

COMMONWEALTH OF KENTUCKY  
BOARD OF LICENSED PROFESSIONAL COUNSELORS  
AGENCY COMPLAINT NO. 2014-18

IN RE: WANDA L. DAY

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**AGREED ORDER**

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This Agreed Order (the "Agreed Order") is made, by and among the Commonwealth of Kentucky, Board of Licensed Professional Counselors (the "Board") and Wanda L. Day (the "Respondent").

**Witnesseth**

**Whereas**, the Respondent is a credentialed Licensed Professional Clinical Counselor in the Commonwealth of Kentucky, having been issued Legacy License No. 0436; License Number 103809; and

**Whereas**, pursuant to KRS Chapter 335.540, the Board is authorized to take disciplinary action against any license or certificate holder; and

**Whereas**, the Board's investigation revealed that the Respondent failed to properly document each session with her client. These sessions include:

- January 28, 2010;
- February 4, 11, 18; March 11, 18, 25, April 1, 18, 19, 22, 29; May 6; September 16, 23, 30; October 7, 17, 21, 28; and November 4, 2011; and
- January 13, 20, 27; February 3, 10, 17, 24; September 28; October 5, 9, 12, 19, 26; November 9, 16, 30; and December 13, 14, and 20, 2012; and

**Whereas**, the Board's investigation revealed that the Respondent improperly billed for the January 28, 2010 session in which she failed to have notes to support her claim submitted to a third-party payor; and

**Whereas,** the Respondent has not engaged in the professional counseling since February 28, 2017; and

**Whereas,** the Parties mutually desire to settle the issues in an expeditious manner, without the need for a formal hearing; and

**Whereas,** the Respondent has had the opportunity at all times to seek advice from competent counsel of choice, and no coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Agreed Order; and

**Whereas,** the Respondent freely and voluntarily enters into this Agreed Order, motivated by a desire to resolve the issues addressed herein, and the Respondent has executed this Agreed Order only after a careful reading of it and a full understanding of all of its terms.

**IT IS HEREBY STIPULATED AND AGREED** among the undersigned Parties this matter shall be settled and resolved upon the following terms:

#### **Findings**

For the purpose of this Agreed Order, the Respondent acknowledges that the Board could find that she engaged in conduct which may violate the provisions of: (1) KRS 335.540(1)(d), an incompetent or negligent activity undertaken within her practice; (2) KRS 335.540(1)(c), an unfair, false, misleading, or deceptive act or practice; and (3) KRS 335.540(1)(e) and (g) for failing to comply with 201 KAR 36:040 Section 6(3)(b), a financial arrangement with a third-party payor that conforms to accepted professional practices.

#### **Voluntary Waiver of Rights**

The Respondent waives the right to challenge any agreed upon term or condition of this Agreed Order notwithstanding any other statutory provision of KRS 335.540-.550, and 335.990, and the administrative regulations promulgated thereto. The Respondent expressly agrees those agreed-upon terms and conditions contained therein are exclusively a matter of private right.



The Respondent is fully aware of the rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges contained in the Formal Complaint, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the Formal Complaint, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Franklin Circuit Court as otherwise allowed by KRS 335.550. All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Agreed Order.

#### **Jurisdiction**

The Respondent acknowledges the Board has jurisdiction over the Respondent and the conduct which has precipitated this Agreed Order. The Respondent also acknowledges the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's license to practice professional counseling in Kentucky.

The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Agreed Order have been met to the satisfaction of the Board.

#### **Publication of Agreed Order**

The Respondent acknowledges, once adopted by the Board, this Agreed Order is considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands the Board is free to make any use it deems appropriate of the contents of this Agreed Order, which shall include the Board's ability to share the content of this Agreed Order with any governmental or professional

board or organization, publication of a summary in the Board's newsletter, reporting under federal law, and availability via the Board's web site.

#### **Terms of Agreed Order**

NOW THEREFORE, in consideration of the mutual promises, covenants and Agreed Orders set forth below, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. By entering into this Agreed Order, the Respondent recognizes that if this matter was to go to an administrative hearing, the Board may have sufficient evidence that she engaged in conduct violative of the provisions of: (1) KRS 335.540(1)(d), an incompetent or negligent activity undertaken within her practice; (2) KRS 335.540(1)(c), an unfair, false, misleading, or deceptive act or practice; and (3) KRS 335.540(1)(e) and (g) for failing to comply with 201 KAR 36:040 Section 6(3)(b), a financial arrangement with a third-party payor that conforms to accepted professional practices. Nevertheless, she desires to settle the matter in an expeditious manner without resorting to a disciplinary hearing, and in doing so, she does not admit to, and expressly denies, any wrongdoing or liability.

2. The Respondent affirms and states that she Respondent has not engaged in the professional counseling since February 28, 2017.

3. The Respondent agrees:

(a) Her license shall be suspended for a period of one (1) year. Her license shall be actively suspended for a period of ninety (90) days during which she shall not engage in the practice of professional counseling. The remainder of the period of suspension shall be probated so long as the Respondent complies with the terms below;



- (b) The period of probation shall be for two (2) years immediately beginning upon the Respondent's completion of her 90-day suspension. During the probated period of the suspension, the Respondent may continue the practice of professional counseling;
- (c) The Respondent shall be supervised by a Board-approved supervisor and meet for face-to-face individual supervision for one (1) hour every two (2) weeks during the period of probation. The Respondent shall submit three (3) names of proposed supervisors with whom she does not have a dual relationship within fifteen (15) days of the execution of this Agreed Order. The approved supervisor shall submit a report to the Board on a monthly basis along with the supervision log being maintained by the supervisor; and
- (d) The Respondent shall pay a fine of \$2,000.00, which shall be paid within ninety (90) days of the execution of this Agreed Order.

4. The Board agrees to:

- (a) Impose a suspension of the Respondent's license for a period of one (1) year of which the Respondent shall be actively suspended for a period of ninety (90) days during which she shall not engage in the practice of professional counseling and then probated for a period of two (2) years after completion of the active suspension on the condition the Respondent satisfactorily completes the terms of probation set forth above;

- (b) To require the Respondent to be supervised by a Board-approved supervisor and meet for face-to-face individual supervision for one (1) hour every two (2) weeks during the period of probation;
- (c) Impose a fine of \$2,000.00. The Respondent shall pay the sum of \$150.00 no later than the tenth of each month beginning June 2017 until the fine is paid in full; and
- (d) Not seek any additional disciplinary action against the Respondent based on the factual allegations set forth in this Agreed Order.

5. This matter shall constitute disciplinary action which may be reportable under state or federal law.

6. The Parties agree to execute all documents necessary to settle this matter.

7. The Respondent expressly understands failure to comply with and complete all terms of this Agreed Order shall constitute failure to comply with an Order of the Board under KRS 335.540(1)(f) for which the Board may impose additional penalties available under law after notice and opportunity to be heard.

8. The Parties agree to take all actions necessary that would cause the conditions and obligations under this Agreed Order to become effective upon the date of this Agreed Order, or, in the event that additional documents may need to be executed after the date of this Agreed Order, the Parties agree to cooperate with each other and execute such additional documents to effectuate the purposes as stated herein.

9. Each of the Parties represents and warrants to the other that it has taken all requisite action to authorize the execution, delivery and performance of its obligations hereunder, and that each Party has all requisite power and authority to enter into this Agreed Order and to effectuate



the purposes herein and that the Agreed Order will in fact be legally binding and will constitute the valid and legally binding obligation of each Party and will be enforceable against each Party in accordance with the respective terms hereof.

10. This Agreed Order shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, in accordance with the laws of the Commonwealth of Kentucky without reference to its choice of law rules. Any dispute arising hereunder shall be settled by a state court of appropriate jurisdiction in Franklin County, Kentucky. The Parties irrevocably consent to the personal jurisdiction and venue of such court. The Parties agree that any such litigation shall be by bench trial only, each of the Parties irrevocably waiving its right to jury trial in any dispute arising hereunder.

11. This Agreed Order may not be modified except by a written Agreed Order signed by all Parties.

12. The Parties represent, agree, and acknowledge that they have read this Agreed Order in its entirety and fully understand and agree to its terms.

#### **Release of Liability**

In consideration of execution of this Agreed Order, the Respondent, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Licensed Professional Counselors, and the Kentucky Attorney General and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this Agreed Order, or its administration.

### **Acceptance by the Board**

It is hereby agreed among the Parties of this Agreed Order shall be presented to the Kentucky Board of Licensed Professional Counselors at the next regularly-scheduled meeting of the Board.

The Respondent understands the Board is free to accept or reject this Agreed Order, and if rejected by the Board, a formal disciplinary hearing against the Respondent may be scheduled thereafter with the Hearing Officer and counsel. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Agreed Order, to hear the disciplinary charges if, after review by the Board, this Agreed Order is rejected.

If the Agreed Order is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the Agreed Order will not be regarded as evidence against the Respondent at the subsequent disciplinary hearing. The Respondent will be free to defend herself and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Agreed Order.

The Agreed Order will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent. The Agreed Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

### **Effective Date**

The Effective Date of this Agreed Order means the date stated on the Certificate of Service, which is found on page twelve (12) of this Agreed Order.



### **Complete Agreed Order**

This Agreed Order consists of eleven (11) pages and embodies the entire Agreed Order between the Board and the Respondent. This Agreed Order shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, withdraw, or seek to modify this Agreed Order prior to or during its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

### **Cooperation with the Board**

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees, and its Impairment Committee and representatives, to monitor the Respondent's compliance with the terms and conditions of this Agreed Order. The Respondent shall sign and file any appropriate authorizations and/or releases for information that may be requested by the Board or its representative member.

### **Findings of Facts, Conclusions of Law, and Order**

After having reviewed the administrative record, and the terms of the Agreed Order, the Board makes the following findings:

1. The Respondent is a credentialed Licensed Professional Clinical Counselor in the Commonwealth of Kentucky, having been issued Legacy License No. 0436; License Number 103809.

2. The Respondent failed to properly document each session with her client. These sessions include:

- January 28, 2010;
- February 4, 11, 18; March 11, 18, 25, April 1, 18, 19, 22, 29; May 6; September 16, 23, 30; October 7, 17, 21, 28; and November 4, 2011; and
- January 13, 20, 27; February 3, 10, 17, 24; September 28; October 5, 9, 12, 19, 26; November 9, 16, 30; and December 13, 14, and 20, 2012.

3. The Respondent improperly billed for the January 28, 2010 session in which she failed to have notes to support her claim submitted to a third-party payor.

4. The Board has sufficient evidence to determine that the Respondent violated: (a) KRS 335.540(1)(d), an incompetent or negligent activity undertaken within her practice; (b) KRS 335.540(1)(c), an unfair, false, misleading, or deceptive act or practice; and (c) KRS 335.540(1)(e) and (g) for failing to comply with 201 KAR 36:040 Section 6(3)(b), a financial arrangement with a third-party payor that conforms to accepted professional practices.

IT IS HEREBY ORDERED THAT Upon consideration of this Agreed Order, it is hereby ORDERED that the terms of this Agreed Order are approved and adopted.

IT IS FURTHER HEREBY ORDERED THAT the Respondent's license be SUSPENDED for a period of one (1) year. The Respondent shall actively serve ninety (90) days of the suspension and the remainder of the suspension shall be probated. The SUSPENSION SHALL RETROACTIVELY BEGIN ON MARCH 1, 2017.

IT IS FURTHER HEREBY ORDERED THAT the Respondent shall be supervised by a Board-approved supervisor and meet for face-to-face individual supervision for one (1) hour every two (2) weeks during the period of probation. The Respondent shall submit three (3) names of proposed supervisors with whom she does not have a dual relationship within fifteen (15) days of the execution of this Agreed Order. The approved supervisor shall submit a report to the Board on a monthly basis along with the supervision log being maintained by the supervisor.

IT IS FURTHER HEREBY ORDERED THAT the Respondent shall pay a FINE in the sum of two-thousand dollars (\$2,000.00). The Respondent shall pay the sum of \$150.00 no later than the tenth of each month beginning June 2017 until the fine is paid in full.

**SO ORDERED** this \_\_\_\_ day of May, 2017.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the **AGREED ORDER** was mailed on this 15 day of ~~May~~<sup>June</sup>,

2017, to the following:

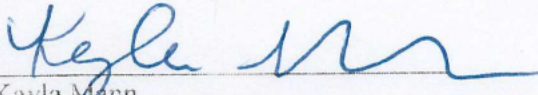
By U.S. Mail, certified and return receipt request, to:

Wanda L. Day

*Respondent*

By messenger mail:

Brian T. Judy  
Assistant Attorney General  
700 Capitol Ave, Suite 118  
Frankfort, Kentucky 40601  
*Board Counsel*

  
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Kayla Mann  
Board Administrator