

KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD
Eisenhower State Office Building
700 SW Harrison, Suite 420
Topeka, Kansas 66603-3240

In the Matter of)

Darby M. Pentecost)
LAC #01730)

Case No. 23-AC-0048

CONSENT AGREEMENT AND FINAL ORDER

Now, on this 1 day of October, 2024, the above-captioned matter comes before the Complaint Review Committee of the Kansas Behavioral Sciences Regulatory Board ("Board") by agreement of Darby M. Pentecost ("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 appears pro se.

2. The Board is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Addiction Counselor Licensure Act, K.S.A. 65-6607 *et seq.* (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 the applicant and/or licensee has committed any of the acts described in K.S.A. 65-6615(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. 65-6615(a), the imposition of disciplinary action against her license and the assessment of a civil fine against her 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. Darby M. Pentecost is currently, and was at all times relevant herein, a Licensed Addiction Counselor within the meaning of the Addiction Counselor Licensure Act, K.S.A. 65-6607 *et seq.*, and amendments thereto.

6. On or about September 30, 2022, the Board received a report of alleged violation from licensee's former employer, concerning Licensee's conduct while employed. The report alleged 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 November 8, 2022.

8. On August 20, 2022, Licensee was taking part in a meeting involving two clients and one other clinician. During this meeting, it is alleged that Licensee became confrontational with one client (Client #1), including yelling for several minutes at Client #1, using profanities, and stating that he was not speaking to Client #1 as a counselor, but instead as a man to a man. During this encounter, Licensee referred to Client #1 using derogatory language and referenced the client's family. After Client #1 asked Licensee not to reference the client's family, Licensee continued to speak about Client #1's family. The confrontation became heated, and the other clinician stood between Licensee and Client #1, used her hands to separate the two individuals, and communicated they both needed to calm down, to prevent further escalation. It was noted that Licensee continued to yell at Client #1, over the shoulder of the second clinician.

9. Following the incident, the second client (Client #2) who was present during the confrontation on August 20, 2022, informed staff that she was very scared during this interaction, due to Licensee's conduct.

10. Licensee was terminated from his position on September 13, 2022. In the report of alleged violation filed with the Board, Licensee's former employer states she was concerned with Licensee's emotional stability and ability to provide safe and therapeutic services to clients without some therapy of his own. From that date until Licensee's response to the report of alleged violation on November 8, 2022, Licensee did not inform the Board that his employment had been terminated for the reasons described in this Consent Agreement and Final Order.

11. In Licensee's November 8, 2022, response to the Board, Licensee states he reviewed the statements concerning his conduct and states that he had previous interactions with Client #1 prior to the confrontation on August 20, 2022. Licensee states that on August 20, 2022, he did raise his voice against Client #1, but states that certain words or phrases he used were taken out of context, as Licensee was trying to use words or phrases used by Client #1 during previous interactions. Licensee informed the Board he did get angry and was "flooded with emotions" during the confrontation. Licensee disagrees that he was yelling at Client #1, but

states he was "pleading with him passionately." Licensee confirmed that during the confrontation, he stated to Client #1 "you told me you didn't want to be a piece of shit drug addict anymore, and you didn't want to die, well, do you want to die and leave those beautiful kids behind?" Licensee notes that following this statement, Client #1 jumped from his chair and started towards Licensee. Licensee confirms the other clinician stood between Licensee and Client #1 to separate the two of them, and confirmed that Licensee yelled at Client #1 over the other clinician's shoulder.

II. APPLICABLE LAW

12. Pursuant to K.S.A. 65-6615(a)(9), 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 been found to have engaged in unprofessional conduct as defined by applicable rules and regulations adopted by the Board.

13. K.A.R. 102-7-11 provides in relevant part, that any of the following acts by a licensee shall constitute unprofessional conduct:

(a) Except when the information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that the licensee or applicant or any other person regulated by the board or applying for licensure or registration has met any of these conditions:

(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.

(g) failing to recognize, seek intervention, and otherwise appropriately respond when one's own personal problems, psychosocial distress, or mental health difficulties interfere with or negatively impact professional judgment, professional performance and functioning, or the ability to act in the client's best interests;

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

(j) engaging in any behavior that is abusive or demeaning to a client, student, or supervisee.

III. CONCLUSIONS OF LAW

14. Based on the facts stipulated to herein, Respondent is subject to sanction pursuant to K.S.A. 65-6615(a)(9) for engaging in unprofessional conduct as defined by applicable rules and regulations adopted by the Board, namely K.A.R. 102-7-11(a)(3), (g), (i) and (j).

IV. AGREEMENT

15. Respondent and the Board mutually desire to enter into a Consent Agreement and Final Order in lieu of further adjudicative proceedings at this time.

WHEREFORE, Licensee consents to the following interim conditions:

a. Licensee shall contact the Board within thirty (30) days of the effective date of this Agreement to provide the name of a professional to provide a fitness for duty evaluation for consideration and approval by the Complaint Review Committee ("Committee") of the Board.

b. Once the evaluator is approved by the Committee, within ninety (90) days of the effective date of this Agreement, Licensee shall complete a fitness for duty evaluation by the approved provider.

c. Licensee shall fully and truthfully cooperate with the evaluation and shall authorize and direct the evaluator to send a complete copy of the evaluation to the investigator for the Board, upon completion. The evaluation must be received by the Board within one hundred twenty (120) days of the effective date of this Agreement for Licensee to be in compliance with the terms of this Agreement.

d. Upon receipt, the Committee will review the evaluation. Further limits or conditions of practice, if any, may be negotiated by Licensee and Committee or otherwise imposed by the Board at that time. If no agreement is reached at that time, this matter shall proceed to formal disciplinary hearing.

e. Licensee shall practice only under individual supervision by a clinical-level supervisor when employed using his LAC license, for a period of twenty-four (24) months. This supervisor may be his 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 his supervisor that will be conducted in-person (in the same place). The focus of the supervision shall include, but not be limited to, boundaries, appropriate interactions with clients, professionalism, recognizing personal problems and the importance of practitioner self-care when it can affect the ability to provide services effectively. Only time while Licensee is employed as an LAC will count towards the twenty-four (24) month requirement.

f. Within thirty (30) days of the effective date of this Consent Agreement and Final Order; Licensee shall submit to the Board's investigator the name of his proposed supervisor.

g. 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 submitted to the Board's Investigator during this two (2) year supervision timeframe.

h. Licensee shall be required to receive individual therapy from a licensed provider approved by the Board. The scope of the therapy shall be defined by the named therapist.

i. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Licensee shall submit to the Board's investigator the name of his proposed therapist.

j. Licensee shall provide a copy of the Consent Agreement and Final Order to the proposed therapist. The therapist shall provide quarterly progress reports to the investigator, demonstrating progress.

k. Licensee shall be responsible for any costs incurred in satisfying the terms of the Agreement.

l. Evidence of Licensee's breach, violation, or failure to comply with any of the above conditions will result in a hearing, with 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 his Licensed Addiction Counselor license could be suspended until such time as Licensee can demonstrate compliance with all terms and conditions of this Consent Agreement and Final Order to the satisfaction of the Board.

m. 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 Final Order.

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

WHEREFORE, the Board further agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to violations of K.S.A. 65-6615 or K.A.R. 102-7-11 as a result of this proceeding until the Board has reviewed the evaluation.

V. ADDITIONAL STIPULATIONS

16. 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 Final Order, with or without the presence of the Licensee or his attorney. In the event that this Consent Agreement and Final Order is not accepted and approved by the Board, Licensee waives any objection to the Board members' consideration of this Consent Agreement and Final 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.

17. The stipulations and orders contained herein shall not become binding until this Consent Agreement and Final Order is approved and entered by the Board. 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 Final Order.

18. Licensee agrees that this Consent Agreement and Final 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.

19. 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.

20. Licensee acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon him;**
- (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 disciplinary action taken against him in accordance with the terms and conditions provided for herein. Licensee also waives all of his rights to seek reconsideration, administrative review and/or judicial review of this Consent Agreement and Final Order or to otherwise challenge or contest this Consent Agreement and Final Order in any direct or collateral administrative or judicial proceedings.

21. Licensee acknowledges that he enters into this Consent Agreement and Final Order freely and voluntarily after consultation or a reasonable opportunity for consultation with counsel of his choosing. Licensee further acknowledges that his representatives have read this Consent Agreement and Final 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.

22. Time is of the essence to this Consent Agreement and Final Order. Licensee acknowledges and agrees that any violation of this Consent Agreement and Final Order shall constitute a violation of a lawful Board order pursuant to K.S.A. 65-8615(a)(11) and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of any alleged violation of this Consent Agreement and Final Order shall not affect the obligation of Licensee to comply with all terms and conditions of this Consent Agreement and Final Order.

23. This Consent Agreement and Final Order constitutes the entire and final agreement of the parties. In the event any provision of this Consent Agreement and Final 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 Final Order shall be given full force and effect.

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

25. This Consent Agreement and Final Order shall become effective on the day it is approved upon motion duly made, seconded and passed by the Board and entered as an order of the Board by the signature of the Board's Chairperson or designee below.

26. Licensee acknowledges that she has been advised by the Board that after the Consent Agreement and Final Order becomes effective Licensee has the right within 15 days after service of this Consent Agreement and Final Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Consent Agreement and Final 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.


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.



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

APPROVED AND CONSENTED TO:



Darby M. Pentecost, Licensee

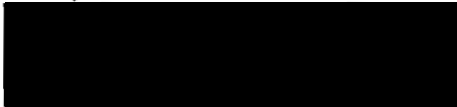
09.20.24

Date

CERTIFICATE OF SERVICE


This is to certify that on this 1 day of October, 2024, a true and correct copy of the above and foregoing Consent Agreement and Final Order was placed in the U.S. mail, first-class postage prepaid, addressed to:

Darby M. Pentecost



And by e-mail to the following:

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



Staff,
Kansas Behavioral Sciences Regulatory Board