

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

In The Matter Of)
)
MALINDA D. KUFAHL, LMSW,) **Case No. 23-MS-0075**
License No. 10380,)
)
_____Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Now, on this 12 day of November, 2024, the above-captioned matter comes before the Complaint Review Committee of the Kansas Behavioral Sciences Regulatory Board ("Board") by agreement of Malinda D. Kufahl, LMSW ("Respondent"), for the purposes of resolving the above-captioned matter.

1. The Board is represented herein by its counsel, Timothy D. Resner of Frieden & Forbes, LLP, 1414 S.W. Ashworth Place, Suite 201, Topeka, Kansas 66604. Respondent appears pro se.

2. The Board is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Social Workers Licensure Act, K.S.A. 65-6301 *et seq.*, and amendments thereto (the "Act") Pursuant to applicable provisions of the Act and the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* ("KAPA"), whenever it is established that the applicant and/or Respondent has committed any of the acts described in K.S.A. 65-6311(a), the Board may refuse to issue, renew or reinstate a license, and/or revoke, suspend, censure, condition, and/or limit a Respondent and/or assess a fine against the applicant and/or Respondent in an amount not in excess of \$1,000.00 per violation

3. The Board's Complaint Review Committee has received certain information, has investigated and has determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of the Act and/or the Board's Regulations that would justify, pursuant to the provisions of K.S.A. 65-6311(a), the imposition of disciplinary action against her license and the assessment of a civil fine against Respondent in an amount not to exceed \$1,000.00 per violation.

4. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board's Complaint Review Committee makes the following findings of fact, conclusions of law and approves of the disposition set forth herein.

I. FINDINGS OF FACT

5. Respondent is currently and was at all times relevant to this Consent Agreement and Final Order, an LMSW within the meaning of the Act.

6. Respondent was previously employed at a mental health center in Kansas.

7. Respondent resigned her employment while on administrative leave in September of 2022 as a result of an investigation by her employer into a breach of confidentiality.

8. A director of QM / Risk Management for Respondent's former employer submitted a report of alleged violation to the Board which alleged and the Board's investigation confirmed that Respondent was placed on administrative leave pending consultation with human resources regarding disciplinary action relating to a breach of confidentiality.

9. Respondent was providing supervision to a therapist at the mental health center. In consultation with Respondent, the therapist relayed a client's disclosure of abuse by her parents when she was a child and revealed that her parents were currently in the adoption process with kids from foster care.

10. After obtaining this information from her supervisee, Respondent looked up the client's parents on Facebook and then revealed the name of the supervisee's client's parents and information regarding abuse of her supervisee's client to an employee of the adoption agency.

11. Respondent did not make a report through the Department of Children and Families hotline.

12. Through her response, Respondent admitted to revealing the name of the supervisee's client's parent and spouse and details regarding concerns with the parent and spouse to the adoption agency (clarifying that the spouse was the individual of concern) but claims that no confidential information was revealed. Respondent attributes any mistake or error to a lack of training from her employer and relayed that she had been in the position for a period of two (2) months when the incident happened.

13. Respondent also provided information showing that her employment was terminated due to the breach of confidentiality by the mental health center.

14. Respondent did not report her termination from her employer to the Board. The Board learned of Respondent's termination, many months later upon receipt of a complaint from Respondent's former employer regarding the subject matter of this Consent Agreement and Final Order.

II. APPLICABLE LAW

15. Pursuant to K.S.A. 65-6311(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 Respondent or may impose a fine not to exceed \$1,000 per violation upon a finding that a Respondent has engaged in unprofessional conduct as defined by applicable rules and regulations adopted by the Board.

16. K.A.R. 102-2-7 provides in relevant part, that any of the following acts by a licensee shall constitute unprofessional conduct:

(b) except when the information has been obtained in the context of a confidential relationship, failing to notify the board, within a reasonable period of time, that any of the following conditions apply to any person regulated by the board or applying for a license or registration, including oneself:

.....
(3) 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;

.....
(j) offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, and experience and with accepted professional standards for social work;

.....
(s) revealing information, a confidence, or secret of any client, or failing to protect the confidences, secrets, or information contained in a client's records, except when at least one of these conditions is met:

- (1) Disclosure is required or permitted by law;
- (2) failure to disclose the information presents a clear and present danger to the health or safety of an individual or the public; or
- (3) the licensee is a party to a civil, criminal, or disciplinary investigation or action arising from the practice of social work, in which case disclosure is limited to that action;

.....
(t) failing to obtain written, informed consent from each client, or the client's legal representative or representatives, before performing any of these actions:

.....

(3) releasing information concerning a client to a third party, except as required or permitted by law;

....
(v) failing to exercise due diligence in protecting information regarding and the confidences and secrets of the client from disclosure by other persons in one's work or practice setting;

III. CONCLUSIONS OF LAW

17. Based on the facts stipulated to herein, Respondent is subject to sanction pursuant to K.S.A. 65-6311(a)(9) for engaging in unprofessional conduct as defined by applicable rules and regulations adopted by the Board, namely K.A.R. 102-2-7(b)(3), (j), (s), (t)(3) and (v).

IV. AGREEMENT

18. Respondent and the Board mutually desire to enter into a Consent Agreement and Final Order in lieu of further adjudicative proceedings at this time.

WHEREFORE, Respondent agrees and consents to, and the Board further orders, the following terms and conditions:

a. Respondent shall practice only under individual supervision by a clinical-level supervisor when employed using her social work license, for a period of one (1) year. The supervisor may be her employment supervisor, if qualified. The supervisor must be approved in advance in writing by the Board. There shall be no dual relationship with the supervisor. Respondent shall have weekly one (1) hour meetings with her supervisor that will be conducted in-person (in the same place). The focus of the supervision shall include, but not be limited to, professional ethics, confidentiality, supervision and standard of client care. Only time while Respondent is employed and using her social work license will count towards the one (1) year requirement.

b. Within thirty (30) days of the effective date of this Consent Agreement and Final Order; Respondent shall submit to the Board's investigator the name of her proposed supervisor.

c. Respondent 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 the one (1) year term of supervision. There shall be a minimum of four (4) quarterly reports submitted to the Board's Investigator during this one (1) year supervision timeframe.

d. Respondent shall be required to obtain six (6) additional continuing education hours in ethics and confidentiality. These hours may not be used toward the total number of continuing education hours required for license renewal.

e. Within ninety (90) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit to the Board's investigator documentation of completion of the six (6) additional continuing education hours.

f. Respondent shall provide a copy of this Consent Agreement and Final Order to any employer during the term of supervision.

g. Respondent shall be responsible for any costs incurred in satisfying the terms of the Agreement.

h. Respondent acknowledges an affirmative duty to notify the Board within ten (10) days of any changes in personal or professional status that would inhibit compliance with any condition of this Consent Agreement and Final Order.

i. Respondent shall submit to the Board's investigator at its offices located at 700 SW Harrison St, Suite 420, Topeka, Kansas, 66603, any and all documents evidencing compliance with the terms and conditions required by this Consent Agreement and Final Order.

V. . ADDITIONAL STIPULATIONS

19. Respondent agrees that all information in the possession of the Board's Complaint Review Committee, its staff, its investigators and its attorney regarding the matters which led to this disciplinary action, the investigation and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board's Complaint Review Committee as part of the presentation and consideration of the proposal of settlement in the form of this Consent Agreement and Final Order, with or without the presence of the Respondent or her attorney. In the event that this Consent Agreement and Final Order is not accepted and approved by the Board's Complaint Review Committee, Respondent waives any objection to such Board members' consideration of this Consent Agreement and Final Order or the information mentioned in the preceding sentence and further waives the disqualification of any Board member, including any right to seek the disqualification of any Board member, based on such Board member's consideration of said document and information.

20. The stipulations and orders contained herein shall not become binding until this Consent Agreement and Final Order is approved and entered by the Complaint Review Committee. Respondent acknowledges that the approval of the Board's Counsel shall not constitute the approval of the Board or bind the Board to approve this Consent Agreement and Final Order.

21. Respondent agrees that this Consent Agreement and Final Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it. Respondent further agrees that the Act referenced in paragraph 2 above is constitutional on its face and as applied in this case.

22. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

23. Respondent acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon her;
- (b) To file a response to the charges;
- (c) To have notice of and participate in a formal adjudicative hearing with the Board or its designee making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and
- (d) To take advantage of all applicable provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq. and the Kansas Judicial Review Act, K.S.A. 77-601 et seq.

Respondent freely waives these rights and acknowledges that such waiver is made voluntarily and in consideration of avoiding an administrative hearing and the Board's agreement to limit the disciplinary action taken against her in accordance with the terms and conditions provided for herein. Respondent also waives all of her rights to seek reconsideration, administrative review and/or judicial review of this Consent Agreement and Final Order or to otherwise challenge or contest this Consent Agreement and Final Order in any direct or collateral administrative or judicial proceedings.

24. Respondent acknowledges that she enters into this Consent Agreement and Final Order freely and voluntarily after consultation or a reasonable opportunity for consultation with counsel of her choosing. Respondent further acknowledges that her representatives have read this Consent Agreement and Final Order in its entirety, that they understand its legal consequences and that they agree that none of its terms or conditions is unconscionable, arbitrary, capricious or unreasonable.

25. Time is of the essence to this Consent Agreement and Final Order. Respondent acknowledges and agrees that any violation of this Consent Agreement and Final Order shall constitute a violation of a lawful Board order pursuant to K.S.A. 65-6311(a)(11) and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of any alleged violation of this Consent Agreement and Final

Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Consent Agreement and Final Order.

26. This Consent Agreement and Final Order constitutes the entire and final agreement of the parties. In the event any provision of this Consent Agreement and Final Order is determined to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Consent Agreement and Final Order shall be given full force and effect.

27. Upon execution by all parties and entry as an order by the Board, this Consent Agreement and Final Order shall be a public record in the custody of the Board

28. This Consent Agreement and Final Order shall become effective on the day it is approved by the signature of the Complaint Review Committee's Chairperson or designee below.

29. Respondent acknowledges that she has been advised by the Board that after the Consent Agreement and Final Order becomes effective Respondent has the right within 15 days after service of this Consent Agreement and Final Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Consent Agreement and Final Order to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 et seq., which must be served on the Kansas Behavioral Sciences Regulatory Board by serving David Fye, its Executive Director, at 700 SW Harrison, Suite 420, Topeka, KS 66603-3240. However, Respondent expressly waives these rights.

30. In accordance with K.S.A. 77-531(a)(3), Respondent consents to service of this Consent Agreement and Final Order via electronic mail, addressed to Respondent at: [REDACTED]

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.



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

AGREED AND CONSENTED TO BY:

Malinda Kufahl, LMSW

Malinda D. Kufahl, LMSW
Respondent

11/6/2024

Date

CERTIFICATE OF SERVICE


This is to certify that on this 12 day of November, 2024, a true and correct copy of the above and foregoing Consent Agreement Order was served via electronic mail only, addressed to:

Malinda D. Kufahl, LMSW



And by e-mail to:

Timothy D. Resner
Frieden & Forbes, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
tresner@fflawllp.com
*Counsel for the Board of the Behavioral
Sciences Regulatory Board*



Staff,
Kansas Behavioral Sciences Regulatory Board