#### BEFORE THE IOWA BOARD OF SOCIAL WORK

IN THE MATTER OF:	)	CASE NO. 08-017 DIA NO. 12SW001
KIMBERLY GAMM	)	FINDINGS OF FACT,
License No. 04284	)	CONCLUSIONS OF LAW, DECISION AND ORDER

On April 19, 2010, the Iowa Board of Social Work (Board) and Kimberly Gamm (Respondent) entered into a Settlement Agreement and Final Order. Pursuant to its terms, Respondent voluntarily surrendered her license to practice as a bachelor social worker and agreed that any future application for reinstatement would be subject to the requirements of 645 IAC 11.31. On December 12, 2011, Respondent filed an Application for Reinstatement of her license. The Board issued a Notice of Hearing on January 5, 2012.

The hearing was held on May 21, 2012 at 9:00 a.m. in the fifth floor conference room, Lucas State Office Building, Des Moines, Iowa. The following members of the Board presided at the hearing: Beth Harms, LISW, Acting Vice-Chair; Katinka Keith, LISW; Mark Hillenbrand, LISW; Dana McCarthy, LBSW; and Neil Nelsen, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Respondent Kimberly Gamm appeared and was self-represented. A certified court reporter recorded the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.19(10) and 11.31(3).

Following the hearing, the Board convened in closed executive session to deliberate their decision, pursuant to Iowa Code section 21.5(1)(f)(2011). The administrative law judge was instructed to prepare Findings of Fact, Conclusions of Law, Decision and Order, in accordance with the Board's deliberations.

#### THE RECORD

The record includes the testimony of Respondent; State Exhibits 1-10 (See exhibit index for description); and Respondent Exhibits A-D.

# FINDINGS OF FACT

- 1. On August 11, 1998, the Board issued Respondent license no. 04284 to practice bachelor level social work in Iowa. (State Exhibit 5) In 2008, Respondent earned a master's degree in counseling. (Testimony of Respondent)
- 2. On February 8, 2010, the Board filed a Notice of Hearing and Statement of Charges against Respondent. Respondent was charged with seven counts related to her documentation and billing while she was employed as a social worker for an agency providing residential treatment. A contract monitor for the state of Iowa had conducted a billing audit of the agency's residential treatment files. The audit concluded that Respondent's group documentation notes for the period from May through December 2008 did not meet the state's standards and were fraudulent. The audit also concluded that Respondent billed for services on a date when she was not at work. The agency terminated Respondent's employment on May 20, 2008. (State Exhibits 5, 7)
- 3. On April 19, 2010, the Board approved a Settlement Agreement and Final Order, which resolved the February 8, 2010 Statement of Charges against Respondent. Pursuant to its terms, Respondent voluntarily surrendered her license and waived her right to a hearing on the Statement of Charges. Respondent agreed that the Settlement Agreement and Final Order would have the same force and effect as an order of revocation. Respondent agreed not to use any words or titles which imply or represent her as a licensed social worker. She further agreed not to engage in the practice of social work for which a license is required in Iowa. (State Exhibit 6)
- 4. Since 2002, Respondent has been certified as an Alcohol and Drug Counselor (CADC) through the Iowa Board of Certification. She has recently been authorized for recertification as a CADC. (Testimony of Respondent; Respondent Exhibit D) For the past three years, Respondent has owned and operated Behavioral Services, LLC, which has two locations in Iowa. Behavioral Services is certified by the Department of Public Health to provide intensive outpatient substance abuse counseling and a 12 hour Driving Under the Influence (DUI) class. Behavioral Services uses three independent contractors, in addition to Respondent, to provide these services. Respondent meets with her staff on a monthly basis to ensure that they are following proper documentation procedures. (Testimony of Respondent; Respondent Exhibit 4)

- 5. In her work with Behavioral Services, Respondent teaches the DUI class and also provides some individual counseling for clients. Respondent also answers phones, does intake, and handles all billing and bill payments. Respondent continually updates her company's policies for documentation and billing. She monitors all billing to ensure that it is supported by appropriate clinical notes. The Iowa Board of Certification has approved all of the forms used by Behavioral Services, including its forms for client progress notes. All notes are handwritten rather than computer generated. This policy was implemented to prevent cutting and pasting of client notes, which was one of the practices that led to the Board's Statement of Charges against Respondent. (Testimony of Respondent)
- 6. Although Respondent does not need a social work license to perform her current work, she has invested a lot of time and effort into obtaining her license and would like to have it reinstated. In the past year, Respondent has completed continuing education courses on the following topics: Screening and Brief Intervention Improving Health Changing Lives; Ethical Decision Making in Mental Health Settings; Ethical Codes of Conduct and Standards in Documentation of Clinical Records; and Nuts and Bolts of Legal & Ethical Practice. (Testimony of Respondent; State Exhibit 10; Respondent Exhibits A-C)
- 7. Respondent has submitted letters of recommendation from two of her former co-workers. (Respondent Exhibits 8, 9)

## CONCLUSIONS OF LAW

"Reinstatement" means the process outlined in 645-11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status. 645 IAC 280.1. A licensee must apply for and be granted reactivation of the license, in accordance with 645 IAC 280.14, prior to practicing social work in this state. 645 IAC 280.15.

645 IAC 11.31 provides, in relevant part:

## 645-11.31(272C) Reinstatement.

11.31(1) Any person whose license to practice has been...suspended may apply to the board for reinstatement in

accordance with the terms and conditions of the order of revocation or suspension,...

**11.31(2)** If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

11.31(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**11.31(5)** An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law. The order shall be published as provided for in this chapter.

The issues before the Board are whether the basis for the voluntary surrender of Respondent's license no longer exists and whether reinstatement is in the public interest. In order to reinstate, the Board must be satisfied that the public will be protected and that Respondent is willing and able to comply with all of the statutes and rules governing practice as a licensed bachelor social worker, including all ethical obligations.

Respondent's license has now been suspended for more than two years. The preponderance of the evidence in the record established that Respondent has complied with the terms of the Settlement Agreement and has addressed the documentation and billing issues that led to the surrender of her social work license. The Board concludes that it is in the public interest to reinstate Respondent's license. If Respondent chooses to reactivate her social work license, it will be placed on probation for a period of one year, subject to terms set out in this Order.

## **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondent's license number 04284 to practice as a bachelor social worker is hereby REINSTATED. In order to practice

social work in Iowa, Respondent must reactivate her Iowa license by fully complying with the requirements of 645 IAC 280.14(3)"a." These include, but are not limited to: submission of a reactivation application and payment of the reactivation fee and verification of completion of 27 hours of continuing education within two years of the reactivation application.

IT IS FURTHER ORDERED that upon reactivation, License Number 04284 shall be placed on probation for a period of one (1) year, subject to the following terms and conditions:

- A. Prior to accepting any position requiring a social work license in Iowa, Respondent shall fully inform the potential employer of her disciplinary history in Iowa by providing the employer copies of the Notice of Hearing and Statement of Charges (2/8/10); the Settlement Agreement and Final Order (4/19/10); and this Decision and Order on Reinstatement. The employer shall provide verification in writing to the Board that the documents were provided by Respondent prior to the date of hire. It is Respondent's responsibility to ensure that the written verification is submitted to the Board.
- B. Within thirty (30) days of reactivation of her license, Respondent shall provide the Board with copies of any forms currently used in her counseling business or social work practice to document client information, including any progress note forms. Respondent shall also provide copies of all of her written policies and procedures concerning documentation and billing. If Respondent changes the forms or updates policies and procedures, she shall provide the updates to the Board within ten days of implementation.
- C. Respondent shall submit quarterly written reports to the Board office no later than June 1, September 1, December 1, and March 1, during the year that she is on probation. Respondent shall report her current employment and shall provide a description of any work that she performs that has any relationship to the field of social work.
- D. Respondent shall report discipline of any professional certification that she holds within ten (10) days of receiving notice of the discipline.

- E. Respondent shall make a personal appearance before the Board upon Board request.
- F. Failure to comply with any of these probationary requirements could result in further disciplinary action against Respondent's license.

Dated this 13th day of June, 2012.

Beth Harms, LISW

Chairperson<sup>1</sup>

Iowa Board of Social Work

cc: Sara Scott, Assistant Attorney General, Hoover State Office Building (LOCAL)

Kimberly Gamm, PO Box 74, Hazleton, IA 50641 (CERTIFIED)

Any appeal to the district court from a decision in a contested case shall be taken within 30 days from the date of issuance of this decision.

<sup>&</sup>lt;sup>1</sup> Ms. Harms was elected Chairperson of the Board following the hearing on May 21, 2012.