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BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD

712 Kansas Avenue
Topeka, Kansas 66603-3817
(913) 296-3240

In the Matter of)

DANIEL CLAIBORN, Ph.D.,)
Licensed Psychologist.)
_____)

Case No. 491

CONSENT AGREEMENT AND ORDER

NOW, on this _____ day of _____, 1996, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board by agreement of Daniel Claiborn, licensed psychologist (licensee), and the Kansas Behavioral Sciences Regulatory Board (board), for the purpose of settling the above-captioned case. Licensee hereby acknowledges the following:

1. Daniel Claiborn is a licensed psychologist within the meaning of the Kansas Regulation of Psychologists Act, K.S.A. 74-5301, *et seq.*, and amendments thereto.
2. On or about September 15, 1993, the board received a report of information concerning licensee's conduct alleging licensee may have violated the following: K.S.A. 74-5324(e), negligence or wrongful actions in the performance of duties and K.S.A. 74-5324(d),

unprofessional conduct, as defined by K.A.R. 102-1-10(b)(6), (7), (9), (19), (21), (25) and K.A.R. 102-1-11(a)(1-7), (9), (11-13).

3. The board conducted an investigation concerning licensee's alleged violation of the above-referenced statutes and regulations.

4. During investigation, licensee, informed of the reported information, was given the opportunity to respond to the allegations, and did respond to the allegations.

5. As a result of the investigation, the board determined as follows:

Thomas Scott, a person not licensed to practice psychology, agreed to provide psychological and counseling services to JFC, LFC, and KAC, as evidenced by a May 28, 1993, agreement drafted by JFC and LFC. The clients believed and understood that Daniel Claiborn, Ph.D., a licensed psychologist, supervised their psychological treatment by Thomas Scott. Dr. Claiborn received payment from Thomas Scott in relation to the supervision of the treatment of JFC, LFC, and KAC.

Blue Cross Blue Shield (BCBS) insurance claim forms, submitted March 19, 1993, by Thomas Scott for his psychological treatment of KAC, indicating Dr. Claiborn served as a consultant, were denied on April 23, 1993.

Subsequently, Dr. Claiborn submitted insurance claim forms to BCBS, dated June 3, 1993, indicating that individual psychotherapy of JFC, LFC, and KAC (by Thomas Scott) had been conducted under his supervision.

In a letter to BCBS, dated January 31, 1994, Dr. Claiborn stated that Thomas Scott was an "independent therapist" to whom he gave "case consultation" in relation to the family. In the same letter, Dr. Claiborn states that he offered Mr. Scott "case supervision" and served in a

“supervisory status.”

The board’s position in this matter is that supervision and consultation are different functions with separate and distinct responsibilities.

The BCBS claim forms submitted by Dr. Claiborn for JFC indicated a diagnosis code of “300.01.” Each diagnosis code represents a psychological diagnosis. To arrive at a diagnosis for the purpose of submitting insurance claim forms, Dr. Claiborn relied solely on Mr. Scott’s descriptions of the clients and did not perform any independent diagnostic assessment, evaluation, interview, or testing.

Thomas Scott was not employed by Dr. Claiborn and was, therefore, ineligible to practice psychology as Dr. Claiborn’s unlicensed assistant, pursuant to K.S.A. 74-5344(e) and K.A.R. 102-2-11; neither was Thomas Scott in the process of attaining supervised experience required for licensure as a psychologist or for registration as a master’s level psychologist. Accordingly, Thomas Scott was not lawfully authorized to practice psychology.

6. As a result of the investigation, the board determined that reasonable grounds exist to believe that licensee:

(a) Engaged in unprofessional conduct, in violation of K.S.A. 74-5324(d), as further defined in K.A.R. 102-1-10(b)(7), taking credit for work not personally performed, and in K.A.R. 102-1-10(b)(25), failing to exercise appropriate supervision over persons with whom the psychologist has a supervisory relationship;

(b) aided or abetted a person, not a licensed psychologist, in representing such person as a psychologist in this state, in violation of K.S.A. 74-5324(c) [“represents oneself to be a psychologist” includes engaging in the practice of psychology for a fee. K.S.A. 74-5302(b)]; and

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(c) engaged in negligence or wrongful actions in the performance of duties in relation to supervision of Thomas Scott, in violation of K.S.A. 74-5324(e).

7. Licensee disputes the board's determinations and denies any intentional violation of statutes or regulations, and contends he was acting in good faith in his professional relationship with Thomas Scott, based on, along with his interpretation of, correspondence from the board's executive director, dated October 26, 1992. This correspondence is attached hereto and made a part thereof.

HOWEVER, licensee and the board mutually desire to enter into this consent agreement and order in lieu of adjudicative proceedings to resolve the report of alleged violations.

HOWEVER, by entering into this consent agreement and order, licensee does not admit any liability nor wrongdoing in any way.

HOWEVER, licensee 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, in relation to Case No. 491.

HOWEVER, licensee waives the right to file a motion for reconsideration and all rights of appeal, pursuant to the Kansas Act for Judicial Review, in relation to Case No. 491.

WHEREFORE, licensee consents to the following conditions on his continued licensed practice as a psychologist in the State of Kansas for a period of eighteen months from the date this consent agreement and order is approved by the board:

(a) Licensee shall not serve as a psychologist supervisor (as defined in K.A.R. 102-1-1(k)) for a fee, or otherwise, for a period of eighteen months.

(b) Upon expiration of the eighteen-month period contemplated by this consent

agreement, licensee may resume service as a psychologist supervisor for a fee. Provided, however, that prior to resumption of such services, licensee shall submit to the board, for its review and approval, a disclosure statement which will be provided to all persons receiving psychological services from individuals supervised by the licensee, including unlicensed assistants. The statement shall disclose the qualifications of the licensee and his unlicensed assistant, the nature of the relationship between the licensee and his unlicensed assistant, the nature of the relationship between the unlicensed assistant and the patient, and the relationship between the licensee and the patient.

(c) Upon expiration of the eighteen month period referenced in paragraph (a) above, licensee shall also submit to the board, for its review and approval, the standard agreement between licensee and his proposed supervisees, setting forth the nature and extent of supervision. The board shall have the authority to approve or disapprove any agreement between the licensee and proposed supervisees.

WHEREFORE, licensee consents to the submission of this consent agreement and order to the Kansas Behavioral Sciences Regulatory Board, and understands that upon approval of the board, this consent agreement and order becomes a final order of the board.

WHEREFORE, the board agrees that as long as licensee complies with the above conditions and upon the expiration of the eighteen-month period contemplated by this agreement, the board will not initiate further disciplinary action against the licensee in Case No. 491.

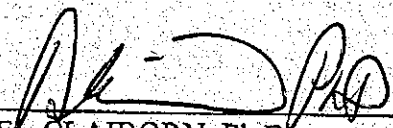
WHEREFORE, the licensee shall not enter into a supervisor/supervisee relationship with Thomas Scott.

WHEREFORE, the provisions above are consented to and are hereby made the final order of the Kansas Behavioral Sciences Regulatory Board, which becomes effective on the date indicated in the below certificate of service.

IT IS SO ORDERED.

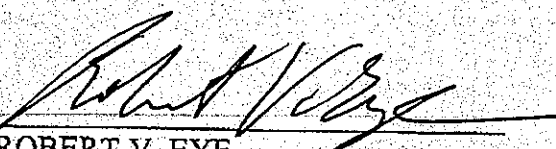
Ed Weigers, Chairman
Behavioral Sciences Regulatory Board

APPROVED AND CONSENTED TO:



DANIEL CLAIBORN, Ph.D.
Licensed Psychologist

9-3-96
(Date)



ROBERT V. EYE
Attorney for Respondent

9.5.96
(Date)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing CONSENT AGREEMENT AND ORDER was deposited in the United States mail, first class postage prepaid, on the _____ day of August, 1996, addressed to:

Daniel Claiborn, Ph.D.



Robert V. Eye
Irigonegaray & Associates
1535 SW 29th Street
Topeka, KS 66611-1901

Wm. Scott Hesse
Assistant Attorney General