

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF LICENSED PROFESSIONAL COUNSELORS
CASE NO. 2023-LPC-00028**

**KENTUCKY BOARD OF LICENSED
PROFESSIONAL COUNSELORS
PETITIONER**

v.

**DAVID JAMES FLOYD,
LPCA, License No. 280695**



AGREED ORDER

Complainant, Kentucky Board of Licensed Professional Counselors (the “Board”) and Respondent , David James Floyd, Licensed Professional Counselor Associate, License No. 280695, hereby enter into this Agreed Order to resolve this administrative action according to the following terms:

DEFINITIONS

1. "Respondent" shall mean the Licensee and his successors, assigns, heirs, executors, administrators, agents, servants, employees, legal representatives, insurers and any and all other affiliated or related persons, firms, or corporations, and all persons, firms, or corporations that may have or claim an interest by or through him.

2. “Kentucky Board of Licensed Professional Counselors” or “Board” shall mean the Kentucky Board of Licensed Professional Counselors and all subdivisions, members, successors, assigns, predecessors, agents, servants, employees, officers, directors, shareholders, legal representatives, insurers, subsidiaries, sister and parent entities, and all other affiliated or related persons, firms and corporations, and any and all persons, firms, or corporations who in the future, or, in the past, are or have been affiliated or related persons, firms or corporations of either entity.

3. "Administrative Action" shall mean Complaint No. 2023-LPC-00028, which is pending before the Board, and styled *Patterson v Floyd*.

4. The "Incident" shall mean the acts or series of acts or occurrences or series of occurrences that are the subject of Complaint No. 2023-LPC-00028, including specifically, but not limited to, violation of 201 KAR 36:040. Section 1.(2)(g) and (h) for Respondent's abandonment of clients by failing to assist clients in obtaining other therapeutic services due to his unwillingness to provide professional help for appropriate reasons, and without making arrangements for the continuation of treatment; and violation of 201 KAR 36:040. Section 2.(2) for Respondent's failure to document treatment provided to clients on the day of his resignation that would accurately reflect the client's progress and services provided.

FACTS

5. On May 24, 2023, the Board received Complaint No. 2023-LPC-00028 from Rebecca Patterson. (the "Complainant"). Complainant asserts Respondent was advised that his supervision was not paid by agency as well as given notice of private employment policy violations. Complainant alleges Respondent then vacated the office without notice to management leaving a client in the waiting room and additional clients scheduled that day without notice of cancellation, and thereafter resigned. Complainant asserts Respondent abandoned thirty-two (32) clients on his case load with no attempt to transition or otherwise notify the clients he had resigned.

6. Respondent submitted an undated response to the complaint that he deemed the workplace as unprofessional and hostile and therefore vacated the position. He denied the assertions relating to the private employment policy violations; and asserted the client had been scheduled for noon and had not presented for session until 12:40, that he left the premises at 12:50 and spoke with the office manager about the client being late, that he was leaving and the need for remaining clients to be

rescheduled with available staff. Respondent denied that he abandoned clients since the business had multiple licensed professionals and there were alternatives to all clients receiving services.

7. On June 13, 2023, Complainant filed a reply to the Respondent's response refuting his assertions relating to private employment violations and provided a detailed summary of events on that date, including a statement from the intake coordinator/office manager that she was required to contact Respondent's clients and inform them they would have to locate another provider for them. Complainant further alleged the Respondent failed to document the client information for three (3) clients seen on the date he resigned.

8. Since the Board has no statutory or regulatory authority over private employment policy violations, any such issue will not be addressed by the Board in this Agreed Order or otherwise.

9. Instead of pursuing a formal administrative disciplinary hearing, the parties have mutually decided to resolve this matter with an informal settlement as authorized by 201 KAR 36:050. Section 4. by means of this Agreed Order.

EFFECT OF THE FOREGOING

10. All of the foregoing provisions are a part of this Agreed Order and are not mere recitals.

JURISDICTION

11. Complainant and Respondent acknowledge the KBLPC has jurisdiction over the Respondent and the conduct alleged in Complaint No. 2023-LPC-00012 pursuant to Kentucky Revised Statute (KRS) Chapter 335, Chapter 13B, and their accompanying administrative regulations. Complainant and Respondent also acknowledge the KBLPC will retain jurisdiction over this matter until the Board is satisfied that Respondent has fulfilled the terms and conditions set forth herein.

INDEMNIFICATION

12. If after providing Respondent with notice and an opportunity to be heard, the Board finds that Respondent failed to fulfill, satisfy, or otherwise comply with any material term, duty, condition, or obligation of this Agreed Order, Respondent agrees to indemnify the Board for all costs, including but not limited to, a reasonable attorney's fee for the Board's enforcement of this Agreed Order.

VOLUNTARY WAIVER OF RIGHTS

13. Respondent represents and warrants that he executes this Agreed Order after having had the opportunity to obtain advice from counsel of his choice. Respondent acknowledges that at all times he has had the opportunity to obtain legal counsel of his choosing.

14. Respondent understands his right to contest the allegations against him in a formal hearing. He understands he has the right to:

- (a) be represented by an attorney at his own expense;
- (b) a public hearing on any charges or allegations filed;
- (c) confront and cross-examine any witnesses called to testify against him;
- (d) present evidence on his own behalf;
- (e) compulsory process to secure the attendance of such witnesses;
- (f) testify on his own behalf;
- (g) receive written findings of fact and conclusions of law supporting the decision on the merits of the allegations made against him; and
- (h) appeal any final order of the Board to the Franklin Circuit Court as otherwise allowed by KRS 335.545 and KRS Chapter 13B.

15. Respondent is voluntarily waiving all these rights in exchange for the Board's acceptance of this Agreed Order. Respondent makes this waiver freely and voluntarily.

16. Respondent recognizes that if this matter was to proceed to an Administrative Hearing, there may exist sufficient evidence to sustain a disciplinary action against him. Respondent nevertheless desires to settle this matter in an expeditious manner without resorting to an administrative hearing.

17. Respondent acknowledges that the Board has made no agreement or promise of any kind whatsoever not herein expressed to him and this document contains the entire agreement between him and the Board.

COSTS

18. The Board and Respondent shall each bear their own costs incurred in this matter, except as provided above under "INDEMNIFICATION."

AGREEMENT

19. Although no specific finding of wrongdoing has been made by the Board, for the purpose of this Agreed Order, the Respondent acknowledges that the Board could find, by a preponderance of the evidence, that he engaged in conduct that violates the provisions of KRS 335.540(1)(g), 201 KAR 36:040, Section 1.(2)(g) and (h) and 201 KAR 36:040. Section 2.(2)(2).

20. For the purpose of this Agreed Order, the Respondent's admits to the factual allegations above and acknowledges that the Board could find that he engaged in conduct that violated the provisions of KRS 335.540(1)(g), 201 KAR 36:040, Section 1.(2)(g) and (h) and 201 KAR 36:040. Section 2.(2)(2).

21. The Parties hereby agree to settle this matter by informal proceedings pursuant to KRS 335.540(4) and 201 KAR 36:050. Section 4. for the purpose of dispensing with the matter.

NOW THEREFORE, THE BOARD AND RESPONDENT NOW AGREE TO EXECUTE THIS AGREED ORDER, WHICH RESOLVES COMPLAINT NO. 2023-LPC-00028 ON THE FOLLOWING TERMS AND CONDITIONS:

22. Respondent shall execute and return a copy of this Agreed Order to the Board within thirty (30) days of receipt of the Agreed Order or it shall be null and void, and the Board may institute further disciplinary action.

23. *The Board offers the following disciplinary sanctions, which are hereby agreed to by the Respondent, as follows:*

- a. The Respondent shall complete three (3) hours of continuing education on abandonment, with proof of completion to be filed with the board within three (3) months of entry of this Agreed Order.*
- b. The Respondent shall complete three (3) hours of continuing education on professionalism, with proof of completion to be filed with the board within three (3) months of entry of this Agreed Order.*
- c. The Respondent's clinical supervisor shall be given notice of the complaint and provide a report to the Board within three (3) months advising the Board of the clinical supervisor's work with the Respondent and Respondent's progress in the areas of abandonment and professionalism.*
- d. All costs for the clinical supervisor's written reports, and continuing education are to be paid by the Respondent unless they are otherwise covered by an employer.*
- e. Respondent agrees to commit no violations of statutes and regulations governing Respondent's license to practice as a Licensed Professional Counselor Associate.*

24. Respondent understands that by signing this Agreed Order he has waived his hearing rights, which specifically include any right to a hearing, including the right to be present with counsel, to subpoena witnesses and to confront those against her, and the right to appeal the Board's decision as entered in this Agreed Order and the full panoply of rights of hearing and appeal related to her mandatory certificate and as authorized by statute, regulation, and court decision.

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

26. The Respondent expressly understands, once executed, 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) and subject the Respondent to further disciplinary action, for which the Board may impose additional penalties available under law after notice and opportunity to be heard.

27. 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.

28. Each of the Parties represents and warrants to the other that it: (1) has taken all requisite action to authorize the execution, delivery and performance of its obligations hereunder; (2) has all requisite power and authority to enter into this Agreed Order and to effectuate the purposes herein; (3) the Agreed Order will constitute the valid and legally binding obligation of each Party; and (4) the Agreed Order will be enforceable against each Party in accordance with the respective terms hereof.

RELEASE OF LIABILITY

29. In consideration of this agreement, Respondent fully and forever releases, acquits and discharges the Commonwealth of Kentucky and the Board from any and all liability on account of any and all actions or causes of action, whether in law or in equity or otherwise, where in contract or tort, or pursuant to any statute, ordinance or regulation, whether direct or indirect, whether known or unknown, whether presently discoverable or undiscoverable, whether suspected or claimed, which he

ever had, now has or may have against the Commonwealth of Kentucky, or the Board arising from or related to the Incident. This Release specifically includes, but is not limited to, all claims, demands, causes of action, and matters at issue in the action or any matters that might or could have been placed at issue in the action. Without in any way limiting the generality of this paragraph, this shall be construed as a complete bar against Respondent's prosecution of any action against the Board.

SUBJECT TO ACCEPTANCE BY THE BOARD

30. This Agreed Order shall not become effective until the Board approves it, and the Board Chair endorses it.

31. Respondent understands the Board is free to accept or reject the Agreed Order, and that Board may in fact reject it. Respondent also understands that if the Board rejects the Agreed Order, the Board may conduct an administrative hearing to consider the allegations against him. If the Board rejects this Agreed Order, Respondent will not be allowed to challenge the impartiality of the Board or any of its board members. By signing this agreement, Respondent understands that he waives this right.

32. If the Board does not accept this agreement, it shall be null and void. Respondent and the Board agree and stipulate that the Agreed Order shall not be offered as evidence at any disciplinary hearing, and neither party shall be permitted to draw any inference from the other's willingness to enter into this agreement.

33. Upon approval of this Agreed Order by the Board, the Board shall dismiss complaint number 2023-LPC-00028. Any violation by the Respondent of the terms of this agreement shall be grounds for further action by the Board, including but not limited to the reopening of this complaint;

OPEN RECORDS

34. 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, 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.

COMPLETE AGREEMENT

35. This Agreed Order consists of eleven (11) pages and is the entire agreement between the Board and Respondent.

36. This agreement is a binding contract between the parties, 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.

37. All parties and their undersigned representatives warrant and represent that they have the requisite power and authority to enter into this Agreed Order and to effectuate the purposes herein, and that this Agreed Order shall be legally binding and enforceable against each party in accordance with terms of the Agreed Order.

38. This Agreed Order shall be governed in all respects by the laws of the Commonwealth of Kentucky. Any disputes arising under this Agreed Order shall be resolved in the Circuit Court of Franklin County, Kentucky; the parties' consent and agree to the *in personam* jurisdiction of such Court; and

39. This Agreed Order may not be modified except by a written agreement executed by all parties.

COOPERATION WITH THE BOARD

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

Effective Date

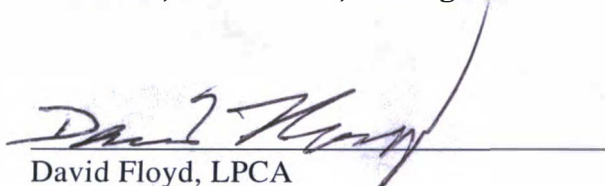
41. The effective date of this Agreed Order shall be the date it is accepted by the Board and signed by the Chair of the Board.



Chair, Kentucky Board of Licensed
for Professional Counselors

Date 9/25/2023

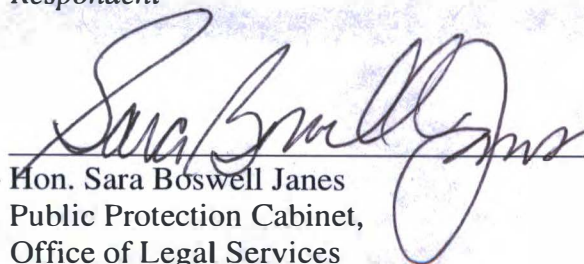
Have Seen, Understood, and Agree:



David Floyd, LPCA
50 Burlwood Drive
Barbourville, Kentucky 40906

Respondent

8/28/23
Date



Hon. Sara Boswell Janes
Public Protection Cabinet,
Office of Legal Services
500 Mero Street 202 NC
Frankfort, Kentucky 40601

Board Counsel

9-15-23
Date

ORDER APPROVING AGREED ORDER

This matter comes before the Board upon the Respondent's acceptance of the offer of informal settlement pursuant KRS 335.540(4) and 201 KAR 36:050. Section 4, as evidenced by the signed Agreed Order.

The Board **HEREBY ACCEPTS AND ADOPTS** the executed **AGREED ORDER**, and this complaint is **DISMISSED** so long as the Respondent complies with the terms of the Agreed Order.

SO ORDERED this 25 day of September, 2023.

FULL BOARD CONCURRING



Dr. Hannah Coyt, Chair
Board of Licensed Professional Counselors

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Agreed Order was sent via regular first-class mail, certified mail, return receipt requested, and electronic mail to:

David Floyd, LPCA
50 Burlwood Drive
Barbourville, Kentucky 40906
dfloyd1982@hotmail.com
Respondent

And via electronic mail to:

Sara Boswell Janes, Staff Attorney III
Sara.janes@ky.gov
Board Counsel

Date: 9/25/23

By: 
Board Administrator