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**BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD  
700 SW Harrison Street, Suite 420  
Topeka, Kansas 66603-3929**

In the Matter of )  
GINIVA ESPINOZA, LPC ) Case No. 195-PC-0165  
License No. 2859 )  
)  
Licensee/Respondent. )

**CONSENT AGREEMENT AND FINAL ORDER**

NOW on this 14 day of November, 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 Giniva Espinoza, (“Licensee”), for the purposes of resolving the above-captioned matters.

The parties knowingly and voluntarily agree as follows:

1. On February 29, 2008, the Board issued Licensee an original Licensed Professional Counselor (“LPC”) No. 2859. This license will expire on November 30, 2019. 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.*

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2. On or about, May 2, 2019, the Board received a Report of Alleged Violation alleging Licensee may have violated certain statutes and regulations governing the practice of professional counselors in the State of Kansas. A subsequent investigation determined the following facts.
3. From March 2013 through February 4, 2019, Licensee was employed at Crosswinds Counseling and Wellness (“Crosswinds”) in Emporia, Kansas.

4. On or about July 27, 2018, Crosswinds issued to Licensee a written warning. This warning involved repeated instances of Licensee failing to respond requests for a meeting with her supervisor. In addition, staff reported to Crosswinds that there were issues with communication between Licensee and Crosswind personnel.
5. On or about January 3, 2019, Crosswinds place Licensee on probation. Crosswinds cited a continued pattern of poor/diffuse communication problem with staff, families, and supervisor. In addition, Crosswinds noted that in November 2018, Crosswinds received a complaint that Licensee documented in a client file on a date that she did not see the client. Crosswinds billed the client's insurance because of this documentation. Licensee acknowledged that the documentation issue was likely a result of poor management of records due to experiencing personal difficulties.
6. On or about February 4, 2019, Crosswinds terminated Licensee from her position at Crosswinds for violations of the internal policies and processes; ethical concerns; and resultant impacts on client care. Crosswinds cited that Licensee failed to comply with the probationary terms from January 3, 2019.
7. Licensee did not report to the Board that Crosswinds terminated her for malfeasance.

#### APPLICABLE LAW

8. 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)(2)(C): except when the information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that any of the following circumstances apply to any person regulated by the board or applying for a license or registration, including oneself has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for some form of misfeasance, malfeasance, or nonfeasance.
- b. K.A.R. 102-3-12a(b)(8): 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 interests.

- c. K.A.R. 102-3-12a(b)(10): Offering to perform or performing professional counseling, assessments, consultations, or referrals clearly inconsistent or incommensurate with one's training, education or experience or with accepted professional standards.
- d. K.A.R. 102-3-12a(b)(23): Engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation.
- e. K.A.R. 102-3-12a(b)(35): failing to maintain a record for each client that conforms to the following minimal requirements: (A) (A) Contains adequate identification of the client; (B) indicates the client's initial reason for seeking the services of the professional counselor or clinical professional counselor; (C) contains pertinent and significant information concerning the client's condition; (D) summarizes the interventions, treatments, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each; (E) documents the client's progress during the course of intervention or treatment provided by the professional counselor; (F) is legible; (G) contains only those terms and abbreviations that are comprehensible to similar professional practitioners; (H) indicates the date and nature of any professional service that was provided; and (I) describes the manner and process by which the professional counseling or clinical professional counseling relationship terminated.
- f. K.A.R. 102-3-12a(b)(38): Making or filing a report that one knows to be false, distorted, erroneous, incomplete, or misleading.

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

10. 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 Nos. 19-PC-0165.

11. 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 Nos. 19-PC-0165.

12. 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)(2)(C), in that Crosswinds terminated Licensee for malfeasance; however, Licensee did not report her termination to the Board.

The Board also finds that Licensee was in violation of K.S.A. 65-5809(a)(9), as referenced in K.A.R. 102-3-12a(b)(8), in that Licensee failed to appropriately respond to her personal difficulties, which impacted her professional performance.

The Board also finds that Licensee was in violation of K.S.A. 65-5809(a)(9), as referenced in K.A.R. 102-3-12a(b)(10) and K.A.R. 102-3-12a(b)(35), in that Licensee failed to failed to maintain accurate records with the accepted professional standards, which caused Crosswinds to place Licensee on probation.

The Board also finds that Licensee was in violation of K.S.A. 65-5809(a)(9), as referenced in K.A.R. 102-3-12a(b)(10), K.A.R. 102-3-12a(b)(23), and K.A.R. 102-3-12a(b)(38), in that Licensee documented in a client file on a date that she did not see the client, which caused Crosswinds to bill the client's insurance because of this false documentation. This conduct is contrary to the accepted professional standards.

**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:

13. Licensee shall practice only under individual supervision by an independent clinical-level supervisor to be approved by the Board if employed using her LPC license. This may be Licensee's supervisor at her place of employment. Licensee shall have weekly one (1) hour meetings with the supervisor in a face to face manner. The focus shall include, but not limited to, clinical documentation, and taking care of one's physical/psychological needs to avoid interference with her practice. This requirement shall continue for two (2) years.

14. Within thirty (30) days of the effective date of this Consent Agreement and Final Order; or if Licensee is not currently working using her LPC license and prior to the beginning of using her LPC license, Licensee shall submit to the Board's investigator the name of her proposed supervisor.

15. Licensee shall provide a copy of this Consent Agreement and Final Order to the supervisor and authorize the supervisor to provide written quarterly reports to the Board's Investigator for two (2) year term of supervision. There shall be a minimum of eight (8) quarterly reports (every three [3] months) submitted to the Board's investigator during this two (2) year supervision timeframe.

16. During the time this Consent Agreement and Final 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 participate in the delivery of professional counseling services.

17. Hours of supervision attained by Licensee pursuant to this Consent Agreement and Final Order shall not count toward any supervised experience hours required for a higher level of licensure.

18. Additionally, Licensee shall obtain six (6) extra continuing education hours in Ethics beyond the biennial requirement, taken in-person or on-line within ninety (90) days of the effective date of this Consent Agreement and Final Order. These additional continuing education hours shall include, but not limited to, clinical documentation, and taking care of one's physical/psychological needs to avoid interference with her practice.

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

20. 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.

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

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

23. 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.

24. 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.

25. Except as provided in paragraph 24, 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).

26. 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.

27. 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.

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

29. 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.

30. 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 14<sup>25th</sup> day of November 2019.



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

AGREED AND CONSENTED TO BY:



Giniva Espinoza, LPC  
Licensee

11-14-19

Date

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was served on this 26 day of November 2019, by depositing the same in the United States mail, postage prepaid, addressed to:

Giniva Espinoza



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*



For the Kansas Behavioral Sciences  
Regulatory Board