

BEFORE THE BEHAVIORAL SCIENCES REGULATORY BOARD

Eisenhower State Office Building
700 SW Harrison, Suite 420
Topeka, Kansas 66603-3240

In the Matter of)
)
Tina Walsh)
(LSCSW #3882))
Respondent)

Case No.: 11-CS-0068
OAH No.: 12BS0002

FINAL ORDER

Granting Application for Reinstatement

Now on this 19th day of November 2012, the above-captioned matter comes on for consideration by the Behavioral Sciences Regulatory Board (Board) of Tina Walsh's (Respondent's) Application for Reinstatement. The presiding Board members were Kathy Armstrong, Barbara Burks, Barbara Callahan, Grant Edwards, Todd Frye, Kathryn Herzog, Larry Salmans, Marcia Simoneau, and Sharon Stuewe. Board member Terry Pfannenstiel recused himself in the matter. Respondent appeared in person and by counsel, Michael E. Francis. Marty Snyder, Assistant Attorney General, Civil Litigation Division, assigned to the Board as litigation counsel was present as well as Janet Arndt, Assistant Attorney General, Legal Opinions and General Counsel Division, assigned to the Board as general counsel. Tina Walsh appeared in person and with her counsel, Michael E. Francis.

Findings

1. The Board issued to Tina Walsh (Respondent) a license as Specialist Clinical Social Worker (LSCSW), License No. 3882. Subsequently, the Board filed a disciplinary petition against Respondent.
2. In the Initial Order granting the Board's petition, a presiding officer at the Office of Administrative Hearings found that while Respondent was an independent contractor and therapist for a mental health clinic, she repeatedly accessed the mental health records of a married couple, J.K. and P.K., even though she had no purpose to do so. Respondent also disclosed certain information contained in P.K.'s mental health records to J.K. Although denied by Respondent, the presiding officer found that Respondent engaged in sexual activities during this time with J.K. The presiding officer concluded Respondent was guilty of unprofessional conduct pursuant to K.S.A. 65-6311(a)(4) and K.A.R. 102-2-7(s) (failing to protect the confidences, secrets, or information contained in a client's records) and K.A.R. 102-2-7(y) (making sexual advances toward or engaging in physical intimacies or sexual activities with one's client).
3. Based upon the above findings and conclusions, the presiding officer issued an Initial Order on March 12, 2012, suspending Respondent's license as a Specialist Clinical Social Worker until further order.

4. Respondent filed a Petition for Review of the Initial Order and a Petition for Stay with the Board. The Board found that Respondent's petitions provided no basis in fact or law to reverse or change the Initial Order or stay the suspension. The Board denied both petitions.

5. Respondent next filed a Petition for Reconsideration. Respondent argued, if the suspension or stay were lifted, she would follow the psychological evaluation prepared on February 10, 2012, by Dr. Bruce Nystrom in Wichita, Kansas. According to Respondent, Dr. Nystrom stated that "[p]sychological testing indicated the presence of histrionic and narcissistic personality traits. There was some indication of depression but this was thought to be reactive to current stressors in her life." He recommended Respondent "enter into long term individual psychotherapy conducted by an experienced therapist. The focus of this psychotherapy should be better understanding [of Respondent's] needs for attention and for affection and how these needs motivate behaviors that may be inappropriate. Any restriction upon her license to practice social work should remain in effect until her therapist reports significant progress toward the above stated goal." However, Respondent had not yet begun any therapy. The Board denied Respondent's Petition in April 2012.

6. In September 2012, Respondent filed an application for reinstatement of her license as a specialist clinical social worker. To support her application, Respondent submitted information from her therapist who has been providing individual psychotherapy services to Respondent since June 2012. One of the goals of Respondent's therapy was to "process and understand the circumstances that led to making unethical choices." Respondent also provided several letters of recommendation supporting her application for reinstatement.

7. At the hearing, Respondent testified about her personal problems that caused her stress and contributed to her unprofessional conduct. Respondent denied disclosing information from P.K.'s mental health file to J.K. However, she testified that at the time the misconduct occurred, Respondent never considered whether looking at the mental health records of J.K. and P.K. or engaging in sexual activities with J.K. violated the professional standards of a LSCSW. Since the suspension of her license, Respondent has completed coursework in professional ethics. Although Respondent stated she was willing to work under supervision and not to accept male clients, she offered no proposal on continuing therapy for herself or safeguarding the confidentiality of client's records.

Conclusions

8. K.S.A. 65-6306(c)(4) and (d)(1) require a LSCSW to be "a person who merits the public trust." K.S.A. 65-6311(a)(4) provides that the Board "may suspend, limit, revoke, condition or refuse to issue or renew a license of any social worker upon proof that the social worker has been found guilty of unprofessional conduct as defined by the rules established by the board." Respondent has been found guilty of unprofessional conduct pursuant to K.A.R. 102-2-7(s) (failing to protect the confidences, secrets, or information contained in a client's records) and K.A.R. 102-2-7(y) (making sexual advances toward or engaging in physical intimacies or sexual activities with one's client).

9. To reinstate a suspended license, the Board considers the following factors listed in *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 597, 602 (1991):

- a. the present moral fitness of the applicant;
- b. the demonstrated consciousness of the wrongful conduct and the disrepute that the conduct has brought to the profession;

- c. the extent of the applicant's rehabilitation;
- d. the seriousness of the original misconduct;
- e. the applicant's conduct subsequent to discipline;
- f. the time elapsed since the original discipline;
- g. the applicant's character, maturity, and experience at the time of the discipline; and
- h. the applicant's present competence to engage in the profession of social work.

10. The Board has reviewed the above factors in considering whether to reinstate Respondent as a LSCSW. The extenuating factors to deny her application are discussed below.

► Respondent's demonstrated consciousness of the wrongful conduct and the disrepute such conduct brought to the profession. The Board has concerns whether Respondent has shown that she fully comprehends the extent of her wrongful conduct and its consequences to the profession.

In the past, Respondent denied disclosing confidential information to J.K. and the extent of her relationship with J.K. Even if we assumed Respondent did not disclose any confidential information, she lacked authority to examine the mental health records of J.K. or P.K. as she was not the treating therapist for either patient. The foundation of recovery is based upon a client's trust that the confidential information shared with the therapist will not be released unless the client consents to or the law requires such disclosure.

Respondent also denies have a client relationship with J.K. because she was not his treating therapist. At the hearing on her reinstatement application, Respondent testified that she only observed the intake interview of J.K. that another counselor conducted. Nevertheless, Respondent did not appeal the finding in the initial order that she had a client relationship with J.K.; thus, it is a conclusive, undisputed fact. Even if we assumed Respondent did not have a client relationship with J.K., she should have known as a LSCSW that engaging in sexual activities with a married individual receiving personal and/or marriage counseling was not in the best interests of that individual.

► The extent of Respondent's rehabilitation. Respondent has shown that she has made progress in her personal growth, but not in her professional growth. Although she has taken ethical coursework since the suspension of her license, the information provided by Respondent's therapist and Respondent's testimony do not show that Respondent has addressed the goal of "process[ing] and understand[ing] the circumstances that led to making unethical choices."

► The seriousness of the original misconduct. The factual findings in the Initial Order showed Respondent engaged in egregious conduct as a licensed specialist clinical social worker. She placed at risk the mental health of two clients and violated the confidential information of both clients.

► The time since the suspension of Respondent's license. Respondent's license has been suspended for a short time—less than one year.

11. The letters of recommendations provided by Respondent indicate that she was effective in providing LSCSW services to other individuals, particularly children, prior to the suspension.

Orders

12. Based upon the above findings and conclusions, the Board reinstates Respondent's license as a specialist clinical social worker subject to the terms and conditions set forth below.

13. Respondent will hold the license as a specialist clinical social worker with the supervision and conditions imposed herein for a minimum of twenty-four (24) months. Any period of time that Respondent is not employed or engaged in the practice of social work shall not count towards this requirement of supervised practice.

14. Respondent shall not engage in independent clinical practice during the supervision period. Respondent shall engage only in the practice of masters social work while employed by a person licensed by the Board or an entity providing social services from persons licensed by the Board. Further, Respondent shall provide masters social work services only to children, adolescents, and female adult clients during the supervision period. She cannot provide any social work services to adult males.

15. Upon employment as a masters social worker, Respondent's practice as a masters social worker shall be supervised by a Board-approved licensed masters social worker (LMSW) or a licensed specialist clinical social worker (LSCSW) who has a minimum of five (5) years practice as a LMSW or LSCWS and is not in a subordinate, familial, or other dual relationship with Respondent.

16. During the period of supervised practice, Respondent's practice supervisor shall provide the Board with monthly written reports during the supervision period. If Respondent's practice supervisor is not her employer, Respondent's employer shall also provide the Board with monthly written reports during the supervision period.

17. Within sixty (60) days of the date of this Order, Respondent's therapist shall provide to the Board and Respondent's practice supervisor a written report addressing Respondent's progress toward her professional goals and boundaries. Respondent's therapist shall thereafter provide to the Board and Respondent's practice supervisor a written report at the end of each three (3) month period. Respondent shall comply with and follow all recommendations made in the reports. By accepting this conditioned license, Respondent hereby consents to the release of the reports by Respondent's therapist to the Board and Respondent's practice supervisor.

18. Respondent shall meet with her Board-approved practice supervisor every week and receive at least one (1) hour of supervision for every 25 hours of client contact. Such supervision shall focus upon the following:

- a. establishing and maintaining professional boundaries with clients;
- b. understanding dual relationships and the impact of Respondent's conduct on clients;
- c. maintaining and respecting client confidentiality;
- d. using relationship with clients or confidential client information for personal gain or gratification;
- e. addressing any concerns or recommendations that made in a report by either Respondent's therapist or Respondent's employer.

19. Respondent must provide to her practice supervisor, employer, and therapist a copy of the following documents:

- a. the Initial Order by the Office of Administrative Hearings suspending Respondent's license;
- b. the Orders by the Board denying Respondent's petitions for review, stay, and reconsideration; and
- c. this Order by the Board reinstating Respondent's license with conditions.

Respondent's practice supervisor, employer, and therapist must provide to the Board written acknowledgement of the receipt of the above documents and agree to abide by the terms and conditions of this Order.

20. During the period of supervised practice, Respondent shall not engage in the supervision of any person licensed by the Board or students and volunteers who participate in the delivery of social work services.


21. During the period of supervised practice, Respondent shall not have any contact or communication with either J.K. or P.K. who were clients of Pawnee Mental Health Services.

22. Respondent must give written notice to the Board within five (5) calendar days of any changes in her personal or professional status that could inhibit compliance with any of the above terms and conditions. Such changes include, but are not limited to, a change of therapist, practice supervisor, employment, job duties, work address, and personal address. In such event, a Board member serving on the Social Work Advisory Committee is hereby authorized to modify or amend this Consent Agreement and Order, provided any such modification or amendment is in writing and signed by Respondent and the Board member.

23. Respondent is responsible for the cost of this proceeding and any costs or expense incurred in satisfying the terms of this Order including any expense of supervision if an acceptable practice supervisor is not available at Respondent's employment site.

24. At the end of the supervised practice period, Respondent's therapist, practice supervisor, and employer, if applicable, must submit a written report to the Board addressing whether Respondent has been sufficiently rehabilitated to merit the public trust, whether Respondent is competent to counsel an adult male client, and whether Respondent is competent to engage in independent practice. If Respondent's therapist, practice supervisor, or employer responds unfavorably on an issue, Respondent's licensure as a LSCSW shall continue on the above terms and conditions for an additional twelve (12) months. If the Board receives an acceptable and favorable report from Respondent's therapist, practice supervisor, and employer, Respondent shall be licensed unconditionally as a LSCSW.

IT IS SO ORDERED.


Grant Edwards, Chair
As directed by and on behalf of the
Behavioral Sciences Regulatory Board

NOTICE OF ADMINISTRATIVE RELIEF

Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 et seq.

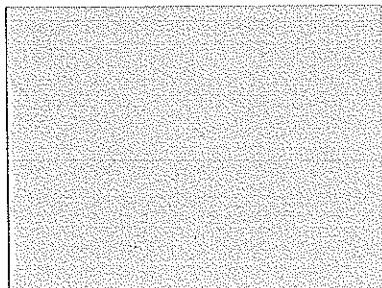
The agency designee who may receive service of a petition for reconsideration or a petition for judicial review on behalf of the Board is:

Tom Hawk, Executive Director
Behavioral Sciences Regulatory Board
712 S. Kansas Avenue
Topeka, Kansas 66603-3240

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of December 2012 a copy of the above and foregoing Order and Notices of Administrative and Judicial Relief was placed in the U.S. mail, first-class postage prepaid, addressed to:

Tina Walsh



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