

KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

Eisenhower State Office Building
700 SW Harrison, Suite 420
Topeka, Kansas 66603-3240

In the Matter of

Krystal R. Kershaw
LSCSW #05402

Case No. 22-CS-0179

CONSENT AGREEMENT AND ORDER

Now, on this ¹²~~5~~th day of February, 2024, the above-captioned matter comes before the Complaint Review Committee of the Kansas Behavioral Sciences Regulatory Board ("Board") by agreement of Krystal R. Kershaw ("Licensee") and the Kansas Behavioral Sciences Regulatory Board for the purposes of resolving the above-captioned case.

1. The Board is represented herein by its Counsel, Timothy D. Resner of Frieden & Forbes, LLP, 1414 S.W. Ashworth Place, Suite 201, Topeka, Kansas 66604. Licensee is represented herein by her attorney n/a.

2. The Board is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Social Worker Licensure Act, K.S.A. 65-6321 et seq., and amendments thereto (the "Act"). Pursuant to applicable provisions of the Act and the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq. ("KAPA"), whenever it is established that an applicant and/or licensee has committed any of the acts described in K.S.A. 65-6311(a), the Board may refuse to issue, renew or reinstate a license, and/or revoke, suspend, censure, condition, and/or limit a licensee and/or assess a fine against the applicant and/or licensee in an amount not in excess of \$1,000.00 per violation

3. The Board's Complaint Review Committee has received certain information, has investigated and has determined that there are reasonable grounds to believe that Licensee has committed one or more acts in violation of the Act and/or the Board's Regulations that would justify, pursuant to the provisions of K.S.A. 65-6311(a), the imposition of disciplinary action against her license and the assessment of a civil fine against Licensee in an amount not to exceed \$1,000.00 per violation.

4. Licensee hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board's Complaint Review Committee finds, that:

I. FINDINGS OF FACT

5. Licensee is currently, and was at all times relevant herein, a Licensed Specialist Clinical Social Worker (LSCSW) within the meaning of the Act.

6. On or about May 13, 2022, the Board received a report of alleged violation concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing unprofessional conduct.

7. The Board conducted an investigation concerning Licensee's alleged violations of statutes and regulations. During the investigation, Licensee was informed of the initial complaint and was given the opportunity to respond to the allegations. Licensee's response was received August 15, 2022.

8. Licensee provided remote therapy services to a client from at least February 8, 2022, until February 28, 2022. After the therapy session on February 28, 2022, the client sent multiple messages related to her therapy to Licensee but received no responses from Licensee. It was noted that communication from Licensee to the individual outside of sessions previously was a regular occurrence.

9. On March 14, 2022, the client appeared for a virtual therapy session, but Licensee was not present after the client waited 15 minutes. The client sent a message to licensee concerning the absence but did not receive a message from licensee. The client sent a message to licensee's employer, who responded that they would be investigating the circumstances.

10. On March 15, 2022, Licensee's employer informed the client that Licensee was unavailable and apologized for Licensee's absence, but asked if the individual would like to switch to another therapist.

11. On March 18, 2022, Licensee's employer informed the client that Licensee would be unavailable and apologized for the inconvenience.

12. On May 25, 2022, Investigators for the Board sent a letter to Licensee, requesting a response to the complaint.

13. On July 12, 2022, Licensee had not sent a response to the Investigators, so Investigators for the Board sent a follow-up letter to Licensee, requesting a response to the complaint no later than August 12, 2022.

14. On August 15, 2022, a response was received from Licensee (dated August 9, 2022). Licensee stated she had experienced difficulties receiving payments from her employer and noted that at a certain point, Licensee was waiting for things to be settled with her employer regarding payment before continuing to provide services.

15. Investigators for the BSRB called Licensee on November 14, 2023, and November 16, 2023, with additional clarifying questions, but were unable to leave messages as Licensee's mailbox was full. Investigators sent an e-mail to Licensee on November 16, 2023, noting the repeated attempts to reach Licensee and requesting Licensee call the Board investigators concerning the investigation.

16. On December 2, 2023, a follow-up e-mail was sent by investigators to Licensee, noting the repeated attempts to contact her and that they had not received communication back. Investigators stated that if a response was not received from Licensee by December 23, 2022, her file would be presented to the Board without additional information from Licensee.

II. APPLICABLE LAW

17. K.S.A. 65-6311. Grounds for suspension, limitation, condition, revocation or refusal to issue or renew a license; procedure; licensure of applicant with felony convictions; requirements.

(a) 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:

(9) has been found to have engaged in unprofessional conduct as defined by applicable rules and regulations adopted by the Board.

18. K.A.R. 102-2-7. Unprofessional Conduct

Each of the following acts ... shall be considered unprofessional conduct...:

(h) failing or refusing to cooperate in a timely manner with any request from the board for a response, information that is not obtained in the context of a confidential relationship, or assistance with respect to the board's investigation of any report of an alleged violation filed against oneself or any other applicant or professional who is required to be licensed or registered by the board. Each person taking longer than 30 days to provide the requested response, information, or assistance shall have the burden of demonstrating that the person acted in a timely manner;

(i) offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, and experience and with accepted professional standards for social work;

(mm) failing to notify the client promptly when termination or interruption of service to the client is anticipated;

(nn) failing to seek continuation of service, or abandoning or neglecting a client under or in need of professional care, without making reasonable arrangements for that care; and

(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

Based on the facts stipulated to herein, Licensee is subject to sanction pursuant to K.S.A. 65-6311(a)(9) having been found to have engaged in unprofessional conduct as defined in K.A.R. 102-2-7(h), (i), (mm), (nn) and (oo).

III. AGREEMENT

19. Licensee and Board mutually desire to enter a Consent Agreement and Order ("Agreement") in lieu of adjudicative proceedings at this time.

WHEREFORE, Licensee consents to, and the Board further orders, the following interim conditions:

a. Licensee shall practice only under individual supervision by a clinical level supervisor when employed using her LSCSW license. This supervisor may be her employment supervisor, if qualified. The supervisor must be approved by the Board. There shall be no dual relationship with the supervisor. Licensee shall have weekly one (1) hour meetings with her supervisor that will be conducted either in-person or via interactive tele-video. The focus of the supervision shall include, but be not limited to, obligation to clients, telehealth, and professional standards.

b. Within thirty (30) days of the effective date of this Consent Agreement and Final Order; or if Licensee is not currently working using her LSCSW license and prior to the beginning of using her LSCSW license, Licensee shall submit to the Board's investigator the name of her proposed supervisor.

c. Licensee shall provide a copy of this Consent Agreement to the supervisor and authorize the supervisor to provide written quarterly reports to the Board's Investigator for the one (1) year term of supervision. There shall be a minimum of four (4) quarterly reports (every three (3) months) submitted to the Board's Investigator during this one (1) year supervision timeframe.

d. Licensee shall pay a fine to the Board in the amount of \$500 which may be paid in five (5) equal monthly installments of \$100, with the first installment to be received by the Board no later than the first calendar day of the month following the effective date of this Consent Agreement and Order, and thereafter, Licensee shall cause

the Board to receive the remaining installments by the first calendar day of each subsequent month.

e. Licensee shall present a copy of this Consent Agreement to her present employer.

f. Licensee must notify the Board's Investigator within ten (10) days of a change in her employment and/or address change.

g. Licensee shall be responsible for any costs or expenses incurred in satisfying the terms of the Consent Agreement.

h. In addition to continuing education hours which must be satisfied as part of the requirements to renew a license, Licensee must complete 6 additional continuing education hours with a focus on telehealth and ethical obligations to clients, within 90 days of the effective date of this order.

i. Evidence of Licensee's breach, violation, or failure to comply with any of the above conditions will result in the Board filing a separate Report of Alleged Violation against Licensee, for failure to comply with a lawful order of the Board. Licensee will be provided notice and opportunity to be heard, to determine whether Licensee has in fact breached, violated, or failed to comply with any condition. Licensee understands and agrees that her Licensed Specialist Clinical Social Worker 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.

j. Licensee acknowledges an affirmative duty to notify the Board within ten (10) days of any changes in personal or professional status that would inhibit compliance with any condition of this Consent Agreement and Order.

k. During the time this Consent Agreement and Order is in effect, Licensee shall not serve as a supervisor to any person actively using a license regulated by the Board in a position in which such license is required. In addition, Licensee shall not engage in the provision of clinical supervision to any person attaining supervised experience in preparation for the Board.

l. This Consent Agreement and Order will be reported to other licensing boards, it is public record in the custody of the Board and it can only be modified by a further order of the Board.

m. Licensee shall submit to the Board's investigator at its offices at 700 SW Harrison. Suite 420. Topeka. Kansas, 66603, any and all documents evidencing compliance with the terms and conditions required by this Consent Agreement and Order.

IV. ADDITIONAL STIPULATIONS

20. Licensee agrees that all information in the possession of the Board's Complaint Review Committee, its staff, its investigators and its attorney regarding the matters which led to this disciplinary action, the investigation and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Consent Agreement and Order, with or without the presence of the Licensee or her attorney. In the event that this Consent Agreement and Order is not accepted and approved by the Board, Licensee waives any objection to the Board members' consideration of this Consent Agreement and Order or the information mentioned in the preceding sentence and further waives the disqualification of any Board member, including any right to seek the disqualification of any Board member, based on such Board member's consideration of said document and information.

21. The stipulations and orders contained herein shall not become binding until this Consent Agreement and Order is approved and entered by the Complaint Review Committee. Licensee acknowledges that the approval of the Board's Counsel shall not constitute the approval of the Board or bind the Board to approve this Consent Agreement and Order.

22. Licensee agrees that this Consent Agreement and Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it. Licensee further agrees that the Act referenced in paragraph 2 above is constitutional on its face and as applied in this case.

23. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

24. Licensee acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon her;
- (b) To file a response to the charges;
- (c) To have notice of and participate in a formal adjudicative hearing with the Board or its designee making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and
- (d) To take advantage of all applicable provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

Licensee freely waives these rights and acknowledges that such waiver is made voluntarily and in consideration of avoiding an administrative hearing and the Board's agreement to limit

the action taken against her in accordance with the terms and conditions provided for herein. Licensee also waives all of her rights to seek reconsideration, administrative review and/or judicial review of this Consent Agreement and Order or to otherwise challenge or contest this Consent Agreement and Order in any direct or collateral administrative or judicial proceedings.

25. Licensee acknowledges that she enters into this Consent Agreement and Order freely and voluntarily after consultation or a reasonable opportunity for consultation with counsel of her choosing. Licensee further acknowledges that her representatives have read this Consent Agreement and Order in its entirety, that they understand its legal consequences and that they agree that none of its terms or conditions is unconscionable, arbitrary, capricious or unreasonable.

26. Time is of the essence to this Consent Agreement and Order. Licensee acknowledges and agrees that any violation of this Consent Agreement and Order shall constitute a violation of a lawful Board order pursuant to K.S.A. 65-6311(a)(11) and grounds for further disciplinary action against her. The pendency of any disciplinary action arising out of any alleged violation of this Consent Agreement and Order shall not affect the obligation of Licensee to comply with all terms and conditions of this Consent Agreement and Order.

27. This Consent Agreement and Order constitutes the entire and final agreement of the parties. In the event any provision of this Consent Agreement and Order is determined to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Consent Agreement and Order shall be given full force and effect.

28. Upon execution by all parties and entry as an order by the Board, this Consent Agreement and Order shall be a public record in the custody of the Board.

29. This Consent Agreement and Order shall become effective on the day it is approved by the signature of the Complaint Review Committee's Chairperson or designee below.

30. Licensee acknowledges that she has been advised by the Board that after the Consent Agreement and Order becomes effective Licensee has the right within 15 days after service of this Consent Agreement and Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Consent Agreement and Order to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, which must be served on the Kansas Behavioral Sciences Regulatory Board by serving David Fye, its Executive Director, at 700 SW Harrison, Suite 420, Topeka, KS 66603-3240. However, Licensee expressly waives these rights.

31. In accordance with K.S.A. 77-531(a)(3), Licensees consent to service of this Consent Agreement and Order via electronic mail, addressed to Licensee at: kryskershawlscsw@gmail.com.

WHEREFORE, the Board further agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further action against Licensee in relation to violations of K.S.A. 65-6311(a)(9), K.A.R. 102-2-7 as a result of this proceeding until the Board has reviewed the evaluation.

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.



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

APPROVED AND CONSENTED TO:



Krystal R. Kershaw, Licensee

2-5-24

Date

CERTIFICATE OF SERVICE

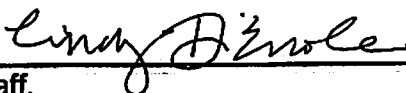
This is to certify that on this 12 day of February, 2024, a true and correct copy of the above and foregoing Consent Agreement Order was served via electronic mail only, addressed to:

Krystal R. Kershaw



And by e-mail to:

Timothy D. Resner
Frieden & Forbes, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
tresner@fflawllp.com
*Counsel for the Board of the Behavioral
Sciences Regulatory Board*



Staff,
Kansas Behavioral Sciences Regulatory Board