure professional judgment is not impaired and there is no risk of client exploitation. Such

relationships shall include, but are not limited to, members of the provider's immediate or extended family, business associates of the professional, or individuals who have a close personal relationship with the professional or the professional's family. When extending these boundaries, providers shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that their judgment is not impaired and no harm occurs....

Principle I-22 Exploitation: Addiction professionals shall be aware of their influential positions with respect to clients, trainees, and research participants, and shall not exploit the trust and dependency of a client, trainee, or research participant . . . Providers shall not use coercive treatment methods with any client, including threats, negative labels, or attempts to provoke shame or humiliation....

Principle I-42 Virtual: Addiction professionals shall be prohibited from engaging in a personal or romantic virtual e-relationship with all current and former clients.

(Pet. Ex. 19, p. 271 n.1) (These principles also appear in Petitioner's Exhibit 1.)

48. Regarding practicing outside the scope of her LADC1 license, DPH alleged that Ms.

Landry

provided services to...Patient [A] for which she was not appropriately licensed. The LADC I license permits Ms. Thornton Landry to provide recovery-based services to individuals with substance use disorders. The Patient sought initial services for couples therapy, unrelated to substance use disorder, and continued to see Respondent for individual therapy related to trauma and an eating disorder. The Patient does not have a substance use disorder, nor did she seek treatment for a substance use disorder.

(Pet. Ex. 19, p. 271)

49. DPH additionally alleged that Ms. Landry

has repeatedly shown a failure to conduct herself in accordance with regulatory and ethical standards, and she is named as a respondent not only in this Notice, but in an Agency Action issued by the Department that is pending a hearing at the Division of Administrative Law Appeals (Docket Number PH-22-0414). This pattern of behavior by Respondent, including practice outside of the scope of her LADC I license, has also been the basis for action taken against other professional licenses she previously held. [Footnote: *See In the Matter of Karen Thornton*, License Number 5051, Board of Registration of Allied Mental Health Professionals, Docket Number: MH 10-006 (January 12, 2012).] These aforementioned violations, described herein, are a serious violation of the public

trust, Massachusetts laws and regulations, and, as such, constitute grounds for immediate summary suspension and permanent revocation of her license.

(Pet. Ex. 19, p. 271)²¹

50. DPH listed a total of four grounds for seeking to summarily suspend and permanently revoke Ms. Landry’s license. The first ground was for summary suspension and is not quoted here; the last three grounds, which are quoted here were for revocation and cited the applicable regulation in brackets:

B. Respondent’s continued provision of services after learning of a serious dual relationship, discussion of personal matters with the Patient, and inviting the Patient to spend a holiday with her, constitute violations of ethical standards which the department determines render her unfit to practice as a LADC I. [105 C.M.R. 168.019(A)(4)];

C. Respondent’s use of intimidating language constitutes other just and sufficient cause which the Department has determined renders her unfit to practice as a licensed alcohol and drug counselor. [105 C.M.R. 168.019 (A)(5)];

D. Respondent’s treatment of a patient without substance use disorder constitutes practice outside the scope of her LADC I license [105 C.M.R. 168.004; 105 C.M.R. 168.019(A)(5)].

(Pet. Ex. 19, p. 272)

51. On July 31, 2023, Ms. Landry emailed her patients that her license had been

²¹ I am not sure what to make of this set of allegations. It does refer to “grounds for...revocation of her license” – but it does not appear in DPH’s explicit list of four grounds for discipline, which I discuss in the next paragraph. In addition, the Code of Massachusetts Regulations does not authorize DPH to discipline an LADC 1 licensee for violating the public trust. The word “trust” and the phrase “public trust” do not appear in 105 CMR. With a broad statute and regulations at DPH’s disposal, which I discuss later, I do not doubt that DPH may seek to discipline an LADC 1 licensee in one case for actions she allegedly took in another case. I do not doubt that DPH may seek to discipline an LADC 1 licensee because the Board of Registration of Allied Mental Health Professionals has disciplined her for acts as a Licensed Mental Health Counselor. However, DPH has not unambiguously sought to discipline Ms. Landry on these grounds and relatedly has not cited a regulation that it relies on. I do not consider further in this decision the allegations in paragraph 49 of the Notice of Agency Action.

suspended “due to a complaint filed with my licensing board against/about me...” (Pet. Ex. 34, p. 524)

52. On August 18, 2023, Ms. Landry emailed her clients that “someone hastily complained to the licensing Board” about her. (Pet. Ex. 34, p. 522) She continued:

Was I angry? Of course! But honestly, working in the fields of feeling, people are bound to eventually take things out of context or misunderstand the meaning behind my words, and lash out wanting the ultimate in spiteful revenge. I am not angry with this person. Nor could I ever be....²²

(Pet. Ex. 34, p. 522-23) Ms. Landry went on to write that she was “distracted over all of you,” “I am sorry that this [trust] was taken from you,” and decision-makers “are relying on the words of someone who was upset and angry with me.” (Pet. Ex. 34, p. 523)

53. On September 1, 2023, Ms. Landry emailed her clients that “there is more to this [case] than meets the eye.” She compared her situation to the movie “Mean Girls.” (Pet. Ex. 34, p. 518),

54. Patient A received the three emails that Ms. Landry sent to her patients, either because Ms. Landry forwarded the emails to Patient A (10-5-23 Tr. 135, 154) or because Ms. Landry still listed Patient A, mistakenly, as a patient. (10-5-23 Tr. 171, 215)

Miscellaneous allegations against Ms. Landry for practicing outside the scope of her license

55. On February 9, 2023, Patient A emailed Ms. Landry to report that she had received her blood test results. (Pet. Ex. 34, p. 497)

²² It is difficult, although not impossible, to reconcile the beginning of this excerpt – Ms. Landry was of course angry at Patient A – with the end – Ms. Landry was not and could never be angry at Patient A.

56. Ms. Landry emailed Patient A:

Excellent. Just looked at your numbers, the higher TSH²³ explains why you've been extra tired and depressed. It's sub clinical, bc your T3 and 4²⁴ are normal, so usually someone your age they just wait and see because it could be related to so many things like where you are in your cycle, dehydration etc. Which might also explain your BUN²⁵ levels. Make sur[e] you stay hydrated, especially if you sweat a lot. With electrolytes, not just water.

(Pet. Ex. 34, p. 497)²⁶

57. On May 8, 2022, Ms. Landry emailed Patient A about positions as a manager and assistant manager at StretchMed. She attached a job description. Her email stated in part, "This is the job I was telling you about...I already talked you up." (Pet. Ex. 34, p. 502)²⁷

Discussion

The standard of proof in this case is preponderance of the evidence. 105 CMR 168.020(A)(2).²⁸

G.L. c. 111J, §6 provides in part that DPH may "deny, refuse renewal, revoke, limit or suspend a license or otherwise discipline an alcohol and drug counselor." Grounds include

....

²³ A hormone.

²⁴ Referring to tests for triiodothyronine and thyroxine.

²⁵ Blood urea nitrogen.

²⁶ Although Ms. Landry's interpretation of test results was the subject of testimony (10-4-23 Tr. 87-88) and passing argument (Pet. Br. 24), it was not the subject of a ground for revocation in the Notice of Agency Action. It was not factually alleged in the notice at all. DPH may not permanently revoke Ms. Landry's LADC 1 license for interpreting Patient A's test results.

²⁷ Although this allegation was the subject of passing argument (10-5-23 Tr. 230), it was not the subject of a ground for revocation in the Notice of Agency Action or factually alleged in the notice at all. DPH may not permanently revoke Ms. Landry's LADC 1 license for this allegation.

²⁸ 105 CMR 168.020 has two subsections marked (A). The standard of review is in the second subsection.

(3) violation of any rule or regulation of the department governing the practice of alcohol and drug counselors;

(4) violation of ethical standards which the department determines to be of such a nature as to render such person unfit to practice as a licensed alcohol and drug counselor;

(5) other just and sufficient cause which the department may determine would render a person unfit to practice as a licensed alcohol and drug counselor.

Thus, DPH may revoke a licensee's LADC I license on broad grounds: "just and sufficient cause." G.L. c. 111J, §6; 105 CMR 168.018. DPH may revoke an LADC I license on these broad grounds, even if a licensee has not violated a specific statutory or regulatory provision or an ethical standard of the National Association for Addiction Professionals (NAADC). See 105 CMR 168.023 (referring to Ethical Standards for counselors set by the National Association of Alcoholism and Drug Counselors).²⁹ In addition, DPH may revoke an LADC I license if the licensee has violated a relevant regulation or ethical standard.

I now examine DPH's three grounds for proposing to permanently revoke Ms. Landry's license. (Ground for revocation A related to Ms. Landry's summary suspension.)

[Ground for revocation B:] Respondent's continued provision of services after learning of a serious dual relationship, discussion of personal matters with the Patient, and inviting the Patient to spend a holiday with her, constitute violations of ethical standards which the department determines render her unfit to practice as a LADC I.

[105 C.M.R. 168.019(A)(4)]

The cited regulation authorizes DPH to discipline an LADC I licensee for

violations of ethical standards which the department determines to be of such a nature as to render such person unfit to practice as a licensed alcohol and drug counselor.

²⁹ The Code of Massachusetts Regulations refers to the National Association of Alcoholism and Drug Counselors. 105 CMR 168.004, 168.023. The organization's name has apparently changed to the National Association for Addiction Professionals – even though it still uses the acronym "NAADC." (Pet. Ex. 1)

105 C.M.R. 168.019(A)(4). As for ethical standards, DPH, in the Notice of Agency Action, cited three provisions in NAADAC's Code of Ethics, Principle I: The Counseling Relationship. (Pet. Ex. 19, p. 271 n.1)

Principle I-22, which is quoted above, bars an addiction professional from exploiting a client's trust and dependency, and from using coercive treatment methods. Ms. Landry did not exploit Patient A's trust or dependency. Any shame or humiliation that Patient A experienced was not part of a "treatment method." (Principle I-22)

Principle I-42, which is quoted above, bars an addiction professional from engaging in a personal or romantic virtual e-relationship with a current or former client. Ms. Landry did not engage in such a relationship. No evidence in this appeal alleged otherwise. (Related to this allegation, DPH alleged elsewhere in the Notice of Agency Action that Ms. Landry "engag[ed] in a personal relationship with a current or former client virtually." (Pet. Ex. 19, p. 268) DPH did not present evidence that Ms. Landry did so.)

Principle I-11, which is also quoted above, bars an addiction professional from engaging in a multiple or dual relationship. (The principle's wording indicates that they are synonyms.) The principle does not define the terms, a definition is apparently not in the record, and although I asked the parties for a definition, they did not provide one. Nonetheless, context provides an understanding of the terms. Principle I-11 states that a therapist

shall make every effort to avoid multiple relationships with a client....Such relationships *shall include, but are not limited to*, members of the provider's immediate or extended family, business associates of the professional, or individuals who have a close personal relationship with the professional or the professional's family.

(Pet. Ex. 19, p. 271 n.1) (emphasis added). Patient A did not fall into those categories of people – but that is not an exhaustive list, as the "include, but are not limited to" language establishes.

Ms. Landry had a dual relationship: She was the therapist of Patient A, conferring with Patient A about the person whom Patient A supervised. And she was a family member of the person whom Patient A supervised.³⁰

Principle I-11 also states:

When a dual relationship is *unavoidable*, the professional shall take extra care to ensure professional judgment is not impaired and there is no risk of client exploitation.

³⁰ In my April 4, 2024 decision on summary suspension, I came to a different conclusion about whether Ms. Landry had engaged in a dual relationship.

In that decision, I wrote,

Patient A did not fall into those categories of people [that Principle I-11 listed]. Because Patient A supervised Ms. Landry’s family member, the relationship may have been *analogous* to Ms. Landry providing therapy to a person who had a close personal relationship with her family. Thus, Ms. Landry *might* have been in a dual relationship with Patient A....

Ultimately, Ms. Landry’s relationship with Patient A does not *seem* to have been a dual relationship....Ms. Landry violated a boundary and she had a conflict of interest that she did not handle appropriately. But she did not *seem* to have had a dual relationship with Patient A – at least not the dual relationship that DPH alleged.

(First two italicizations are in the original; second two italicizations are added.)

I come to a different conclusion in this decision after having paid more attention to the “shall include, but are not limited to” language in Principle I-11.

In her brief for this decision, Ms. Landry misrepresented my decision on summary suspension as follows:

[The] Magistrate agreed there was no conflict of interest or personal relationship between Landry and Patient A and therefore [she] did not violate NAADAC code of ethics in that regard.

(Resp. Br. 55) Ms. Landry *did* have a conflict of interest in treating Patient A and she did have a personal relationship with Patient A.

In my decision on summary suspension, I also ruled that Ms. Landry had had a dual relationship with Patient A in acting as both her therapist and legal advisor. I need not explore that issue in this decision.

(emphasis added). The principle does not merely state that a therapist with a dual relationship shall take extra care and so on. The principle implies that when the therapist may avoid the dual relationship, the therapist should do so. Ms. Landry did not avoid the dual relationship, that is, stop counseling Patient A early in the counseling relationship when Ms. Landry learned of the dual relationship.

This ground for revocation, besides relying on a factual allegation of “a serious dual relationship,” also alleges that Ms. Landry engaged in “discussion of personal matters” with Patient A. Although it is unclear what this factual allegation means, I assume that it alleges that Ms. Landry discussed *her* personal matters. If DPH means that Ms. Landry and Patient A discussed Ms. Landry’s family member, that is not barred by 105 C.M.R. 168.019(A)(4) or the three NAADAC principles that DPH cites, as I have discussed above. Discussing “personal matters,” which the ground for revocation alleges, is not the same as having a “personal relationship,” which Principle I-11 generally prohibits.

This ground for revocation relies on a third and last factual allegation: Ms. Landry invited Patient A to spend a holiday with her. However, DPH did not prove by a preponderance of the evidence that Ms. Landry invited Patient A for Thanksgiving. (10-5-23 Tr. 112-13) Patient A testified that Ms. Landry invited her; Ms. Landry testified that she did not. (10-5-23 Tr. 175-76) The parties stipulated that Ms. Landry’s family member invited Patient A for dessert. (See Pet. Ex. 105) DPH’s position *might* be that the family member’s invitation to Patient A for dessert came after Ms. Landry’s invitation to dinner. However, DPH has not specified that that is its position, and it did not prove by a preponderance of the evidence that Ms. Landry invited Patient A for Thanksgiving.

DPH may permanently revoke Ms. Landry's LADC I license on the ground that she

engaged in a serious dual relationship, but not on the ground that she discussed personal matters with Patient A, and invited Patient A to spend a holiday with her.

[Ground for revocation C:] Respondent’s use of intimidating language constitutes other just and sufficient cause which the Department has determined renders her unfit to practice as a licensed alcohol and drug counselor.
[105 C.M.R. 168.019 (A)(5)]

The cited regulation authorizes DPH to discipline an LADC I licensee for just and sufficient cause which the department may determine would render a person unfit to practice as a licensed alcohol and drug counselor.

105 C.M.R. 168.019(A)(5).

In her text to Patient A on or around June 25, 2023, Ms. Landry used this intimidating language:

“[B]e VERY careful what you[’]re saying is required from staff...”

“You could unknowingly be violating HIPAA.”

Under certain circumstances, “it is a HIPAA violation...”

“It is also a violation of employee right[s]...”

“I know all this legal stuff...”

“...saying that you can’t do what you did[;] that’s illegal.”

“...I’m sure it’s a liability thing...”

(Pet. Ex. 24, p. 306)

In her email to Patient A on July 1, 2023, Ms. Landry used this intimidating language:

“...now I fear [name of gym] will have no choice but to let you go for the multiple violations, if they don’t let her back.”

“...how could you know that asking for a drs note would be violating a law?”

(Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490)

Ms. Landry accused Patient A of violating HIPAA, violating an employee’s rights,

violating a law, committing multiple violations, acting illegally, and having liability, and stated that Patient A was in danger of being fired. Patient A accurately perceived that Ms. Landry had threatened her and her livelihood. (Pet. Ex. 22, p. 296) In addition, Ms. Landry's email of July 1, 2023, by discussing that her family member had lost her job and was not eligible for unemployment compensation, implied that Patient A was responsible. (Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490)

Ms. Landry's messages generated anxiety, depression, and suicidal thoughts in Patient A. Ms. Landry has made Patient A uncomfortable in seeking another therapist, made her feel unsafe, and has caused issues with her work performance. Patient A is correct that a therapist should not be a source of anxiety, depression, and suicidal thoughts. (10-5-23 Tr. 128)

The English word "therapy" derives from the Latin word "therapia," which means, among other things, "curing" and "healing." <https://www.etymonline.com/word/therapy>. Therapy is supposed to cure, not damage; heal, not hurt. When a patient undergoes therapy, the patient should not need further therapy to undo the damage from the initial therapy. When a patient undergoes therapy, the therapy should not make the patient wary of further therapy. Ms. Landry's use of intimidating language and threats to Patient A's livelihood render her unfit as an LADC I licensee.

In his closing argument, Ms. Landry's lawyer conceded:

There is no question that the emails and text messages could be interpreted adversely to my client...[W]e do not blame Patient A or Ms. Muniz or BSAS, for that matter, for interpreting them in that manner.

(10-5-23 Tr. 237) But, her lawyer continued, her intent mattered and she did not intend to harm or threaten Patient A. (10-5-23 Tr. 237) I asked the parties to brief the issue of intent in this context. (10-5-23 Tr. 246) Ms. Landry's successor lawyer did not do so.

The regulation, 105 C.M.R. 168.019(A)(5), does not mention intent. Nor does it imply that an LADC I licensee must act with intent for DPH to be authorized to discipline the licensee. The regulation's wording refers to a person being "unfit to practice as a licensed alcohol and drug counselor." That's all. Being unfit includes many states and traits that have nothing to do with intent. For example, a hypothetical person could be too old to be fit to practice as an LADC I licensee. A hypothetical person could be unfit to practice as an LADC I licensee for obviously intimidating a patient and threatening her livelihood. That person would still be unfit.

DPH may permanently revoke Ms. Landry's license on this ground.

This ground does not include the three emails that Ms. Landry sent to her patients on July 31, August 18, and September 1, 2023, after her license had been suspended (Pet. Ex. 34, pp. 518, 522-24) That is because a revocation must be based "upon relevant facts as they existed at or prior to the time that the Department initiated the action." 105 CMR 168.020(A)(2).³¹ I do not need to discuss whether these three emails contained intimidating language and whether Ms. Landry sent the three group emails to Patient A intentionally or negligently.

In her brief, Ms. Landry concedes:

With the benefit of distance from the events and hearing Patient A testify, Landry recognizes she could have and should have handled her communication with Patient A better than she did.

(Resp. Br. 40) She makes three more similar concessions. (Resp. Br. 2, 42, 56) However, Ms. Landry does not really take responsibility. She repeatedly argues that it was the fault of her former husband for triggering her or forcing her to communicate with Patient A as she did. (Resp. Br. 2, 39, 40, 54, 56, 58 (referring to her "volatile ex-husband")).

³¹ As noted above, 105 CMR 168.020 has two subsections marked (A). The standard of review is in the second subsection.

[Ground for revocation D:] Respondent’s treatment of a patient without substance use disorder constitutes practice outside the scope of her LADC I license. [105 C.M.R. 168.004; 105 C.M.R. 168.019(A)(5)]³²

The reference to “a patient” is to Patient A and not Person 1 – because Person 1 is not labeled as a patient and the Notice of Agency Action refers to no other patients.

105 C.M.R. 168.004 is a definitions section with 19 definitions. DPH means the definition of LADC I, which is “a person Licensed by the Department to conduct an independent practice of alcohol and drug counseling....” (Pet. Br. 22-23) As for 105 C.M.R. 168.019(A)(5), which I quote again, it authorizes DPH to discipline an LADC I licensee for

just and sufficient cause which the department may determine would render a person unfit to practice as a licensed alcohol and drug counselor.

A definition of a term is usually not a substantive directive, although I suppose that it can impliedly be a directive. By invoking a definition, DPH seems to be saying that a person licensed to counsel a patient for alcohol and drug abuse can treat a patient (1) only if that patient has an alcohol or substance use disorder and (2) only for that alcohol or substance use disorder and nothing else. With this ground for revocation as a whole, DPH seems to be saying that because Ms. Landry was licensed to counsel patients only with a substance use disorder, and she counseled Patient A, who lacked a substance use disorder, Ms. Landry is unfit to be a counselor.

However, it cannot be said that Patient A did *not* have a substance use disorder. Ms. Landry’s counseling progress notes for Patient A carry two diagnoses. One is “Cannabis abuse, uncomplicated.” (*E.g.*, Pet. Ex. 111, p. 1195)

³² The wording for ground for revocation D differs from the wording for ground for revocation A, which was the ground I discussed in my decision on summary suspension. And because the wording differs, my analysis of and conclusion about whether DPH has proved its ground for revocation D here differs from my analysis and conclusion about ground A in my decision about summary suspension.

DPH may not permanently revoke Ms. Landry's license on this ground.

In the Notice of Agency Action, DPH successfully sought to *summarily suspend* Ms. Landry's LADC I license on ground A. Ground A alleged that Ms. Landry had "continued [to] practice outside of the scope of her license." (Pet. Ex. 19, p. 272) I found that Ms. Landry had practiced outside the scope of license, including by providing couples therapy to Patient A and Person 1 and by providing individual therapy to Patient A for depression, anxiety, food anxiety, daily stressors, and trauma was also outside the scope of her LADC I license. I allowed DPH to summarily suspend Ms. Landry's license on that ground.

Ground A was for summary suspension; ground D is for permanent revocation and it has a different wording. Ground D alleges that Ms. Landry treatment of "a patient without substance use disorder constitutes practice outside the scope of her LADC I license." The issue of whether an LADC I is allowed to treat the co-occurring disorders of a patient with substance use disorder is not before me, as it was in Ms. Landry's appeal of her summary suspension and as it is in her appeal in PH-22-0414. Ground D alleges that Patient A did not have a substance use disorder. But she did. Therefore, ground D is not a ground to permanently revoke Ms. Landry's license.

Conclusion and Order

DPH may permanently revoke Ms. Landry's LADC I license .

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: