

Jane E. Weiler, #25276
Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Avenue, Second Floor
Topeka, KS 66612-1597

BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD
700 SW Harrison Street, Suite 420
Topeka, Kansas 66603-3929

In the Matter of)
DUSTIN B. WHERRELL, T-LMLP) Case No. 21-MP-0036
License No. 2932)
)
Respondent/Licensee.)

CONSENT AGREEMENT AND FINAL ORDER

NOW on this 14 day of July, 2021, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board (“Board”) by and through Assistant Attorney General Jane E. Weiler on behalf of the Board, and by agreement of Dustin B. Wherrell, (“Licensee”), by and through his attorney of record, Kelli J. Stevens of Forbes Law Group, LLC, for the purposes of resolving the above-captioned matter.

The parties knowingly and voluntarily agree as follows:

1. On July 15, 2019, the Board issued Licensee an original Temporary Licensed Master’s Level Psychologist (“T-LMLP”) No. 2932. This license expires on July 31, 2021. Licensee is currently, and was at all times relevant to this Consent Agreement and Final Order, an T-LMLP within the meaning of the laws relating to regulation of psychologists, K.S.A. 74-5361 *et seq.*

2. On or about September 30, 2020, a Report of Alleged Violation (“RAV”) was received by the Board alleging Licensee may have violated certain statutes and regulations governing the practice of a master’s level psychologist in the State of Kansas.

3. From on or about July 22, 2019, to September 1, 2020, Licensee was employed at KVC Hospitals, Inc. In February 2020, Licensee was assigned to provide therapy to an adolescent female, “Client”.

4. During the time he provided therapy, Licensee sent numerous personal letters to Client. At the end of each of these letters, he used the Client's own coded set of letters, which decoded as "love you" at the end of these letters. Licensee admitted to this when he responded to this RAV.

5. Additionally, Licensee included an inappropriate level of self-disclosure regarding Licensee in some of the letters.

6. Licensee also wrote in these letters that after her treatment was terminated, he wanted to see Client socially and take Client to social events, such as concerts. Licensee admitted to this when he responded to this RAV.

7. On or about September 15, 2020, Licensee was terminated from KVC for malfeasance for his conduct. Licensee failed to timely report this termination to the Board.

APPLICABLE LAW

8. K.S.A. 74-5361: "Master's level psychology" means the practice of psychology pursuant to the restrictions set out in K.S.A. 74-5362, and amendments thereto, and includes the diagnosis and treatment of mental disorders under K.S.A. 74-5361 *et seq.*, and amendments thereto.

9. K.S.A. 74-5369(a): The Board may refuse to issue, renew or reinstate a license, may condition, limit, revoke or suspend a license, may publically 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 licensure: K.S.A. 74-5369(a)(9) 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. 102-4-12(b)(2)(C): except when such information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that 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. 102-4-12(b)(10): offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, or experience with accepted professional standards.
- c. K.A.R. 102-4-12(b)(47): engaging in a dual relationship with a client, student, or supervisee.

10. Licensee and the Board mutually desire to enter into this Consent Agreement and Final Order in lieu of further summary and adjudicative proceedings.

11. Licensee understands that by entering into this Consent Agreement and Final Order Licensee waives all rights to further adjudication of facts and law that could be determined pursuant to summary proceedings or a hearing conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* in relation to Case No. 21-MP-0036.

12. Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.* in relation to Case No. 21-MP-0036.

13. The Board accepts Licensee's waiver of rights and stipulations.

ORDER

WHEREFORE, the Board finds that the above facts have been established by clear and convincing evidence; and further finds that Licensee was in violation of K.S.A. 74-5369(a), as defined in 102-4-12(b)(2)(C), when Licensee was terminated from his position at KVC Hospitals, Inc. for malfeasance, and he failed to timely report this termination to the Board.

FURTHER WHEREFORE, the Board finds that Licensee was in violation of K.S.A. 74-5369(a), as defined in K.A.R. 102-4-12(b)(10), when Licensee performed services clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards in that Licensee wrote numerous letters to Client that included codes for "love you" at the end of these letters.

FURTHER WHEREFORE, the Board finds that Licensee was in violation of K.S.A. 74-5369(a), as defined in K.A.R. 102-4-12(b)(47), when Licensee engaged in a dual relationship with Client, in that he wrote numerous letters to Client, and in these letters he disclosed personal information about himself to Client. He also that he wanted to see Client socially after the termination of the treatment, which included taking her to social events.

AND WHEREAS Licensee and the Board mutually desire to enter into a Consent Agreement and Final Order in lieu of further adjudicative proceedings to resolve the reported violations.

NOW THEREFORE, Licensee consents to the following terms and conditions, and the Board orders that:

14. Licensee shall practice only under individual supervision by an independent clinical-level supervisor to be approved by the Board. There shall be no dual relationship with the supervisor. Licensee shall have one (1) hour meetings every other week with his supervisor in a face to face manner. The focus shall be related to all areas of conflict of interest, dual relationships, and professional boundaries. This requirement shall continue for two (2) years. Further, this requirement remains in full force and effect when Licensee transitions from his T-LMLP license to his LMLP license, thus Licensee will still require this supervision until the two (2) year requirement has been completed.

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

16. Licensee shall provide a copy of this Consent Agreement and 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.

17. During the time this Consent Agreement and Final 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 by the Board. Finally, Licensee shall not supervise any unlicensed person, including students or volunteers, when such persons are engaged in the delivery of professional counseling services.

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

19. Licensee shall be responsible for any costs and expenses incurred in satisfying the terms of this Consent Agreement and Final Order.

20. Additionally, Licensee shall obtain six (6) extra continuing education hours in Ethics beyond the biennial requirement, taken in-person or on-line within six (6) months of the effective date of this Consent Agreement and Final Order. These additional continuing education hours shall include, but not limited to, dual relationships, personal/professional boundaries, and treatment of specific age groups.

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

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

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

24. After completion of the actions set out in the Consent Agreement and Final Order, Licensee will have no remaining obligations to the Board in relation to this case. However, Licensee may be subject to further enforcement action if Licensee fails to comply with the terms, conditions, and requirements imposed by this Consent Agreement and Final Order.

25. The matters referred to in this Consent Agreement and Final Order shall not be grounds for future action against Licensee, except the extent that that such matters may be relevant for future disciplinary or licensure proceedings in the Board's consideration of the factors identified in K.S.A. 74-5365 [Application and renewal fee, nonrefundable; evidence required; continuing education; notice of address change], and K.S.A. 74-5369 [Grounds for denial, suspension, limitation, condition, revocation or nonrenewal of license; procedure; judicial review; licensure of applicant with felony conviction, requirements], for establishing rehabilitation or a pattern of conduct.

26. Except as provided in paragraph 25, this Consent Agreement and Final Order shall operate as a complete release of all claims the parties may have against each other pending before the Board and arising out of the Board's investigation of these matters. Licensee agrees not to file, or cause to be filed, any litigation or claims in any federal or state court of law or federal or state administrative agency against the Board, its agents, Board members, or employees, individually or in their official capacity. Such litigation or claims include, but are not limited to, any K.S.A. Chapter 60 or Chapter 61 civil action regarding negligence and/or a 42 United States Code action and/or any administrative petition for redress. Licensee agrees that all actions in this matter were a bona fide use of administrative discretion on the part of the Board, its members, and employees, which is a statutory exception to liability within the Kansas Tort Claims Act, K.S.A. 75-6104(b), (c) or (e).

27. Licensee agrees that this Consent Agreement and Final Order conforms to Kansas and federal law and that the Board has jurisdiction to enter into it and enter the Final Order provided for herein.

28. Licensee understands that a notification of this Consent Agreement and Final Order shall be provided to any other state licensing board or entity if Licensee is also licensed, registered or certified in another state.

29. This Consent Agreement and Final Order shall be a public record in the custody of the Board.

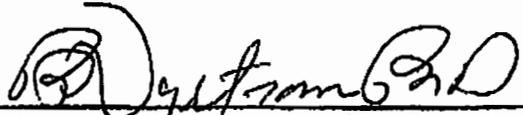
30. This Consent Agreement and Final Order constitutes the entire agreement of the parties and may only be modified by order of the Board or by a subsequent writing signed by the parties. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

31. This Consent Agreement and Final Order shall become effective on the date indicated in the Certificate of Service.

WHEREFORE, the parties consent to these provisions, which are hereby made the Final Order of the Kansas Behavioral Sciences Regulatory Board in the above-captioned case.

IT IS SO ORDERED.

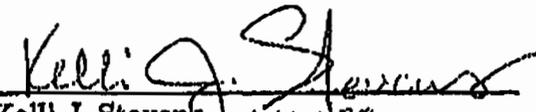
Dated this 13th day of July 2021.


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

AGREED AND CONSENTED TO BY:


Dustin B. Wherrell, T-LMLP
Respondent/Licensee

7/13/2021
Date


Kelli J. Stevens - # 1632
Attorney for Respondent/Licensee

7/13/2021
Date

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was served on this 14 day of July 2021, by depositing the same in the United States mail, postage prepaid, addressed to:

Kelli J. Stevens
Attorney for Respondent/Licensee
Forbes Law Group, LLC
6900 College BLVD, Suite 840
Overland Park, KS 66211

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

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



For the Kansas Behavioral Sciences
Regulatory Board