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Kansas Attorney General's Office  
120 SW 10<sup>th</sup> St, Second Floor  
Topeka, KS 66612-1597

COPY

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD  
712 South Kansas Avenue  
Topeka, Kansas 66603-3817

In the Matter of )  
 )  
Sheryl R. Smith, LPC #754 )  
 )

Case No. 03-PC-0001

CONSENT AGREEMENT AND ORDER

NOW on this 12<sup>th</sup> day of May, 2003, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board (Board) by agreement of Sheryl R. Smith (Licensee) and the Kansas Behavioral Sciences Regulatory Board for the purpose of resolving the above-captioned case.

Licensee hereby acknowledges the following:

1. Sheryl R. Smith is currently, and at all times relevant has been, a Licensed Professional Counselor within the meaning of the Kansas Professional Counselors Licensure Act, K.S.A. 65-5801 *et seq.*, and amendments thereto.
2. On or about July 1, 2002, the Board received a report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing her practice as a Licensed Professional Counselor.
3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations.

However, Licensee and the Board mutually desire to enter into a Consent Agreement and Order in lieu of adjudicative proceedings to resolve the report of alleged violations.

WHEREFORE, Licensee waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas Administrative Procedure Act in relation to Case No. 03-PC-0001.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review in relation to Case No. 03-PC-0001.

~~WHEREFORE, Licensee consents to the suspension of her license for a period of six (6) months with all of the suspension stayed on the following conditions (not reportable):~~

(a) For twelve (12) months from the date indicated in the below Certificate of Service, Licensee's practice as a Licensed Professional Counselor shall be supervised by a Board-approved Qualified Mental Health Professional who is not in a subordinate, familial or other dual relationship with Licensee.

(b) The focus of this supervision shall be on appropriateness of progress notes, treatment planning and documentation for reimbursement.

(c) Licensee shall meet with her supervisor for a one-hour supervisory session every week for the first six (6) months and every two weeks for the remainder of the Consent Agreement and Order.

(d) Written reports from Licensee's supervisor are expected every three (3) months regarding Licensee's compliance with the supervision process and the focus of supervision. Licensee will request and make every effort to ensure that the supervisor provides these status reports to the Board.

(e) Licensee shall furnish a copy of the Consent Agreement and Order to her supervisor and shall cooperate with her supervisor to enable the supervisor to discharge his or her duties in a responsible manner.

(f) Licensee shall research and write a five (5) page professional paper on the subject of Review of the literature on the penalties of Medicaid fraud on individuals and agencies and how it pertains to licensure violations as listed in this Consent Agreement and Order. The paper shall be double-spaced, in APA format and contain at least ten (10) professional references integrated within the text of the paper. This paper must be submitted to the Board and to the supervisor within three (3) months from the date in the Certificate of Service.

(g) During the time this Consent Agreement and Order is in effect, Licensee shall not serve as a supervisor to any person licensed by the Board, any person attaining supervised experience in preparation for licensure by the Board or any unlicensed person, including students or volunteers, who participates in the delivery of professional counseling services.

(h) Licensee shall be responsible for any costs incurred in satisfying the terms of this Consent Agreement and Order. Supervised hours will not count toward any supervised experience requirement for the next level of licensure.

(i) Evidence of Licensee's breach, violation or failure to comply with any of the 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 conditions. Upon determination at such hearing that Licensee has breached, violated or failed to comply with any condition, Licensee understands and agrees that her Professional Counselor license shall be suspended for six (6) months.

(j) Licensee acknowledges that proof submitted to the Board by affidavit or other form of competent evidence that Licensee has breached, violated or failed to meet the conditions of this Consent Agreement and Order shall be good and sufficient evidence to support an alleged violation of breach, violation or non-compliance.

4. During the investigation, Licensee was informed of the reported information, was given the opportunity to respond to the allegations and did respond to the allegations.

5. As a result of the investigation, the Board finds probable cause to believe the following facts:

The following factual allegations involve counseling services claimed to have been provided to M.R., a minor child, and his family. Licensee documented approximately thirty (30) sessions of "home-based family therapy" that did not occur. Licensee fabricated progress notes for at least eight (8) therapy sessions that did not occur by altering notes from prior sessions and affixing a new signature and date. Licensee submitted progress notes that contain inaccurate or misleading information. Licensee submitted documentation claiming she had performed counseling services on certain dates and with certain persons when no such contact occurred.

As a result of Licensee's misrepresentations, her employer, Crawford County Mental Health, had an audit performed. As a result of the audit, Medicaid filed for recoupment of payments for approximately thirty (30) sessions in which the documentation was inadequate or nonexistent.

6. The Board finds that reasonable grounds exist to believe Licensee has committed unprofessional conduct in violation of K.S.A. 65-5809 as defined as follows:

- (a) K.A.R. 102-3-12a(b)(23),
- (b) K.A.R. 102-3-12a(b)(35)(H),
- (c) K.A.R. 102-3-12a(b)(36),
- (d) K.A.R. 102-3-12a(b)(38) and
- (e) K.A.R. 102-3-12a(b)(56).

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

(l) Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with any condition of this Consent Agreement and Order. In such event, a designee of the Board is authorized to modify or amend this Consent Agreement and Order in writing.

(m) If the Board does not approve this Consent Agreement and Order, Licensee waives any right she may have to object to the composition of any subsequent hearing panel due to hearing panel members having knowledge of matters contained within this Consent Agreement and Order.

(n) This Consent Agreement and Order constitutes the entire agreement between the Licensee and the Behavioral Sciences Regulatory Board and may be modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

WHEREFORE, Licensee consents to the submission of this Consent Agreement and Order to the Board's Complaint Review Committee and understands that, upon approval of the Complaint Review Committee, this Consent Agreement and Order will become a final Order of the Board. The Board has authorized the Complaint Review Committee to determine approval of this Consent Agreement and Order.

WHEREFORE, the Board 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. 65-5809 as defined by K.A.R.s 102-3-12a(b)(23), (35)(H), (36), (38) and (56) as a result of this proceeding.

WHEREFORE, the Board further agrees that, at the conclusion of the conditional licensure period, upon determination of Licensee's compliance with the conditions stated herein and upon Board receipt of an acceptable reference from Licensee's supervisor on a Board-approved form, Licensee shall be unconditionally licensed as a Licensed Professional Counselor.

WHEREFORE, the foregoing provisions are consented to, are hereby made the final 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.

Wesley Jones Ph.D.  
Wesley Jones, Ph.D.  
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:

Sheryl R. Smith, LPC, Eds.      04-28-03  
Sheryl R. Smith, LPC                      Date

Certificate of Service

This is to certify that on this <sup>13<sup>th</sup></sup> ~~13<sup>th</sup>~~ day of <sup>May</sup> ~~May~~, 2003, a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Sheryl R. Smith  
212 E. 5<sup>th</sup> Street Address Correction

Crawford County Mental Health

Sheri Smith, LPC, Eds  
Family Therapist

Restorative Justice Authority  
69 Hwy.  
KS 66762      Roger Scarlock  
For the Behavioral Sciences Regulatory Board