

Marty M. Snyder, Supreme Court #11317
Kansas Attorney General's Office
120 SW 10th St, Second Floor
Topeka, KS 66612-1597
(785) 296-2215

6-2111-0000000000

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD

In the Matter of)
)
JULIANE L. COLBY, LMSW)
Respondent)
_____)

Case No. 08-NL-91

PRELIMINARY CONSENT AGREEMENT AND ORDER

NOW on this 6 day of January, 200~~8~~⁹, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board (Board) by agreement of Juliane L. Colby (Licensee) and the Kansas Behavioral Sciences Regulatory Board for the purpose of resolving the above-captioned case.

FACTS

Licensee hereby acknowledges the following facts:

1. Licensee became an applicant for licensure as a Licensed Masters Social Worker within the meaning of the Kansas Social Workers Licensure Act, K.S.A. 65-6301 *et seq.*, and amendments thereto on March 12, 2007 and became licensed on August 20, 2008.
2. On April 1, 2008, the Board received a report of misconduct that alleged dishonesty and fraudulent conduct by Licensee while she was an applicant for licensure.

3. Licensee was informed about the complaint and given an opportunity to respond to it. She did respond in her letter received August 21, 2008.

4. While employed in a non-licensed position with KVC Behavioral Health Care, Licensee rented a car from Enterprise for her work at KVC. The cost of the rental was billed to KVC. Initially, some car rentals were approved by Licensee's supervisor.

5. Licensee left her employment at KVC on June 30, 2007 but failed to return the rental car. In addition, she billed the agency and was reimbursed in the amount of \$399.75 for personal mileage between June 1 and June 20, 2007, during the time she had the rental car.

6. In October of 2007, KVC learned that Enterprise was still billing for the rental car that Licensee continued to use without authority. ~~KVC~~ ^{Enterprise (MMS per 12-17-08 letter)} left several messages for Licensee, finally stating that the car would be reported stolen as her rental was unauthorized. Licensee returned the car shortly thereafter.

7. KVC filed a police report, and criminal charges of felony theft were filed against Licensee. She states she entered a diversion agreement in April of 2008 in which she admitted her guilt regarding the crimes charged. Terms of the diversion were to repay KVC the full amount billed by Enterprise, to complete a theft offenders program, to write a letter of apology to KVC and to complete 100 hours of community service work. She states she has completed all other terms but is still performing the community service hours.

VIOLATIONS

The Board finds that probable cause exists to believe Licensee, while an applicant for licensure, violated the following statutes and regulations:

- (A) **KSA 65-6311. Grounds for suspension, limitation, revocation or refusal to issue or renew license; procedure.** (a) The board may suspend, limit, revoke, condition or refuse to issue or renew a license of any social worker upon proof that the social worker: (1) has been convicted of a felony ...; (2) has been found guilty of fraud or deceit ...; (4) has been found guilty of unprofessional conduct as defined by rules established by the board....
- (B) **KAR 102-2-7. Unprofessional conduct.** Any of the following acts by a licensee shall constitute unprofessional conduct:
- (w) engaging in professional activities ... involving dishonesty, fraud, deceit or misrepresentation;
- (C) **KSA 21-3701. Theft** (a) (1) obtaining or exerting unauthorized control over property and (2) obtaining by deception control over property;

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. 08-NL-91.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions in relation to Case No. 08-NL-91.

WHEREFORE, Licensee consents to the following interim conditions:

(a) Within ten days of the effective date of this Agreement, Licensee shall furnish to the Board office a copy of her diversion agreement and written confirmation of completion of the terms of the diversion agreement or the current status if incomplete;

(b) Within ten days of the effective date of this Agreement, Licensee shall furnish to the Board office a written statement describing where she is working now, what her job responsibilities are and the identity of her supervisor;

(c) Within ten days of the effective date of this Agreement, Licensee shall contact Dr. Scott Stacey or Dr. Peter Graham with Acumen Assessments and arrange for an evaluation of her misconduct identified in this Agreement with a focus on whether her behavior was likely due to a personality disorder or was more situational and unlikely to recur. The report should contain recommendations on Licensee's ability to practice social work competently and professionally with or without specific conditions or restrictions.

(d) Licensee shall cooperate with the evaluation and shall authorize the evaluators to send a complete copy of the evaluation to the Board upon completion;

(e) Further terms and conditions of practice if any shall be negotiated by Licensee and the Complaint Review Committee following review of the evaluation. If no agreement is reached, this matter shall proceed to formal disciplinary hearing.

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

(g) Evidence of Licensee's breach, violation or failure to comply with any of the conditions will result in a hearing, with notice and opportunity to be heard, to determine whether Licensee has in fact breached, violated or failed to comply with any conditions. Upon determination at such hearing that Licensee has breached, violated or failed to comply with any condition, Licensee understands and agrees that her license shall 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.

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

(i) 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.

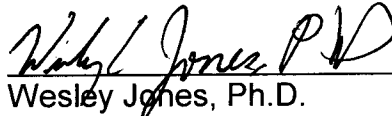
(j) This Consent Agreement and Order constitutes the entire agreement between the Licensee and the Behavioral Sciences Regulatory Board and may be modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

WHEREFORE, Licensee consents to the submission of this Consent Agreement and Order to the Board's Complaint Review Committee and understands that, upon approval of the Complaint Review Committee, this Consent Agreement and Order will become a Preliminary 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. 65-6311 as defined by K.A.R. 102-2-7 as a result of this proceeding until full review of the evaluation.


WHEREFORE, the foregoing provisions are consented to, are hereby made the Preliminary 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.



Wesley Jones, Ph.D.
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:



Juliane L. Colby, LMSW
Respondent Licensee

12-17-08
Date

APPROVED BY:

Counsel for Respondent

Date

Certificate of Service

This is to certify that on this 9th day of January, 200~~8~~⁹, a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Juliane L. Colby



[counsel]

Roger Scurlock
For the Behavioral Sciences Regulatory Board

the reported information, was given the opportunity to respond to the allegations, and did fully respond to the allegations in a letter received from attorney on August 21, 2008.

4. While employed in a non-licensed position with KVC Behavioral Health Care, Licensee rented a car from Enterprise for her work at KVC. The cost of the rental was billed to KVC. Initially, some car rentals were approved by Licensee's supervisor.

5. Licensee left her employment at KVC on June 30, 2007 but failed to return the rental car. In addition, she billed the agency and was reimbursed in the amount of \$399.75 for personal mileage between June 1 and June 20, 2007, during the time she had the rental car.

6. In October of 2007, KVC learned that Enterprise was still billing for the rental car that Licensee continued to use without authority. Enterprise left several messages for Licensee, finally stating that the car would be reported stolen as her rental was unauthorized. Licensee returned the car shortly thereafter.

7. KVC filed a police report, and criminal charges of felony theft were filed against Licensee. She states she entered a diversion agreement in April of 2008 in which she admitted her guilt regarding the crimes charged. Terms of the diversion were to repay KVC the full amount billed by Enterprise, to complete a theft offenders program, to write a letter of apology to KVC, and to complete 100 hours of community service work. She states she has completed all other terms but is still performing the community service hours.

8. As a result of the investigation, a Preliminary Consent Agreement and Order was entered into between the Board and Licensee on January 6, 2009.

9. The Board finds that Licensee followed the requirements of the Preliminary Consent Agreement and Order.

10. Licensee is not currently employed as a licensed masters social worker, but Licensee wishes to retain her license for future employment possibilities.

11. The Board finds probable cause exists to believe Licensee, while an applicant for licensure, violated the following statutes and regulations:

(A) K.S.A. 65-6311. Grounds for suspension, limitation, revocation or refusal to issue or renew license; procedure.

(a) The board may suspend, limit, revoke, condition or refuse to issue or renew a license of any social worker upon proof that the social worker:

- (1) has been convicted of a felony ...;
- (2) has been found guilty of fraud or deceit ...;
- (4) has been found guilty of unprofessional conduct as defined by rules established by the board....

(B) K.A.R. 102-2-7. Unprofessional conduct. Any of the following acts by a licensee shall constitute unprofessional conduct:

(w) engaging in professional activities ... involving dishonesty, fraud, deceit or misrepresentation;

(C) K.S.A. 21-3701. Theft.

(a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (1) obtaining or exerting unauthorized control over property;
- (2) obtaining by deception control over property.

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. 08-NL-0091.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review in relation to Case No. 08-NL-0091.

WHEREFORE, Licensee consents to continuation of her license under the following conditions:

(a) Licensee shall continue with psychotherapy for a period of time to be determined by her therapist and on the focus recommended by the therapist. The therapist should provide quarterly reports to the Board confirming Licensee's attendance. Licensee shall provide her therapist with a copy of this Consent Agreement and Order.

(b) At such time as Licensee is employed, she shall be supervised by a Board-approved supervisor, with the supervisor providing quarterly reports to the Board. Licensee shall provide the supervisor with a copy of this Consent Agreement and Order. The focus of the supervision shall be on ethical practices and handling stress.

(c) Licensee shall enroll in and successfully complete a college course in moral development and provide proof of completion to the Board.

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

(e) Evidence of Licensee's breach, violation or failure to comply with any of the conditions will result in a hearing, with notice and opportunity to be heard, to determine whether Licensee has in fact breached, violated or failed to comply with any conditions. Upon determination at such hearing that Licensee has breached, violated or failed to comply with any condition, Licensee understands and agrees that her Kansas Licensed Masters Social Worker license could 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.

(f) Licensee acknowledges that proof submitted to the Board by affidavit or other form of competent evidence that Licensee has breached, violated or failed to meet the conditions of this Consent Agreement and Order shall be good and sufficient evidence to support an alleged violation of breach, violation or non-compliance.

(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) If the Board does not approve this Consent Agreement and Order, Licensee waives any right she may have to object to the composition of any subsequent hearing panel due to hearing panel members having knowledge of matters contained within this Consent Agreement and Order.

(j) 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.S.A. 65-6311, K.A.R. 102-2-7, and K.S.A. 21-3701 as a result of this proceeding.

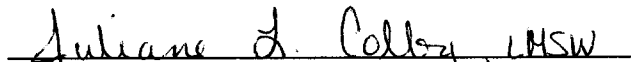
WHEREFORE, the foregoing provisions are consented to, are hereby made the final Order of the Kansas Behavioral Sciences Regulatory Board, and become effective on the date indicated in the Certificate of Service below.

IT IS SO ORDERED.



WESLEY JONES, Ph.D.
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:

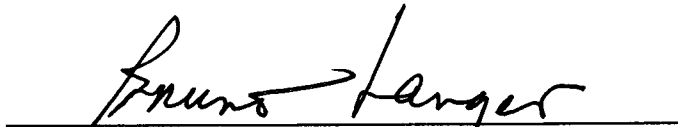

JULIANE L. COLBY, LMSW
Licensee

10-26-09
Date

CERTIFICATE OF SERVICE

This is to certify that on this 10th day of November, 2009, a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Juliane L. Colby



For the Behavioral Sciences Regulatory Board