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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)
RUSSELL BURTON, LMSW)
License No. 8904) Case No. 18-MS-0130
)
Respondent/Licensee.)

CONSENT AGREEMENT AND FINAL ORDER

NOW on this 12 day of February, 2019, 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 Russell Burton, ("Licensee"), by and through his attorney of record, Brian Burge of Sanders, Warren, Russell, & Scheer, LLP, for the purposes of resolving the above-captioned matter.

The parties knowingly and voluntarily agree as follows:

1. On June 24, 2013, the Board issued Licensee an original Licensed Master Social Worker ("LMSW") No. 8904. This license expires on June 30, 2019. Licensee is currently, and was at all times relevant to this Consent Agreement and Final Order, an LMSW within the meaning of the laws relating to regulation of social workers, K.S.A. 65-6301 *et seq.*

CASE NO. 18-MS-0130

2. On or about June 4, 2018, a Report of Alleged Violation was received by the Board alleging Licensee may have violated certain statutes and regulations governing the practice of master's level social workers in the State of Kansas.

3. Licensee provided services to a female patient until approximately December 2016. Several months after termination of the therapist-patient relationship with

this client, Licensee continued to text this patient. The text messages related to meeting the patient's friend. Licensee did admit that text messaging with a former patient was inappropriate.

4. Additionally, in early 2015, Licensee's wife passed away. Licensee admitted that the sudden death of his wife caused an unprecedented amount of personal turmoil that affected his professional life and judgment.

APPLICABLE LAW

5. K.S.A. 65-6302(b): "Social work practice" means the professional activity of helping individuals, groups or communities enhance or restore their capacity for physical, social and economic functioning and the professional application of social work values, principles and techniques in areas such as psychotherapy, social service administration, social planning, social work consultation and social work research to one or more of the following ends: Helping people obtain tangible services; counseling with individuals, families and groups; helping communities or groups provide or improve social and health services; and participating in relevant social action. The practice of social work requires knowledge of human development and behavior; of social, economic and cultural institutions and forces; and of the interaction of all these factors. Social work practice includes the teaching of practicum courses in social work and includes the diagnosis and treatment of mental disorders as authorized under K.S.A. 65-6306 and 65-6319, and amendments thereto.

6. K.S.A. 65-6311(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. Specifically:

- a. K.A.R. 102-2-7(j): offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, or experience with accepted professional standards for social work.
- b. K.A.R. 102-2-7(h): 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 interest.
- c. K.A.R. 102-2-7(z): making sexual advances toward, engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past 24 months, has been one's client.
- d. K.A.R. 102-2-7(tt): engaging in a dual relationship with a client, supervisee, or student.

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

8. 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. 18-MS-0130.

9. 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. 18-MS-0130.

10. 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. 65-6311(a)(9), as defined in K.A.R. 102-2-7(j), in that Licensee performed services clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards when Licensee established a relationship outside of the therapist-patient relationship with a former patient.

Additionally, the Board finds Licensee was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(h), in that Licensee admitted that the sudden death of his wife caused an unprecedented amount of personal turmoil that affected his professional life and judgment.

Further, the Board finds Licensee was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(z), in that Licensee exercised undue influence with a former patient when he had her texting him information about meeting her friend.

In addition, the Board finds Licensee was in violation of K.S.A. 65-6311(a)(9), as defined in K.A.R. 102-2-7(tt), in that Licensee established a dual relationship with a former patient.

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:

11. 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 weekly one (1) hour meetings with his supervisor in a face to face manner. The focus shall be related to dual relationships.

12. Licensee shall provide a copy of this Consent Agreement to the supervisor and authorize the supervisor to provide written monthly reports to the Board's Investigator for one (1) year term of supervision. There shall be a minimum of twelve (12) monthly reports submitted to the Board's investigator during this one (1) year supervision timeframe, with each report submitted on or before the first of each month.

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

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

15. 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.

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

17. 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.

18. 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.

19. 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.

20. 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. 65-6313 [Licenses; effective and expiration dates; renewal; continuing education; safety awareness training; reinstatement; duplicate; notice of change of address], and K.S.A. 65-6311 [Grounds for suspension, limitation, condition revocation or refusal to issue or renew license; procedure; licensure of applicant with felony conviction, requirements], for establishing rehabilitation or a pattern of conduct.

21. Except as provided in paragraph 20, 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).

22. 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.

23. 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.

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

25. 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.

26. 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 11th day of February 2019.



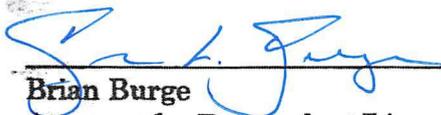
Chairperson, Complaint Review Committee
On behalf of Kansas Behavioral Sciences
Regulatory Board

AGREED AND CONSENTED TO BY:



Russell Burton, LMSW
Respondent/Licensee

1/23/2019
Date



Brian Burge
Attorney for Respondent/Licensee

2/5/2019
Date

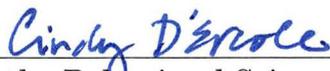
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was served on this 12 day of February 2019, by depositing the same in the United States mail, postage prepaid, addressed to:

Brian Burge
Sanders, Warren, Russell, & Scheer, LLP
9401 Indian Creek Parkway, Suite 1250
Overland Park, KS 66210
Attorney for Respondent/Licensee

And a copy delivered via interoffice mail to:

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 Behavioral Sciences
Regulatory Board