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BY:_____

BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In the Matter of	)	
	)	
LELAND HERMAN,	)	**Case No. 14-AC-079**
LAC #601,	)	
Respondent	)	

CONSENT AGREEMENT AND ORDER

NOW, on this ~~31~~ 19 day of ~~August~~ September, 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 Leland Herman [Respondent / Licensee], ~~by and through counsel Tim Schendt, Esq.~~ (no longer represented - MMS), and the Board for the purpose of resolving the above-captioned case.

Respondent hereby acknowledges the following:

1. Leland Herman, at all times relevant, has been a Licensed Addictions Counselor within the meaning of the Addictions Counselor Licensure Act, K.S.A. 65-6601, *et seq.*, and amendments thereto.

2. On December 30, 2013, the Board received a report of information concerning Respondent's conduct, alleging Respondent may have violated certain statutes and regulations governing the practice of addictions counseling in Kansas.

3. The Board conducted an investigation concerning Respondent's alleged violation of statutes and regulations. During the investigation, Respondent was informed of the reported information and was given the opportunity to respond to the allegations. He supplied information directly and through counsel in a timely manner.

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

a. Based on findings from investigations and site visits, the Kansas Department for Aging and Disability Services [KDADS] served a Notice of Intent to Revoke an Addiction and Prevention Service's [Facility] License. The licensed provider was Respondent and Leland Herman d/b/a A Allied Assessments in Merriam, Kansas. Respondent filed a timely request for hearing.

b. The proposed Revocation was heard by an Administrative Law Judge with the Office of Administrative Hearings. Seven areas of statutory violations were found, and the Initial Order affirmed the KDADS Intent to Revoke the facility's provider license. The violations found included:

(1) Respondent's advertising references to Kansas DUI Resource Center and ABC Assessments - neither is a licensed provider;

(2) files containing blank, missing or incomplete client documentation;

(3) continued deficiencies in client progress notes despite prior noted deficiencies and Corrective Action Plans in 2012 and 2013;

(4) assigning unqualified staff to provide treatment at levels they were not authorized to provide;

(5) inadequate documentation in employee personnel files;

(6) failure to complete client drug and alcohol treatment by missing appointments and spending less than 20 minutes for appointments claimed and billed for one hour – resulting in inadequate evaluations and misleading reports to prosecutors; and

(7) blaming the State and others for Respondent's own failings as an addictions counselor and licensed provider.

5. Respondent requested review of the Initial Order, but review was declined by the KDADS Secretary. Respondent filed a Petition for Judicial Review in Shawnee County District Court. On November 19, 2015, Judge Franklin Theis issued a fifteen-page Memorandum Order and Entry of Judgment also finding numerous violations and affirming the Initial Order of Revocation. That Order has not been appealed.

6. The Board takes notice of the KDADS proceedings set forth above and finds they state probable cause of violations of Kansas statutes and administrative regulations governing Respondent's Addictions Counselor license as set forth below.

7. In addition, the Board finds advertising violations, including the false claim on Respondent's Kansas DUI Resource Center website that an individual held a Kansas license as a Licensed Addictions Counselor as well as the implied claim that the Center and ABC Assessments were licensed Services.

8. The Board further finds that Respondent committed renewal fraud by falsely claiming he had completed his required CEUs when he applied for renewal of his LAC license on August 27, 2013. He failed a random audit and then failed to self-report his violation.

9. The Board finds that Respondent fails to take responsibility for his own misconduct by blaming his circumstances on KDADS personnel, former 'disgruntled' employees, family health concerns and other sources. Respondent failed to refer clients elsewhere when he was unable to conduct evaluations competently.

Conclusions of Law

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

A. K.S.A. 65-6615 (c), (d), (e), (f), (g), (h).

B. K.A.R. 102-7-11-- Unprofessional Conduct.

Each of the following acts shall be considered unprofessional conduct for a licensed addiction counselor:

(f) knowingly aiding or abetting any individual who is not credentialed by the Board to represent that the individual as a person who was or is credentialed by the Board;

(g) failing to recognize, seek intervention and otherwise appropriately respond when one's own personal problems ... interfere with ... professional judgment, professional performance and functioning or the ability to act in the client's best interests;

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

(hh) making or filing a report that one knows to be false, distorted, erroneous, incomplete or misleading;

C. K.A.R. 102-2-8 – Renewal audit.

(d) continuing education hours that a renewal applicant earns after Board receipt of the renewal application form shall not be approved for continuing education credit for the period being audited.

However, Respondent 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 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. 14-AC-079.

WHEREFORE, Respondent 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. 14-AC-079.

WHEREFORE, the Board and Respondent agree that Respondent's LAC license shall be suspended for two years; however, the suspension shall be stayed while Respondent complies with the following terms and conditions:

(a) Once Respondent becomes employed in a position using his LAC license, he shall practice only under the supervision of a board-approved clinical level supervisor and shall meet one hour per week in person for supervision. Focus of the supervision shall be on ethical practice. Respondent shall provide his supervisor with a copy of this Consent Agreement and Order, and the supervisor shall provide quarterly progress reports to the Board's investigator, but immediate contact if there are any problems.

(b) Respondent shall notify the Board's Investigator when he becomes employed using his LAC license and when he changes employment during the next two years of licensed practice.

(c) Respondent shall complete three extra CEU hours in person on ethical practice within six months of the effective date of this Consent Agreement and Order and shall furnish notice of completion to the Investigator.

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

(e) Evidence of Respondent's failure to comply with any of these conditions may result in vacation of the stay of the suspension of Respondent's Kansas Addictions Counselor license until such time as he can demonstrate compliance with all terms and conditions of this Consent Agreement and Order to the satisfaction of the Board.

(f) Respondent acknowledges an affirmative duty to notify the Board's Investigator 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 understands that a notification of this Consent Agreement and Order shall be provided to any other state licensing board if Respondent is also licensed, registered or certified in another state and as otherwise required by law.

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

WHEREFORE, Respondent 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 complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to violations of K.S.A. 65-6615 and K.A.R. 102-7-8 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 12th day of September, 2016.

Terry Pfannenstiel, Ph.D., LCP, LCMFT
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:

Leland Herman, LAC
Licensee / Respondent

8-31-16
Date

REVIEWED BY: (no longer represented - MMS)

Timothy D. Schendt, Esq.
Counsel for Licensee / Respondent

Date

CERTIFICATE OF SERVICE

This is to certify that on this 19 day of September, 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:

Leland Herman
[redacted]

Timothy D. Schendt, Esq.
5501 Foxridge Drive
Merriam, KS 66202

and emailed to: lelandeherman5757@gmail.com

and a copy sent by building mail to:

Marty M. Snyder
Assistant Attorney General

For the Board