

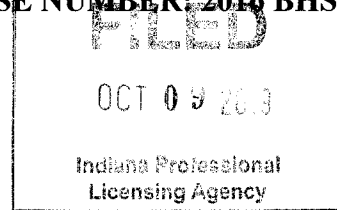
**BEFORE THE
BEHAVIORAL HEALTH AND
HUMAN SERVICES LICENSING
BOARD**

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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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Behavioral Health and Human Services Licensing Board ("Board") held an administrative hearing on August 26, 2019 in Room W064 of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana concerning the Petition to Withdraw Probation filed by Mark Edward Smith, L.C.S.W. ("Petitioner").

Petitioner appeared in person, was advised of his right to counsel, and chose to proceed without counsel. Deputy Attorney General Alyssa D. Servies represented the State of Indiana ("State").

The Board, after considering the evidence presented and taking official notice of the file in this matter, issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner is a Licensed Clinical Social Worker ("L.C.S.W") in the State of Indiana having been issued license number 34001845A on March 15, 1993.
2. Petitioner's address on file with the Board is Family Tree Counseling Associates, 2160 West 86th Street. Suite 201, Indianapolis, Indiana 46260.
3. Petitioner received timely and proper notice of the date, time and location of this hearing pursuant to Ind. Code § 4-21.5-3-20.

4. The Board is empowered to hold this administrative hearing pursuant to the authority of Ind. Code § 25-1-9-9 and Ind. Code § 4-21.5-3.
5. The Board took judicial notice of Petitioner's file in this matter.
6. Petitioner's license was placed on Indefinite Probation on January 11, 2018, after the Board approved the Settlement Agreement executed between Zanna C. Dyer, Deputy Attorney General, and the Petitioner, represented by counsel, Michael Roth.
7. While on probation, Petitioner's license was to be governed by terms and conditions, including, but not limited to, the following:
 - a. Petitioner'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.
 - b. Petitioner is required to make personal appearances once every six months before the Board to discuss his professional competency and ability to practice. Petitioner shall contact Board staff at the Indiana Professional Licensing Agency to schedule the required appearances. Prior to petitioning for the withdrawal of probation, Petitioner must appear at a scheduled the Board meeting at least three (3) times.
 - c. Petitioner shall obtain a psychological evaluation which includes an evaluation of fitness for duty by a psychologist HSPP approved by the Board. Petitioner shall provide the evaluation report to the Board. Petitioner shall also provide proof to the Board that he has taken steps to follow any recommendations made by the HSPP in the evaluation report.

8. The Board received two (2) Supervisor reports from Brian Grant, Ph.D., H.S.P.P., prior to Petitioner submitting a petition for withdrawal.
9. The Board received one (1) Supervisor report from Brian Grant, Ph.D., H.S.P.P., after Petitioner submitted a petition for withdrawal.
10. Petitioner only made two (2) personal appearances before the Board prior to petitioning for the withdrawal of probation. His third personal appearance was at the hearing on his Petition to Withdraw Probation.
11. On April 23, 2018, the Board received an evaluation of Petitioner's fitness for duty by Sean Samuels, Psy.D., M.L.S., C.S.A.Y.C., H.S.P.P, which stated Petitioner admitted to using "Skype therapy" to several clients.
12. The evaluation included a recommendation that Petitioner be required to demonstrate the telehealth services he provides are compliant with the Health Insurance Portability and Accountability Act ("HIPAA").
13. On August 26, 2019, Petitioner admitted he uses Skype to communicate with several clients in Indiana while he is out of state; therefore, Petitioner has not demonstrated the telehealth services provided to his clients are HIPAA compliant.
14. The Board denied the Petition to Withdraw Probation by a vote of 8-0-0.

CONCLUSIONS OF LAW

1. Ind. Code § 25-1-9-9(b) states:

The board may withdraw or modify the probation under section (a)(5) if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order.
2. Petitioner has not remedied the defects that led to his misconduct, ultimately leading to his license to be placed on probation.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board
MODIFIES the probation on Petitioner's license.

1. Petitioner's license shall remain on **INDEFINITE PROBATION**.
2. Petitioner's practice shall continue to be supervised by Brian Grant, Ph.D., H.S.P.P.
3. Brian Grant, Ph.D., H.S.P.P. shall submit **QUARTERLY REPORTS** to the Board
describing clinical supervision and practice regarding HIPAA compliance, boundary issues,
and methods of telehealth.
4. Petitioner is required to make **QUARTERLY PERSONAL APPEARANCES** before the
Behavioral Health and Human Services Board to discuss his professional competency and
ability to practice. Petitioner shall contact Board staff at the Indiana Professional Licensing
Agency to schedule the required appearances.
5. Petitioner may not petition for withdrawal of probation for a period of one (1) year from the
date of the Final Order.

SO ORDERED, this 9th day of October 2019.

BEHAVIORAL HEALTH AND HUMAN SERVICES
LICENSING BOARD

By: Maureen Bennett
for Stephan Viehweg, L.C.S.W.
Board Chair

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CERTIFICATE OF SERVICE

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

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10/9/2019
Date

Cindy A. Vaught
Cindy A. Vaught Board Director

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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.