

BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

IN THE MATTER OF )

Sara Minges, )  
LPC License #1961, )

Licensee )

BSRB Case Nos. 15-PC-0006  
15-PC-0043  
15-PC-0101  
16-PC-0054

OAH Case No. 18BS0001

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Pursuant to K.S.A. 77-527

FINAL ORDER

On September 17, 2018, the above-referenced matter comes before the Kansas Behavioral Sciences Regulatory Board for consideration of the Petition for Review of the Initial Order and for Stay of Effectiveness of Initial Order, or, in the Alternative, Final Order filed by Licensee, by and through her attorney, John G. Schultz.

The Board has delegated to Board members Kathy Armstrong, Jill Craven, Larry Salmans, and Deb Stidham its authority as Agency Head to review this initial order and render a final order thereon.

The Board takes administrative notice of the agency file in the above captioned matters. The Board considers the Compliant Review Committee (CRC) Petition in Discipline, the Licensee's Answer to the Petition in Discipline, the Initial Order granting the Petition in Discipline, the Licensee's Petition for Review of Initial Order and for Stay of Effectiveness of Initial Order, or, in the Alternative, Final Order; the CRC's Responses to Licensee's Petition for Review of Initial Order and Motion for Stay of Effectiveness of Initial Order, or, in the Alternative, Final Order; the Order Granting Review and Stay, Licensee in the Licensee's Memorandum of Law in Response to June 22, 2018 Order Granting Review and Stay, Petitioner's Brief on Board Review of Initial Order, the agency record designated by the parties and the briefs filed by the parties.

After reviewing records listed above, the Petition for Review is granted in part and denied in part based upon the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Board adopts and affirms the findings of fact in the Initial Order and incorporates them herein.
2. The CRC filed a Petition in Discipline against Licensee's license to practice as a Licensed Professional Counselor on August 1, 2017. The Petition in Discipline specifically alleged Licensee committed four counts of unprofessional conduct. Count 1 alleged a violation of K.A.R. 102-3-12a(b)(10); Count 2 alleged a violation of K.A.R. 102-3-12a(b)(14); Count 3 alleged a violation of K.A.R. 102-3-12a(b)(38), and Count 4 alleged a violation of K.A.R. 102-3-12a(b)(52).
3. Licensee filed an Answer to Petition in Discipline on February 9, year unknown.

4. On February 26 and 27, 2018, the Presiding Officer at the Office of Administrative Hearings conducted a formal hearing on the Petition in Discipline. The Licensee appeared in person and by her attorney, John G. Schultz. The CRC appeared by and through its attorney, Marty M. Snyder, Assistant Attorney General.
5. The parties presented evidence through documents and testimony. The CRC's witnesses were: Cindy D'Ercole, Board Investigator; the Licensee; and complainants, [REDACTED]. An affidavit by complainant [REDACTED] was admitted because she was unable to testify. The Licensee's witnesses were: Amy Hyken-Lande and David Whitney. The Licensee also testified on her own behalf.
6. The Initial Order suspending Licensee's license was filed on May 24, 2018. The Initial Order found that the following provisions were violated: K.A.R. 102-3-12a(b)(9), (b)(10), (b)(11), (b)(14), (b)(23), (b)(27), (b)(34), (b)(36), (b)(38), (b)(45), and (b)(52).
7. The Licensee timely filed the Petition for Review on June 5, 2018. The Board (not Max Foster, Executive Director as alleged by Licensee in the Licensee's Memorandum of Law in Response to June 22, 2018 Order Granting Review and Stay) issued an Order Granting Review and Stay on June 22, 2018. In the Order, the Board ordered two issues to be briefed by the parties:
  - a. Did the Administrative Law Judge err in finding violations of K.A.R. 102-3-12a(b)(1), (11), (23), (27), and (44) when the CRC did not file these violations in the Petition in Discipline?
  - b. Do the findings of fact and conclusions of law support a finding for violations of K.A.R. 102-3-12a(b)(10), (14), (38), and (52) as filed in the Petition in Discipline; and if so, do the findings of fact and conclusions of law support the sanction imposed?
8. Ms. Minges's brief was timely filed with the Board on or before July 26, 2018 and the CRC's brief was timely filed on or before August 27, 2018.

#### Applicable Law

9. The Board is charged with the responsibility to protect the public health, safety and welfare by regulating the competence to practice as a professional counselor. K.S.A. 65-5801, *et seq.*
10. Pursuant to K.S.A. 65-5809(a)(9), "[t]he board may refuse to issue, renew or reinstate a license, may condition, limit, revoke or suspend a license, may publicly or privately censure a licensee or may impose a fine not to exceed \$1,000 per violation upon a finding that a licensee or an applicant for licensure: . . . has been found to have engaged in unprofessional conduct as defined by applicable rules and regulations adopted by the board."
11. K.A.R. 102-3-12a provides, in pertinent part:
  - (a) Any license may be suspended, limited, conditioned, qualified, restricted, revoked, not issued, or not renewed upon a finding of unprofessional conduct.

(b) Any of the following acts by a licensed professional counselor, a licensed clinical professional counselor, or an applicant for a professional counselor license or a clinical professional counselor license shall constitute unprofessional conduct:

(10) offering to perform or performing professional counseling, assessments, consultations, or referrals clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards;

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

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

(52) practicing professional counseling or clinical professional counseling in an incompetent manner.

12. K.S.A. 74-7507(b), provides, "[i]f an order of the behavioral sciences regulatory board is adverse to a licensee or registrant of the board, the actual costs shall be charged to such person as in ordinary civil actions in the district court. The board shall pay any additional costs and, if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed in accordance with statutes governing taxation of witness fees and costs in the district court."

#### Conclusions of Law

13. We adopt and incorporate herein the conclusion of law and discussion from the Initial Order and find there is sufficient evidence to conclude that Licensee violated K.A.R. 102-3-12a(10).
14. We adopt and incorporate herein the conclusion of law and discussion from the Initial Order and find there is sufficient evidence to conclude that Licensee violated K.A.R. 102-3-12a(14).
15. We adopt and incorporate herein the conclusion of law and discussion from the Initial Order and find there is sufficient evidence to conclude that Licensee violated K.A.R. 102-3-12a(38).
16. We adopt and incorporate herein the conclusion of law and discussion from the Initial Order and find there is sufficient evidence to conclude that Licensee violated K.A.R. 102-3-12a(52).

#### Order

The Board affirms the findings of fact and conclusions of law regarding violations of K.A.R. 102-3-12a(b)(10), (14), (38), and (52). The Board reverses the conclusions in the Initial Order that finds violations of K.A.R. 102-3-12a(b)(9), (11), (23), (27), (34), (36), and (45) because the violations were not charged in the Petition in Discipline. However, the findings of fact regarding these violations, as they relate to the violations cited in the Petition in Discipline, are affirmed.

The Board upholds the suspension of the licensed professional counselor license of Sarah Minges. The Board upholds the order that all legal costs, fees and expenses of the formal hearing be assessed to the licensee.

**IT IS SO ORDERED.**



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Max Foster, Executive Director  
As directed and authorized by the Kansas  
Behavioral Sciences Regulatory Board

#### **NOTICE OF ADMINISTRATIVE RELIEF**

The above Order is a Final Order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 77-528, a party may file with the Board a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

The agency officer who may receive service of a petition for reconsideration or a petition for a stay on behalf of the Board is Max L. Foster, Jr., Executive Director, Kansas Behavioral Sciences Regulatory Board, 700 SW Harrison Street, Suite 420, Topeka, KS 66603.

#### **NOTICE OF JUDICIAL RELIEF**

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The agency officer who may receive service of a petition for judicial review on behalf of the Board is Max L. Foster, Jr., Executive Director, Kansas Behavioral Sciences Regulatory Board, 700 SW Harrison Street, Suite 420, Topeka, KS 66603.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2018, a copy of the above Final Order and Notice of Administrative and Judicial Relief was deposited with the United States Postal Service, postage pre-paid, and addressed to:

John G. Schultz  
Franke Schultz & Mullen, P.C.  
8900 Ward Parkway  
Kansas City, MO 64114  
**Attorney for Licensee**

Hand-delivered to:

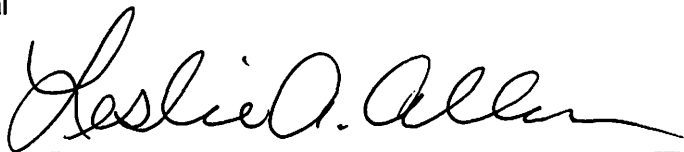
Marty Snyder, Assistant Attorney General  
Office of Attorney General Derek Schmidt  
120 S.W. 10<sup>th</sup> Avenue, Second Floor  
Topeka, KS 66612-1598  
**Disciplinary Counsel**

Original Filed with:

Max L. Foster, Jr., Executive Director  
Kansas Behavioral Sciences Regulatory Board  
700 SW Harrison Street, Suite 420  
Topeka, KS 66603

And a courtesy copy to:

Athena E. Andaya, Deputy Attorney General  
**Legal Counsel**

A handwritten signature in black ink, appearing to read "Leslie A. Allen", written over a horizontal line.

Staff

Kansas Behavioral Sciences Regulatory Board