

KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

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

In the Matter of)
Franklin W. Horbelt)
)
Applicant for Licensure as a)
Professional Counselor)

Case No. 19-PC-002

**FINAL ORDER
AND PROTECTIVE ORDER**

On January 13, 2020, the above-captioned matter came before the Kansas Behavioral Sciences Regulatory Board (Board) for a hearing on the application filed by Franklin W. Horbelt for licensure as a professional counselor.

After reviewing the Board’s file and considering the evidence and arguments presented at the hearing, the Board makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

Procedural History

1. On October 10, 2019, the Board issued a Summary Proceeding Order denying the application filed by Franklin W. Horbelt (Horbelt) for licensure as a professional counselor. Horbelt filed a timely request for a hearing.
2. The Board conducted the hearing on January 13, 2020. Exhibits 1, 2, 3, and 4 were admitted without objection. Horbelt testified in support of his application. The evidence from those exhibits and his testimony are set forth below.

Hearing

3. In May 2019, Horbelt received a Master of Science degree in clinical counseling from Emporia State University and filed an application with the Board for licensure as a professional counselor (LPC). On his application, Horbelt answered “yes” to the following question: “Have you ever been charged with or convicted of a felony or misdemeanor other than a traffic violation?”
4. In 1990, Horbelt was 18 years old and charged with two counts of aggravated criminal sodomy, a class B felony. The charges stemmed from an incident when Horbelt was caring for three children who were [REDACTED]. He saw them “playing doctor” and joined them. After the incident, Horbelt moved to Atlanta, Georgia,

with his mother, but decided he could not live with what he had done. Horbelt wanted the children to get help even though they had not told anyone what had happened. Horbelt turned himself in to law enforcement in Georgia even though he knew they would report the incident to the authorities in Kansas. This led to the filing of the felony charges.

5. Prior this incident, Horbelt had a troubled life. He had difficulty establishing relationships with others. His [REDACTED] him about two years earlier after his [REDACTED] and others in high school had taunted him because he was obese. His church instructed him that sexual desire was a sin.

6. In 1991, he entered a guilty plea to one count of indecent liberties with a child, a class C felony. At the time of sentencing, Horbelt had served 9 months in jail; the district court granted probation and released him to community corrections for supervision. He was placed in a residential facility for one year. Horbelt's probation conditions included [REDACTED] and maintaining employment.

7. Horbelt had difficulty finding and maintaining employment because he lacked transportation and support. At Horbelt's request in 1992, the court revoked his probation because he could not satisfy all of the probation conditions. While in prison, Horbelt attended [REDACTED]. Horbelt was granted parole in 1998. One of his parole conditions was to [REDACTED]. Horbelt received a discharge from his sentence in 2003.

8. Horbelt received an accounting degree and became a controller for a small manufacturer. However, he lost other jobs due to his conviction. Horbelt later opened a tea bar. As it became more successful, he feared the discovery of his past and having to close the teashop. Due to his fear, Horbelt later closed his tea bar, opened an online tea business, and sold other products online. While pursuing his online ventures, Horbelt still feared disclosure of his conviction and [REDACTED]. His fear came to fruition when he went to a bar where another individual recognized him and revealed his conviction. Horbelt became distraught because he felt the people in the bar did not need to know that part of his past. [REDACTED]. This experience made him realize his interest in counseling.

9. [REDACTED]
[REDACTED]
[REDACTED]. Since his release from prison, Horbelt has married and has a family.

10. Horbelt joined [REDACTED]
[REDACTED]
Horbelt told the faculty and several others of his felony conviction so they would be aware of it if any issues arose. Prior to entering graduate school, Horbelt understood his felony conviction could be an impediment to licensure. Although there were no restrictions

placed on his practicum, he did not work with minors because he wanted to avoid trust issues, not because there a risk issue. While in graduate school, Horbelt [REDACTED]

11. Horbelt submitted three professional references who recommended licensure. One reference is a LPC who was Horbelt’s onsite practicum supervisor. She had known Horbelt for approximately two years but did not address Horbelt’s conviction. The second reference is a licensed clinical professional counselor who had been Horbelt’s practicum supervisor and had known him for four months. She also did not address Horbelt’s conviction. The third reference is a licensed professional counselor who taught Horbelt in three classes. He stated he knew Horbelt had served time in prison for his conviction of an act against a minor.

12. After Horbelt had request a hearing, the professional reference who was Horbelt’s onsite practicum supervisor submitted a letter to the Board addressing Horbelt’s criminal conviction. She supervised Horbelt in his initial practicum course in 2016 and again in his clinical internship from June 2018 through May 2019. The reference stated she was aware of Horbelt’s conviction but did not mention it in her recommendation because she did not believe it reflected on him unfavorably. She evaluated his counseling skills through video-recorded counseling sessions. She saw improvements in Horbelt’s counseling and reflection abilities, standing out from his peers. In the fall semester of 2018 Horbelt was a student supervisor to three students beginning the master’s program. As a supervisor and counselor, Horbelt developed and maintained a strong rapport with others and demonstrated empathy for others. She acknowledged that others would view Horbelt’s conviction as unforgiveable, but she believed his personal growth made him a stronger counselor.

13. The Board also received correspondence from a licensed clinical marriage and family therapist [REDACTED]

[REDACTED]

Conclusions of Law

14. The Board is authorized to issue a license as a professional counselor to qualified applicants. See K.S.A. 65-5806. However, the Board may refuse to issue a license or may condition or limit a license if the Board finds that a licensee or an applicant for a license has been convicted of a felony offense and has not shown to the Board’s satisfaction that licensee or applicant has been sufficiently rehabilitated to merit the public

trust. K.S.A. 65-5809(a)(2). Because he has applied for licensure as a professional counselor and has a felony conviction, the Board has jurisdiction over Horbelt and this matter.

15. Horbelt has a felony conviction. Thus, the issue is whether he has been sufficiently rehabilitated to warrant the public trust. Evidence of rehabilitation include the following factors:

- (a) the seriousness and the nature of the person's past crime(s);
- (b) the age, character, maturity, and experience of the person at the time of the commission of the crime(s);
- (c) the amount of time elapsed since the commission of the crime(s);
- (d) the conduct, work activity, and education of the person before and after the commission of the crime(s);
- (e) whether the crime was an isolated or recurring incident;
- (f) conditions of probation, parole, or post-release supervision;
- (g) discharge from probation, parole, or post-release supervision;
- (h) evidence of the person's rehabilitation or rehabilitative effort;
- (i) the demonstrated consciousness of the wrongful conduct and the disrepute that the conduct has brought the profession;
- (j) voluntary involvement in community service activities, and
- (k) all other evidence of the person's present fitness for a license.

16. Evidence of the above factors shows Horbelt committed an egregious sexual felony offense involving three minor children almost 30 years ago. At that time, he was an immature 18 year old who struggled with serious personal issues. While in prison and on parole, he [REDACTED] He has no other criminal convictions; thus, it was an isolated incident. Horbelt did not produce evidence of all of the conditions of his parole and probation, but he did acknowledge he had difficulty complying with the employment conditions, and as a result, had to serve his prison term. He was discharged from his sentence over 16 years ago. Horbelt's fear of others discovering his felony conviction and the trust issues it may raise shows he is conscious of his wrongful conduct and the disrepute it may bring to the profession.

17. Since his discharge from the criminal case, Horbelt has maintained employment, completed a master's degree in professional counseling, and started a

family. Horbelt's three references who recommended licensure were licensed professionals who knew him in his graduate counseling program. [REDACTED]

[REDACTED] While he has submitted evidence of rehabilitation, the extent of his rehabilitation must be sufficient to merit the public trust—especially the trust between a counselor and a client. Based upon the above, the Board hereby grants Horbelt's application for licensure as a professional counselor subject to the following terms and conditions.

(a) Horbelt shall be employed by an agency as a professional counselor; he cannot engage in private practice as a professional counselor. Upon employment as a licensed professional counselor, a licensed clinical professional counselor (LCPC) who the Board has approved as a supervisor for this Order, has a minimum of two (2) years in such clinical practice, and is not in a familial, subordinate, or other dual relationship with Horbelt shall supervise Horbelt's practice as a LPC. If a LCPC is not available to provide supervision under this order, Horbelt may be supervised by a Board-approved person who is licensed by the Board at the clinical level in their practice, has a minimum of two (2) years of clinical practice in their practice, and is not in a familial, subordinate, or other dual relationship with Horbelt.

(b) Horbelt will hold the license as a professional counselor with the supervision and conditions imposed herein for a minimum of twenty-four (24) months. Any period of time that Horbelt is not employed as a licensed professional counselor or engaged in the practice as a licensed professional counselor shall not count towards this requirement of supervised practice.

(c) During this supervised period, Horbelt and his supervisor shall have weekly one-hour, in-person supervision sessions. These sessions shall focus on decision-making, boundaries, and the ability to recognize personal issues that may influence his professional judgment.

(d) During this supervision period, Horbelt's practice supervisor shall provide the Board with written reports at the end of each three (3) month period of supervision. This report shall address topics required above in paragraph 18(c). If Horbelt's supervisor is not his employer, Horbelt's employer shall also provide the Board with written reports at the end of each three (3) month period of supervision that includes the information required above in paragraph number 18(c).

(e) During the supervision period under this Order, Horbelt shall not provide services to or engage in any therapy or counseling with a minor child.

(f) Horbelt shall notify the Board and his practice supervisor within seven (7) calendar days of any changes in his personal or professional status that would hinder or inhibit compliance with any of the terms and conditions of this Order. In such event, a Board member who is licensed as a professional counselor and serves on the Board's Professional Counselor Advisory Committee may modify or amend the terms or conditions of this Order that will still serve to protect the public. Any such modification or amendment of this Order must be in writing and signed by Horbelt and the Board member.

(g) Horbelt's practice supervisor and employer shall immediately notify the Board of their concerns if either has reason to believe that Horbelt has not complied with the terms and conditions of this Order, a modification or amendment of this Order, or the Professional Counselors Licensure Act, or the regulations governing Professional Counselors.

(h) Horbelt shall bear any expense of supervision and all other costs incurred in satisfying the terms of this Consent Agreement and Order.

(i) Horbelt shall provide to his practice supervisor and employer a copy of this Order and any modification or amendment of this Order that the Board signed and approved. Horbelt's practice supervisor and employer must agree in writing to abide by the terms of this Order and any modification or amendment of this Order that the Board signed and approved. Horbelt's practice supervisor and employer shall send their signed written agreement(s) to the Board within seven (7) calendar days of becoming Horbelt's practice supervisor or employer under this Order or any modification or amendment of this Order that the Board signed and approved.

(j) Horbelt shall obey all federal, state, and local laws, including the Professional Counselors Licensure Act and the regulations governing Professional Counselors.

(k) At the end of the supervised practice period, Horbelt's practice supervisor and employer must submit a written report to the Board addressing whether Horbelt poses a risk to the public in the practice of professional counseling without supervision under this Order. If Horbelt's practice supervisor responds unfavorably, the Board may continue Horbelt's licensure as a professional counselor on the above terms and conditions, as well as any other terms and conditions that the Board deems appropriate based upon the practice supervisor's report for an additional twenty-four (24) months or refuse to re-issue a license to Horbelt. If Horbelt's practice supervisor responds favorably, the Board shall license Horbelt as a professional counselor without the terms and conditions imposed herein.

(l) If he fails to find employment as a professional counselor and obtain a Board-approved practice supervisor within two (2) years from the date on the Certificate of Service below, Horbelt must submit a new application for licensure as a professional counselor.

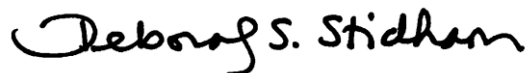
(m) Horbelt must successfully pass the examination for licensure as a professional counselor pursuant to the Professional Counselors Licensure Act.

Order

After consideration of the above findings and fact and conclusions of law, it is the decision and order of the Board that the application for licensure as a professional counselor filed by Franklin W. Horbelt shall be granted subject to the above terms and conditions. It is the further decision and order of the Board that a protective shall be entered to protect all confidential medical records of Franklin W. Horbelt from disclosure and use outside of this proceeding because state or federal law restricts its disclosure and use.

IT IS SO ORDERED.

Kansas Behavioral Sciences Regulatory Board



Deborah Stidham, President of the Board
On Behalf of the Presiding Officers

Notice of Administrative Relief

The above Order is a final order. Pursuant to K.S.A. 2018 Supp. 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. 2018 Supp. 77-528, a party may file, if applicable, 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.

Notice of Judicial Relief

If a petition for reconsideration is not filed 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 designee who may receive service of a petition for reconsideration, a petition for stay, or a petition for judicial review on behalf of the Board is:

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

Certificate of Service

This is to certify that on the 18th day of February 2020 a copy of the above and foregoing Order, Notice of Administrative Relief, and Notice of Judicial Relief were placed in the U.S. mail, first-class postage prepaid addressed to the person listed below:

Franklin W. Horbelt

The undersigned further certifies a true and correct copy of the above and foregoing Order, Notice of Administrative Relief, and Notice of Judicial Relief was delivered by interoffice mail to:

Jane Weiler, Assistant Attorney General
Civil Litigation Division
Office of the Attorney General
Memorial Building
120 SW 10th Avenue
Topeka, Kansas 66612



Staff,
Behavioral Sciences Regulatory Board