

000068 OCT-7² SETTLEMENT AGREEMENT
BETWEEN
STATE COMMITTEE FOR SOCIAL WORKERS
AND
THERESA SMITH

Theresa Smith, (“Smith”), and the State Committee for Social Workers, (“Committee”), enter into this Settlement Agreement for the purpose of resolving the question of whether Smith’s license as a clinical social worker, no. 2006038492, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo Cum. Supp. 2009. The Committee and Smith jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

Smith acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Committee at which time Smith may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Committee.

Being aware of these rights provided to her by law, Smith knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Smith acknowledges that she has received a copy of documents that were the basis upon which the Committee determined there was cause for discipline, along with citations to law and/or regulations the Committee believes were violated. Smith stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Committee that Smith's license as a clinical social worker, license no. 2006038492, is subject to disciplinary action by the Committee in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 337, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Committee and Smith in Part II herein is based only on the agreement set out in Part I herein. Smith understands that the Committee may take further disciplinary action against

her based on facts or conduct not specifically mentioned in this document that are either now known to the Committee or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Committee and Smith herein jointly stipulate to the following:

1. The Committee is an agency of the State of Missouri created and established pursuant to § 337.622, RSMo, for the purpose of executing and enforcing the provisions of §§ 337.600 through 337.689, RSMo.
2. Respondent, Smith, is licensed by the Committee as a clinical social worker, license number 2006038492.
3. Respondent's license is current and active, and was so at all times relevant herein.
4. At the times relevant to these events, B.S. was Respondent's daughter-in-law.
5. B.S. was seeing Dr. Hurt, a board certified physician and surgeon in the state of Missouri for post-partum depression.
6. On or about July 9, 2008, Respondent drafted and sent a letter to Dr. Hurt regarding B.S.
7. The letter by Respondent was on Respondent's employment letterhead—Center for Life for Coaching and Counseling, LLC, 1119 S. Elliott Ave, Aurora, MO 65605.
8. At no time was B.S. a patient of Respondent.

9. B.S., at one time, was Respondent's daughter-in-law.
10. In the letter, Respondent referred to B.S.'s post-partum depression, and suggested B.S. has extreme emotions, paranoia, and reactive-explosive type behavior.
11. Respondent admits she wrote the letter to Dr. Hurt because she was worried about her son and grandchild.
12. Respondent admits the letter was not related to any counseling or treatment of B.S.
13. State Regulation 20 CSR 2263-3.010 states in part:
 - (1) The ethical standard/disciplinary rules for licensed social workers, provisional licensed clinical social workers, temporary permit holders and registrants, as set forth hereafter by the committee, are mandatory. The failure of a licensed social worker, provisional licensed social worker, temporary permit holder, or registrant to abide by any ethical standard/disciplinary rule in this chapter shall constitute unethical conduct and be grounds for disciplinary proceedings.
14. Code of State Regulation, 20 CSR 2263-3.020 states in part:
 - (2) No member of the profession shall—
 - (A) Violate any ethical standard/disciplinary rule [.]
15. Code of State Regulation, 20 CSR 2263-3.040 states in part:
 - (2) A member of the profession shall be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.

16. Because Respondent used her professional credentials and letterhead for a private matter, Respondent failed to make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, and thereby failed to show the skill and learning ordinarily used under the same or similar circumstances by licensed clinical social workers.

17. Respondent's conduct demonstrates a lack of present ability, or a lack of disposition to use a present ability, to make clear distinctions between statement made and actions engaged in as a private individual and as a representative of the social work profession.

18. Because Respondent failed to make a clear distinction between her actions as a private person and as a clinical social worker, Respondent's license is subject to discipline.

19. Therefore, cause exists to discipline Respondent's license pursuant to § 337.630.2, RSMo, Cum. Supp. 2009, which states in part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by §§ 337.600 to 337.639, or any person who failed to renew or has surrendered the person's license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of a social worker license pursuant to this chapter;

....

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 337.600 to 337.689, or any lawful rule or regulation adopted pursuant to sections 337.600 to 337.689;

....

(15) Being guilty of unethical conduct as defined in the ethical standards for clinical social workers adopted by the committee by rule and filed with the secretary of state.

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

20. Smith's license is on probation. Smith's license as a clinical social worker is hereby placed on PROBATION for a period of (1) one year. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Smith shall be entitled to practice as a clinical social worker under Chapter 337, RSMo, as amended, provided Smith adheres to all the terms of this agreement.

21. Terms and conditions of the disciplinary period. The terms and conditions of the disciplinary period are as follows:

- a. Respondent must earn an additional six (6) hours of ethics continuing education. These six (6) hours are additional to the 30 hours, (including 3 hours of ethics), required for renewal.
- b. Respondent's practice shall be under supervision during the one (1) year probationary period, with quarterly reports by the supervisor submitted to the Committee.
- c. Within 20 business days of the effective date of this order, Respondent shall submit no fewer than 5 names of proposed clinical social workers who will agree to serve as Respondent's supervisor. The Committee may approve one of the proposed clinical social workers, or may require additional names to be submitted, which Respondent will submit within 20 business days of the Committee's request. Respondent must begin supervision within one week of the Committee's approval. Respondent must immediately notify the Committee, in writing, of the start date of supervision. If Respondent fails to secure a supervisor within 20 business days from the effective date of this order, Respondent shall cease to practice as a clinical social worker until a supervisor is secured. Respondent shall be responsible for any payment associated with the supervision. Supervision includes, but is not limited to, monthly on site face-to-face review of cases, and review, approval, and co-

signing of written reports such as case notes, intake assessments, test reports, treatment plans, and progress reports.

- d. In the event the supervising clinical social worker becomes unable or decides not wish to continue serving in his/her capacity as a supervising clinical social worker during the probationary period, Respondent shall:
 - i. Notify the Committee in writing within 3 business days of the supervising clinical social worker's inability or decision to no longer serve as a supervisor; and
 - ii. Within 20 business days of being notify that the supervising clinical social worker is unable or no longer wishes to serve as a supervisor, Respondent shall secure a new supervising clinical social worker approved by the Committee. Should Respondent be unable to secure a new supervising within 20 business days, Respondent shall cease to practice as a clinical social worker.
- e. The supervising clinical social worker shall be vested with the administrative authority over all matters affecting the services provided by Respondent so that the ultimate responsibility for the welfare of every client is maintained by the supervising clinical social worker.

f. Respondent submit reports created by Respondent's supervisor on a quarterly basis, beginning June 1. It is Respondent's responsibility to ensure that these reports are provided in a timely manner.

22. Upon the expiration of the disciplinary period, the license of Smith shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Committee determines that Smith has violated any term or condition of this Settlement Agreement, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Smith's license.

23. No additional discipline shall be imposed by the Committee pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Committee as a contested case in accordance with the provisions of Chapter 536, RSMo.

24. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning any future violations by Smith of Chapter 337, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

25. This Settlement Agreement does not bind the Committee or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Committee or may be discovered.

26. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Committee may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Smith agrees and stipulates that the Committee has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

27. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

28. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

29. The parties to this Settlement Agreement understand that the Committee will maintain this Settlement Agreement as an open record of the Committee as required by Chapters 337, 610, and 324, RSMo, as amended.

30. Smith, together with her partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Committee, its respective members, employees, agents

and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

31. Smith understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Smith's license. If Smith desires the Administrative Hearing Commission to review this Settlement Agreement, Smith may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

32. If Smith requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the

Settlement Agreement sets forth cause for disciplining Smith's license. If Smith does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Committee.

LICENSEE

Theresa J. Smith 10-4-10
Theresa Smith Date



Tom Reichard, Executive Director
Date: 10-7-10

CHRIS KOSTER
Attorney General

Michael R. Charbon #59642 (for YAL)
Yamini A. Laks
Assistant Attorney General
Missouri Bar No. 61452

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-9623
Telefax: 573-751-5660
Attorneys for the Committee