

Marty M. Snyder, KS S.C. #11317
Assistant Attorney General
120 SW 10th Avenue, Second Floor
Topeka, KS 66612-1597

**BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD
712 South Kansas Avenue
Topeka, KS 66603-3817**

In the Matter of)
)
IRVIN R. PENNER, LSCSW)
License #0159,)
Respondent/Licensee)
_____)

Case No. 09-CS-0091

CONSENT AGREEMENT AND ORDER

NOW, on this 28 day of June, 2010, 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 Irvin R. Penner (Respondent/Licensee) and the Board for the purpose of resolving the above-captioned case.

Licensee hereby acknowledges the following:

1. Irvin R. Penner, Respondent/Licensee, at all times relevant, was a Licensed Specialist Clinical Social Worker within the meaning of the Kansas Social Workers Licensure Act, K.S.A. 65-6301 *et seq.*, and amendments thereto.
2. In January of 2009, the Board received a report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing the practice of social work related to his job as a Licensed Specialist Clinical Social Worker.

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. Licensee did respond by letters dated March 21, 2009 and, after further request for information from the Board, January 26, 2010.

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

a. In 2005 Licensee was retained by the [REDACTED] to conduct a home study for the purpose of adopting an infant. He was not retained to provide any mental health treatment or therapy. They met face-to-face on three occasions: August 2005 for the home study, November 2005 when Licensee delivered the completed home study, and September 2005 when they met with a prospective birth mother at Licensee's office.

b. However, Licensee billed the [REDACTED] health insurance carrier for counseling for anxiety associated with the adoption process on at least seven occasions and was paid based on those billings. When the [REDACTED] informed their insurance company that no mental health counseling was provided and that all contacts with Licensee were connected with an adoption home study, the insurance company reversed approval of the charges and sought reimbursement from Licensee. Licensee admits he has no office records that would document any therapy consultations.

c. Between 2005 and 2008, the [REDACTED] learned after the fact that Licensee had placed their signatures on documents associated with the adoption application. He admitted to them that he had signed the KBI document but failed

to inform them regarding the KDHE release forms. There is no evidence that the [REDACTED] gave Licensee their verbal or written consent to place their signatures on adoption documents.

d. In addition, Licensee failed to make his business relationship with SDI, the adoption agency, clear to the [REDACTED]. He failed to return numerous telephone calls and emails from the [REDACTED] inquiring about the status of the adoption. He failed to generate or preserve records of his professional contacts with the [REDACTED].

e. The Board does not find that the [REDACTED] adoptions fell through due to any fault of Licensee and does not find that the \$40,000 expended by the [REDACTED] for the prospective adoptions was lost due to any fault of Licensee.

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

A. K.A.R. 102-2-7. Unprofessional Conduct. Any of the following acts by a licensee or an applicant for a social work license shall constitute unprofessional conduct:

(n) failing to provide each client with a description of what the client can expect in the way of services, consultation, reports, fees, billing, therapeutic regimen, or schedule, or failing to reasonably comply with these descriptions;

(t) failing to obtain written, informed consent from each client, or the client's legal representative or representatives, before performing any of these actions:

(3) releasing information concerning a client to a third party, except as required or permitted by law;

(w) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(ii) if the social worker is the owner of the records, failing to maintain for each client a record that conforms to ... minimal standards;

(qq) if the licensee is the owner or custodian of client records, failing to retain those records for at least two years after the date of termination of the professional relationship, unless otherwise provided by law.

B. 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:

(2) has been found guilty of fraud or deceit in connection with services rendered as a social worker or in establishing needed qualifications under this act;

(4) has been found guilty of unprofessional conduct as defined by rules established by the board;

(6) has been found guilty of negligence or wrongful actions in the performance of duties.

However, Respondent/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, Respondent/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. 09-CS-0091.

WHEREFORE, Respondent/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. 09-CS-0091.

WHEREFORE, the Board and Licensee agree to the following terms and conditions:

(a) Respondent/Licensee shall begin individual supervision with a Board-approved supervisor within 30 days of the date on the certificate of service of this

Consent Agreement and Order. Licensee shall meet with his supervisor two hours for every 40 hours of clinical practice, with the focus of the supervision on following Behavioral Sciences Regulatory Board regulations regarding record keeping, billing procedures, informed consent, and insurance billings. Respondent/Licensee shall provide a copy of the consent agreement to the supervisor and authorize the supervisor to provide quarterly reports to Bruno Langer, Special Investigator for the Board, for a period of one year.

(b) Respondent/Licensee is assessed a fine of \$1,000.00, to be paid to the Board within 60 days of the effective date of this Agreement.

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

(d) Evidence of Respondent/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 Respondent/Licensee has in fact breached, violated or failed to comply with any conditions. Upon determination at such hearing that Respondent/Licensee has breached, violated or failed to comply with any condition, Respondent/Licensee understands and agrees that his Kansas Licensed Specialist Clinical Social Worker license could be suspended until such time as Respondent/Licensee can demonstrate compliance with all terms and conditions of this Consent Agreement and Order to the satisfaction of the Board.

(e) Respondent/Licensee acknowledges that proof submitted to the Board by affidavit or other form of competent evidence that Respondent/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.

(f) Respondent/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.

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

(h) If the Board does not approve this Consent Agreement and Order, Respondent/Licensee waives any right he 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.

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

WHEREFORE, Respondent/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 Respondent/Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Respondent/Licensee in relation to violations of K.A.R. 102-2-7 and K.S.A. 65-6311 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 C Jones, Ph.D.

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

APPROVED AND CONSENTED TO:

Irvin R. Penner, LSCSW

Irvin R. Penner, LSCSW
Respondent/Licensee

6-15-10

Date

Martin W. Bauer

Martin W. Bauer
Counsel for Respondent

6/19/10

Date

CERTIFICATE OF SERVICE

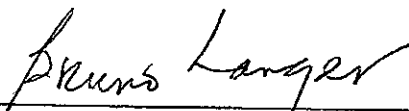
This is to certify that on this 1st day of July, 2010, a true and correct copy of the above Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Martin W. Bauer, Esq.
Martin Pringle
100 North Broadway, Suite 500
Wichita, KS 67202

Irvin R. Penner



Marty M. Snyder, Esq.
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612



For the Behavioral Sciences Regulatory Board

January 14, 2011

Irvin R. Penner, LSCSW

Re: Consent Agreement and Order 09-CS-0091
Final Disposition

Dear Mr. Penner:

I find that has been no evidence presented that there has been a willful breach, violation or failure to comply with any of the conditions of the Consent Agreement and Order; therefore, it is the determination of the board that all conditions set-forth in the said Consent Agreement and order be lifted, the case be closed without further consideration and the licensee be deemed in good standing with the Board.

You are again unconditionally licensed as a Licensed Clinical Specialist Social Worker. Thank you for your cooperation in this matter.

On behalf of the Behavioral Sciences Regulatory Board,

Bruno Langer
Special Investigator

cc: Michael Keller, LSCSW