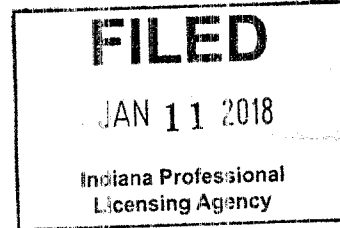


BEFORE THE
BEHAVIORAL HEALTH AND HUMAN
SERVICES LICENSING BOARD
CAUSE NUMBER 2016 BHSB 0029

IN THE MATTER OF THE LICENSE OF:)
)
MARK EDWARD SMITH, L.C.S.W.)
)
LICENSE NO.: 34001845A)



FINAL ORDER ACCEPTING PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The State of Indiana ("Petitioner"), by Deputy Attorney General Zanna C. Dyer, and Mark Edward Smith, L.C.S.W. ("Respondent"), represented by counsel, Michael Roth, signed a Proposed Settlement Agreement ("Agreement") which purports to resolve all issues involved in the action by Petitioner and the Behavioral Health and Human Services Licensing Board ("Board") regarding the Respondent's license, and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the November 27, 2017, meeting held in Room W072 of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, 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 which is attached hereto and incorporated herein as **Exhibit A** and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 8-0-0. Incorporated into the Agreement was the consensus of both parties to Findings of Fact, Conclusions of Law, and Order.

WHEREFORE, the Board hereby accepts and approves the Agreement, settling all matters in this case consistent with the terms of the Agreement between the parties, and Respondent is hereby ORDERED to abide by all the terms of the Agreement.

SO ORDERED, this 17th day of January 2018.

BEHAVIORAL HEALTH AND HUMAN SERVICES
LICENSING BOARD

By: Maurice Bernick
for Donald Osborn, Ph.D.
Board Chair
LCAC, LMFT, LCSW, LMHC

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CERTIFICATE OF SERVICE

I certify that a copy of the "Final Order Accepting Proposed Findings of Fact, Conclusions of Law and Order" has been duly served upon:

Mark Edward Smith
Family Tree Counseling Associates
11350 North Meridian, Suite #110
Carmel, Indiana 46032-5318

Michael Roth
Counsel for Respondent
EICHHORN & EICHHORN, LLP
9101 N. Wesleyan Road, Suite 401
Indianapolis, Indiana 46268
Service by US Mail

Zanna C. Dyer, Deputy Attorney General
Office of the Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, Indiana 46204
Email: Claire.Dyer@atg.in.gov
Service by Email

11/11/2018
Date

Cindy A. Vaught
Cindy A. Vaught, Board Director

Behavioral Health and Human Services Licensing Board
Indiana Government Center South
402 West Washington St., Room W072
Indianapolis, Indiana 46204
Phone: (317) 234-2054
Fax: (317) 233-4236
Email: cvaught@pla.in.gov

Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

BEFORE THE BEHAVIORAL
HEALTH AND HUMAN SERVICES
LICENSING BOARD
CAUSE NUMBER 2016 BHSB 0029

IN THE MATTER OF THE LICENSE OF
MARK EDWARD SMITH, L.C.S.W.
LICENSE NO: 34001845A

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PROPOSED SETTLEMENT AGREEMENT

The State of Indiana ("Petitioner"), by counsel, Zanna C. Dyer, Deputy Attorney General, on behalf of the Office of the Indiana Attorney General, and Mark Edward Smith, L.C.S.W. ("Respondent"), represented by counsel, Michael Roth, hereby execute this Agreement to a disposition of the Administrative Complaint filed in this cause with the Behavioral Health and Human Services Licensing Board ("Board"). This Agreement is subject to the review and approval of the Board pursuant to Ind. Code § 25-1-9 *et seq.* and the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 *et seq.*

STIPULATED 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

EXHIBIT A

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.

STIPULATED CONCLUSIONS OF LAW

The parties further stipulate:

16. 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 former client by soliciting and then hiring the client into his practice after the period of time Respondent provided marriage counseling to the client/employee and her spouse.

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.

18. 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.

19. 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.

20. 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.

AGREED DISPOSITION

It is now therefore agreed by Respondent and Petitioner as follows:

1. The Board has jurisdiction over Respondent and the subject matter in this disciplinary action.
2. The parties execute this Agreement voluntarily.
3. Both parties voluntarily waive their rights to a public hearing on the Complaint and all other proceedings in this action to which either party may be entitled by law, including judicial review.
4. Petitioner agrees the terms of this Agreement will resolve any and all pending claims or allegations relating to disciplinary action against Respondent's Indiana Clinical Social Worker license.
5. Respondent's Indiana Clinical Social Worker license shall remain on **INDEFINITE PROBATION** for **NOT LESS THAN EIGHTEEN (18) MONTHS** from the date of the final order.
6. While on probation, Respondent's license shall be governed by the following

TERMS AND CONDITIONS:

-
- a. Respondent shall keep the Board informed of his address and telephone number at all times.

- b. Respondent shall keep the Board informed of his employer(s) name, address, and telephone number at all times.
- c. Respondent's **PRACTICE SHALL BE SUPERVISED** by a practitioner who is approved by the Board and holds a current license issued by the Board. The supervisor shall submit **SUPERVISOR REPORTS ONCE EVERY SIX MONTHS** to the Board describing the supervision and Respondent's professional competence. Prior to petitioning for the withdrawal of probation, the Board must be in receipt of at least three (3) Supervisor reports.
- d. Respondent is required to make **PERSONAL APPEARANCES ONCE EVERY SIX MONTHS** before the Behavioral Health and Human Services Board to discuss his professional competency and ability to practice. Respondent shall contact Board staff at the Indiana Professional Licensing Agency to schedule the required appearances. Prior to petitioning for the withdrawal of probation, Respondent must appear at a scheduled Behavioral Health and Human Services Board meeting at least three (3) times.
- e. Respondent shall obtain a psychological evaluation which includes an evaluation of fitness for duty by a psychologist HSPP approved by the Board. Respondent shall provide the evaluation report to the Board. Respondent shall also provide proof to the Board that he has taken steps to follow any recommendations made by the HSPP in the evaluation report.

7. Prior to being eligible to petition for the withdrawal of probation, Respondent shall submit to the Board **PROOF OF COMPLETION OF TWENTY (20) UNITS OF**

CONTINUING EDUCATION in Professional Boundaries and/ or Ethics to be completed in-person and not online.

8. Respondent shall, prior to being eligible to petition for the withdrawal of probation, pursuant to Ind. Code § 4-6-14-10(b), pay a **FEE of FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order payable to the State of Indiana, and submitted to the following address:

Office of the Indiana Attorney General
Attn: Teresa Henson
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

9. Respondent has agreed to review Frederic G. Reamer's "Boundary Issues and Dual Relationships in the Human Services." Respondent is aware that the Board may ask questions regarding the material during his quarterly personal appearances before the Board.

10. 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.

11. Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of behavioral health and human services, or any violation of this Settlement Agreement may result in Petitioner requesting a summary suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

12. The parties agree to the continuing jurisdiction of the Board and that the discipline agreed to, terms of discipline, and licensure status will apply even if the Board renews Respondent's license at a later date.

Mark E. Smith

Mark Edward Smith,
Respondent

[Signature]

Michael Roth,
Counsel for Respondent

Zanna C. Dyer

Zanna C. Dyer
Deputy Attorney General
Attorney No.: 31014-29

10-23-17

Date

6-3-17

Date

11/3/2017

Date

STATE OF SC)
) SS:
COUNTY OF Horry)

Before me a Notary Public for said County and State, personally appeared **Mark Edward Smith, L.C.S.W.** first duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

Signed and sealed this 23 day of Oct, 2017.

Susan J. McNulty
Signature

Susan J McNulty
Printed

My Commission Expires: 8-24-2027
County of Residence: SC

