

BEFORE THE BEHAVIORAL HEALTH AND HUMAN SERVICES BOARD

CAUSE NUMBER: 2016 BHSB 0029

IN THE MATTER OF THE LICENSE OF)
MARK E. SMITH, LCSW)
LICENSE NUMBER: 34001845A (Active))

FILED

DEC 22 2016

Indiana Professional
Licensing Agency

ADMINISTRATIVE COMPLAINT

The State of Indiana ("State"), by counsel, Deputy Attorney General N. Renee Gallagher, on behalf of the Office of the Indiana Attorney General, and pursuant to Ind. Code § 25-1-7-7, Ind. Code ch. 25-1-5, Ind. Code § 25-23.6-2-7, the Administrative Orders and Procedures Act, Ind. Code ch. 4-21.5-3 and Ind. Code ch. 25-1-9, files its Complaint against the Social Worker license of Mark E. Smith ("Respondent"), and in support, states the following:

FACTS

1. Respondent's address on file with the Indiana Professional Licensing Agency is 14164 Camden Lane, Carmel, Indiana 46074.
2. On June 25, 2015, Respondent is a Clinical Social Worker license ("LCSW") in Indiana, under license number 34001845A and is currently active.
3. Respondent was employed at Family Tree Counseling Associates ("Family Tree") located at 11350 Meridian Street, Indianapolis, Indiana where Respondent was the Director from approximately 1989 to present except for a leave of absence from work from approximately May 22, 2015 through July 23, 2015 while he was enrolled in in-patient treatment. In his absence, Andrew Holzman acted as Interim Director for Family Tree.
4. Respondent's leave of absence from Family Tree was precipitated by several events.

5. On or about April 26, 2015, Respondent learned that his fiancé of approximately six or seven years was engaged in a sexual relationship with a co-worker.

6. Respondent continued to practice from April 26, 2015 until approximately May 22, 2015.

7. On June 1, 2015, Respondent sent an email to approximately 600 or more clients and business associates of Family Tree contained in the business' database asking that each recipient send a written complaint to the employer of his fiancé's and demand that the co-worker be fired due to the affair Respondent learned about between Respondent's fiancé and her co-worker.

8. On June 15, 2015, the Office of the Indiana Attorney General ("OAG") and later on August 6, 2015, a consumer complaint from two former Licensed Clinical Social Workers ("LCSWs") of Family Tree.

9. In the letter and consumer complaint, the LCSWs provided that a former client of Family Tree notified the LCSWs that the client had received an email from Respondent asking for the client to file a complaint against the co-worker of Respondent's fiancé. In the email, many details and allegations are made against the co-worker, such as referring to the co-worker as a "sex addict," and details of the affair.

10. The LCSWs reported this information to the OAG as an alleged acts of unprofessional behavior, a "blatant" abuse of client information and both were concerned that receipt of the email could possibly cause a "re-traumatizing" of someone who had been in an affair, was sex addict, or who was in a relationship affected by similar behaviors.

11. On July 29, 2015, the OAG received a second consumer complaint from a former client of Respondent who alleged that, while in marriage counseling as a couple with Respondent,

Respondent hired his wife to work at Family Tree while the couple was continuing to receive marriage counseling from Respondent.

12. In response to the two consumer complaints, dated August 18, 2015 and September 6, 2015, Respondent admits to sending the June 1, 2015 email to over 600 clients, former clients and business contacts and admits to hiring his Ms. Hall, his former client.

13. In his responses to the consumer complaints, Respondent also admits that he was not fit to practice after learning of his fiancé's affair in April 2015 however, Respondent continued to practice until May 22, 2015.

14. Respondent, in his September 6, 2015 response, also provides that Ms. Hall is not licensed but is an "unlicensed" intern who charges thirty (30) dollars per session and is supervised by Respondent and another practitioner in his office, Mr. Holzman, the interim director at Family Tree.

15. A review of licensing records at the Indiana Professional Licensing Agency for the individuals listed as providing counseling services in Respondent's office reveals that at least four do not have an active Indiana license to provide counseling services as a licensed social worker, licensed mental health counselor or other license issued by the Board.

COUNT I

14. Paragraphs one (1) through fifteen (15) are incorporated by reference herein.

15. Respondent's conduct as described above constitutes a violation of Ind. Code §25-1-9-4(a)(3) in that Respondent violated state statute or rule regulating the profession, in that, Respondent failed to comply with 839 IAC 1-3-4(b), as Respondent failed to act within the generally accepted ethical principles and guidelines of the profession, when he engaged in a dual relationship with a client by soliciting and then hiring the client into his practice during the

period of time Respondent was providing marriage counseling to the client/employee and her spouse.

COUNT II

16. Paragraphs one (1) through fifteen (15) are incorporated by reference herein.

17. Respondent's conduct as described above constitutes a violation of Ind. Code §25-1-9-4(a)(3) in that, Respondent violated a state statute or rule regulating the profession, in that, Respondent failed to comply with 839 IAC 1-3-4(b)(6), as Respondent failed to act within the generally accepted ethical principles and guidelines of the profession and the National Association of Social Workers Code of Ethics and Ethical Responsibilities ("NASW") 1.06, when he sent an email to approximately 600 or more email addresses of former and current clients of his practice as well as business associates for his personal gain by requesting that the recipients of the email file complaints against the co-worker who had an affair with Respondent's fiancé and referencing the affair and sexual addiction in the email.

COUNT III

18. Paragraphs one (1) through fifteen (15) are incorporated by reference herein.

19. Respondent's conduct as described above constitutes a violation of Ind. Code §25-1-9-4(a)(3), in that, he violated 839 IAC 1-3-4(b) and NASW 3.01 and NASW 5.01, when Respondent employing and/or supervising persons who did not possess active licenses issued by the Board to provide counseling services in Indiana.

COUNT IV

20. Paragraphs one (1) through fifteen (15) are incorporated by reference herein.

21. Respondent's conduct as described above constitutes a violation of Ind. Code

§25-1-9-4(a)(13), in that, Respondent assisted several persons in committing acts of practicing without valid Indiana licenses which would be grounds for disciplinary action by the Board.

COUNT V

22. Paragraphs one (1) through fifteen (15) are incorporated by reference herein.

23. Respondent's conduct as described above constitutes a violation of Ind. Code §25-1-9-4(a)(4)(B), in that, Respondent failed to keep abreast of current theory and professional practice when he continued to work, although Respondent was unfit to work, and provide counseling services during the period of April 26, 2015 through May 22, 2015.

WHEREFORE, Petitioner demands an order against the Respondent, that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all of the cost incurred in the prosecution of this case;
3. Directs Respondent to pay a fee of Five Dollars (\$5.00) to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund pursuant to Ind. Code § 4-6-14-10(b); and
4. Provide any other relief the Board deems just and proper.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney Number: 1958-98

By: _____

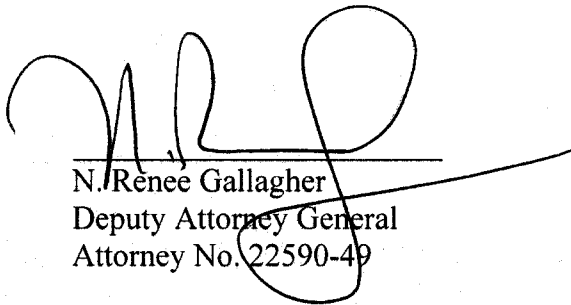
N. Renee Gallagher
Deputy Attorney General
Attorney No. 22990-49

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Administrative Complaint" has been served upon the Respondent listed below, by United States mail, first class postage prepaid, on this 22nd day of December, 2016.

Mark Smith, LCSW
14164 Camden Lane
Carmel, Indiana 46074

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