

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF ALCOHOL AND DRUG COUNSELORS
AGENCY CASE NO. 16-07**

**KENTUCKY BOARD OF ALCOHOL
AND DRUG COUNSELORS**

COMPLAINANT

V.

**DAVID A. WEINSTEIN
(Temporary Certificate No. 167923)**

RESPONDENT

AGREED ORDER

Whereas, the Kentucky Board of Alcohol and Drug Counselors (hereafter the “Board”) filed the instant complaint against David A. Weinstein, Temporary Certified Alcohol and Drug Counselor, (hereafter the “Respondent”); and

Whereas, the Respondent has been issued temporary certificate number 167923; and

Whereas, pursuant to KRS 309.086(1), the Board may revoke, suspend, place on probation, or restrict, refuse to issue or renew, impose probationary or supervisory conditions upon, impose an administrative fine, reprimand or admonishment, impose a fine, or any combination of actions regarding any applicant or licensee upon proof that the applicant or licensee has violated KRS 309.080 to .089, or 201 KAR Chapter 35; and

Whereas, the Respondent provided alcohol and drug counseling services at the Center for Behavioral Health between March 21, 2016, and July 21, 2016; and

Whereas, in the course of his employment with the Center for Behavioral Health, the Respondent engaged in a romantic or sexual relationship with a female client; and

Whereas, the relationships included intimate contact and email exchanges, which expressed various intimate desires; and;

Whereas, the Respondent entered into a dual relationship with these a female client; and

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

IT IS HEREBY STIPULATED AND AGREED between 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 finds that he engaged in conduct which violates the provisions of KRS 309.086(1)(d) and (h), and 201 KAR 36:030, Section 1(3)(c) and (3)(d)1.

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Agreed Order. The Respondent has freely and voluntarily entered into this Agreed Order, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Agreed Order only after a careful reading of it and a full understanding of all of its terms. The Respondent waives the right to challenge any agreed upon term or condition of this Agreed Order notwithstanding any other statutory provision of KRS 309.080 to .089, or 201 KAR Chapter 35. 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 Circuit Court as otherwise allowed by KRS 309.086(2). 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 Alcohol and Drug Counselors 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 Agreement

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

1. For the purpose of this Agreed Order, the Respondent acknowledges that the Board could find that he engaged in conduct which may violate the provisions of KRS 309.086(1)(d) and (h), and 201 KAR 36:030, Section 1(3)(c) and (3)(d)1. Nevertheless, he desires to settle the matter in an expeditious manner without resorting to a disciplinary hearing, and in doing so, he admits to, and expressly denies, any wrongdoing or liability.

2. The Respondent agrees to surrender his license. He understands that the Board shall treat the surrendering of his license as if it was revoked. The Respondent further agrees that he shall not seek reinstatement of his license under KRS 309.087. The Respondent understands that this action shall constitute a reportable disciplinary action against the Respondent's license for purposes of any professional organization, national database, or licensing board.

3. The Board agrees to accept the Respondent's surrender of his license and to enter it as if his license had been revoked. The Board shall not seek any additional disciplinary action against the Respondent based on the factual allegations set forth in this Agreed Order.

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

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

6. 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

309.086(1)(d) and (h), and 201 KAR 36:030, Section 4(3)(b)2 for which the Board may impose additional penalties available under law after notice and opportunity to be heard.

7. 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.

8. 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.

9. 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.

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

11. 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 Alcohol and Drug 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 between the Parties this Agreed Order shall be presented to the Kentucky Board of Alcohol and Drug 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 himself 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 of acceptance by the Board as reflected in its Meeting Minutes and date this Agreed Order was ordered, which is found on page 8 of this Agreed Order.

Complete Agreed Order

This Agreed Order consists of nine (9) pages and embodies the entire agreement 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.

Order

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

IT IS HEREBY ORDERED THAT the license issued to the Respondent, David A. Weinstein, shall be hereby REVOKED.

SO ORDERED on this 3 day of March, 2017.



GEOFFREY WILSON, CHAIR
KENTUCKY BOARD OF ALCOHOL AND
DRUG COUNSELORS

Have Seen, Understood and Agreed:



David A. Weinstein

Date 2-27-17



Brian T. Judy

Board Counsel

Kentucky Board of Alcohol and Drug
Counselors

Date 3-3-17

CERTIFICATE OF SERVICE

I hereby certify that copies of the Agreed Order were mailed by regular first class mail on this 18th day of May, 2017, to:

David A. Weinstein



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

A handwritten signature in blue ink, appearing to read "K. Judy", written over a horizontal line.

Board Administrator

