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Kansas Attorney General's Office
120 SW 10th Avenue, Second Floor
Topeka, KS 66612-1597

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BY:.....

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD

In the Matter of)
)
MICHAEL D. WHITT, LCAC,)
License #437,)
Respondent)
_____)

Case No. 15-CA-022

CONSENT AGREEMENT AND ORDER

NOW, on this 12 day of August, 2015, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board [Board], by and through Assistant Attorney General Marty M. Snyder, by agreement of Michael D. Whitt, LCAC, [Respondent / Licensee] and the Board for the purpose of resolving the above-captioned case.

Licensee hereby acknowledges the following:

1. Michael D. Whitt is, and was at all times relevant, a Licensed Clinical Addictions Counselor within the meaning of the Kansas Addictions Counselor Licensure Act, K.S.A. 65-6607, *et seq.*, and amendments thereto.
2. In August of 2014, the Board opened an investigation of this complaint after receiving an application for reinstatement of Licensee's LCAC license. Information in the application indicated that Licensee may have violated certain statutes and regulations governing unprofessional conduct.
3. The Board conducted an investigation concerning Licensee's alleged violations of statutes and regulations. During the investigation, Licensee was informed of the

concerns. Licensee provided three responses to the Board's concerns of unlicensed practice from November 1, 2013 through November 26, 2013 and his failure to provide required documentation until April of 2014 despite several requests. Licensee admitted that his LCAC license expired October 31, 2013 and that he did not provide complete reinstatement forms and payment to the Board until November 26, 2013 or documentation of his CEUs until April of 2014.

4. As a result of the investigation, the Board finds probable cause that the following facts have been established by a preponderance of the evidence:

- a. Licensee held himself out as a LCAC in Kansas for twenty-six days in November of 2013 and provided addiction counselor services during the four weeks that he did not have a current Kansas LCAC license. Current licensure is required for his addiction counseling practice as well as for the licensed facility.
- b. Despite Board staff's granting reinstatement of his LCAC license on November 26, 2013, Licensee failed to complete submission of paperwork on his required CEUs until April of 2014.
- c. Licensee's LMSW license is not at a clinical level, and he requires supervision during any period of time his LCAC is not current.

5. The Complaint Review Committee of the Board finds that Licensee has violated the following statutes and regulations:

A. K.S.A. 65-6609 – Prohibited acts.

~~(b) On and after September 1, 2011, no person shall engage in the practice of addiction counseling as a clinical addiction counselor or represent that such person is a licensed clinical addiction counselor ... without having first obtained a license as a clinical addiction counselor under the addiction counselor licensure act.~~

B. K.S.A. 65-6615. Licensure action. The Board may refuse to grant licensure to, or may suspend, revoke, condition, limit, qualify or restrict the licensure issued under this Act of any individual who the Board, after an opportunity for a hearing, determines:

(c) has violated a provision of the Addictions Counselor Licensure Act or one or more of the rules and regulations of the Board;

(g) has been found guilty of unprofessional conduct as defined by rules and regulations established by the Board.

C. K.A.R. 102-7-11. Unprofessional Conduct. Each of the following acts shall be considered unprofessional conduct for a ... licensed clinical addiction counselor: by a licensee . . . shall constitute unprofessional conduct:

(a)(5) has practiced the licensee's profession in violation of the laws or regulations that regulate the profession;

(h) failing or refusing to cooperate in a timely manner with any request from the Board for a response, information or assistance with respect to the Board's investigation of any report ... Each person taking longer than 30 days to provide the requested ... information ... shall have the burden of demonstrating that the person has acted in a timely manner;

(ss) practicing addiction counseling after one's license expires;

(tt) using without a license, or continuing to use after a license has expired, any title or abbreviation defined by regulation.

However, Licensee and the Board mutually desire to enter a Consent Agreement and Order in lieu of formal adjudicative proceedings to resolve the report of alleged violations.

WHEREFORE, Licensee waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas Administrative Procedure Act [KAPA] in relation to Case No. 15-CA-022.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Judicial Review Act [KJRA] in relation to Case No.15-CA-022.

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WHEREFORE, Licensee agrees to enter this Consent Agreement and Order on the following terms and conditions:

- (a) Within 45 days of the effective date of this Consent Agreement and Order, Licensee shall contact all clients seen in the period from November 1 through November 26, 2013 in writing, explain that his LCAC license was lapsed during that time and offer a refund of any monies paid by the client or insurance company. He may state that this is an administrative sanction, not necessarily disciplinary.
- (b) Clients may elect not to accept the offered refund. Licensee shall provide written proof of all contact to and from clients to Special Investigator Cindy D'Ercole within 45 days of sending the client contacts.
- (c) Licensee shall be responsible for any costs and expenses incurred in satisfying the terms of this Consent Agreement and Order.
- (d) Evidence of Licensee's breach, violation or failure to comply with any of the conditions could result in a determination that Licensee's Kansas Licensed Clinical Addiction Counselor license should be suspended until such time as Licensee can demonstrate compliance with all terms and conditions of this Consent Agreement and Order to the satisfaction of the Board.
- (e) Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with any condition of this Consent Agreement and Order. In such event, a designee of the Board is authorized to modify or amend this Consent Agreement and Order in writing.

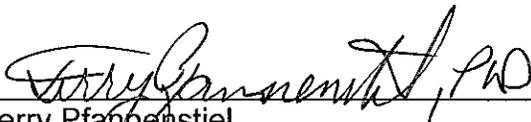
(f) This Consent Agreement and Order constitutes the entire agreement between the Licensee and the Behavioral Sciences Regulatory Board and may be modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

WHEREFORE, Licensee consents to the submission of this Consent Agreement and Order to the Board's Complaint Review Committee and understands that, upon approval by the Complaint Review Committee, this Consent Agreement and Order will become a Final Order of the Board. The Board has authorized the Complaint Review Committee to determine approval of this Consent Agreement and Order.

WHEREFORE, the Board agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to violations of K.S.A. 65-6607, *et seq.* and K.A.R. 102-7-11 as a result of this proceeding.

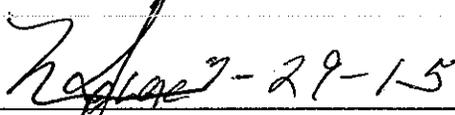
WHEREFORE, the foregoing provisions are consented to, are hereby made the final Order of the Kansas Behavioral Sciences Regulatory Board and become effective on the date indicated in the Certificate of Service below.

IT IS SO ORDERED this 12 day of August, 2015.



Terry Pfannenstiel
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:



Michael D. Whitt, Licensee / Respondent

7-29-15

Date

CERTIFICATE OF SERVICE

This is to certify that on this 12 day of August, 2015, a true and correct copy of the above Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Michael D. Whitt

Michael D. Whitt



and a copy delivered via interoffice mail to:

Marty M. Snyder, Esq.
Assistant Attorney General
Disciplinary Counsel for the Board

Cindy D'Ercole
For the Behavioral Sciences Regulatory Board

2015 AUG 12 10:00 AM