

STATE OF VERMONT
OFFICE OF THE SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
APPELLATE OFFICER

IN RE: ERIC R. KLING)
Clinical Mental Health Counselor)
License No. 068.0000284) Docket No. M 2011-4 Appeal
)

Appellate Officer: George K. Belcher

Representing the Appellant: Pro Se
Representing the State: Edward G. Adrian, Esq.

Exhibits: None

**ORDER AFFIRMING DECISION BY VERMONT BOARD OF ALLIED MENTAL
HEALTH PRACTITIONERS DATED JUNE 16, 2011**

This matter was considered on October 14, 2011. The Appellant, Eric Kling, was present and appeared *pro se*. The State was represented by Edward G. Adrian, Esq. The Vermont Board of Allied mental Health Practitioners issued a decision on June 16, 2011 which denied the Appellant's request to modify conditions placed upon his license. Mr. Kling appealed that order.

Facts

A brief summary of the history of this case is in order. On October 21, 2004, by stipulation and consent order, Mr. Kling was found to have procured a renewal of his license by fraudulent statements on his license renewal application. (He neglected to disclose that he had DUI convictions in 2001 and 2003 and a felony narcotics conviction in 1996.) By his own agreement, Mr. Kling agreed to, and was ordered to, take an ethics course within twelve months of the date of the order and to pay a \$2,000.00 fine within six months of the order. The order also required that Mr. Kling "abstain completely from the consumption or possession of alcohol."

In July, 2005 Mr. Kling was again involved with criminal allegations when he was charged with disorderly conduct by phone and violating conditions of release. He admitted that he had been drinking. Mr. Kling's license as a mental health practitioner was suspended for six months and his license was further conditioned upon taking an ethics course within twelve months of reinstatement of the license. The order of suspension which was dated August 18,

2005 noted that Mr. Kling had not paid the original \$2,000.00 fine. The 2005 order granted to Mr. Kling the ability to make a plan for payment of the fine and that the fine should be paid within three years. In addition, he was again ordered to take the ethics course.

Mr. Kling's license was reinstated on May 17, 2007 but he did not pay the fine which was due by May 16, 2010 and he did not complete the ethics course. Instead of complying with these requirements he wrote two letters to the Board requesting a modification of the requirement of the fine and the ethics course. He asked that the obligation to pay the fine be removed entirely. He asked that the requirement of the ethics course be satisfied "in a unique way" by becoming a guest speaker at college level ethics courses about his experience or being able to "run a workshop on these issues." The Board issued a preliminary denial of his request and Mr. Kling appealed the preliminary denial to the Board. The Board heard the case on June 16, 2011 and decided that Mr. Kling should complete the ethics course no later than December 31, 2011 at his own expense. If he completed the course as required, the fine would be reduced to \$1,000.00 to be paid by December 31, 2012. In its decision, the Board made the following findings in part,

4. In a letter of February of 2011 Mr. Kling asked that condition #2, the requirement of an ethics course be stricken. As grounds, he stated that his financial situation over the last five years has left him without money to take the course. Rather than take the course, Mr. Kling suggested that he be allowed instead to become a "regular guest speaker at any college level course I can find."

5. The requirement that Mr. Kling take an ethics course has been unsatisfied almost seven years. Mr. Kling has not addressed the issues that gave rise to that requirement.

Mr. Kling appealed this decision. He stated that he agreed with 99% of the decision. He thought that the decision was a "reasonable compromise." His appeal contested two of the findings included in the Board decision. First, he complained that Finding 4 focused upon his being a speaker at ethics courses and neglected to describe that he also offered to run a workshop. He complained that Finding number 4 as written implied that his offer was flippant and *de minimus*. He complained that the Board's focus on his being a speaker failed to recognize the value of his speaking concerning his past experience concerning ethics problems.

He next argued that Finding 5 was factually inaccurate since he had addressed "the issues that gave rise to that requirement," but he simply didn't take the course. (He indicated in oral argument that he had addressed the issues in his counseling, but no evidence of that was offered at the hearing before the Board). Mr. Kling argued that Findings 4 and 5 were arbitrary and capricious and should be changed because "they are part of the official record".

Discussion

As a simple legal matter, Mr. Kling has not satisfied the requirements of 3 VSA Sec. 130a(b) in that there was no showing that the decision was clearly erroneous in view of the evidence in the record as a whole or that the decision was arbitrary or capricious. The terms "arbitrary and capricious" imply erratic and unreasoned decisions or findings. Clearly, the findings were based upon the evidence in the record. As was stated, Mr. Kling argued that he had already dealt with the issues giving rise to the requirement of the ethics course, but the record includes no evidence whatsoever of that fact. Likewise the decision contains no abuse of discretion against the rights of the Appellant.

Mr. Kling agreed with counsel for the State that he was primarily complaining of stylistic issues. There was no legal error in the Board's decision.

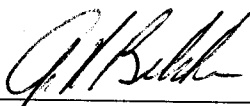
Finally, the Appellate Officer must remind the Appellant the old saying that "discretion is the better part of valor." It would have been a simple matter for the Board to give Mr. Kling no quarter and suspend his license for the clear violation of conditions which were placed upon his license by his own agreement. Despite the Appellant's failure to correct these breaches of prior orders, the Board did not summarily suspend his license. Rather, when he asked for some leeway, the Board gave him the benefit of additional time to complete the requirement and a reduction of the fine if he were to do so. The Board decision was eminently fair and reasonable to the Appellant. That the Appellant now quibbles over minor stylistic language in the findings (which were wholly accurate upon the record) shows an appalling lack of discretion by the Appellant.

The Appeal is DENIED.

Conclusion

The decision by the Board of Allied Mental Health Practitioners in this matter dated June 16, 2011 is **AFFIRMED**.

Dated this 4th day of November, 2011.



George K. Belcher
Appellate Officer

11/8/11
Date Entered

Appeal Rights

A party may appeal a decision of an Appellate Officer or an Administrative Law Officer to the Washington Superior Court by filing with the Docket Clerk a written notice of appeal within 30 days of the date of entry of the order, in the manner provided in the Vermont Rules of Appellate Procedure 3 and 4. A check for the court filing fee, made payable to the Clerk of the Washington Superior Court, must accompany the filing. Any request for stay pending appeal should be filed with the Washington Superior Court.

**STATE OF VERMONT
BOARD OF
ALLIED MENTAL HEALTH PRACTITIONERS**

In re: Eric R. Kling

}
}
} Preliminary Denial of
Motion to Modify Conditions

Board Members participating:

Marilyn Turcotte, LCMHC, Chair
Marjorie Trombly, LCMHC, Vice-Chair
Edmund Fischer
Raymond McCandless

Appearances:

State of Vermont: Edward G. Adrian
Petitioner: Eric Kling

Presiding Officer: Larry S. Novins

Preliminary Denial Hearing

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Board of Allied Mental Health Practitioners held a hearing in the above matter on June 16, 2011 at the Office of Professional Regulation Conference Room at the National Life Building in Montpelier, Vermont.

Mr. Kling bears the burden to convince the Board that the preliminary denial of his request to modify conditions should be reversed. 3 V.S.A. § 129(e).

Background

By letter dated March 25, 2011 this Board denied Mr. Kling's request to modify conditions placed on his license. The letter stated that Mr. Kling had not shown sufficient cause to remove the conditions.

Findings of Fact

Based on the evidence presented at the hearing and review of the file, the Board finds as follows:

1. Eric R. Kling is licensed as a Clinical Mental Health Counselor and is subject to the jurisdiction of this Board. 26 V.S.A. § 3263(a)(4), 3 V.S.A. §§ 129, 129(a), the

- Administrative Rules of the Board of Allied Mental Health Practitioners, and the Rules of the Office of Professional Regulation.
2. By Stipulation and Consent Order accepted by the Board on October 21, 2004 sanctions including an administrative penalty and license conditions were placed on Mr. Kling's license.
 3. In 2005, Mr. Kling was the subject of further disciplinary action. By Stipulation and Consent Order accepted by the Board on August 18, 2005, further conditions were placed on Mr. Kling's license. The conditions retained from the 2004 Stipulation and Consent Order the \$2,000 civil penalty and the requirement that he take an ethics course.
 4. In a letter in February of 2011 Mr. Kling asked that condition #2, the requirement of an ethics course, be stricken. As grounds, he stated that his financial situation over the last five years has left him without the money to take the course. Rather than take a course, Mr. Kling suggest that he be allowed instead to become a "regular guest speaker" at any college level ethics course I can find."
 5. The requirement that Mr. Kling take an ethics course has been unsatisfied almost seven years. Mr. Kling has not addressed the issues that gave rise to that requirement.
 6. Mr. Kling was required to pay an administrative penalty of \$2,000.00 within six months of October 21, 2004. The 2005 Stipulation and Consent Order gave Mr. Kling up to three years to pay the \$2,000.00. He has made no payment.
 7. Mr. Kling does not suggest that the sanctions were ill-advised or unfair. His suggests that he has been unable to comply with them because of his dire financial straits.
 8. It was Mr. Kling who brought this matter to the Board's attention. One suggestion he made at the hearing was that the Board permit him to pay according to a payment plan. We find that Mr. Kling does have the ability to satisfy the conditions imposed on his license.
 9. The public health, safety and welfare justified the sanctions imposed on Mr. Kling's license. The passage of time has not lessened the need for the ethics course. The integrity of the licensing and disciplinary system would be compromised were we to strike that condition or the civil penalty.
 10. Of the two conditions, the more important one to public health, safety and welfare is the ethics course. Although long over-due, it remains necessary in order for Mr. Kling to resume a full active practice.

Conclusions of Law

Mr. Kling has shown good cause to modify some of the conditions previously imposed on him.

Order

Mr. Kling's request to modify the conditions is, therefore, **denied in part, and granted in part.** To ensure that the public is adequately protected, Mr. Kling shall comply with the following:

- 1) Mr. Kling shall, at his own expense, successfully complete one (1) three credit college

level ethics course. The course must be pre-approved by the Board. It may be a "live" in-person course, or an on-line course. Mr. Kling must submit his course proposal to the Board for approval no later than September 1, 2011. The Board strongly suggests that Mr. Kling submit his proposal as soon as possible. Mr. Kling must complete the course no later than December 31, 2011. He must submit written documentation of successful completion of the course (certificate of completion, passing grade etc.) no later than January 30, 2012.

2) If Mr. Kling satisfies condition # 1 above, his civil penalty will be reduced to \$1,000.00 which must be paid in full by December 31, 2012.

3) Should Mr. Kling fail to meet conditions 1 and 2 above, he may be subject to further disciplinary action.

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Allied Mental Health Practitioners.

A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, National Life Bldg., North, FL2, Montpelier, VT 05620-3402 within 30 days of the entry of this Order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

BOARD OF ALLIED MENTAL HEALTH PRACTITIONERS

By:

Marilyn Turcotte, LCMHC
Marilyn Turcotte, LCMHC, Chair

Dated: June 16, 2011

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6/16/11