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Kansas Attorney General's Office  
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Topeka, KS 66612-1597  
(785) 296-2215

**BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD**

<b>In the Matter of</b>	)	
	)	
<b>DAVID T. BARKER,</b>	)	<b>Case No. 10-LC-0017</b>
<b>LCPC #175</b>	)	
_____	)	

**CONSENT AGREEMENT AND ORDER**

NOW, on this 28 day of December, 2009, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board (Board) by agreement of David T. Barker (Licensee) and the Kansas Behavioral Sciences Regulatory Board for the purpose of resolving the above-captioned case.

**FACTS**

Licensee hereby acknowledges the following facts which the Board finds have been established by clear and convincing evidence:

1. David T. Barker is currently and, at all times relevant, has been a Licensed Clinical Professional Counselor within the meaning of K.S.A. 65-5801, Professional Counselors Licensure Act, and amendments thereto.
2. On or about August 19, 2009, the Board received a self-report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing unprofessional conduct.

3. The Committee 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. A response letter dated August 21, 2009, was received from Licensee. Licensee and his counsel Brian Russell appeared before the Committee on November 9, 2009.
4. As a result of the investigation, the Board finds probable cause to believe the following facts:
  - a. In the fall of 2008, a married client, with whom Licensee had worked for approximately a year, shared that she was very attracted to Licensee. After discussion, Licensee and the client agreed to terminate their work together, and the client was referred to a colleague of Licensee.
  - b. At the client's last session with Licensee, the client reported that she had researched the therapist/client relationships and Licensee's ethical requirements and was aware that Licensee could not have a relationship with the client for two years after termination of their professional relationship. The client asked if it would be possible after two years were up, and Licensee said yes.
  - c. Licensee and the client remained in phone contact during the client's transition to her new therapist. At one point, the client asked for and Licensee gave her his cell phone number.
  - d. In January 2009, Licensee and the client met at Licensee's office. They hugged and kissed but mostly talked.
  - e. They met again in February 2009 at Licensee's house and had sexual contact but no intercourse. Also in February, Licensee and the client took an overnight trip out of town. They continued to talk on the phone and met a few times for a few

minutes in Licensee's office. There was sexual contact during some of those times.

f. In March 2009, at the client's request, Licensee scheduled three counseling sessions with the client. There was sexual contact after one session, and Licensee set a boundary that there could be no more sexual contact in the office.

g. In April 2009, Licensee and the client continued phone contact and had sexual intercourse. The client said she would not tell her therapist about the relationship and jeopardize Licensee's license.

h. In May 2009, Licensee made an appointment with the client's therapist and disclosed the relationship. The therapist advised Licensee to end the relationship. Licensee ceased contact with the client. He did not return her phone calls and contacted the client's therapist to advise that the client had called him.

i. In August 2009, Licensee answered a call on his cell phone from the client. They met at Licensee's house, talked and had sex. They continued to talk on the phone and met again several days later and had sex.

j. On August 11, 2009, the client's therapist called Licensee to report that the client had told the therapist about the renewed relationship and advised Licensee to report his actions to BSRB. Licensee self-reported his actions on August 19, 2009.

## **VIOLATIONS**

The Board finds that probable cause exists to believe that Licensee, while a Licensed Clinical Professional Counselor, violated the following regulations:

### **K.A.R. 102-3-12a. Unprofessional Conduct.**

(b) Any of the following acts by a...licensed clinical professional counselor...shall constitute unprofessional conduct:

(25) making sexual advances toward or engaging in physical intimacies or sexual

activities with one's client...;

(26) making sexual advances toward, engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past 24 months, has been one's client.

However, Licensee and the Board mutually desire to enter a Consent Agreement and Order .

WHEREFORE, Licensee consents to the following conditions placed upon his License:

a. Licensee will participate in weekly therapy sessions with a Board-approved therapist for twelve months with quarterly attendance and progress reports provided to the Board. The focus shall be upon harmful dual relationships, transference and therapist-client boundaries. Recommendation by the therapist for a longer or shorter term of therapy will be considered by the Committee. Licensee shall provide a copy of the Acumen evaluation and this Consent Agreement and Order to his therapist.

b. Licensee will have weekly supervision meetings with a Board-approved supervisor for twelve months with quarterly attendance and progress reports provided to the Board. The focus shall be upon harmful dual relationships, transference and therapist-client boundaries. Recommendation by the supervisor for a longer or shorter term of supervision will be considered by the Committee. Licensee shall provide a copy of the Acumen evaluation and this Consent Agreement and Order to his supervisor.

c. Licensee shall draft an informed consent form to be provided to female clients that specifies the parameters of counseling, covering telephone calls, meetings outside the office, office meetings and any other therapy formats used. The form shall explicitly inform clients that romantic feelings sometimes occur during the course of therapy and how boundary issues, transference, appropriate responses and dual relationships will be handled. The form shall be provided to the Board within thirty days of the effective date of this Consent Agreement and Order for review. The

approved form shall be furnished to every current and new female client during the term of this Consent Agreement and Order.

d. Licensee shall have no contact by any means during the term of this Consent Agreement and Order with the former client with whom Licensee had a romantic relationship.

e. Licensee shall be responsible for any costs 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 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 condition. Upon determination at such hearing that Licensee has breached, violated or failed to comply with any condition, Licensee understands and agrees that his 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.

g. Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status that 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. This Consent Agreement and Order constitutes the entire preliminary 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 will become an Order of the Board. The Board has authorized the Complaint Review Committee to determine approval of this Consent Agreement.

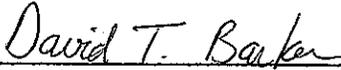
WHEREFORE, the Board further agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to violations of K.A.R. 102-3-12a as a result of this proceeding.

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

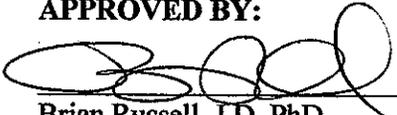
  
Wesley Jones, Ph.D.  
Chair, Complaint Review Committee

**APPROVED AND CONSENTED TO:**

  
David T. Barker, Licensee

12/15/09  
Date

**APPROVED BY:**

  
Brian Russell, J.D., Ph.D.  
Counsel for Respondent Licensee

12/19/09  
Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 30<sup>th</sup> day of December, 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:

David T. Barker



Dr. Brian Russell, Esq.  
3601 Clinton Parkway, B-306  
Lawrence, KS 66047

Marty M. Snyder  
Kansas Attorney General's Office by building mail

  
For the Behavioral Sciences Regulatory Board