
BEFORE THE IOWA BOARD OF BEHAVIORAL SCIENCE

RE:
Mental Health Counselor License of:

Case No. 21-0041
DIAL No. 23IDPHBBS0003

DAVID EKMAN

License No. 00367

RESPONDENT.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

STATEMENT OF THE CASE

The Iowa Board of Behavioral Science (“Board”) found probable cause to file a Notice of Hearing and Statement of Charges on February 16, 2023 charging Respondent David Ekman (“Respondent”) with being convicted of an offense that directly relates to the duties and responsibilities of the profession pursuant to Iowa Code section 147.55(10) and 645 Iowa Administrative Code 33.2(12).¹

The hearing was held at the Board’s office on June 13, 2024 before the following members of the Board: Amy Mooney, M.H.C.; Chair, Lauren Wood, M.F.T.; Echo Kent, M.F.T.; Blake Stephenson, B.C.B.A.; Cody Samec, M.H.C.; Maria Valdovinos, B.C.B.A.; and Nolan Byrnes, public member. Assistant Attorney General Lindsey Browning represented the state of Iowa. Respondent appeared and participated via videoconference. The hearing was held open to the public, pursuant to Iowa Code section 272C.6(1). Administrative Law Judge Kristine M. Dreckman assisted the Board in conducting the hearing and was instructed to prepare the Board’s decision in accordance with their deliberations.

THE RECORD

The record includes State’s Exhibits 1-9 and the following exhibits submitted on behalf of the Respondent: a written statement dated January 10, 2024, two photographs, and a motion to vacate filed in United States v. David Ekman, case number 4:21-cr-00102-RGE-HCA-1 with attachments. The State’s Exhibits 1-2 and Respondent’s exhibits were marked confidential and filed under seal. The record additionally includes the testimony of Tony Alden, Stephanie Lampie, and the Respondent.

FINDINGS OF FACT

1. The Board issued a mental health counselor license number 00067 in December 1998. Said license is currently inactive, having expired on September 30, 2022. (Alden Testimony; Respondent Testimony).

¹ 645 Iowa Administrative Code 33.2 was in effect from August 18, 2021-June 4, 2024. This decision cites to the rules in effect at the time the Board issued the statement of charges, unless otherwise indicated.

2. Respondent holds a bachelor's degree from Simpson College and a master's degree from Western Illinois University. He has worked as a psychologist in the prison system. More recently, Respondent worked as a substance abuse treatment counselor in a treatment facility in Marshalltown, Iowa. (Respondent Testimony).

3. According to Respondent, he has a history of abusing alcohol and pain medication. Respondent reported experiencing a period of homelessness as a result of his addiction at a time not disclosed in this record. He reported a sobriety date of approximately 2012. (Respondent Testimony).

4. In February 2021, local law enforcement received an allegation that Respondent sexually abused a child. The victim was then 17-years-old and well known to Respondent through a close family relationship. The victim had a childhood history of abuse and mental health diagnoses. At age 16, the victim had received regular treatment through a crisis intervention program and therapy after exhibiting signs of suicidal thoughts and self-harm. The victim also had a borderline intellectual impairment and attended school through a 504 plan for academic supports. (State's Exhibit 1; Respondent Testimony; Lampie Testimony).

5. Local law enforcement and the Iowa Department of Health and Human Services initiated investigations. During those investigations, the victim reported Respondent first initiated sex with her in the fall of 2020. She disclosed Respondent engaged in sexual acts with her on a number of occasions in Respondent's home and at the Respondent's office. The victim reported Respondent also made a number of sexual advances toward her while they were alone in a car together. The victim was able to provide very specific details about Respondent's genitals and graphic details regarding the sexual acts themselves. (State's Exhibit 1; Lampie Testimony; Alden Testimony; Respondent Testimony).

6. The victim additionally described an incident when Respondent took her on an overnight trip to Minnesota. Respondent provided the victim alcohol, which she drank to the point of intoxication. Respondent engaged in multiple sex acts with the victim in their hotel room in Minnesota. Respondent videotaped at least one of the sex acts and showed it to the victim. (State's Exhibit 1; Lampie Testimony).

7. The victim also reported that Respondent asked her to share photos of her in state of undress, and that she complied. Law enforcement searched Respondent's phone and discovered a screenshot of a video depicting a sex act between Respondent and the victim. (State's Exhibit 1; Lampie Testimony).

8. The Department of Health and Human Services ultimately concluded Respondent committed child abuse in two ways: sexual abuse of in the second degree and sexual abuse by invasion of privacy. Respondent's name was placed on the state's central abuse registry as a result of the determination of child abuse. (State's Exhibit 1; Lampie Testimony; Alden Testimony; Respondent Testimony).

9. Moreover, Respondent was indicted by a grand jury in United States District Court for the Southern District of Iowa for three separate criminal counts: 1) transportation of a minor

with intent to engage in criminal sexual activity, 2) transportation of child pornography, and 3) possession of child pornography. (State's Exhibit 3; Lampie Testimony; Alden Testimony; Respondent Testimony).

10. Respondent eventually pleaded guilty to the charge of transportation of child pornography in violation of 18 United State Code sections 2252A(a)(1) and 2252A(b)(1) on January 31, 2022. (State's Exhibit 4).

11. In his written guilty plea, Respondent admitted to the following factual basis:

On or about January 30, 2021, [Respondent] knowingly drove Minor Victim 1 in a vehicle from the Southern District of Iowa to the District of Minnesota. Minor Victim 1 is a person whose identify is known to both parties.

On or about January 30, 2021, Minor Victim 1 was less than 18 years old, and [Respondent] knew Minor Victim 1 was less than 18 years old.

[Respondent] planned to stay overnight with Minor Victim 1 in a hotel in the District of Minnesota and look at an airplane that [Respondent] was purchasing the following day.

On or about January 30, 2021, [Respondent] engaged in unlawful sexual contact with Minor Victim 1 in the District of Minnesota, specifically, oral sex. [Respondent] used his Apple iPhone 7 Plus ... to video record himself engaging in sexual contact with Minor Victim 1, thereby creating child pornography as defined in 18 U.S. S. § 2256(8).

On or about January 31, 2021, [Respondent] transported the child pornography using means and facilities of interstate and foreign commerce, or in or affecting interstate or foreign commerce, by storing the child pornography on the above-identified iPhone 7 and driving it in his vehicle from Minnesota to Iowa;

The defendant knew that such transported items constituted child pornography as defined in 18 U.S.C. § 2256(8)

Some of the above events occurred in the Southern District of Iowa.

(State's Exhibit 4; Respondent Testimony).

12. Respondent was then convicted of transportation of child pornography in violation of 18 U.S.C. § 2252A(a)(1) in federal district court on June 17, 2022. A copy of the judgment entry is included in this record. He was sentenced to 240 months of prison, which included an upward departure from the federal sentencing guidelines because his victim was "unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct."² Respondent was also fined \$5,768.00. As part of the Respondent's plea

² United States Sentencing Commission, Guidelines Manual, § 3A.1.1 (n2).

agreement with the government, the other two criminal counts against him were dismissed. (State's Exhibits 5, 6).

13. Respondent appealed his sentence to the Eighth Circuit Court of Appeals and argued, among other things, the upward departure from the standardized sentencing guidelines for a "vulnerable victim" was unwarranted. The appellate court affirmed his sentencing, stating

We conclude that the district court did not clearly err in applying the vulnerable-victim enhancement, as the evidence presented at sentencing supported the court's finding that Ekman knew or should have known about the victim's vulnerabilities. See U.S.S.G. § 3A1.1(b), comment (n2). Nor did the court err in departing upward under U.S.S.G. § 5K2.3, as the evidence showed that Ekman was a mental health counselor who knew the victim had previously been sexually abused by family members, see *United States v. Rose*, 315 F.3d 956, 958 (8th Cir. 2003), and that his abuse caused the victim to restrict her activities and suffer significant mental health issues. See *United States v. White Twin*, 682 F.3d 773, 776 (8th Cir. 2012); *United States v. Pergola*, 930 F.2d 216, 219 (2d Cir. 1991).

(State's Exhibit 7).

14. Respondent is currently serving his 240-month sentence in federal prison. Although he continued to dispute the appropriateness of his sentence, Respondent acknowledged his conviction for trafficking child pornography. Respondent described to the Board what he believed to be the relevant underlying facts that lead to his criminal conviction, using extremely crass and demeaning language in doing so. Respondent squarely placed the blame on the victim, claiming he was the target of her advances, and that she was neither vulnerable nor a victim in the relationship. Respondent additionally told the Board he had suffered a relapse in his sobriety because of the Covid-19 pandemic, and that he had developed a sex addiction. (Respondent Testimony; Respondent's Exhibits).

15. Respondent additionally acknowledged his license to practice is currently inactive. His goal is to return to the field of substance abuse counseling upon his release from prison. (Respondent letter dated January 10, 2024; Respondent Testimony).

CONCLUSIONS OF LAW

Iowa Code section 147.55 provides the Board with the authority to discipline a licensee for a number of grounds, including when a licensee is guilty of "other acts or offenses as specified by board rule."³ The Board's rule in place at time it issued the statement of charges provides that discipline may be imposed against a licensee upon "being convicted of an offense that directly relates to the duties and responsibilities of the profession," which is what Respondent has been charged with in this case.⁴ A copy of order of conviction constitutes conclusive evidence of the conviction.⁵

³ Iowa Code § 147.55(10).

⁴ 645 Iowa Administrative Code (IAC) 33.2(12)

⁵ *Id.*

The conviction at issue for this case is transportation of child pornography in violation of 18 U.S.C. sections 2252A(a)(1) and 2252A(b)(1). Those sections provide that any person who “knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in affecting interstate or foreign commerce by any means, including by computer, any child pornography” shall be fined and imprisoned for a term between five and twenty years. It is undisputed Respondent was convicted of this offense.

The Board has carefully reviewed the record and considered the testimony in this case. The Respondent’s actions were reprehensible. Respondent not only knew the victim was a child, but that she was particularly vulnerable because of her mental health diagnoses, past history of abuse, and intellectual capacity. His personal relationship with the victim and her family placed Respondent in a position of power over her. The Board has no doubt Respondent used his specialized training and knowledge as a licensed mental health counselor to select his victim and use her vulnerabilities to exploit and abuse her. Respondent also admitted he was practicing the profession at a time when he was in active addiction. Respondent failed in his duties and responsibilities as a licensed mental health counselor when he used his training and knowledge to exploit and abuse a vulnerable child and by continuing to practice the profession while abusing alcohol or other controlled substances.

Accordingly, the preponderance of the evidence established that the Respondent violated Iowa Code section 147.55(10), as defined by 645 Iowa Administrative Code 33.2(12), by being convicted of an offense that directly related to the duties and responsibilities of the profession.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Iowa mental health counselor license number 00067 issued to Respondent David Ekman is hereby **PERMANENTLY REVOKED** effective immediately upon service of this Decision and Order, for Respondent’s violation of Iowa Code section 147.55(10) and 645 Iowa Administrative Code 33.2(12).

IT IS FURTHERED ORDERED, pursuant to Iowa Code section 272C.6(6) and 645 Iowa Administrative Code 5.3(10), that Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, Respondent shall pay any costs billed by the executive director and reimbursable pursuant to Iowa Code section 272C.6(6)(a). All fees and costs shall be paid within thirty days of the issuance of said bill for costs.

RESPONDENT IS HEREBY NOTIFIED that this Decision and Order, when fully executed, is a permanent public record and will be made available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 and 272C.

Appeal on the Merits

In accordance with the provisions of Iowa Code section 17A.16(2) a party may file an application for rehearing within twenty (20) days after the issuance of this decision. In accordance with Iowa Code section 17A.19(3) any petition for judicial review must be filed within thirty (30) days after an application for rehearing has been denied or deemed denied. If a

party does not file an application for rehearing any petition for judicial review must be filed within thirty (30) days after the issuance of this decision.

Dated this 24th day of September, 2024.

/s/Aaron Culley

Aaron Culley, L.I.S.W.

Vice Chair, Iowa Board of Behavioral Science

cc: Lindsey Browning, Assistant Attorney General