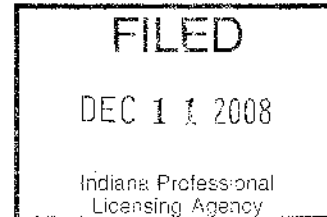


BEFORE THE SOCIAL WORKER, MARRIAGE
AND FAMILY THERAPIST, AND MENTAL
HEALTH COUNSELOR BOARD OF INDIANA
CAUSE NO. 2008 BHSB 0003

IN THE MATTER OF THE LICENSE OF)
)
MARK SMITH, LCSW)
)
LICENSE NUMBER: 34001845A)



**RESPONDENT, MARK SMITH, LCSW'S PETITION
FOR TERMINATION OF PROBATIONARY ORDER**

Respondent, Mark Smith, LCSW ("Mr. Smith"), by counsel, hereby moves the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board of Indiana for termination of his probation as imposed by the Stipulated Findings of Fact, Stipulated Conclusions of Law, Ultimate Conclusions of Law and Order dated June 26, 2008. In support of this Petition, Mr. Smith states as follows:

1. On June 26, 2008, the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board of Indiana issued an Order placing Mr. Smith's clinical social worker license on indefinite probation and during said probation, Mr. Smith's license would be governed by the terms and conditions outlined in said Order, which included not being able to terminate probation for a minimum of six (6) months from the date of the final Order. (See Exhibit A, p. 4, Order, ¶ 6 and ¶ 7, Sections a-g).

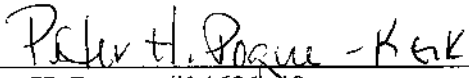
2. Respondent has complied with all terms and conditions of the Order of the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board and now requests that the Board set a hearing on the issue of whether the probationary order shall be terminated.

3. Mr. Smith requests that the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board set this matter for hearing at the Board's scheduled meeting on January 26, 2009, as that will be more than six (6) months from the date of the Board's Order imposing disciplinary sanctions.

WHEREFORE, Mark Smith, LCSW, by counsel, respectfully requests that the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board of Indiana set a hearing to determine whether the probationary order shall be terminated, and for all other just and proper relief.

Respectfully submitted,

SCHULTZ & POGUE, LLP



Peter H. Pogue, #1463149
Attorney for Respondent,
Mark Smith, LCSW

CERTIFICATE OF SERVICE

Service of the foregoing was made by placing a copy of the same into the United States

Mail, first class postage prepaid, this 8th day of December, 2008, to:

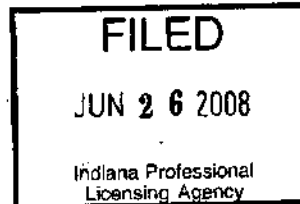
Heather C. Kennedy
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

Peter H. Pogue - K&K

SCHULTZ & POGUE, LLP
520 Indiana Avenue
Indianapolis, IN 46202
Phone: (317) 262-1000
Fax: (317) 262-9000

BEFORE THE SOCIAL WORKER,
MARRIAGE AND FAMILY
THERAPIST, AND MENTAL HEALTH
COUNSELOR BOARD
CAUSE NO. 2008 BHSB 0003

IN THE MATTER OF THE LICENSE OF)
MARK SMITH, LCSW)
LICENSE NO: 34001845A)



STIPULATED FINDINGS OF FACT, STIPULATED CONCLUSIONS OF LAW,
ULTIMATE CONCLUSIONS OF LAW AND ORDER

The Petitioner, the State of Indiana, by Heather C. Kennedy, Deputy Attorney General, Division of Consumer Protection ("Petitioner"), the Respondent, Mark Smith, LCSW ("Respondent"), and Respondent's counsel, Peter Pogue of Schultz & Pogue, LLP, signed an Agreement that purports to resolve all issues involved in the action by the Petitioner before the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board ("Board") regarding Respondent's license, and that Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the June 23, 2008 meeting, now finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement as if fully set forth herein and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 5 in favor, 0 against, and 0 abstaining. Incorporated into the Agreement was the consensus of both parties to the following Stipulated Findings of Fact, Stipulated Conclusions of Law, Ultimate Conclusions of Law and Order. The Board, hereby issues the following Stipulated



Findings of Fact, Stipulated Conclusions of Law, Ultimate Conclusions of Law and Order:

STIPULATED FINDINGS OF FACT

1. Respondent's address on file with the Board is 14164 Camden Lane, Westfield, IN 46704 and he is a duly licensed Clinical Social Worker in the State of Indiana having been issued license number 34001845A.

2. At all time pertinent to this Complaint, Respondent practiced as a clinical social worker at Family Tree Counseling ("Family Tree") in Carmel, Indiana. At the time of the consumer complaint, Respondent was the President and sole owner of Family Tree and has held that position each year since.

3. While acting as President of Family Tree, Respondent submitted all claims to Magellan Health Services ("Magellan") in his name, while services were actually rendered by other Family Tree employees.

4. On or about May 4, 2004, Respondent was notified by his insurance carrier, Magellan, that all contracts and/or agreements with them were terminated due to: quality of care concerns related to allowing an unlicensed therapist in Respondent's practice to treat a member referred by Magellan, failure to adequately supervise the unlicensed provider, and submission of claims to Magellan under Respondent's name for that treatment, when in fact Respondent's subordinate rendered the services.

5. On or about July 7, 2004, Magellan filed an Adverse Action Report against the Respondent, in order to be maintained within The Healthcare Integrity and Protection Data Bank.

STIPULATED CONCLUSIONS OF LAW

1. Respondent's conduct described above constitutes a violation of Indiana Code § 25-1-9-4(a)(1)(B), in that, the Respondent engaged in material deception in the course of professional services or activities, as evidenced by Respondent submission of claims to Magellan for services he did not render, thus failing to maintain billing practices consistent with the manner in which services were provided, to wit: 839 IAC 1-3-4(b) The competent practice of social work and clinical social work includes, acting within generally accepted ethical principles and guidelines of the profession and maintaining an awareness of personal and professional limitations. These ethical principles include, but are not limited to: NASW Ethics Code 3.05: Social workers should establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

ULTIMATE CONCLUSIONS OF LAW

The Respondent's failure to comply with the above referenced standards is cause for disciplinary sanctions that may be imposed singly or in combination such as censure, a letter of reprimand, probation, suspension, or a revocation of license, and a fine up to the amount of \$1000.00 per violation, as detailed at Indiana Code § 25-1-9-9.

ORDER

Based upon the above Stipulated Findings of Fact and Stipulated Conclusions of Law, the Board issues the following Order:

1. The Board has jurisdiction over the Respondent and the subject matter in this disciplinary action commenced on April 2, 2008.

2. The parties execute this Agreement voluntarily.
3. Respondent and Petitioner voluntarily waive their rights to a public hearing on the Complaint and all other proceeding in this action to which either party may be entitled by law, including judicial appeal or review.
4. Petitioner agrees that the terms of this Agreement will resolve any and all outstanding claims or allegations or potential claims or allegations relating to disciplinary action against Respondent's license for the period between April 2, 2008 and the date of the Final Order.
5. Respondent has carefully read and examined this Agreement and fully understands its terms and that, subject to a final order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.
6. Respondent's clinical social worker license shall be placed on **INDEFINITE PROBATION**. Respondent may petition the Board after six (6) months of successfully complying with his probation for withdrawal of said probation.
7. During the Probationary period, Respondent's license shall be governed by the following **TERMS AND CONDITIONS**:
 - a. Respondent shall keep the Board apprised of his home address, mailing address and residential telephone number at all times.
 - b. Respondent shall keep the Board apprised of his place of employment, employment telephone number and name of his supervisor at all times.
 - c. Respondent shall keep the Board informed of his occupation title and work schedule, including the number of hours worked at all times.

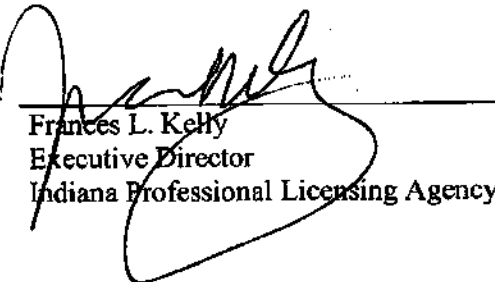
- d. Respondent shall provided a copy of all Board orders imposing discipline or limiting practice to any social work employer who shall sign and return a copy of such order to the Board within seven (7) days of employment or receipt of this order.
 - e. Respondent shall be supervised by a Board approved supervisor twice a month for the length of his probation to discuss ethics and supervision. Said supervisor shall submit quarterly reports to the Board that Respondent is in compliance with the Order.
 - f. Respondent shall complete 50% of his Continuing Education requirements, ten (10) hours for the 2008-2010 year in **Category I** supervision and billing.
 - g. Respondent shall make quarterly personal appearances before the Board for the length of his probation. At each personal appearance, Respondent shall inform the Board that he is supervising employees in accordance with the applicable supervising statutes.
8. Respondent agrees to pay for a copy of the transcript of the presentation of this Agreement to the Board.
9. It is further agreed that any information received by any other regulatory agency that indicates non-compliance with the statutes or regulations regarding the competent practice of a Clinical Social Worker or a violation of the Final Order, may result in the State requesting an emergency suspension of Respondent's license, as well as possible reinstatement of the initial action giving rise to this resolution, an Order to Show Cause as may be issued by the Board, or a new cause of action being filed pursuant

to Indiana Code § 25-1-9-4(a)(10), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

10. The Parties agree to the continuing jurisdiction of the Board.

SO ORDERED this 26 day of June, 2008.

SOCIAL WORKER, MARRIAGE AND FAMILY
THERAPIST, AND MENTAL HEALTH
COUNSELOR BOARD

By: 

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency

Copies:

Mark Smith, LCSW
14164 Camden Lane
Westfield, IN 46704

SENT CERTIFIED MAIL NO.: 7006 2760 0003 4661 7414
RETURN RECEIPT REQUESTED

Schultz & Pogue, LLP
Peter Pogue
520 Indiana Avenue
Indianapolis, IN 46202

SENT CERTIFIED MAIL NO. : 7006 2760 0003 4661 7421
RETURN RECEIPT REQUESTED

Deputy Attorney General – Heather C. Kennedy
OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204-2770