

Marty M. Snyder, KS S. Ct. #11317
Assistant Attorney General
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BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In The Matter Of)
)
PHILLIP M. TONGIER,)
LCP #290, LMLP #397, LCAC #413)
Respondent)
_____)

Case No. 16-CP-120

Pursuant to KSA Ch. 77, KAPA

CONSENT AGREEMENT AND ORDER

NOW, on this 17th day of February, 2018, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board [Board], by and through Assistant Attorney General Marty M. Snyder, by agreement with Phillip Tongier [Respondent / Licensee], by and through counsel Joseph P. Huertler, Terópir & Huertler, for the purpose of resolving the above-captioned case.

The parties hereby stipulate to the following facts which are supported by a preponderance of the evidence:

1. Phillip Tongier [Licensee / Respondent] was at all times relevant a Licensed Clinical Psychotherapist [LCP], a Licensed Masters Level Psychologist [LMLP] and a Licensed Clinical Addiction Counselor [LCAC] within the meaning of the Kansas Licensure of Master's Level Psychologists Act, K.S.A. 74-5361, *et seq.*, and the Kansas Addictions Counselor Licensure Act, K.S.A. 65-6601, *et seq.*, and amendments thereto.

2. In May of 2016, the Board received a report of alleged violations by Respondent from his employment supervisor. Respondent failed to respond to Initial

requests for a written response, hired counsel to obtain a Protective Order to protect confidential client information before responding and eventually provided a written response in August of 2017 after being furnished the client information.

3. The Board conducted an investigation of the reported violations and finds that the following facts have been established by a preponderance of persuasive evidence:

a. Respondent was employed by KVC Behavioral Health Care in Parsons, Kansas, as an outpatient therapist in the Spring of 2014. The Complainant was his LCP supervisor throughout the employment.

b. Within the first year of employment, agency staff became aware of problems Respondent had with documentation of files and took formal steps in June of 2015 to address these concerns. A list of missing and incomplete documentation was provided to Respondent for corrective action.

c. In September of 2015, the agency switched to electronic records, and all therapists were requested to use that format. However, by March of 2016, it became evident that Respondent had not created a single electronic record. An audit of Respondent's paper files revealed missing documentation in all but two.

d. Respondent was given a deadline for entering his case data into the electronic record system and only then began entering the information. When it became apparent that he would not meet the deadline, he resigned his position and did not complete the electronic or paper documentation needed for the client files.

Conclusions of Law

The Complaint Review Committee of the Board finds that probable cause exists to believe Respondent has violated the following statutes and regulations:

A. K.S.A. 74-5369(a)(9) – unprofessional conduct.

B. K.A.R. 102-4-12 – unprofessional conduct

(b)(2)(C) – failing to notify the Board that Licensee has resigned from employment for some form of misfeasance, malfeasance or nonfeasance;

(b)(9) – failing to cooperate in a timely manner with any request from the Board for a response, information or assistance with respect to a Board investigation;

(b)(10) – performing services clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards;

(b)(36) – failing to maintain a record for each client that conforms to minimal requirements stated in sections (A) through (I).

C. K.S.A. 65-8615 (g) – unprofessional conduct.

D. K.A.R. 102-7-11 – unprofessional conduct.

Each of the following acts shall be considered unprofessional conduct for a ... licensed addiction counselor:

(a)(3) has resigned from employment for some form of misfeasance, malfeasance or nonfeasance;

(h) failing to cooperate in a timely manner with any request from the Board for a response, information or assistance with respect to a Board investigation.

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

However, Respondent and the Board mutually desire to enter a Consent Agreement and Order in lieu of adjudicative proceedings to resolve the above violations.

WHEREFORE, Respondent 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 [KAPA] in relation to Case No. 16-CP-120.

WHEREFORE, Respondent waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Judicial Review Act [KJRA] in relation to Case No. 16-CP-120.

WHEREFORE, the Board and Respondent agree to enter this Consent Agreement and Order [CAO] for a twelve-month suspension of each of his BSRB licenses, but the suspensions shall be stayed while Respondent is in compliance with the following terms and conditions:

(a) Respondent shall, within sixty (60) days of the effective date of this CAO, submit to the Board's Investigator a fifteen (15) page paper with at least twelve (12) professional references in APA format concerning the importance of prompt documentation of client information and of developing skills in electronic record-keeping.

(b) Respondent shall continue in therapy with his provider to care for his depression and follow the directives of the provider. His therapist shall be identified to the Board's Investigator, and Respondent shall authorize the therapist to provide quarterly written reports to the Investigator regarding Respondent's general progress.

(c) Respondent shall, within ninety (90) days of the effective date of this CAO, provide proof to the Board's Investigator that he has completed a seminar with no fewer than six (6) credit hours on the importance of learning electronic documentation. These hours shall be in addition to the biennial CEU requirement.

(d) Respondent agrees to continue to provide *pro bono* training for Foster Parents within the KVC system in cooperation with the direction of the agency's supervisor.

(e) Respondent shall meet weekly face to face for at least one hour with an employment supervisor with focus on completion of all clinical and administrative

documentation in compliance with the agency's policies and governing Kansas statutes and regulations. Respondent shall provide a copy of this CAO to the employment supervisor, and the supervisor shall submit a written quarterly report of progress to the Board's Investigator.

(f) Respondent shall be responsible for any costs and expenses incurred in satisfying the terms of this Consent Agreement and Order.

(g) Evidence of Respondent's failure to comply with any of these conditions may result in emergency suspension of Respondent's BSRB licenses until such time as he can demonstrate compliance with all terms and conditions to the satisfaction of the Board.

(h) Respondent acknowledges an affirmative duty to notify the Board's Investigator 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.

(i) Respondent understands that a notification of this Consent Agreement and Order shall be provided to any other state licensing board if Respondent is also licensed, registered or certified in another state and as otherwise required by law.

(j) This Consent Agreement and Order constitutes the entire agreement between Respondent and the Board and may be modified or amended only by written agreement signed by Respondent and the Board or a designee of the Board.

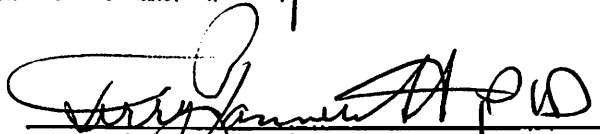
WHEREFORE, Respondent consents to the submission of this Consent Agreement and Order to the Board's Complaint Review Committee and understands that, upon approval by the Complaint Review Committee, this Consent Agreement and

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.

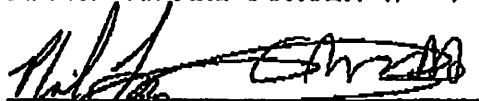
WHEREFORE, the Board agrees that, so long as Respondent complies with the above conditions, the Board will not initiate further disciplinary action against Licensee In relation to violations of K.S.A. 74-5369(a)(9), K.A.R. 102-4-12, K.S.A. 65-6615 or K.A.R. 102-7-11 as a result of this proceeding.

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 this 23rd day of February, 2018.


Terry Pfannenstiel, Ph.D., LSP, LCMFT
Chair, Complaint Review Committee

APPROVED AND CONSENTED TO:


Phillip M. Tongler, LCP, LMLP, LCAC
Licensee / Respondent

2/17/18
Date

APPROVED BY:


Joseph P. Hueter, Esq.
Counsel for Licensee / Respondent

2/21/18
Date

CERTIFICATE OF SERVICE

This is to certify that on this 26 day of February, 2018, a true and correct copy of the above Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Joseph P. Huerter, Esq.
Tenopir & Huerter
1610 SW Topeka Blvd.
Topeka, KS 66612

Phillip Tongier



and a copy sent by building mail to:

Marty M. Snyder, Esq.
Assistant Attorney General

Cindy D'Arde
For the Board