

Marty M. Snyder, KS S.Ct. #11317
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BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In the Matter of)
)
DONNA BOTINELLY, LCMFT)
License #147)
Respondent)

Case No. 15-CT-040

CONSENT AGREEMENT AND ORDER

NOW, on this 27 day of February, 2016, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board [Board], by and through Assistant Attorney General Marty M. Snyder, by agreement with Donna Botinelly [Respondent / Licensee] and the Board for the purpose of resolving the above-captioned case.

Licensee hereby acknowledges the following:

1. Donna Botinelly, at all times relevant, was a Licensed Clinical Marriage and Family Therapist within the meaning of the Kansas Marriage and Family Therapist Licensure Act, K.S.A 65-6401, *et seq.* and amendments thereto. She is also a Licensed Clinical Addictions Counselor within the meaning of the Kansas Addictions Counselor Licensure Act, K.S.A. 65-6601, *et seq.*, and amendments thereto.

2. In August of 2014, the Board received a report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing the practice of marriage and family therapy in Kansas.

3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations. During the investigation, Licensee was informed of the reported information and was given the opportunity to respond to the allegations. She provided three written responses - all dated November 21, 2014 - as well as a copy of a note from one of two 2007 marriage counseling clients [AT] authorizing Licensee and the client's attorney to discuss the counseling that had occurred seven years previously. Licensee claimed that she had written consent to provide an opinion letter for use in the couple's divorce, however no such document was ever produced.

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

a. Licensee saw WT and AT in marriage and family therapy counseling for six months in 2007. Seven years later in 2014, she was contacted by AT regarding their pending divorce. Licensee had not seen either WT or AT in therapy or counseling for more than seven years.

b. AT [only] provided information to Licensee regarding the divorce and asserted unsupported negative information about WT. Licensee did not obtain **any** information from WT or any corroborating information from any source. AT requested Licensee to discuss the couple's 2007 counseling with her divorce attorney, and she provided a written authorization for that discussion.

c. However, Licensee provided a written opinion to the lawyer for use in the divorce proceedings without written consent from either former client. That letter expressed opinions based on information that was more than seven years out of date from WT and new information provided by only one of the former clients. No consent for breach of confidence was ever provided by WT.

d. Licensee was consulted for marriage therapy in 2007, not as a potential forensic witness for one of the parties in a future divorce but as a therapist and counselor for both clients.

e. In providing an opinion letter in divorce proceedings between two former clients, Licensee betrayed the trust of a former client, switched roles without the informed consent of both former clients, breached confidentiality of her former therapy clients and provided a forensic opinion without clearly identifying the extremely limited and one-sided nature of any current information she had regarding WT.

5. The Complaint Review Committee of the Board finds that probable cause exists to believe Licensee has violated the following statutes and regulations:

- A. **K.S.A. 65-6408 (1), (3) and (7).**
- B. **K.S.A. 65-6410(a) – Limitations on disclosure of information.**
- C. **K.A.R. 102-5-12 - Unprofessional Conduct, (b) (10), (19), (20)(C), (44) and (50).**

However, Licensee and the Board mutually desire to enter a Consent Agreement and Order in lieu of 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 in relation to Case No. 15-CT-040.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Judicial Review Act in relation to Case No. 15-CT-040.

WHEREFORE, the Board and Licensee agree that Licensee's LCMFT license shall be suspended for two years from the effective date of this Agreement, but the suspension shall be stayed subject to the following terms and conditions:

(a) Licensee shall obtain three (3) hours of continuing education on ethics, confidentiality and dual relationships to be completed within six (6) months of the effective date of this Agreement and shall provide a copy of her certificate(s) of attendance to the Board's special investigator upon completion. Such continuing education shall be **in addition** to licensure requirements, may not be obtained online and shall be at Licensee's expense.

(b) Licensee shall prepare a 10-page professional paper in APA format on professional licensure boundaries, including the limits on switching from the therapeutic role to the forensic role and resulting confidentiality concerns and submit it to the Board within six (6) months of the effective date of this Agreement.

(c) Licensee shall obtain a Board-approved supervisor licensed at the clinical level and meet with the supervisor for one hour of every 30 hours of client contact. The focus of the supervision shall be ethical practice. Licensee shall provide the supervisor with a copy of this Consent Agreement and Order and shall authorize the supervisor to submit written quarterly supervision reports to the Board's special investigator.

(d) The above terms shall remain in effect for two years from the effective date of this Consent Agreement and Order.

(e) Licensee shall be responsible for any costs and expenses incurred in satisfying the terms of this Consent Agreement and Order.

(f) Evidence of Licensee's breach, violation or failure to comply with any of the conditions could result in suspension of Licensee's LCMFT license 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.

(g) 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.

(h) Licensee understands that a notification of this Consent Agreement and Order shall be provided to any other state licensing board if Licensee is also licensed, registered or certified in another state.

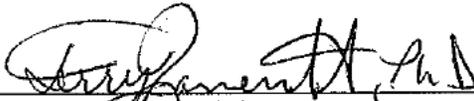
(i) This Consent Agreement and Order constitutes the entire agreement between Licensee and the Board and may be modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

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.A.R. 102-5-12 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 23 day of February, 2016.


Terry Pfannenstiel
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:


Donna Botinelly, LCMFT, LCAC
Licensee

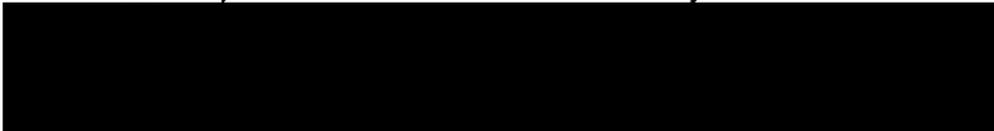
2-11-2016
Date

CERTIFICATE OF SERVICE

This is to certify that on this 29 day of February, 2016, 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:

Donna Botinelly

Donna Botinelly



and a copy sent by building mail to:

Marty M. Snyder
Assistant Attorney General


For the Board