

IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF BEHAVIORAL HEALTH AND DISABILITY SERVICES

COMPLAINT INVESTIGATION REPORT

PROGRAM: Avery Comprehensive Services
309 Court Avenue, Suite 218
Des Moines, Iowa 50309

LICENSED SERVICES: Adult and Juvenile Substance Use Disorder
Assessment and OWI Evaluation Only Services

COMPLAINT #: **BH-1230-040422**

INVESTIGATOR: Lori Hancock-Muck, Division of Behavioral Health

DATE OF COMPLAINT: April 4, 2022

INVESTIGATION TIMELINE: April 4, 2022 to November 7, 2022

DATE OF REPORT: December 22, 2022

ATTACHED DOCUMENTS: Previous complaints from past five years (BH-1226-072821)

SUMMARY FINDINGS:

Allegation #1: **UNDETERMINED**
Providing licensed substance use disorder treatment services at a non-licensed location.

Additional Findings as a Result of the Investigation:

Finding #1: **UNDETERMINED**
Failure to comply with a previous corrective action plan.

Finding #2: **SUBSTANTIATED**
Providing misleading information to the Department during an investigation.

NATURE OF COMPLAINT:

On April 4, 2022, the Iowa Department of Public Health (Department) received a complaint via a phone call from Gabi Twohey, a former staff person from Avery Comprehensive Services (Avery). Ms. Twohey reported earlier in the week she contacted Avery's Information Technology (IT) company as she was unable to access her electronic work accounts. She reports that she learned from IT that her account had been locked and her employment contract with Avery had been terminated. She reported she wanted to make the Department aware of Mr. Avery's recent behaviors that were concerning to her, including her assertion that Mr. Avery has a contract with Iowa State University (ISU) and has an on-site office at ISU to work with students in the athletic department. She stated

that Mr. Avery would often brag about “how he was the smartest person around” and “has them [Department] in his pocket.” Ms. Twohey stated that Mr. Avery told her “do not talk to [Department surveyors] without him present.”

Ms. Twohey also informed the investigator that she was unaware that a contract did not exist between Avery and the local jail until she was made aware of this from the complaint that was filed against Avery last year (BH-1226-072821). When the investigator asked Ms. Twohey if she knew why Avery did not have a contract with the jail, she stated Mr. Avery did not want to have anything to do with state regulators and “the less we have to do with (Department), the better.”

INVESTIGATION AND FINDINGS:

On April 27, 2022, the investigator sent Mr. Avery an email notifying him that the Department received information alleging he may be providing licensed substance use disorder treatment services at the ISU campus without having the location approved by the Department. Mr. Avery was asked to provide a written response to address the Department’s concerns.

On April 29, 2022, Mr. Avery provided the following response:

“Avery Comprehensive Services (ACS) does not have an office on ISU campus, nor do I provide substance use disorder treatment services at ISU or any other location. I am fortunate to have a myriad of other skill sets that are utilized by twelve different colleges/universities across the country and four NFL teams. Credentials/Skill sets include: 25 years as a licensed coach (football), 25 years as a licensed referee (football basketball track & field), mentoring program coordinator, certified life skills facilitator, co-author of reproductive health curriculum for family planning council of Iowa (male responsibility project), certified cognitive training facilitator, certified real colors trainer (personality temperaments), former Myers Briggs trainer (specializing in predictive index), paid consultant for the Iowa judicial branch (implicit bias in work-based infrastructure, and paid consultant on drug policy development. So, if I am at ISU, other colleges, or the NFL it’s for the other skills sets/ credentials if have, and not to conduct substance abuse treatment services.”

Following Mr. Avery’s written response, the investigator contacted Mark Coberley (Associate Athletics Director for Sports Medicine and Performance at ISU), by phone, to inquire about the contractual services Avery was providing for ISU. Mr. Coberley confirmed that Mr. Avery is paid to “provide substance abuse counseling services for ISU”, and is their “primary counselor for all student athletes.” Mr. Coberley reported that if a student athlete fails a drug test or possibly has a drug problem, Mr. Avery will “assess” the student and provide the counseling services. Mr. Coberley stated that Mr. Avery does not have an assigned office on campus but is able to utilize a designated space that is used for outside providers. Mr. Coberley also reported that ISU utilizes Mr. Avery’s services as opposed to the Student Counseling Services, as the athletes are high profile and need anonymity. He further stated there is a written agreement but did not have that agreement and provided the investigator with an additional ISU contact for obtaining the agreement.

On June 1, 2022, the ISU's contract manager sent the investigator a contract between Avery and ISU. The contract overview was for "substance abuse and OWI assessments of ISU student-athletes as requested by ISU athletics" and specific services included: substance abuse assessments, OWI assessments, and group presentations. In addition to the contract, ISU also sent the investigator the Unit Pricing sheet for Avery which included rates for substance abuse assessment; OWI assessment; family substance abuse consultations; substance abuse education individual session; OWI 12-hour education class; substance abuse education group presentation; substance abuse education workshops; site-visit consultation and follow up (SVSA).

On June 15, 2022, the investigator sent Mr. Avery an additional email informing him that the Department received the contract between his program and ISU. Mr. Avery was informed that the information found in that contract contradicted the information he had previously communicated to the Department, specifically that the contract indicated he had been providing substance use disorder services at the ISU campus at a designated space to provide contracted counseling services. The Department requested Mr. Avery provide a written response to the contradictory information, as Mr. Avery had previously reported on April 29, 2022 that he did not provide substance use disorder treatment services at ISU or any other location.

Mr. Avery responded a few hours later with the following information:

- *The contract I have with ISU indicates that I can bill them for OWI assessments, group presentation, and other assessment but does not indicate that those duties are to be performed on ISU campus nor is it the only thing I can bill for.*
- *The last assessment that was conduct by my organization for ISU was in 2018 and that was conducted at my office at 309 Court Avenue Suite 218 Des Moines Iowa 50309 (the assistant football operations director Justin Cummings-Morrow drove the client to my office waited for the assessment to be completed, and drove the client back to ISU campus).*
- *The services that are provided on-site are life skills, based on the NCTI crossroads cognitive life skills curriculum and subsequent on-site follow up and consultations. The sessions are based on 1 of 12 identified needs (which does not fall under SA/PG licensure requirements). These sessions are billed out \$200 per individual session or block four billing (block four means, I will bill no more or no less than 4hrs of billing time regardless of the number of athletes I see. A deal that was brokered with ISU athletics due to a higher than anticipated volume of "off the field" conduct issues.*
- *So, the accusation I have an off-site substance abuse service office at ISU is false. I can get space at ISU anytime I need it, but its not for substance abuse services, its for a myriad of other things. Thusly anyone implying that I have an office to provide substance services at ISU is incorrect, (see *attachments: I don't believe Kirk Ferentz, Matt Campbell, and myself are discussing SA/PG at an off-site office) *The noted "attachments" included photos of Mr. Avery on the sidelines of ISU football games.*
- *In closing, no one in the athletic dept. really has any idea what I do at ISU (plausible deniability), but everyone else tries real hard to find out. Simply put, I*

fix what's broken and send ISU an invoice. Once again none of what I do on-site at ISU are IDPH SA/PG services.

The investigator asked Mr. Avery if he would be able to provide the Department with a contact at ISU, who would be able to attest to the information provided in his response. Mr. Avery responded, “No one will say too much about what I do either because they have no idea, or they feel it may cost them their job. I do have billing invoices for ISU during the past year that “attest” to the information I provided. I will need you to sign a confidentiality agreement since the billing has nothing to do with SA/PG and does not fall within your purview.”

On July 12, 2022, pursuant to Iowa Code sections 17A.13, 125.15A, 125.17 and 641 Iowa Administrative Code 173.14, the Department issued an administrative subpoena to ISU requesting any documentation of bills, invoices, reimbursements and payments made to Avery under contract with ISU. On July 21, 2022, ISU submitted requested documents, which included a spreadsheet listing monthly invoice amounts but it did not include the details of the services rendered. The investigator emailed ISU’s Associate General Counsel, Brett Lohofener, to request details to the exact services included for the monthly invoices so the Department could determine whether any of the paid services/invoices included Substance Abuse Assessment or OWI Assessment services. Mr. Lohofener informed the investigator that he would contact the Procurement Team to see if that information was available.

On August 16, 2022, Mr. Lohofener provided the investigator with 28 itemized invoices separated out monthly with billing cycles ranging from November 2019 to May 2022. The investigator’s review of the itemized invoices showed a description of “SA Substance Abuse Assessments” for 41 individuals that occurred from December 7-28, 2020. All other invoices were for “Site Visit Consultation and Follow Up Services (SVSA)”. As the investigator was unable to find a detailed description for SVSA, the investigator followed up with Mr. Lohofener to determine what SVSA service included.

On September 13, 2022 Mr. Lohofener responded that SVSA was an acronym for Site Visit – Student Athlete and that “the site visit generally included meeting and counseling student athletes, typically individually but sometimes group.” The investigator asked Mr. Lohofener if “counseling” could include substance use disorder services but he reported he would need to reach out to ISU staff for clarification. On September 28, 2022, Mr. Lohofener provided a final response indicating he had requested clarification from the contracting personnel, but they did not have that level of detail. He further noted “the invoices and statements requested in the subpoena that I have reviewed do not identify the service with exact specificity. I think it has been described as counseling, but I am not sure if that term is being used in a professional/technical sense or more of a coaching/life best practice sense.”

CONCLUSIONS:

Allegation #1:

UNDETERMINED

Providing licensed substance use disorder treatment services at a non-licensed location.

641 IAC 155.17(125, 135) License revision. *A licensee shall submit a written request to the division to revise a license at least 30 days prior to any change of address, executive director, clinical oversight staff, facility, or licensed program service. The division will determine if the requested revision can be approved or if the change is significant enough to require the submission of an application for license renewal by the licensee.*

The allegation that Avery Comprehensive Services was providing licensed substance use disorder treatment services at a non-licensed location was found to be undetermined. The investigator determined that at least 41 substance abuse assessment services were provided by Mr. Avery to ISU students in December 2020, however it is undetermined whether those services were provided on site at ISU or at another location. Mr. Avery has denied any substance use disorder treatment services have been conducted outside of his approved location in Des Moines, however the ISU administrative staff did inform the investigator that a designated office space is provided to external contractors, and Mr. Avery would have access to use this space to conduct contracted services.

Additional Finding #1:

UNDETERMINED

Failure to comply with a previous corrective action plan.

641 IAC 155.11(125, 135) Denial, suspension or revocation of a license. *The committee may suspend or revoke a license for any of the grounds for discipline pursuant to paragraph 155.10(1)"d".*

155.10(1)d. Violation of any of the following grounds for discipline:

(16) Failure to submit an acceptable written corrective action plan or failure to comply with a corrective action plan issued pursuant to rule 641—155.9(125,135) or 641—155.16(125,135).

As the allegation reported in this complaint was similar to the substantiated allegation found in BH-1226-072821, the Department investigated whether Avery Comprehensive Services failed to comply with a previous corrective action plan. For complaint report BH-1226-072821, Mr. Avery had submitted a corrective action plan on December 16, 2021, which included measures for ensuring the program would not provide licensed substance use disorder treatment services at the Polk County Jail, and would only provide services in compliance with Iowa Administrative Code. The investigator was unable to determine whether Mr. Avery was providing licensed substance use disorder treatment services on-site at ISU, and therefore was unable to determine whether the program was in compliance with his previously submitted corrective action plan.

Additional Finding #2:

SUBSTANTIATED

Providing misleading information to the Department during an investigation.

641 IAC 155.11(125, 135) Denial, suspension or revocation of a license. *The committee may suspend or revoke a license for any of the grounds for discipline pursuant to paragraph 155.10(1)"d".*

155.10(1)d. Violation of any of the following grounds for discipline:

(1) Submission of fraudulent or misleading information.

During the course of the investigation, it was determined that Mr. Avery provided misleading information to the Department investigator. In an emailed response to the Department, Mr. Avery provided the following information: “*Avery Comprehensive Services (ACS) does not have an office on ISU campus, nor do I provide substance use disorder treatment services at ISU or any other location.*” The investigator was later informed by ISU’s Associate Athletics Director for Sports Medicine and Performance, that Mr. Avery is paid to “provide substance abuse counseling services for ISU” and is their “primary counselor for all student athletes.” The investigator was also provided with an ISU executed supplier contract for Avery Comprehensive Services to provide contracted substance abuse and OWI assessments for ISU Student-Athletes. Additional itemized ISU invoices showed Mr. Avery was paid for providing at least 41 substance abuse assessments in December 2020. Mr. Avery previously had informed the investigator that “*the last assessment that was conduct by my organization for ISU was in 2018 and that was conducted at my office at 309 Court Avenue Suite 218 Des Moines Iowa 50309.*”

PROGRAM RESPONSE:

Program response is attached.

RECOMMENDATIONS:

The Division recommends that the Iowa Board of Health Substance Abuse/Problem Gambling Program Licensure Committee close this case with a closure letter of warning to Avery Comprehensive Services to notify the licensee that any further violation of Department statutes or administrative rules in the future may result in the filing of disciplinary action against Avery Comprehensive Services, including suspension or revocation of its license.

Responses to Complaint Investigation Report BH-1230-040422.

Additional Finding #2: SUBSTANTIATED Providing misleading information to the Department during an investigation. 641 IAC 155.11(125, 135) Denial, suspension or revocation of a license. The committee may suspend or revoke a license for any of the grounds for discipline pursuant to paragraph 155.10(1)"d". 155.10(1)d. Violation of any of the following grounds for discipline:

Allegation:

(1) Submission of fraudulent or misleading information. 2022 Avery Comprehensive Services 6 | Page During the course of the investigation, it was determined that Mr. Avery provided misleading information to the Department investigator. In an emailed response to the Department, Mr. Avery provided the following information: "Avery Comprehensive Services (ACS) does not have an office on ISU campus, nor do I provide substance use disorder treatment services at ISU or any other location." The investigator was later informed by ISU's Associate Athletics Director for Sports Medicine and Performance, that Mr. Avery is paid to "provide substance abuse counseling services for ISU" and is their "primary counselor for all student athletes."

Response: At no point did I indicate that I have not provided substance abuse assessment **for** ISU staff and athletes in the past, the question posed to me was weather I provided substance abuse assessments **at** ISU or any other facility in Ames, IA or any other place in this world other my registered office (309 court Ave Suite 218 DSM, IA 50309). As I indicated before I do life skills counseling/facilitation for ISU athletes based on the (NCTI Crossroads curriculum in which I am certified). So yes, as indicated before, I provided a myriad of counseling services for ISU all of which I am certified to provide, but at no point did I deny providing substance assessments **for** ISU staff, athletes, or anyone else on God's green earth. I did deny doing assessments **at** ISU or an unauthorized location and that is true..

See below: original email sent to Lori Hancock-Muck 04/29/2022 4:58 pm

Response:

Avery Comprehensive Services (ACS) does not have an office on ISU campus, nor do I provide substance use disorder treatment services at ISU or any other location. I am fortunate to have a myriad of other skill sets that are utilized by twelve different colleges/universities across the country and four NFL teams. Credentials/Skill sets include: 25 years as a licensed coach (football), 25 years as a licensed referee (football basketball track & field), mentoring program coordinator, certified life skills facilitator, co-author of reproductive health curriculum for family planning council of iowa (male responsibility project), certified cognitive training facilitator, certified real colors trainer (personality temperaments), former myers-briggs trainer (specializing in predictive index) , paid consultant for the iowa judicial branch (implicit bias in work-based infrastructure) , and paid consultant on drug policy development. So if I am at ISU, other colleges, or the NFL its for the other skills sets/ credentials if have, and not to conduct substance abuse treatment services."

Allegation:

The investigator was also provided with an ISU executed supplier contract for Avery Comprehensive Services to provide contracted substance abuse and OWI assessments for ISU Student-Athletes. Additional itemized ISU invoices showed Mr. Avery was paid for providing at least 41 substance abuse assessments in December 2020. Mr. Avery previously had informed the investigator that “the last assessment that was conducted by my organization for ISU was in 2018 and that was conducted at my office at 309 Court Avenue Suite 218 Des Moines Iowa 50309.” PROGRAM RESPONSE:

Response: Note for the record; only a few contractors were allowed on ISU Campus from March 15, 2020 until September 1, 2021 due to ISU Covid Protocol. Avery Comprehensive Services were not apart of the “chosen few” so any exchange of services supplied by Avery Comprehensive Services to ISU during that time frame were either virtual or by phone (which gives further insight into the fact that no substance abuse assessment services were conducted at ISU).

Furthermore: it is a fraudulent accusation and a blatant lie that I was paid by ISU for 41 substance abuse assessment conducted in December 2020 at ISU (I have a copy of the billing invoice submitted by email to ISU for December 2020 services). ISU was billed \$2,000 for a total 10 Site Visit Student Athlete Consultation Follow-up (SVSA) contacts (December 2, 9, 16, 23, and 30 in the year 2020). Also, during the month of December 2020 on the dates of the 7, 14, 21, and 28; I consulted (consultation part of SVSA) with ten confidential college football athletes who were considering joining the NCAA College Football Transfer Portal. The time spent with the athletes totaled 40 contact hours, none of which were billed to ISU for payment (no charge was indicated on the invoice). The players were afraid of reprisal from the football program so they wanted the process to remain confidential.

Additionally, on December 15, 2020 a free Substance Abuse Status Report was conducted on a football athlete virtually (reminder the status of my relationship with ISU did not allow for contractors to be on-site during this time frame nor did the status of my SAPG license to conduct an assessment on-site). So since this service was free and a status report, it did not pull up when I put in a query for paid assessments provide to ISU (I believe I was responding to your original email sent 06/15//2022). 2018 was the most recent year to show a paid assessment for an ISU staff or player in the query, thus my response of 2018 in my email was honest. I think the 40 free contacts with the players on NCAA Transfer Portal and the one free Substance Abuse status report is where you arrived at the number of 41 (none of which were paid services). So anyone putting forth that I was paid (for) and conducted 41 substance abuse assessments in December 2020 for ISU is mistaken or flat-out telling a lie! I do have documents and invoices to prove it.

See below: original emails me and Lori Hancock-Muck June 15, 2022 11:42 pm

-----Original Message-----

From: "Hancock-Muck, Lori" <lori.hancock-muck@idph.iowa.gov>
Sent: Wednesday, June 15, 2022 11:42pm
To: averycomprehensiveservices@courtavenuesuites.com
Subject: Re: Inquiry about ISU location and Court Avenue reception staff

Would you be able to provide me with a contact at ISU who could attest to the information you have provided?

On Wed, Jun 15, 2022 at 10:44 PM

<averycomprehensiveservices@courtavenuesuites.com> wrote:

My response to the allegation:

Hi Michael,

I have received additional information that conflicts with your email response below about licensed substance use disorder treatment being conducted at ISU. ISU provided me with a contract agreement between Avery Comprehensive Services along with your agency's pricing list. The contract indicates you are providing licensed substance use disorder treatment services at the ISU campus. I was also informed that although you do not have your own office, you are provided with a designated space to provide contracted counseling services.

Response:

1. The contract that I have with ISU indicates that I can bill them for OWI assessments, group presentations, and other assessment but does not indicate that those duties are to be performed on ISU campus nor is it the only thing I can bill for.

"CONTRACT FOR SUBSTANCE ABUSE AND OWI ASSESSMENTS OF ISU, STUDENT-ATHLETES AS REQUESTED BY ISU ATHLETICS, THE DOLLAR AMOUNT INDICATED IS AN ESTIMATE OF ANNUAL EXPENDITURE AND, DOES NOT COMMIT ISU TO AN ACTUAL AMOUNT OF SPEND. THE ACTUAL AMOUNT, WILL DEPEND ON THE NUMBER OF ASSESSMENTS PERFORMED., PRICING:, SUBSTANCE ABUSE ASSESSMENTS: \$75.00, OWI ASSESSMENTS: \$100.00, GROUP PRESENTATIONS: \$100.00 PER TEN PARTICIPANTS, 1-20 = \$200, 21-30 \$300; 31-40 \$400; 41-50 \$500; 51 +, \$100 PER TEN PARTICIPANT"

2. The last assessment that was conduct by my organization for ISU was in 2018 and that was conducted at my office at 309 Court Avenue Suite 218 Des Moines Iowa 50309 (the assistant football operations director Justin Cummings-Morrow drove the client to my office waited for the assessment to be completed, and drove the client back to ISU campus)

3. The services that are provided on-site are life skills, based on the NCTI crossroads cognitive life skills curriculum and subsequent on-site follow up and consultations. The sessions are based on 1of12 identified needs (which does not fall under SA/PG licensure requirements). These sessions are billed out \$200 per individual session or block four billing (block four means, I will bill no more or no less than 4hrs of billing time regardless of the number of athletes I see. A deal

ACS

Avery Comprehensive Services Inc.

309 Court Ave, Suite 218, Des Moines, IA 50309 • Phone: 515-875-4880 • Fax: 515-875-4881

that was brokered with ISU athletics due to a higher than anticipated volume of "off the field" conduct issues.

4. So the accusation I have an off-site substance abuse service office at ISU is false.

"Our Department received information that you may be providing substance use disorder treatment services at ISU with an office located on the school's campus". I can get space at ISU anytime I need it, but its not for substance abuse services, its for a myriad of other things. Thusly anyone implying that I have an office to provide substance services at ISU is incorrect, (see attachments: I don't believe Kirk Ferentz, Matt Campbell, and myself are discussing SA/PG at an off-site office)

In closing, no one in the athletic dept. really has any idea what I do at ISU (plausible deniability), but everyone else tries real hard to find out. Simply put, I fix what's broken and send ISU an invoice. Once again none of what I do on-site at ISU are IDPH SA/PG services.

Thank You!

In closing, there is no fraudulent or misleading information that has been put forth by me in response to SAPG investigation **BH-1230-040422**. I have been honest, forthright, and very direct in responding to the investigators questions, even when being emailed and asked to respond to questioning at 11:42 pm at night by SAPG investigation staff. I have plenty of documentation to validate my original response to the allegations, and look forward to the opportunity to fully exonerate my company of these malicious and retaliatory accusations.

Therefore,

I am making a formal request to be present at the next available board meeting to refute the allegations of **BH-1230-040422** in person or by legal counsel.

Thank you,



Michael Avery