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BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In The Matter Of)
)
DONNA M. CUNNINGHAM, LBSW) Case No. 21-BS-0122
License #8748)
)
Respondent)
_____))
Pursuant to K.S.A. 77-536

SUMMARY PROCEEDING ORDER

NOW, on this 4 day of April, 2022, the above-captioned matter comes before the Complaint Review Committee of the Kansas Behavioral Sciences Regulatory Board (Board).

FINDINGS OF FACT

The Board finds that the following facts have been established by a preponderance of the evidence:

1. Donna M. Cunningham (“Respondent”) was at all times relevant, a Licensed Bachelor Social Worker (“LBSW”), having been issued LBSW License No. 8748. This license expired on September 30, 2021. Respondent was at all times relevant an LBSW within the meaning of the laws relating to regulation of social workers, K.S.A. 65-6301 *et seq.*

2. On or about June 14, 2021, a Report of Alleged Violation was received by the Board alleging Respondent may have violated certain statues and regulations governing the practice of bachelors level social workers in the State of Kansas. An investigation found the following facts.

3. Respondent was employed at the LaBette Center for Mental Health Services (LCMHS) as a mental health case manager.

4. LCMHS received a complaint that while providing services to one client, Respondent had made comments about other clients. These comments were recorded by the client's family. This recording was provided to LCMHS.

5. On or about May 7, 2021, LCMHS discussed the complaint with Respondent, who originally denied making such statements. The recorded conversation was then played for Respondent. Respondent then stated, "I've had enough of this, I quit." Respondent did leave her employment at LCMHS on this date.

APPLICABLE LAW

6. Pursuant to K.S.A. 77-537(a) of the Kansas Administrative Procedure Act ("KAPA"), a state agency may use summary proceedings, subject to a party's request for a hearing on the order, if:

- (1) The use of those proceedings in the circumstances does not violate any provision of law;
- (2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties;
- (3) based upon an investigation of the facts by the state agency, beyond receipt of the allegations, the state agency believes in good faith that the allegations will be supported to the applicable standard of proof, provided however that an alleged failure to meet the standards set forth in this subsection shall not be subject to immediate judicial review and shall not invalidate any later agency action that has been supported to the applicable standard of proof; and
- (4) the order does not take effect until after the time for requesting a hearing has expired.

7. Pursuant to K.S.A. 65-6302(b): "Social work practice" means the professional activity of helping individuals, groups or communities enhance or restore their capacity for physical, social and economic functioning and the professional application of social work values, principles and techniques in areas such as psychotherapy, social service administration, social

planning, social work consultation and social work research to one or more of the following ends: Helping people obtain tangible services; counseling with individuals, families and groups; helping communities or groups provide or improve social and health services; and participating in relevant social action. The practice of social work requires knowledge of human development and behavior; of social, economic and cultural institutions and forces; and of the interaction of all these factors. Social work practice includes the teaching of practicum courses in social work and includes the diagnosis and treatment of mental disorders as authorized under K.S.A. 65-6306 and 65-6319, and amendments thereto.

8. K.S.A. 65-6311(a)(9): The 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 license has been found to have engaged in unprofessional conduct as defined by applicable rules and regulations adopted by the Board. Specifically:

a. K.A.R. 102-2-7(b)(3): except when the information has been obtained in the context of a confidential relationship, failing to notify the board, within a reasonable period of time, that any of the following conditions apply to any person regulated by the board or applying for a license or registration, including oneself has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for some form of misfeasance, malfeasance, or nonfeasance.

b. K.A.R. 102-2-7(s)(3): revealing information, a confidence, or secret of any client, or failing to protect the confidences, secrets, or information contained in a client's records, except when at least one of these conditions is met releasing information concerning a client to a third party, except as required or permitted by law.

c. K.A.R. 102-2-7(mm): failing to notify the client promptly when termination or interruption of service to the client is anticipated.

d. K.A.R. 102-2-7(oo): abandoning employment under circumstances that seriously impair the delivery of professional care to clients and without providing reasonable notice to the employer.

CONCLUSIONS OF LAW

9. The Board finds that Respondent was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(b)(3), in that Respondent failed to notify the board, within a reasonable period of time, that she quit LCMHS in lieu of disciplinary action related to her malfeasance.


10. In addition, the Board finds that Respondent was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(s)(3), in that Respondent made comments about other clients while providing services to another client.

11. Further, the Board finds that Respondent was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(mm), and K.A.R. 102-2-7(oo), in that Respondent failed to notify her clients of her abandoning her employment.

ORDER

WHEREFORE, based on the above Findings of Fact and Conclusions of Law and pursuant to the authority granted by K.S.A. 65-6311(a) and K.S.A. 77-537, the Complaint Review Committee of behalf of the Board finds that the Kansas LBSW license of Respondent Donna M. Cunningham should be and is hereby **PUBLICALLY CENSORED** for her violations of the Kansas Social Workers Licensure Act.

IT IS SO ORDERED ON THIS 31st DAY OF March, 2022.


Chairperson, Complaint Review Committee
On behalf of the Behavioral Sciences
Regulatory Board

NOTICE OF RELIEF FROM SUMMARY PROCEEDING ORDER

Pursuant to K.S.A. 77-537 and K.S.A. 77-542, this Summary Proceeding Order is subject to your request for a hearing. If you desire a hearing, you must direct a written request for hearing to:

David Fye, Executive Director
Behavioral Sciences Regulatory Board
700 SW Harrison St., Suite 420
Topeka, KS 66603-3929

This written request must be filed within fifteen (15) calendar days from the date indicated in the below Certificate of Service. Pursuant to K.S.A. 77-503(c), the 15-day period begins the day after the date indicated in the Certificate of Service and includes weekends and legal holidays. If the 15th day falls on a Saturday, Sunday, or legal holiday, then the 15-day period runs until 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday. A request is considered "filed" on the date it is received at the Board's office. If a hearing is not requested in the time and manner stated, this Summary Order becomes a final order subject to judicial review. A petition for judicial review should be directed to the above recipient.

CERTIFICATE OF SERVICE

This is to certify that on this 4 day of April, 2022, a true and correct copy of the above and foregoing Summary Proceeding Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Donna M. Cunningham



and by email to: jane.weiler@ag.ks.gov

Jane E. Weiler, Esq.
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Disciplinary Counsel for the Board

Cindy D'Ercole
For the Board