

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

WAKE COUNTY

15 SAP 750

**NORTH CAROLINA SUBSTANCE)
ABUSE PROFESSIONAL PRACTICE)
BOARD)**

Petitioner

v.

KEITH EDWARD GREEN

Respondent

PROPOSAL FOR DECISION

THIS CAUSE coming on to be heard and being heard on June 22, 2015, in the Office of Administrative Hearings, and it appearing that Respondent was present and appeared *pro se*, and the Petitioner was represented by attorney Mr. Nelson G. Harris of the Raleigh, North Carolina law firm of Harris & Hilton, P.A.

Based upon the evidence presented, a review of the documents in the case file, and the arguments of the parties, the undersigned makes the following findings of fact:

1. Petitioner North Carolina Substance Abuse Professional Practice Board ("the Board"), was established by N.C.G.S. § 90-113.32, and is recognized as the registering, certifying, and licensing authority for substance abuse professionals described in the Practice Act.

2. Respondent is a citizen and resident of Orange County, North Carolina.

3. The Board was established to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of credentialed substance abuse professionals, to provide for the establishment of standards for the education of credentialed substance abuse professionals, and to ensure the availability of credentialed substance abuse professionals of high quality to persons in need of these services.

4. The Board, under authority granted by the Practice Act, regulates Board-credentialed persons offering substance abuse assessments, counseling and treatment services, substance abuse prevention services, and any other substance abuse services for which the Board is authorized to grant registration, certification or licensure.

5. N.C.G.S. § 90-113.40(c) provides that the Board shall issue a license credentialing an applicant as a "Licensed Clinical Addictions Specialist" ("LCAS") if, in addition to meeting the

requirements of subdivisions (a)(1) through (5a) of the section, the applicant meets one of the following four (4) criteria, referred to as Criteria A, Criteria B, Criteria C or Criteria D.

6. Respondent applied to the Board for a license as a LCAS pursuant to "Criteria A."

7. Criteria A includes a requirement that the applicant have "a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university." N.C.G.S. § 90-113.40(c)(1)(a).

8. Respondent's master's degree from the University of Louisville is in Special Education, and he contends this degree qualified him for licensure as a LCAS.

9. However, Respondent's master's degree did not involve counseling in a clinical setting, or counseling supervised by a professor or other instructor.

10. Respondent did perform community support work, case management work, and referrals in connection with his course of study through internships and independent study, but these were not supervised by his professor(s), nor were they done in a clinical setting.

11. The Quality Assurance Committee of the Board, and the Executive Committee of the Board, after review of Respondent's application and other submittals, determined that Respondent's degree did not have a clinical application as required by N.C.G.S. § 90-113.40(c)(1)(a), and that a license should not be issued under Criteria A.

12. Prior to Respondent's application, the Board, in considering other applications for licensure under Criteria A, consistently applied its definition of "clinical application". (T. pp. 53-54).

13. In particular, with respect to each such application, the Board has maintained that an applicant only qualifies under Criteria A if there is direct observation by the professor or other instructor, or if the work is in a clinical setting. (T. p. 54).

14. Respondent timely requested a contested case hearing from the Board's determination that he did not qualify for licensure.

15. The phrase "clinical application" as used herein is unambiguous.

16. For purposes of qualifying for licensure under Criteria A, an applicant must show that the master's degree on which the applicant relies in his application involved counseling in a clinical setting, or counseling supervised by a professor or other instructor.

17. While Respondent's educational and work background are impressive, the master's degree issued to him by the University of Louisville does not qualify for licensure as an LCAS under Criteria A of N.C.G.S. § 90-113.40(c).

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. The Respondent has the burden of proof in this matter, and must prove his case by the preponderance of the evidence.

3. Both parties were properly noticed for hearing of this contested case.

4. Respondent has produced insufficient evidence to prove that the master's degree conferred upon him by the University of Louisville involved a clinical application.

5. The Petitioner's interpretation of the term "clinical application" is reasonable and based upon a permissible construction of the statute.

6. Petitioner has consistently applied its interpretation, and, in accordance with *Rainey v. N.C. Department of Public Instruction*, 361 N.C. 679, 680-681, 652 S.E.2d 251, 252, 253 (2007), its interpretation is entitled to some deference. See also, *Cashwell v. Department of State Treasurer*, 198 N.C. App. 80, 675 S.E.2d 73 (2009); *City of Durham v. North Carolina Department of Environmental and Natural Resources*, 131 N.C. App. 395, 507 S.E.2d 310 (1998); *Carpenter v. N.C. Department of Human Resources*, 107 N.C. App. 278, 419 S.E.2d 582 (1992).

7. The phrase "clinical application" in the context of Criteria A is clear and unambiguous, requiring either direct observation by a professor or other instructor, or work conducted in a clinical setting.

8. Respondent's master's degree from the University of Louisville did not include a clinical component that involved direct observation by a professor or other instructor, or work that was conducted in a clinical setting.

9. The Board's interpretation is reasonable in light of the purposes for which it was established, which are to safeguard the public health, safety and welfare of the public by preventing the licensure of unqualified substance abuse counselors.

10. More specifically, interpreting the "clinical application" requirement to mean that an applicant must have instructor supervised or clinical counseling experience is not only a reasonable interpretation of the statute, it is an interpretation that will tend to prevent individuals without any counseling experience, who are presumably less qualified to provide counseling services to the public than individuals with supervised counseling experience, from being licensed to provide counseling services to the public. See also, N.C.G.S. § 90-113.33, which provides that: "The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective."

Based upon the foregoing findings of fact and conclusions of law, Respondent does not qualify for licensure as an LCAS under Criteria A of N.C.G.S. § 90-113.40(c), and his application

should be denied.

NOTICE AND ORDER

The North Carolina Substance Abuse Professional Practice Board is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The final decision maker shall serve a copy of the Final Agency Decision upon each party personally, or by certified mail, addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a). It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 24th day of August, 2015.

Philip E. Berger, Jr.
Administrative Law Judge