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BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

000405 JAN 13 8

MISSOURI COMMITTEE FOR)
PROFESSIONAL COUNSELORS,)
)
Petitioner,)
)
v.)
)
MICHAEL R. NIEHAUS,)
)
Respondent.)

FILED

JAN 21 2009

ADMINISTRATIVE HEARING
COMMISSION

No. 08-1298 PC

**JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF FACTS,
WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE HEARING
COMMISSION AND MISSOURI COMMITTEE FOR PROFESSIONAL
COUNSELORS, AND DISCIPLINARY ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("AHC") and pursuant to the terms of section 536.060, RSMo,¹ as it is made applicable to the Commission by section 621.135, RSMo, Michael Niehaus ("Niehaus") and the Missouri Committee for Professional Counselors ("Committee") hereby waive the right to a hearing of the above-styled case before the AHC and, additionally, the right to a disciplinary hearing before the Committee pursuant to section 621.110, RSMo, and jointly stipulate to the facts and consent to the imposition of disciplinary action against Niehaus' professional counselor's license for violations of statutes set forth below.

¹ Statutory references are to Missouri Revised Statutes 2000, unless otherwise indicated.

Niehaus acknowledges that he has received and reviewed a copy of the Complaint filed by the Committee in this case, and the parties submit to the jurisdiction of the AHC.

Niehaus acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the AHC prior to the entering of its order; the right to have all charges against Niehaus proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Niehaus; the right to present evidence on Niehaus' own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial Commissioner concerning the complaint pending against Niehaus; and the right to a ruling on questions of law by a Commissioner. Being aware of these rights provided Niehaus by operation of law, Niehaus knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Committee for Professional Counselors, and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law ("Joint Stipulation") and agrees to abide by the terms of this document as they pertain to Niehaus.

Based upon the foregoing, the Committee and Niehaus jointly stipulate to the following and request that the AHC adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the AHC's Findings of Fact and Conclusions of Law:

JOINT PROPOSED FINDINGS OF FACT

1. The Committee is an agency of the State of Missouri created and established pursuant to section 337.535, RSMo, for the purpose of executing and enforcing the provisions of sections 337.500 - .540, RSMo (2000), as amended.

2. Niehaus is licensed by the Committee as a licensed professional counselor, license number COU 2000150484. Niehaus' Missouri license is, and was at all relevant times herein, current and active.

3. At all times relevant herein, Niehaus was self-employed as a licensed professional counselor keeping an office at 1034 South Brentwood Boulevard, Saint Louis, Missouri 63117.

4. Jurisdiction and venue are proper before the AHC pursuant to sections 621.045, RSMo (Cum. Supp. 2007), and 337.525.2, RSMo.

5. On or about January 7, 2005, in his capacity as a health care provider, Niehaus knowingly made a false representation of material fact for the purpose of receiving a health care payment from the Missouri Department of Social Services ("DSS"), a health care payer, in that Niehaus falsely reported that he provided one hour of family counseling service to A.E., an eligible Medicaid recipient, on January 3, 2005, which was a false representation of material fact and known by Niehaus to be false when made.

6. On or about February 4, 2005, in his capacity as a health care provider, Niehaus knowingly made a false representation of material fact for the purpose of receiving a health care payment from DSS, a health care payer, in that Niehaus falsely reported that he provided

one hour of family counseling service to A.E., an eligible Medicaid recipient, on January 29, 2005, which was a false representation of material fact and known by Niehaus to be false when made.

7. On or about July 22, 2005, in his capacity as a health care provider, Niehaus knowingly made a false representation of material fact for the purpose of receiving a health care payment from the DSS, a health care payer, in that Niehaus falsely reported that he provided one hour of family counseling service to D.M., an eligible Medicaid recipient, on May 15, 2005, which was a false representation of material fact and known by Niehaus to be false when made.

8. On or about November 9, 2007, Niehaus pled guilty to three (3) counts of causing to be made a false statement to receive a health care payment, in violation of section 191.905.1, RSMo.

9. On or about November 13, 2007, the Circuit Court of Cole County entered an order sentencing Niehaus to a term of four (4) years' imprisonment for each count, to run concurrently, and suspended execution of this sentence, placing Niehaus on five (5) years' supervised probation. The court also ordered Niehaus to pay restitution of \$25,520.00 and \$20,000.00 in investigative costs.

10. On or about December 3, 2007, the Committee received notification of Niehaus' guilty pleas from the Office of the Missouri Attorney General.

11. Reporting the provision of client counseling services to the DSS, a health care payer, for the purpose of receiving health care payments for services rendered to eligible

Medicaid recipients is an activity reasonably related to the qualifications, functions, or duties of a professional counselor.

12. Causing false statements to be made to the DSS, a health care payer, for the purpose of receiving health care payments for services rendered to eligible Medicaid recipients is an offense an essential element of which is fraud, dishonesty or an act of violence.

13. Causing false statements to be made to the DSS, a health care payer, for the purpose of receiving health care payments for services rendered to eligible Medicaid recipients constitutes incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor.

JOINT PROPOSED CONCLUSIONS OF LAW

14. Niehaus' entry of guilty pleas to three (3) counts of causing to be made a false statement to receive a health care payment, in violation of section 191.905.1, RSMo, constitute offenses reasonably related to the qualifications, functions or duties of a professional counselor, an essential element of which is fraud, dishonesty or an act of violence, in violation of section 337.525.2(2), RSMo.

15. Niehaus' causation of false statements to be made to the DSS, a health care payer, for the purpose of receiving health care payments for services rendered to eligible Medicaid recipients constitutes obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation, in violation of section 337.525.2(4), RSMo.

16. Niehaus' causation of false statements to be made to the DSS, a health care payer, for the purpose of receiving health care payments for services rendered to eligible Medicaid recipients constitutes incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor, in violation of section 337.525.2(5), RSMo.

17. Cause exists for the Committee to discipline Niehaus' professional counselor's license pursuant to section 337.525, RSMo, which states, in pertinent 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 sections 337.500 to 337.540 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:

...

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of a professional counselor; for any offense an essential element of which is fraud, dishonesty or an act of violence;

...

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the

performance of the functions or duties of a professional counselor;

....

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 section 621.110, RSMo:

1. Niehaus' license as a licensed professional counselor, license number COU 2000150484, is immediately **SUSPENDED** for a period of three (3) years. Imposition of the suspension shall be stayed and Niehaus shall be placed on **PROBATION** for a period of five (5) years ("disciplinary period"). During the disciplinary period, Niehaus shall be entitled to engage in the practice of professional counseling under Chapter 337, RSMo, provided he adheres to all of the terms of this Joint Stipulation.

I. GENERAL REQUIREMENTS

- A. Niehaus shall meet with the Committee or its representative at such times and places as required by the Committee after notification of a required meeting.
- B. Niehaus shall keep the Committee apprised of his current home and work addresses and telephone numbers. Niehaus shall inform the Committee within ten (10) days of any change of home or work address and home or work telephone number.

- C. Niehaus shall comply with all provisions of Chapter 337, RSMo, as they pertain to the practice of professional counseling; all applicable federal and state drug laws, rules and regulations; and all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.
- D. During the disciplinary period, Niehaus shall timely renew his license and timely pay all fees required for licensing and comply with all other Committee requirements necessary to maintain Niehaus' license in a current and active state.
- E. During the disciplinary period, Niehaus shall accept and comply with unannounced visits from the Committee's representatives to monitor his compliance with the terms and conditions of this Joint Stipulation.
- F. If Niehaus fails to comply with the terms of this Joint Stipulation, in any respect, the Committee may impose such additional or other discipline that it deems appropriate.
- G. Niehaus shall notify, within fifteen (15) days of the effective date of this Joint Stipulation, all facilities where Niehaus practices of Niehaus' disciplinary status. Notification shall be in writing and Niehaus shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Committee for verification by the Committee or its designated representative.

- H. For purposes of this Joint Stipulation, unless otherwise specified in this Joint Stipulation, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Committee in this Joint Stipulation shall be forwarded to: Committee for Professional Counselors, 3605 Missouri Boulevard, Post Office Box 1335, Jefferson City, Missouri 65102.
- I. This Joint Stipulation does not bind the Committee or restrict the remedies available to it concerning any other violation of Chapter 337, RSMo, by Niehaus not specifically mentioned in this document.

II. REQUIREMENTS REGARDING SUPERVISED PRACTICE

- A. Niehaus' practice as a professional counselor during the period of probation shall be supervised by a licensed professional counselor or licensed psychologist approved by the Committee. If Niehaus fails to secure a supervisor within twenty (20) business days from the start of probation, Niehaus shall cease practicing professional counseling until a supervisor is secured. Niehaus shall be responsible for any payment associated with the supervision.
- B. In the event the approved supervisor becomes unable or decides not to continue serving in his capacity as a supervisor or otherwise ceases to serve as a supervisor during the period of probation, then Niehaus shall:
 - (1) within three (3) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or

otherwise learning of the need to secure a supervisor, advise the Committee in writing that Niehaus needs to secure a supervisor and the reasons for such change; and

(2) within twenty (20) business days of being notified of the supervisor's inability or decision not to continue serving as the supervisor, or otherwise learning of the need to secure a supervisor, secure a supervisor pursuant to and in accordance with the terms and conditions set forth in this Joint Stipulation. After twenty (20) business days, Niehaus shall not practice if he has not secured a supervisor.

- C. The supervisor shall be vested with administrative authority over all matters affecting the provision of professional counseling provided by Niehaus so that the ultimate responsibility for the welfare of every client is maintained by the supervisor.
- D. Niehaus shall meet with the supervisor at least one (1) hour per week every two (2) weeks to discuss practice issues to include billing, record keeping, and related issues.
- E. Niehaus' supervisor shall report to the Committee in writing on a quarterly basis with the reports due by December 1, March 1, June 1 and September 1 each year during the disciplinary period. It is Niehaus' responsibility to ensure that these reports are provided in a timely manner.

- F. Following two (2) years of acceptable supervision, Niehaus may request the Committee consider reducing the number of supervisory meetings to one (1) per month.

III. REQUIREMENTS REGARDING CONTINUING EDUCATION

Niehaus shall complete a three (3) semester hour graduate level course in professional ethics from a regionally accredited college or university. Niehaus shall be responsible for any cost associated with completing the graduate course. The course cannot be offered via the internet, online, video or audio tape or by correspondence course. The course required herein is in addition to the continuing education hours required for licensure renewal by the Committee. The graduate course must be obtained within one (1) year of the effective date of this Joint Stipulation. Niehaus shall provide the Committee with proof of completion with a graduate transcript. In the event Niehaus requires additional time to complete the course, he shall advise the Committee in writing and request an extension of time. Failure to obtain the required graduate course in ethics and/or submit the required documentation to the Committee will result in a violation of the terms of discipline.

2. Upon the expiration of the disciplinary period, Niehaus' license as a professional counselor in Missouri shall be fully restored, provided all provisions of this Joint Stipulation and all other requirements of law have been satisfied.

3. If the Committee determines that Niehaus has violated a term or condition of his discipline, or has otherwise failed to comply with the provisions of Chapter 337, RSMo,

which violation would be actionable in a proceeding before the Committee, the AHC, or a Circuit Court, the Committee may elect to pursue any lawful remedies or procedures afforded to it, and is not bound by this Joint Stipulation and its selection of remedies concerning such violation.

4. The parties to this Joint Stipulation understand that the Committee will maintain this agreement as an open record of the Committee as provided in Chapters 337, 610, and 620, RSMo, as amended.

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

6. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation 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.

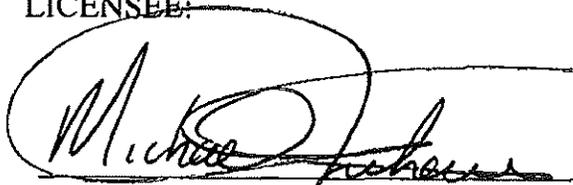
7. Niehaus hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorneys fees and expenses, including any claims pursuant to section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation.

The parties acknowledge that this Paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

8. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Commission without further action by either party.

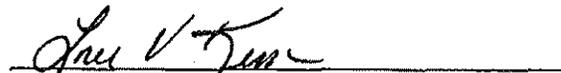
In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Committee for Professional Counselors, and Disciplinary Order and to the termination of any further proceedings before the AHC based upon the Complaint filed by the Committee in the above-styled action.

LICENSEE:



Michael Niehaus, LPC
License Number COU 2000150484

COMMITTEE:



Loree V. Kessler
Executive Director
Committee for Professional Counselors

Date: Jan 6, 2009

Date: 1/14/2009

Complaint No. 2007-005853

COMMITTEE FOR PROFESSIONAL COUNSELORS

This license has been suspended Pursuant to Section 324.010, RSMo, that requires the suspension of the professional license of individuals failing to file state tax returns and/or pay their state tax liabilities.

NAME:	Michael R Niehaus
LICENSE TYPE:	Professional Counselor
LICENSE NUMBER:	2000150484
LICENSE REVOKED:	
LICENSE SUSPENDED:	November 13, 2007
LICENSE REINSTATED:	November 29, 2007