

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**

Appearances for Petitioner:

Tracy J. Ottina, Esq.
Jessica Uhing-Luedde, Esq.
Department of Public Health
Office of the General Counsel
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Appearance for Respondent:

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Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Department of Public Health may summarily suspend the petitioner's alcohol and drug counseling license because her use of intimidating language toward a patient, her boundary violations, and her practice outside the scope of her license are an immediate and serious threat to the public health, safety, and welfare.

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."

DECISION

The petitioner, Karen Landry, appeals the summary suspension by the Department of Public Health of her license as a Licensed Drug and Alcohol Counselor I (LADC I).

I held a hearing on October 5, 2023 by Webex, which I recorded. The witnesses were Nashira Muniz, a compliance officer (investigator) for DPH; Patient A, who had been a patient of Ms. Landry; and Ms. Landry. I admitted Petitioner's Exhibits 19 through 34 and 109 through 111 for DPH; and Respondent's Exhibits 95 through 108 for Ms. Landry. (Other exhibits, such as Exhibits 1 through 18, related to other appeals by Ms. Landry.)

Because this appeal is of DPH's summary suspension of Ms. Landry, the parties gave oral closing arguments and waived briefs to speed the process. (The parties also asked that I issue separate decisions on DPH's proposed revocation of her LADC I license under this docket number, and two other appeals of other DPH actions regarding her license, each under a separate docket number. My decision on the proposed revocation awaits the parties' submission of briefs.)

A transcript of the hearing did not arrive at the Division of Administrative Law Appeals until February 21, 2024.

Findings of Fact

Ms. Landry

1. On December 14, 2018 DPH's Bureau of Substance Addiction Services issued a Licensed Alcohol and Drug Abuse Counselor I (LADC I) license to Ms. Landry. (Pet. Ex. 19, p. 268)

Ms. Landry's services to Patient A and Person 1

2. Patient A and Person 1 were a couple. (Pet. Ex. 22, p. 293; Tr. 68)

3. Patient A searched online for couples therapy and found Ms. Landry. (Pet. Ex. 22, p. 293; Tr. 109)

4. Patient A emailed Ms. Landry, who responded that she specialized in couple's therapy, eating disorders, and trauma. (Pet. Ex. 22, p. 293)

5. Ms. Landry's intake form for Patient A and Person 1, dated March 16, 2022, included this question: "Do either you or your partner drink alcohol to intoxication or take drugs to intoxication?" The answer was no. (Pet. Ex. 30, p. 433)

6. The Alcohol Use Disorders Identification Test (Audit), which Person 1 completed on March 16, 2022, included these questions and answers: "How often do you have six or more drinks on one occasion?" Never; "How often during the last year have you found that you were not able to stop drinking once you have started?" Never; "How often during the last year have you failed to do what was normally expected from you because of drinking?" Less than monthly; "How often during the last year have you needed a first drink in the morning to get yourself going after a heavy drinking session?" Never; How often during the last year have you had a feeling of guilt or remorse after drinking?" Less than monthly; "How often during the last year have you been unable to remember what happened the night before because you had been drinking?" Never. (Pet. Ex. 30, p. 437).

7. Person 1 later told Ms. Landry that he did not answer the Alcohol Use Disorders Identification Test truthfully, according to her testimony. (Tr. 193)

8. On a survey about drug use and abuse (as opposed to alcohol), which Person 1 completed on March 16, 2022, Person 1 answered no to all questions, indicating that he did not use or abuse drugs. (Pet. Ex. 30, p. 439)

9. In March 2022, Ms. Landry began providing couple's therapy to Patient A and Person

1. (Pet. Ex. 22, p. 293; Pet. Ex. 21, p. 281)

10. Ms. Landry's Counseling Progress Notes had two diagnoses: Counseling for family member of alcoholic; and Post-traumatic stress disorder, chronic. The notes did not specify whether the diagnoses were for Patient A, Person 1, both, or Patient A and Person 1 as a couple. (Pet. Ex. 32, p. 480)

11. Ms. Landry's March 24, 2022 Counseling Progress Note stated that Person 1 "won[']t answer if out drinking," presumably referring to answering his phone. (Pet. Ex. 32, p. 481)

12. Ms. Landry's March 29, 2022 Counseling Progress Note stated that the couple had had a fight and that Person 1 "had been out drinking and [Patient A] could not reach him...." (Pet. Ex. 32, p. 482)

13. Ms. Landry's April 6, 2022 Counseling Progress Note recorded that Patient A said that Person 1 made work or alcohol a priority over her. (Pet. Ex. 32, p. 483)

14. Ms. Landry's April 22, 2022 Counseling Progress Note recorded that Person 1 wanted to work on his alcohol abuse. (Pet. Ex. 32, p. 485)

15. Ms. Landry's May 6, 2022 Discharge Summary Note records that Person 1 had had a series of incidents of getting drunk and lying about it; both Patient A and Person 1 had family histories involving alcohol and substance abuse; and Patient A's mother had died from an intentional overdose. (Pet. Ex. 32, p. 487)

Ms. Landry's counseling of Patient A

16. When Patient A's and Person 1's couple's therapy ended, Ms. Landry provided Patient A with individual therapy. (Pet. Ex. 21, p. 281; Tr. 110)

17. Patient A sought therapy about moving on from her relationship with Person 1, depression, anxiety, food anxiety, and daily stressors. (Tr. 110-11)

18. Ms. Landry asked Patient A about substance use during the intake process but not during therapy. (Tr. 111)

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

Ms. Landry's counseling progress notes of Patient A mentioning alcohol and drugs

20. 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)

21. 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)

22. Ms. Landry's May 16, 2022 Counseling Progress Note recorded that Patient A (or she and Ms. Landry) "went over more of her relationship history and history of choosing men with drinking problems." (Pet. Ex. 111, p. 1196)

23. 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)

24. Ms. Landry's August 25, 2022 Counseling Progress Note recorded that a person whose name was blanked out, possibly Person 1, "got in car accident, [Patient A] thinks he was drunk bc he didn[']t want [to go to the] hospital...." (Pet. Ex. 111, p. 1206)

25. Ms. Landry's September 1, 2022 Counseling Progress Note recorded: "'I wish I could hang with drunk people and not get triggered.'" (Pet. Ex. 111, p. 1207) Presumably, this is a quotation of Patient A.

26. 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)

27. Ms. Landry's October 11, 2022 Counseling Progress Note read: "Worries about [name blanked out] drinking." (Pet. Ex. 111, p. 1210)

28. Ms. Landry's November 9, 2022 Counseling Progress Note read: "Client accepting of pattern with [name blanked out] and...the realization [of] his own pattern of addiction..." (Pet. Ex. 111, p. 1211)

29. Ms. Landry's December 21, 2022 Counseling Progress Note read: "Thinks he is drinking when he tells her he is at work." (Pet. Ex. 111, p. 1216) Presumably, the note referred to Person 1.

30. Ms. Landry's April 21, 2023 Counseling Progress Note read: "Discussed view from her MGM² and Mom re: drinking 'you drink and your life will be over.['] Gravitates towards partners" who abuse alcohol. (Pet. Ex. 111, p. 1233)

31. 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.

32. Ms. Landry's May 3, 2023 Counseling Progress Note for Patient A reported that Patient A "[s]poke to [name blanked out] and reminded him alcohol is a huge trigger." (Pet. Ex. 111, p. 1236) Presumably, alcohol was a trigger to Patient A.

33. Ms. Landry's May 11, 2023 Counseling Progress Note for Patient A reported: "Talked a bit about [name blanked out]'s mom and sister being heroin addicts and her suicide possibly being an intended overdose." (Pet. Ex. 111, p. 1237) The note did not indicate how close Patient A was to the person whose name was blanked out; and who had committed suicide.

34. 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)

35. Ms. Landry's July 12, 2023 Discharge Summary Note noted that Patient A's "off and

² Presumably, maternal grandmother.

on again boyfriend of 6 years” abused alcohol and 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)

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

36. 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. (Tr. 108, 142)

37. 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)

38. 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. In October 2022, Patient A became the supervisor of Ms. Landry’s family member. (Pet. Ex. 22, p. 295; Tr. 108, 112, 142-43)

39. 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; Tr. 112-13, 156)

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

41. 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)

42. 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)

43. Ms. Landry occasionally asked Patient A about her family member's performance at work. (Pet. Ex. 22, p. 297)

44. 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. (Tr. 115)

45. 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)

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

47. On or around Sunday, June 25, 2023, around 9:00 p.m. (Tr. 120, 124), Ms. Landry

texted Patient A:³

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.⁴ Especially if it's for health reasons. You could unknowingly be violating HIPAA.⁵ If it's not an employee policy, they⁶ 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.....She⁷ 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 her⁸ 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,⁹ 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 spot¹⁰ but hope you see.
Looking out for both of you[.]¹¹

³ For background, 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 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 what her condition was. (Tr. 162)

⁴ It is unclear what Ms. Landry was trying to convey. I assume that that "can out" meant "call out," as in "call out sick."

⁵ Health Insurance Portability and Accountability Act.

⁶ Presumably, the employee.

⁷ Presumably, Ms. Landry's family member.

⁸ What the boss told Ms. Landry's family member is unclear.

⁹ It is unclear what Ms. Landry meant.

¹⁰ 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.

¹¹ Presumably, Patient A and Ms. Landry's family member.

(Pet. Ex. 24, p. 306)

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

49. 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)

50. 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. (Tr. 117-18)

51. 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)

52. 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*] this¹² 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)

53. 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. (Tr. 126)

¹² Ms. Landry may have meant "that."

54. 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)

55. On or about June 30, 2023, Patient A terminated Ms. Landry’s family member from her job at the gym. (Pet. Ex. 22, pp. 296;Tr. 118)

56. 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; Tr. 119)

57. 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.¹³

....

I wish you all the best life has to offer, and hope you ‘always know your worth’.¹⁴ It has been a pleasure working with you (and [name deleted]!).¹⁵ 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)

58. 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

¹³ The record does not seem to show that Patient A declined a referral.

¹⁴ The source of this quotation is unknown. Presumably, Ms. Landry used it in therapy with Patient A.

¹⁵ Patient A’s emotional support dog. (Pet. Ex. 111, p. 1205)

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 her¹⁶ back. She doesn't qualify for unemployment and needs a job to live(which is on [name of gym] for not providing you with a policy and handbook for employees...¹⁷they 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)

59. 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. (Tr. 127)

60. 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, and purposefully hurtful (Tr. 128)

61. 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. (Tr. 128)

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

63. 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; Tr. 71)

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

64. On July 28, 2023, DPH issued a Notice of Agency Action, in which DPH did two

¹⁶ Presumably, Ms. Landry's family member.

¹⁷ Ellipses in original.

things (Pet. Ex. 19): It summarily suspended, effective on that date, Ms. Landry's LADC1 license; and proposed to permanently revoke Ms. Landry's LADC1 license. (Pet. Ex. 19) (Again, this decision is only about the summary suspension.)

65. DPH alleged that Ms. Landry is

an immediate and serious threat to the public health, safety, and welfare due to [her] (1) engaging in intimidating behavior towards a patient; (2) committing serious ethical and boundary violations; and (3) practicing outside the scope of her license.

(Pet. Ex. 19, p. 267)

66. 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)

67. 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)

68. 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)

69. 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)

70. 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....¹⁸

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.¹⁹

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

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

¹⁸ In this appeal, Ms. Landry did not "exploit the trust and dependency of a client" or "use coercive treatment methods with any client, including threats, negative labels, or attempts to provoke shame or humiliation...." Any shame or humiliation that Patient A experienced was not part of a "treatment method."

¹⁹ Ms. Landry did not engage "in a personal or romantic virtual e-relationship" with any current or former client. Principle I-42 Virtual (Pet. Ex. 19, p. 271 n.1) No testimony or exhibit in this appeal alleged otherwise.

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)

72. 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)

73. 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 cited the applicable regulation; the last three grounds were for revocation and cited the applicable regulation:

A. Respondent's actions, including the use of intimidating language, various ethical and boundary violations, and continued practice outside of the scope of her license, constitute an immediate and serious threat to the public health, safety, and welfare.

[105 C.M.R. 168.018];

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) (brackets in original)

74. On July 31, 2023, Ms. Landry emailed her patients that her license had been suspended "due to a complaint filed with my licensing board against/about me...." (Pet. Ex. 34, p. 524)

75. 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....

(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)

76. 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),

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

Discussion

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

....

(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.

DPH may also adopt “policies and grounds for discipline through adjudication as well as through rule making.” 105 CMR 168.019(B).

Under 105 CMR 168.018, DPH

may summarily suspend a license pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Department determines that a licensee is an immediate and serious threat to the public health, safety or welfare.

Thus, DPH may summarily suspend an LADC 1 licensee on broad grounds: “just and sufficient cause,” G.L. c. 111J, §6; or if “a licensee is an immediate and serious threat to the public health, safety or welfare.” 105 CMR 168.018. DPH may summarily suspend an LADC 1 licensee 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.

In 105 CMR 168.018, the words “based on the evidence before it” are key. They appear in the provision that DPH

may summarily suspend a license pending a final hearing on the merits on the question of revocation if, based on the evidence before it....

That is, summary suspension must be based on the evidence before DPH at the time of the summary suspension. Anything that happens after the summary suspension cannot be the basis of evidence for the summary suspension. What is relevant to Ms. Landry's summary suspension are events on and before July 28, 2023.

While G.L. c. 111J, §6 allows DPH to suspend a license and 105 CMR 168.018 allows DPH to *summarily* suspend a license, I use the criterion in 105 CMR 168.018 for this decision on summarily suspending Ms. Landry's license: whether she is an immediate and serious threat to the public health, safety or welfare.

This is the ground on which DPH seeks to summarily suspend Ms. Landry's license:

A. Respondent's actions, including the use of intimidating language, various ethical and boundary violations, and continued practice outside of the scope of her license, constitute an immediate and serious threat to the public health, safety, and welfare.

[105 C.M.R. 168.018]

(Pet. Ex. 19, p. 272)

Thus, I'm presented with three sets of questions, which I number, underline, and answer below.

1. Did Ms. Landry use intimidating language and, if so, did it constitute an immediate and serious threat to the public health, safety, and welfare?

Regarding intimidating behavior, DPH found "particularly alarming" Ms. Landry's alleged

use of intimidating language such as "now I fear [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)

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. (Tr. 128)

The English word “therapy” derives from the Modern 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 make Ms. Landry an immediate and serious threat to the public health, safety, and welfare. DPH may summarily suspend her LADC 1 license should so that she cannot harm other patients, especially so that she cannot harm other patients to the point where they consider suicide.

Evidence that is not relevant

On August 18, 2023, Ms. Landry emailed her patients – and included Patient A – 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....²⁰

(Pet. Ex. 34, p. 523) 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

²⁰ It is difficult to reconcile the beginning of this excerpt – Ms. Landry was of course angry with Patient A – with the end – Ms. Landry was not and could never be angry with Patient A. Significantly, this excerpt undermined Ms. Landry’s credibility. She stated something clearly, invoking “Of course!,” and then contradicted it emphatically (“Nor could I ever”), undermining her other explanations at the hearing.

someone who was upset and angry with me.” (Pet. Ex. 34, p. 523) Ms. Landry implied that Patient A had taken away trust from the rest of her patients.

On September 1, 2023, Ms. Landry again emailed her patients and Patient A, stating 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), implying that Patient A was a mean girl who was picking on Ms. Landry.

However, Ms. Landry’s emails of August 18 and September 1, 2023 came after DPH summarily suspended her on July 28, 2023; did not constitute “evidence before” DPH at the time of the summary suspension, 105 CMR 168.018; and cannot constitute intimidating language relevant to this decision.

2. Did Ms. Landry commit various ethical and boundary violations and, if so, did they constitute an immediate and serious threat to the public health, safety, and welfare?

To answer this set of questions, I pose three more questions, which I identify with letters: Did Ms. Landry commit boundary violations? Did Ms. Landry engage in a dual relationship? Did Ms. Landry commit ethical violations?

A. Did Ms. Landry commit boundary violations?

NAADC’s Code of Ethics refers to counselors’ respecting boundaries, but does not provide much guidance about what constitutes boundaries or their violations, and how to avoid them.

Ms. Landry violated a boundary by discussing her family member with Patient A. Ms. Landry violated a boundary by asking Patient A about her family member’s performance at work. (Pet. Ex. 22, p. 297) Ms. Landry violated the boundary as Patient A’s therapist by sending a text to Patient A on June 25, 2023, which was entirely about Ms. Landry’s family member and Patient A’s workplace. (Pet. Ex. 24, p. 306) When Patient A raised 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), Ms. Landry allowed the boundary between her professional life and family life to be violated.

Ms. Landry further violated a boundary when she emailed Patient A on July 1, 2023 and justified her previous boundary-violating text by invoking therapy: "I had sent you the original info in a therapeutic attempt to inform and thus protect you from possible harm and additional work stress." (Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490) Ms. Landry practically admitted violating a boundary in that email when she wrote, "On a personal note." (Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490) She admitted that she had shifted from the professional realm to the personal.

Ms. Landry violated a different boundary by purporting to give Patient A legal advice about HIPAA and employee's rights. Ms. Landry was Patient A's therapist, not legal advisor. (Ms. Landry's lawyer, in his closing argument, defended the accuracy of Ms. Landry's legal advice. (Tr. 238) That issue is not before me.)

In his closing argument, Ms. Landry's lawyer argued that the situation of Ms. Landry's family member working with one of her patients was unique. (Tr. 239) I agree. That, however, is not the entire issue. The issue is: If boundary issues arise with other patients, would Ms. Landry handle them appropriately? The record indicates that she might not.

Ms. Landry did violate professional boundaries and DPH may discipline her for doing so.

B. Did Ms. Landry engage in a dual relationship?

NAADC's Code of Ethics does not define multiple or dual relationships (the context indicates that they are synonyms) but reading Principle I-11 reveals that a therapist must "make every effort to avoid" counseling "members of the provider's immediate or extended family, business associates...or individuals who have a close personal relationship with the [therapist] or

the [therapist's] family.” (Pet. Ex. 19, p. 271 n.1) Patient A did not fall into those categories of people. 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. However, the Code of Ethics does not define “dual relationship” and although I asked the parties for a definition, they did not provide one.

Ultimately, Ms. Landry's relationship with Patient A does not seem to have been a dual relationship. On one hand, Ms. Landry was Patient A's therapist. On the other hand, Ms. Landry was the therapist of her family member's supervisor. There was no duality; Ms. Landry was acting as a therapist. Ms. Landry was Patient A's therapist, not Patient A's relative, friend, business associate, or gym client. 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.

Ms. Landry did have a dual relationship with Patient A, acting as her therapist and legal advisor. Those relationships conflicted. DPH may discipline Ms. Landry for having had a dual relationship with Patient A, as therapist and legal advisor. DPH may not discipline Ms. Landry for having had a dual relationship, as therapist to Patient A and as therapist to the supervisor of Ms. Landry's family member.

C. Did Ms. Landry commit ethical violations?

DPH did not specify which ethical standards Ms. Landry violated, although DPH might have meant NAADC's Code of Ethics. See Pet. Ex. 19, p. 271 n.1 (quoting three principles). See also Pet. Ex. 19, pp. 270-71 (DPH alleged that Ms. Landry's “egregious violations of ethical standards... demonstrate a lack of regard for the integrity of the patient-client relationship”

without specifying ethical standards).

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)²¹ Because Ms. Landry relationship with Patient A did not seem to have been a dual relationship, Ms. Landry was not required to document it or seek Patient A's informed consent, as DPH has alleged.

As I have discussed, Ms. Landry's "discussing her family member's work performance during therapy sessions and in text messages" violated boundaries, although using her personal device to send the text message did not make the violation more serious. (Pet. Ex. 19, p. 270)

DPH did not prove by a preponderance of the evidence that Ms. Landry invited Patient A for Thanksgiving. (Tr. 112-13) Patient A testified that Ms. Landry invited her; Ms. Landry testified that she did not. (Tr. 175-76) The parties stipulated that Ms. Landry's family member invited Patient A for dessert. (See Pet. Ex. 105) The family member's invitation to Patient A for dessert *might* have come after Ms. Landry's invitation to dinner, but DPH has not so alleged, and DPH did not prove by a preponderance of the evidence that Ms. Landry invited Patient A for Thanksgiving.

DPH also 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

²¹ This passage seems to correspond with Ground B of Grounds for Summary Suspension and Intended Revocation. (Pet. Ex. 19, p. 272) If so, it is a ground for intended revocation and not summary suspension. However, this passage is from a paragraph that begins by discussing summary suspension. The paragraph continues with "Additionally" and eventually leads to the quoted passage, indicating that this passage is indeed about summary suspension.

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) (seeming to distinguish between ethical standards and the Code of Ethics)

As discussed, Ms. Landry did commit boundary violations. To the extent that DPH meant that Ms. Landry's boundary violations were ethical violations, she committed ethical violations. DPH did not prove that Ms. Landry committed other ethical violations. Ms. Landry did not seem to have engaged in a multiple or dual relationship. Nor did Ms. Landry "engag[e] in a personal relationship with a current or former client virtually," as DPH alleged. (Pet. Ex. 19, p. 268) DPH presented no evidence otherwise.

Now to answer the overarching question: Did Ms. Landry commit various ethical and boundary violations and, if so, did they constitute an immediate and serious threat to the public health, safety, and welfare?

Ms. Landry committed boundary violations. She committed an ethical violation by engaging in a dual relationship with Patient A, acting as her therapist and legal advisor. Ms. Landry's multiple boundary violations and insistence on providing legal advice, even though she is not a lawyer, are an immediate and serious threat to the public health, safety, and welfare. To keep her from committing other boundary violations that damage patients and offering legal advice to other patients, DPH may summarily suspend her license.

3. Did Ms. Landry's continue to practice outside the scope of her license and, if so, did it constitute an immediate and serious threat to the public health, safety, and welfare?

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)

To answer my underlined question above and assess the Notice of Agency Action, I must first answer three related questions: (1) Was Ms. Landry unlicensed to provide therapy related to couples, trauma, and eating disorders? (2) Did Ms. Landry practice therapy outside of the scope of her LADC 1 license? (3) Did Ms. Landry *continue* to practice therapy outside of the scope of her license?

On October 3 and 4, 2023, I held hearings on two other of Ms. Landry's appeals, PH-22-0414 and PH-23-0133, which concern what licenses she has held and whether she practiced outside their scope. Because I have not issued decisions in those appeals – the parties have not even submitted briefs – I cannot answer Questions 1 and 3. I will examine whether Ms. Landry practiced therapy outside the scope of her LADC 1 license.

An LADC license is for a provider of “treatment for individuals with a substance use disorder.” 105 CMR 168.005. “Substance use disorder” in turn relies on the definition in the Diagnostic and Statistical Manual of Mental Disorders. *Id.*

Initially, Patient A sought couple's therapy, located Ms. Landry online, and emailed her. Patient A told DPH that Ms. Landry responded that she specialized in “couples therapy, eating disorders and trauma as that was what I was looking for.” (Pet. Ex. 22, p. 293) (Patient A's account was slightly ambiguous: whether she was looking for couple's therapy or also therapy for eating disorders and trauma.) See also Pet. Ex. 34, p. 523 (in her group email to patients on August 18, 2023, Ms. Landry called herself “a counselor who specializes in addictions and trauma”).

Patient A later underwent individual therapy with Ms. Landry about moving on from her relationship with Person 1, depression, anxiety, food anxiety, and daily stressors. (Tr. 110-11) DPH was correct that Patient A did not seek treatment for a substance use disorder.

However, it cannot be said that Patient A did not have a substance use disorder, as DPH stated in its Notice of Agency Action. 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) Thus, it seems that Ms. Landry diagnosed Patient A as having a substance abuse disorder.

Ms. Landry's provision of couple's therapy was outside the scope of her LADC 1 license. It does not matter whether Patient A, Person 1, or their relatives had issues or problems with drugs or alcohol (E.g., Pet. Ex. 32, 480-83, 485, 487); she was still providing couple's therapy, not alcohol and drug counseling. It does not matter whether Patient A's or Person 1's use or abuse of drugs or alcohol affected their relationship; Ms. Landry was still providing couple's therapy. It does not matter that Ms. Landry's Counseling Progress Notes for Patient A and Person 1 as a couple had two diagnoses: Counseling for family member of alcoholic; and Post-traumatic stress disorder, chronic. (Pet. Ex. 32, p. 480) Ms. Landry's training as an LADC 1 may have helped her provide couple's therapy to Patient A and Person 1, but that does not mean that her LADC 1 license allowed her to provide couple's therapy at all.

Ms. Landry's provision of individual therapy to Patient A for depression, anxiety, food anxiety, daily stressors, and trauma was also outside the scope of her LADC 1 license. It does not matter that Ms. Landry diagnosed Patient A's condition as Cannabis abuse, uncomplicated. That diagnosis did not allow Ms. Landry to use her LADC 1 license to provide therapy for other conditions and diagnoses.

Moreover, Ms. Landry's provision of legal advice to Patient A during the course of and in the context of therapy – Ms. Landry couched her legal advice as “Looking out for...you” (Pet. Ex. 24, p. 306) and “a therapeutic attempt to inform and thus protect you from possible harm and additional work stress” (Pet. Ex. 24, p. 308; Pet. Ex. 34, p. 490) – was outside the scope of her LADC 1 license.

No statute, regulation, or case explicitly allows DPH to discipline an LADC 1 licensee for practicing outside the scope of the license. Nonetheless, DPH may summarily suspend an LADC 1 licensee for “just and sufficient cause,” G.L. c. 111J, §6, and for a licensee to practice outside the scope of the license is a just and sufficient cause for DPH. In addition, DPH may bar a licensee from practicing outside the scope of a license through adjudication, such as this appeal. 105 CMR 168.019(B); *Town of Brookline v. Commissioner of Department of Environmental Quality Engineering*, 387 Mass. 372, 379 (1982). Furthermore, a license to provide one kind of therapy is not automatically a license to provide another kind. In fact, a license to provide one kind of therapy implies that is a license for only that kind of therapy, just as a license to drive a motorcycle is not a license to drive a truck. Ms. Landry did not argue in this appeal that she had a license other than as an LADC 1.

Ms. Landry's practice outside the scope of her license was an immediate and serious threat to the public health, safety, and welfare and DPH may summarily suspend her license to protect the public from her unlicensed practice.

Conclusion and Order

DPH's summary suspension of Ms. Landry's LADC 1 license is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Administrative Magistrate

Dated:

APR - 4 2024

