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BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In The Matter Of)	
)	
EARNEST M. WASH,)	Case No. 19-AC-0198
LAC #981)	Case No. 20-AC-0005
)	Case No. 20-AC-0006
Respondent)	Case No. 20-AC-0065

Pursuant to K.S.A. 77-536		

SUMMARY PROCEEDING ORDER

NOW, on this 20 day of March, 2020, 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. Earnest M. Wash ("Respondent") was at all times relevant, a Licensed Addictions Counselor ("LAC"), having been issued LAC license number 981 within the meaning of the Kansas Addictions Counselor Licensure Act, K.S.A. 65-6607, *et seq.*, and amendments thereto.

CASE NO. 19-AC-0198

2. On or about June 25, 2019, the Board received a self-report from Respondent that he had been terminated from his position at the Matrix Center-Addictive Behavioral Change Health Group ("Matrix Center") in Wichita, KS.

3. Respondent reported that he talked with a Matrix Center client about the client's personal issues in her life.

4. Respondent had this client enter into his office, and she closed the door.

5. This client then filed a complaint with the Matrix. The client reported that the conversation initially related to her family member, then Respondent diverted the conversation and it became sexual in nature.

6. This client was not assigned to Respondent.

7. Respondent was terminated from the Matrix Center related to this complaint.

CASE NO. 20-AC-0005

8. On or about July 11, 2019, the Board received a Report of Alleged Violation that alleged Respondent may have been in violation of the Kansas Addictions Counselor Licensure Act.

9. A client of Matrix Center submitted this Report of Alleged Violation.

10. This client reported that she and Respondent had been in a personal relationship outside of the Matrix Center.

11. In his response to the Board, Respondent states, "Counselor worked with Patient on finding other means of transportation, employment opportunities, Safe housing, and abstain a drug-free lifestyle."

12. This Matrix Center client was not assigned to Respondent.

CASE NO. 20-AC-0006

13. On or about July 15, 2019, the Board received a Report of Alleged Violation that alleged Respondent may have been in violation of the Kansas Addictions Counselor Licensure Act.

14. Two of Respondent's clients (a married couple) submitted the Report of Alleged Violation. These clients were clients of the Matrix Center, and each client was assigned to Respondent.

15. Each client reported that Respondent was involved with a football team in Wichita. The clients provided money to Respondent while they were his clients at Matrix Center for his football team. They reported that they gave approximately \$2,000.00 to Respondent for his football team while he was providing addiction counseling to this couple.

16. In addition, Respondent gave his clients advanced notification of when their random drug screens were scheduled.

17. In his response to the Board, Respondent admitted that he received money from the clients for his football team. In addition, Respondent admitted to notifying the clients regarding their random drug testing.

CASE NO. 20-AC-0065

18. On or about November 6, 2019, the Board received a Report of Alleged Violation that alleged Respondent may have been in violation of the Kansas Addictions Counselor Licensure Act.

19. On or about September 13, 2012, Respondent submitted to the Board his Addiction Counseling Grandparenting Licensure Application (LAC).

20. Section VI, Question 8 of this application asks, "Have you ever been found to be in violation of a professional association's code of ethics or of a state licensing board's rules and regulations or statutes regarding professional conduct?" In his application, Respondent responded "No" to this question.

21. However, on or about May 24, 2010, Respondent received from the Kansas Department of Social and Rehabilitation Services notice that he was in violation of the Addiction and Prevention Services ("AAPS") Code of Ethics, specifically that the AAPS Counselor shall not exploit relationships with current or former clients for personal gain, including social, business or

sexual relationships. Respondent's AAPS Counselor credentials were revoked. Respondent timely requested a hearing before the Kansas Office of Administrative Hearings ("OAH").

22. On or about March 1, 2011, Respondent submitted to Stephen E. Good, Presiding Officer at OAH, a letter. In this letter, Respondent denied the allegations of unprofessional conduct; however, Respondent agreed to disciplinary action in that Respondent agree that his AAPS Counselor credentials be suspended for one year.

23. Respondent did not provide this information to the Board at the time of his application, and the Board approved his application on November 6, 2012.

24. In his response to the Board, Respondent stated, "Counselor on September 10, 2010, received a letter stating everything was moot. Do [sic] to everything being moot, counselor applied question 8 as such."

APPLICABLE LAW

25. Pursuant to K.S.A. 65-6615(c): Administrative proceedings and disciplinary actions regarding licensure under the Addiction Counselor Licensure Act shall be conducted in accordance with the Kansas Administrative Procedure Act.

26. 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.

27. Pursuant to K.S.A. 65-6608(c): “Licensed addiction counselor” means a person who engages in the practice of addiction counseling limited to substance abuse disorders and who is licensed under this act. Such person shall engage in the practice of addiction counseling in a state-licensed or certified alcohol and other drug treatment program or in completing a Kansas domestic violence offender assessment for participants in a certified batterer intervention program pursuant to K.S.A. 2017 Supp. 75-7d01 through 75-7d13, and amendments thereto, unless otherwise exempt from licensure under K.S.A. 59-29b46(n), and amendments thereto.

28. Pursuant to K.S.A. 65-6615(a)(5): 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 violated a provision of the addiction counselor licensure act or one or more of the rules and regulations of the board. Specifically:

- a. K.A.R. 102-7-11(a)(3): 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. 102-7-11(i): offering to perform or performing services clearly inconsistent or incommensurate with one’s training, education, or experience or with accepted professional standards.
- c. K.A.R. 102-7-11(v): engaging in a harmful dual relationship or exercising undue influence.

29. Pursuant to K.S.A. 65-6615(a)(6): 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 obtained or attempted to obtain a license or license renewal by bribery or fraudulent representation.

CONCLUSIONS OF LAW

30. The Board finds that the above facts have been established by clear and convincing evidence; and further the Board finds that in Case No. 19-AC-0198, Respondent is in violation of K.S.A. 65-6615(a)(5), as defined in K.A.R. 102-7-11(a)(3), in that Respondent was terminated from the Matrix Center for malfeasance.

31. Additionally, Respondent is in violation of K.S.A. 65-6615(a)(5), as defined in K.A.R. 102-7-11(i), in that Respondent failed to practice addiction counseling with the accepted professional standards. Specifically, Case No. 19-AC-0198, Respondent had a conversation with an individual at the Matrix Center who was not his client in his office with the door closed, and this conversation was not related to a patient-therapist relationship; in Case No. 20-AC-0005, Respondent admitted to the Board that he assisted an individual at the Matrix Center, who was not his client, with transportation, employment opportunities, and safe housing; and in Case No. 20-AC-0006, Respondent gave his clients advanced notification of when their random drug screens were scheduled.

32. In Case No. 20-AC-0006, Respondent is also in violation of K.S.A. 65-6615(a)(5), as defined in K.A.R. 102-7-11(v), in that Respondent received money from his clients for his football team.

33. Further, in Case No. 20-AC-0065, Respondent is in violation of K.S.A. 65-6615(a)(6), in that Respondent failed to be forthright and honest when he applied for his LAC license.

ORDER

WHEREFORE, based on the above Findings of Fact and Conclusions of Law and pursuant to the authority granted by K.S.A. 65-6315(a) and KAPA, K.S.A. 77-537, the Complaint Review Committee of behalf of the Board finds that the Kansas LAC license of Respondent Earnest M. Wash should be and is hereby **SUSPENDED** for thirty (30) days from effective date of this Summary Proceeding Order as set forth in the Notice of Relief and the Certificate of Service below.

FURTHER, after the aforementioned suspension has terminated, as a condition for continued licensure, Respondent Earnest M. Wash shall:

34. Practice only under individual supervision by an independent clinical-level supervisor to be approved by the Board if employed using his LAC license. This may be Respondent's supervisor at his place of employment. Respondent shall have weekly one (1) hour meetings with the supervisor in a face to face manner. The focus shall include, but not limited to, dual relationships and undue influence. This requirement shall continue for two (2) year.

35. Within thirty (30) days of the effective date of this Final Order; or if Respondent is not currently working using his LAC license and prior to the beginning of using his LAC license, Respondent shall submit to the Board's investigator the name of his proposed supervisor.

36. Respondent shall provide a copy of this Final Order to the supervisor and authorize the supervisor to provide written quarterly reports to the Board's Investigator for the two (2) year term of supervision. There shall be a minimum of eight (8) quarterly reports (every three [3] months) submitted to the Board's investigator during this two (2) year supervision timeframe.

37. During the time this Final Order is in effect, Respondent shall not serve as a supervisor to any person licensed by the Board, any person attaining supervised experienced in preparation for licensure by the Board, or any unlicensed person, including students or volunteers, who participate in the delivery of addiction counseling services.

38. Hours of supervision attained by Respondent pursuant to this Final Order shall not count toward any supervised experience hours required for a higher level of licensure.

39. Additionally, Respondent shall obtain six (6) extra continuing education hours in Ethics beyond the biennial requirement, taken in-person or on-line within ninety (90) days of the effective date of this Final Order. These additional continuing education hours shall include, but not limited to, dual relationships and undue influence.

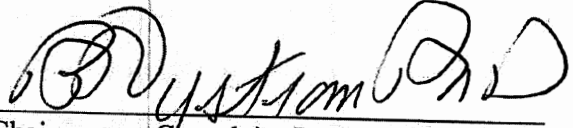
40. These hours shall be in addition to those continuing education hours required for renewal of license.

41. All foreseen and unforeseen expenses to complete the aforementioned course(s) including travel, lodging, program fee, meals, etc., shall be at Respondent's own expense.

42. Respondent must notify the Board's Investigator within ten (10) days of a change in his employment and/or address change.

43. Respondent shall be responsible for any costs and expenses incurred in satisfying the terms of this Final Order.

IT IS SO ORDERED ON THIS 18th DAY OF March 2020.


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:

Max Foster, 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 20 day of March, 2020, 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:

Earnest M. Wash
[REDACTED]
[REDACTED]

and a copy delivered via interoffice mail to:

Jane E. Weiler, Esq.
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612
Disciplinary Counsel for the Board

Cindy D'Ercole
For the Board