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Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612
(785) 296-2215

BEFORE THE KANSAS BEHAVIORAL SCIENCES REGULATORY BOARD

In the Matter of)
)
BRENDA HARVEY-SMITH,)
LCMFT #0216)
_____)

Case No. 10 CT 0037

MODIFIED CONSENT AGREEMENT AND ORDER

NOW, on this 27th day of August, 2010, the above-captioned matter comes before the Kansas Behavioral Sciences Regulatory Board [Board] by agreement of Brenda Harvey-Smith [Licensee] and the Board for the purpose of resolving the above-captioned case. The Board appears by Assistant Attorney General Marty M. Snyder, and Licensee appears by Ronald B. Rose, Martin, Pringle, Oliver, Wallace & Bauer, LLP.

FACTS

Licensee hereby acknowledges the following facts which the Board finds have been established by clear and convincing evidence:

1. Brenda Harvey-Smith is currently, and at all times relevant has been, a Licensed Clinical Marriage and Family Therapist within the meaning of the Marriage and Family Therapists Licensure Act, K.S.A. 65-6401, *et seq.*, and amendments thereto.
2. In June of 2009, the Board received a report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing the practice of social work.

3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations. During the investigation, Licensee was informed of the reported information and was given the opportunity to respond to the allegations. Licensee initially responded on October 30, 2009 that she was limited in her ability to respond due to confidentiality of clients. On November 4, 2009 and November 12, 2009, the Board clarified to Licensee that disclosure of confidential information is allowed if permitted by law and reminded Licensee of her obligation to respond to a Board inquiry. Licensee responded on November 30, 2009.
4. As a result of the investigation, the Board finds probable cause that the following facts have been established by clear and convincing evidence:
 - a. On April 6, 2009, at her client M.H.'s request, Licensee completed an "Application for Disability Accommodations Practitioner's Statement" for the ASWB. [Exhibit A]
 - b. The form stated the diagnosis as "315.00 Reading Disorder (dyslexia)" and was signed by Licensee as the Behavioral Health Care Practitioner certifying the information to be true.
 - c. However, at no time had Licensee made such a diagnosis for M.H., nor did she confirm the diagnosis by any other health care practitioner.

VIOLATIONS

The Board finds that reasonable grounds exist to believe Licensee has violated the following regulations:

K.A.R. 102-5-12(b). Unprofessional Conduct. Any of the following acts by ... a ... licensee ... shall constitute unprofessional conduct:

- (1) Obtaining or attempting to obtain a license or registration for oneself or another by engaging in ... misrepresentation, or by concealing a material fact;
- (37) making or filing a report that one knows to be ... distorted, ... incomplete, or misleading.

HOWEVER, Licensee and the Board mutually agreed to enter a Consent Agreement and Order in lieu of adjudicative proceedings to resolve the report of alleged violations with an effective date of July 12, 2010. The parties further mutually agree to enter this Modified Consent Agreement and Order.

WHEREFORE, Licensee waives all rights to an adjudication of facts and law that could be determined pursuant to a hearing conducted in accordance with the Kansas Administrative Procedure Act in relation to Case No. 10-CT-0037.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Judicial Review Act in relation to Case No. 10-CT-0037.

WHEREFORE, Licensee consents to continuation of her license without restriction under the following conditions:

- A. Licensee will attend five hours of continuing education on professional ethics [completed] and five hours on diagnoses of learning disorders. The continuing education classes may be completed via internet if no in-person course can be found. Licensee shall provide a copy of her certificate(s) of attendance to the Board within nine months of the effective date of the original Consent Agreement and Order. Such training shall be in addition to licensure requirements and shall be at Licensee's expense.
- B. Pursuant to K.A.R. 102-5-7a(4)(d)(3), "Each clinical supervisor shall ... not be under any sanction from a disciplinary proceeding, unless the board waives this prohibition

for good cause shown by the proposed supervisor." Licensee currently supervises 18 supervisees but has provided a written request for waiver of this prohibition. The Board consents to the waiver for a period of 180 days from the effective date of the original Consent Agreement and Order to allow Licensee to complete the terms of this Modified Consent Agreement and Order or to allow Licensee adequate time to advise her supervisees of the supervisory prohibition if Licensee will be unable to complete the terms of this Modified Consent Agreement and Order within the 180-day time period so that supervisees can make other supervision arrangements.

- C. Licensee shall be responsible for any costs incurred in satisfying the terms of this Order.
- D. Evidence of Licensee's breach, violation or failure to comply with any of the conditions will result in an order to appear and show cause why Licensee's license should not be suspended temporarily pending full compliance with this Modified Consent Agreement and Order. At such show cause hearing, the issues will be limited to whether this Modified Consent Agreement and Order has been violated and the appropriate sanction for such violation.
- E. Licensee acknowledges that proof submitted to the Board by affidavit or other form of competent evidence that Licensee has breached, violated or failed to meet the conditions of this Modified Consent Agreement shall be good and sufficient evidence to support an alleged violation of breach, violation or non-compliance.
- F. Licensee understands that a notification of this Modified Consent Agreement and Order shall be provided to any other state licensing board if Licensee is also licensed, registered or certified in another state.

- G. Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with any condition of this Modified Consent Agreement and Order. In such event, a designee of the Board is authorized to modify or amend this Order in writing.
- H. This Modified Consent Agreement and Order constitutes the entire agreement between the Licensee and the Board and may be further modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

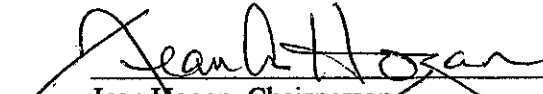
WHEREFORE, Licensee consents to the submission of this Modified Consent Agreement and Order to the Board's Complaint Review Committee and understands that, upon approval of the Complaint Review Committee, this Modified Consent Agreement becomes a final order of the Board. The Board has authorized the Complaint Review Committee to approve this Modified Consent Agreement and Order.

WHEREFORE, the Board agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to the violations of K.A.R. 102-5-12(b)(1) and (37) listed above.

WHEREFORE, the Board further agrees that, upon determination of Licensee's compliance with the conditions stated herein, Licensee shall continue to be unconditionally licensed as a Licensed Clinical Marriage and Family Therapist.

WHEREFORE, the provisions as modified above are consented to and are hereby made the final order of the Kansas Behavioral Sciences Regulatory Board and become effective on the date indicated in the below Certificate of Service.

IT IS SO ORDERED.



Jean Hogan, Chairperson
Complaint Review Committee


APPROVED AND CONSENTED TO:



Brenda D. Harvey-Smith, Licensee

08/20/2010
Date

APPROVED:



Ronald B. Rose, Esq.
Counsel for Licensee

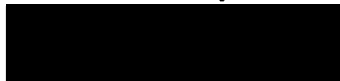
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Date

CERTIFICATE OF SERVICE


This is to certify that on the 31st day of August, 2010, a true and correct copy of the above and foregoing Modified Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Ronald B. Rose
Martin Pringle Oliver Wallace Bauer LLP
100 N. Broadway, Suite 500
Wichita, KS 67202

Brenda D. Harvey-Smith



Marty M. Snyder, Esq.
Assistant Attorney General
120 SW 10th Ave, 2nd Floor
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For the Behavioral Sciences Regulatory Board