

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
STATE OF CALIFORNIA

In the Matter of:

CALEB OLA ALERU,

Respondent.

Case No. AS 2007-299

OAH No. N2007100489

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Behavioral Sciences as its Decision in the above-entitled matter.

This Decision shall become effective on March 27, 2008.

IT IS SO ORDERED February 26, 2008.



BEFORE THE
BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CALEB OLA ALERU
Fresno, CA 93710

Associate Clinical Social Worker
Registration No. ASW 16190

Respondent.

Case No. AS-2007-299

OAH No. 2007100489

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 3, 2008, in Sacramento, California.

Jessica M. Amgwerd, Deputy Attorney General, represented Paul Riches (complainant), Executive Officer of Board of Behavioral Sciences (Board).

Caleb Ola Aleru (respondent) appeared by telephone on his own behalf.

Evidence was received, the record was closed, and the matter was submitted on January 3, 2008.

FACTUAL FINDINGS

1. On October 23, 2003, the Board issued Associate Clinical Social Worker Registration No. ASW 16190 to respondent to practice as an associate clinical social worker (ACSW) in the State of California. On October 31, 2007, respondent's registration expired due to non-payment of renewal fees. Complainant seeks to revoke respondent's ACSW registration based upon the driving under the influence convictions described in Findings 2, 3, 4, and 6, below.

2. In 1980 and 1984, respondent was convicted of driving under the influence of alcohol.

3. On June 23, 1995, in the Fresno County Municipal Court, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08 percent or more.

4. On December 28, 1998, in the Fresno County Superior Court, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08 percent or more.

5. On July 27, 1999, respondent submitted an application to the Board for a license to act as a licensed clinical social worker (LCSW). The application was denied, respondent filed an appeal, and a statement of issues (SOI) was issued in Case No. AS-2000-168, OAH No. N2000080067. A hearing on the SOI was held before an administrative law judge (ALJ) on September 28, 2000. Respondent appeared on his own behalf. Thereafter, the ALJ issued a proposed decision, which was adopted by the Board as its decision on January 16, 2001, effective February 15, 2001. The decision denied respondent's application for an LCSW license based upon respondent's multiple convictions for driving under the influence of alcohol and his lack of rehabilitation.

6. On September 14, 2006, approximately three years after he received his ACSW registration, respondent was arrested for driving under the influence of alcohol. On January 17, 2007, in the Fresno County Superior Court, respondent, upon his plea of guilty, was convicted of violating Penal Code section 23152, subdivision (b), driving with a blood alcohol content of .08 percent or more, a misdemeanor. Respondent's blood alcohol content was .20/.18 percent. Imposition of judgment and sentence was suspended and respondent was placed on probation for 36 months. The court ordered respondent to serve 365 days in jail, suspended all except 25 of those days, and referred respondent to the Adult Offender Work Program. The court also ordered respondent to pay fines and fees, to complete an 18-month Multiple Offender Drug Program, and to complete one Alcoholic Anonymous (AA) program per week.

7. At hearing, respondent admitted his convictions. He asserted that he completely stopped drinking in February 2003 and remained clean and sober until July 2006. In 2006, respondent's mother became ill and was hospitalized in Nigeria. Respondent planned to visit her and purchased an airplane ticket but, due to the needs of his work, was unable to go. His mother died before respondent was able to visit her in Nigeria. According to respondent, the pain of coping with his mother's death was so great, he relapsed in July 2006.

8. According to respondent, he drank his last beer on September 15, 2006, when he returned home from his September 14 arrest, and has not had anything to drink since then. He testified that he has been attending the 18-month Multiple Offender Drug Program since January 2007 and will finish the year-long part of that program this month. Once he finishes that part, he will begin the six-month aftercare part of that program, which will run until July

or August 2008. He also testified that he has learned a lot from the alcohol education and counseling he has received through the program.

9. Respondent is a born-again Christian and is attending his church for rehabilitation. He goes to the Campus Baptist Church about twice a month. In the past, he periodically attended Alcoholics Anonymous (AA) but, because of his spiritual beliefs, he stopped attending regularly. According to respondent, there are AA meetings in the church near where he lives, which he attends on occasion.

10. From 1993 to 1994, respondent worked for a non-profit organization that helped the homeless. From December 1994 through April 1995, he worked for Comprehensive Youth Services. Between 1995 and 2000, he worked for the Fresno County Department of Mental Health. Since 2001, he has worked for the Fresno County Department of Employment and Temporary Assistance. He is a Social Work Practitioner in the Crisis Intervention Unit. In this capacity, he triages, evaluates, assesses, refers, monitors, and follows up on crisis and non-crisis mental health and domestic violence referrals. For the period from January 2006 to January 2007, he received a satisfactory performance evaluation from his employer. Respondent asserted that he has never harmed any clients during the course of his work. Because respondent does not provide any direct counseling services in his job, he does not need to be licensed.

11. At hearing, respondent took responsibility for his convictions. He recognized his mistakes and promised to do his best in the future to ensure that he would not repeat those mistakes.

12. While respondent testified in a direct and forthcoming manner, he did not offer sufficient evidence to substantiate that he has been rehabilitated. He did not submit any evidence from either his church or his 18-month Multiple Offender Drug Program to show that he has complied with the requirements of an alcohol treatment program and has remained clean and sober. He did not offer any testimony or submit any letters of support from his friends, employers, or other persons familiar with his criminal conduct and the changes he has made in his life since his convictions. He has had five alcohol-related convictions since 1980. There was no evidence to indicate that any of respondent's convictions had been expunged under Penal Code section 1203.4. He is still on probation from his most recent conviction. Although he was denied an LCSW license in February 2001 based upon his multiple convictions for driving under the influence of alcohol and his lack of rehabilitation, he did not stop drinking until February 2003, two years later. While respondent attributed his relapse from July to September 2006 to his distress over his mother's death, the Board must have confidence that its registered ACSW's will not succumb to alcohol abuse in times of stress and anxiety. Complainant established by clear and convincing evidence that respondent's registration as an ACSW should be revoked.

13. Complainant filed a Certification of Prosecution Costs in which the Deputy Attorney General certified that complainant had incurred \$2,172.50 in legal costs in

prosecuting this matter. These costs consist of 13.75 hours of legal work billed at \$158 per hour. This legal work included reviewing and prioritizing the case upon receipt; organizing and maintaining the file; analyzing the investigative file and exhibits; reviewing documentation for authenticity, accuracy, and completeness; reviewing the law, regulations and facts to establish violations; preparing and serving the Accusation and related pleadings; researching legal issues; seeking to obtain discovery from respondent; reviewing respondent's Notice of Defense; communicating with the client; obtaining hearing dates; preparing the case, cost declaration, and exhibits for hearing; and engaging in settlement negotiations. These costs appeared to be reasonable in light of the issues presented in this matter. At hearing, respondent testified that he did not have the financial ability to pay the requested costs, unless he could make arrangements to pay them over time.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4992.3, subdivision (a), the Board may revoke the registration of a registrant who has been convicted of "a crime substantially related to the qualifications, functions, or duties of a ... registrant." Pursuant to Business and Professions Code section 118, subdivision (b), the Board may revoke a registration that has expired.¹ In California Code of Regulations, title 16, section 1812, the Board has set forth its criteria for substantial relationship as follows:

For purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapter 17 of Division 3 and Chapter 4 of Part 3 of Division 7 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare.

Respondent's January 17, 2007 conviction for driving with a blood alcohol level of .08 percent or more to a substantial degree evidences present or potential unfitness of respondent to perform the functions authorized by his registration in a manner consistent

¹ Business and Professions Code section 118, subdivision (b), provides:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

Business and Professions Code section 118, subdivision(c), provides that the term "license" includes "registration."

with the public health, safety or welfare. As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

The court's reasoning in *Griffiths* applies in this case. Respondent's January 2007 conviction establishes cause to revoke respondent's ACSW registration under Business and Professions Code section 4992.3, subdivision (a).

2. Pursuant to Business and Professions Code section 4992.3, subdivision (c), the Board may revoke a registration when the registrant has consumed alcohol to the extent or in a manner as to be dangerous or injurious to himself or the public. The Board may also revoke a registration under section 4992.3, subdivision (c), if the registrant has been convicted of more than one misdemeanor involving the consumption of alcohol. Respondent's five misdemeanor convictions for driving under the influence of alcohol (Findings 2, 3, 4 and 6) establish cause to revoke respondent's registration under Business and Professions Code section 4992.3, subdivision (c).

3. Respondent argued that, because the Board relied upon his 1980, 1984, 1995, and 1998 convictions to deny his application for an LCSW license, it cannot use those convictions again to revoke his ACSW registration, because this would amount to punishing him twice for the same offenses.

Respondent's argument was not persuasive. Respondent was, in essence, making a double jeopardy argument. The doctrine of double jeopardy protects an individual against additional prosecutions for the same offense after an acquittal or conviction. It applies solely to multiple criminal prosecutions for the same offense. Administrative actions such as the subject case are not criminal in nature. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Accordingly, the doctrine of double jeopardy is not applicable. The purpose of this administrative revocation proceeding is not to punish respondent, but to protect the public. The Board may rely upon respondent's past driving under the influence convictions to

revoke his ACSW registration, notwithstanding the fact that it also relied upon those convictions to deny his application for an LCSW license.

4. In California Code of Regulations, title 16, section 1814, the Board has set forth criteria for evaluating the rehabilitation of a registrant in a revocation action.² As set forth in Finding 12, respondent did not offer sufficient evidence to substantiate that he has been rehabilitated. He did not submit any evidence to establish that he has complied with the requirements of an alcohol treatment program and has remained clean and sober. He did not offer evidence from any persons familiar with his criminal conduct and the changes he has made in his life since his convictions. He has had five alcohol-related conviction since 1980. There was no evidence to indicate that any of respondent's convictions had been expunged under Penal Code section 1203.4. He is still on probation from his most recent conviction. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole."].)

5. It is the primary responsibility of the Board to protect the public. To ensure that the public will be properly protected, the Board may revoke an ACSW registration even in the absence of evidence of actual harm to any clients. (*Griffiths, supra*, 96 Cal.App.4th at pp. 772-3.) Given respondent's repeated driving under the influence convictions and his lack of adequate rehabilitation, complainant established by clear and convincing evidence that respondent's misconduct poses a sufficient danger to the public that his registration as an ACSW should be revoked.

² California Code of Regulations, title 16, section 1814 provides:

- (a) When considering the suspension or revocation of a license, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:
- (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.
 - (3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation.
 - (4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.
 - (7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
 - (8) Evidence, if any, of rehabilitation submitted by the licensee.

6. Pursuant to Business and Professions Code section 125.3, a registrant found to have violated the registration act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the registrant has been successful at hearing in getting charges dismissed or reduced, the registrant's subjective good faith belief in the merits of his or her position, whether the registrant has raised a colorable challenge to the proposed discipline, the financial ability of the registrant to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

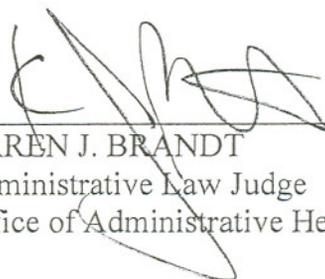
As found in Finding 13, complainant has requested reimbursement of \$2,172.50 in legal costs incurred in the prosecution of this matter. These costs appear to be reasonable in light of the issues presented in this case. Respondent was not successful in getting any of the charges included in the Accusation dismissed. He did not raise a colorable challenge to the level of proposed discipline. At hearing, respondent asserted that he could only pay these costs if he were able to make arrangements with the Board for their payment. Based upon all the factors set forth in *Zuckerman*, \$2,172.50 is a reasonable amount of costs to be charged against respondent. Such costs shall not be due and payable unless and until respondent applies for reinstatement of his registration.

ORDER

1. Associate Clinical Social Worker Registration No. ASW 16190 issued to respondent Caleb Ola Aleru is revoked.

2. Respondent shall pay to the Board of Behavioral Sciences \$2,172.50 as its reasonable costs of investigation and enforcement in this case. This amount shall not be due and payable unless and until respondent applies for reinstatement of his registration.

DATED: January 11, 2008



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

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7 **Attorneys for Complainant**

8
9 BEFORE THE
10 BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation) No. AS-2007-299
13 Against:)
14 CALEB OLA ALERU) **ACCUSATION**
526 E. Barstow #105)
15 Fresno, CA 93710)
16 Associate Clinical Social Worker)
Registration No. ASW 16190)
17 Respondent.)
18

19 Complainant, Paul Riches, alleges as follows:

20 1. Complainant is the Executive Officer of the Board of Behavioral
21 Sciences, Department of Consumer Affairs, State of California ("Board"), and makes and files
22 this Accusation in his official capacity.

23 **I.**

24 **LICENSE INFORMATION**

25 2. On October 23, 2003, the Board issued to Caleb Ola Aleru, Associate
26 Clinical Social Worker, Registration No. ASW 16190, allowing Mr. Aleru to practice as an
27 associate clinical social worker ("ASW") in the State of California.

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2 On October 31, 2006, Mr. Aleru's ("Respondent") Registration No. ASW 16190
3 expired due to non-payment of renewal fees, and was subsequently renewed on March 5, 2007.
4 Mr. Aleru's Registration No. ASW 16190 will expire on October 31, 2007, unless renewed.

5 **II.**

6 **PAST LICENSE HISTORY**

7 3. On November 23, 1993, Respondent submitted an Application for
8 Registration as an Associated Clinical Social Worker to the Board, which was signed under
9 penalty of perjury, attesting that all the answers were true and correct. Respondent checked the
10 "NO" box with respect to the following question: "HAVE YOU EVER BEEN CONVICTED
11 OF OR PLED GUILTY OR NOLO CONTENDERE TO ANY MISDEMEANOR OR
12 FELONY?" Respondent's answer was untrue as fingerprinting revealed convictions in 1980
13 and 1984 for driving under the influence of alcohol. Accordingly, Respondent's application
14 was re-reviewed as investigation revealed the prior convictions.

15 4. On December 1, 1993, the Board issued to Respondent, Associate
16 Clinical Social Worker, Registration No. ASW 4954, allowing Mr. Aleru to practice as an
17 associate clinical social worker in the State of California. On December 31, 1999, Mr. Aleru's
18 Registration No. ASW 4954 expired and was cancelled.

19 5. On July 27, 1999, Respondent submitted an application for license as a
20 licensed clinical social worker to the Board. The application was denied, Respondent filed an
21 appeal, and a statement of issues, entitled, *In the Matter of the Statement of Issues Against:*
22 *Caleb O. Aleru*, Case No. AS-2000-168, OAH No. N-2000080067, was filed on July 18, 2000.
23 Thereafter, an administrative hearing was held on September 28, 2000, and the denial was
24 upheld pursuant to Business and Professions Code section 480(a), in conjunction with sections
25 4996.2, 4992.3(a), and 4992.3(c), based upon Respondent's multiple convictions for driving
26 under the influence of alcohol and lack of rehabilitation. The decision became effective on
27 February 15, 2001.

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III.

RELEVANT STATUTES

6. Business and Professions Code section 4991 *et. seq.*, known as the Clinical Social Worker Practice Act, regulates the practice of social workers. Business and Professions Code section 4996.18 pertains to the registration of associate clinical social workers.

7. Business and Professions Code section 4992.3, states in pertinent part the following:

§ 4992.3 Unprofessional conduct; effect on licensee or registrant

The board may refuse to issue a registration or a license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of *nolo contendere* made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or to the extent that the use

1 impairs the ability of the person applying for a registration or
2 license or holding a registration or license to conduct with safety
3 to the public the practice authorized by the registration or license,
4 or the conviction of more than one misdemeanor or any felony
5 involving the use, consumption, or self-administration of any of
6 the substances referred to in this subdivision, or any combination
7 thereof. . . .

8 8. Title 16 of the California Code of Regulations, section 1812, states as
9 follows:

10 **§ 1812. Substantial Relationship Criteria.**

11 For purposes of denial, suspension, or revocation of a license or
12 registration pursuant to Division 1.5 (commencing with Section
13 475) of the Code, a crime or act shall be considered to be
14 substantially related to the qualifications, functions or duties of a
15 person holding a license under Chapter 17 of Division 3 and
16 Chapter 4 of Part 3 of Division 7 of the Code if to a substantial
17 degree it evidences present or potential unfitness of a person
18 holding a license to perform the functions authorized by his or her
19 license in a manner consistent with the public health, safety or
20 welfare.

21 9. Business and Professions Code section 118, subsection (b) provides that
22 an expired license shall not deprive the board of its authority to institute a disciplinary
23 proceeding against the license.

24 10. Under Business and Professions Code section 125.3, the Board may
25 request the administrative law judge to direct a licentiate found to have committed a violation
26 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case.

28 **IV.**

GENERAL BACKGROUND

11. In 1980 and 1984, Respondent was convicted for driving under the
influence of alcohol.

12. On June 23, 1995, in the Municipal Court, Fresno Judicial District,
County of Fresno, California, in the case entitled, *People v. Caleb Aleru*, Case No. T95003427-
2, Respondent was convicted for violating Vehicle Code section 23152(b) [driving under the

1 more than one conviction "involving the use, consumption, or self-administration" of alcohol.

2 Said conduct includes the following:

- 3 a. On January 17, 2007, in the case entitled, *People v. Caleb Aleru*, Case
4 No. MO6922786, Respondent was convicted for a violation of Vehicle
Code section 23152(b) [driving under the influence of alcohol].
- 5 b. In 1980 and 1984, Respondent was convicted for driving under the
6 influence of alcohol.
- 7 c. On June 23, 1995, in the case entitled, *People v. Caleb Aleru*, Case No.
8 T95003427-2, Respondent was convicted for violating Vehicle Code
9 section 23152(b) [driving under the influence of alcohol].
- 10 d. On December 28, 1998, in the case entitled, *People v. Caleb Aleru*, Case
11 No. T98908468-2, Respondent was convicted for violating Vehicle Code
12 section 23152(b) [driving under the influence of alcohol].

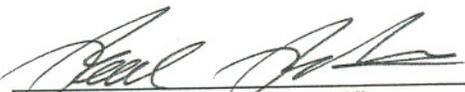
13 V.

14 **PRAYER**

15 WHEREFORE, complainant prays that a hearing be held and that the Board of
16 Behavioral Sciences make its order:

- 17 1. Revoking or suspending Associate Clinical Social Worker, Registration
18 No. ASW 16190 issued to Caleb Ola Aleru;
- 19 2. Ordering Caleb Ola Aleru to pay to the Board its costs in investigating
20 and enforcing the case according to proof at the hearing, pursuant to Business and Professions
21 Code section 125.3.
- 22 3. Taking such other and further action as may be deemed proper and
23 appropriate.

24 DATED: July 31, 2007

25 
26 Paul Riches, Executive Officer
27 Board of Behavioral Sciences
28 Department of Consumer Affairs
State of California

Complainant