

Jane E. Weiler, #25276  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Avenue, Second Floor  
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	)	
JAMES F. ORWIG, LPC	)	Case No. 19-PC-0060
License No. 2005	)	
	)	
<u>Licensee/Respondent.</u>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

NOW on this 9 day of May, 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 James F. Orwig, ("Licensee"), for the purposes of resolving the above-captioned matters.

The parties knowingly and voluntarily agree as follows:

1. On August 26, 2008, the Board issued Licensee an original Licensed Professional Counselor ("LPC") No. 2005. Licensee is currently, and was at all times relevant to this Consent Agreement and Final Order, an LPC within the meaning of the Kansas Professional Counselors Licensure Act, K.S.A. 65-5801 *et seq.*

**CASE NO. 19-PC-0060**

2. Licensee's LPC license expired August 31, 2018.
3. On or about November 7, 2018, Licensee notified the Board that he had failed to renew his license in a timely manner.
4. Additionally, Licensee reported that he provided professional counseling services to clients during the time that his LPC license was expired, in addition to billing for these services.

## **APPLICABLE LAW**

5. K.S.A. 65-5802(g): "Licensed professional counselor" means a person who is licensed under this act and who engages in the practice of professional counseling except that on and after January 1, 2002, such person shall engage in the practice of professional counseling only under the direction of a licensed clinical professional counselor, a licensed psychologist, a person licensed to practice medicine and surgery or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental disorders.

6. K.S.A. 65-5809(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 licensure 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. 102-3-12a(b): Any of the following acts by a licensed professional counselor, a licensed clinical professional counselor, or an applicant for a professional counselor license or a clinical professional counselor license shall constitute unprofessional conduct.
- b. K.A.R. 102-3-12a(b)(53): practicing professional counseling or clinical professional counseling after one's license expires.
- c. K.A.R. 102-3-12a(b)(54): using without a license, or continuing to use after the expiration of a license, any title or abbreviation prescribed by law for use solely by persons currently holding that type or class of license.

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. 19-PC-0060.

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. 19-PC-0060.

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. 65-5809(a)(9), as referenced in K.A.R. 102-3-12a(b)(53) and K.A.R. 102-3-12a(b)(54), in that Licensee practiced professional counseling after his LPC license expired, and he held himself as an LPC after in license expired.

**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 pay a fine of \$200.00 within thirty (30) days of the effective date of this Diversion Agreement to the Board's investigator at its offices located at 700 SW Harrison St, Suite 420, Topeka, Kansas, 66603.

12. Licensee shall be responsible for any costs and expenses incurred in satisfying terms of this Diversion Agreement.

13. Licensee's renewal applications shall be audited for the next two (2) renewal cycles.

14. 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.

15. 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. 65-5806 [Licensure; expiration and renewal; continuing education; reinstatement of suspended or revoked license], and K.S.A. 65-5809 [Refusal to issue, suspension, limitation, refusal to renew or revocation of license or specialty designation; grounds], for establishing rehabilitation or a pattern of conduct.

16. Except as provided in paragraph 15, 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).

17. 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.

18. 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.

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

20. 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.

21. 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 9<sup>th</sup> day of May, 2019.

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

RECEIVED  
MAY 02 2019

BY: \_\_\_\_\_

AGREED AND CONSENTED TO BY:

James F. Orwig  
James F. Orwig, LPC  
Licensee

4/29/2019  
Date

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was served on this 9 day of May 2019, by depositing the same in the United States mail, postage prepaid, addressed to:

James F. Orwig, LPC  
[REDACTED]  
[REDACTED]

And a copy delivered via interoffice mail to:

Jane E. Weiler, Assistant Attorney General  
Office of the Attorney General  
120 SW 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, KS 66612  
*Disciplinary Counsel for the Board*

Cindy D'Amore  
For the Kansas Behavioral Sciences  
Regulatory Board