



Eversman v.

Kentucky Board of Social Work

Background

- Social work is title and practice protected in the Commonwealth of Kentucky at the Bachelor's, Master's, and Clinical levels.
- Kentucky law allows for a few exemptions to the title and practice act per KRS 335.010:
 1. Kentucky Department of Education and all local boards of education
 2. Administrative heads of social service agencies of local city, county, or urban county governments or the Commonwealth of Kentucky

Background

3. Licensed Social Workers (Bachelor's level) and Certified Social Workers (Master's level) practicing in nonprofit 501(c)3 organizations in which IRS tax-exempt status can be provided to the Board
- NO individual licensee may practice CLINICAL social work without being licensed pursuant to the Law and Regulations.

Definition of social work

- Pursuant to KRS 335:020: “The practice of social work” means the professional activity of helping for remuneration individuals, groups, or communities enhance or restore their capacity for social functioning and create societal conditions favorable to this goal. It includes the professional application of social work values, principles, and techniques to one or more of the following ends: counseling and nonmedical psychotherapy with individuals, families, and groups; helping people obtain tangible services; assisting communities or groups provide or improve social and health and services; and engaging in social work education, research, planning, and the appropriate administration of social work or social welfare services.

Definition of clinical social work

- Pursuant to 201 KAR 23:070 Section (2):
“Practice of clinical social work” means the practice of social work that focuses on the evaluation, diagnosis, and treatment of an emotional disorder and mental illness as related to the total health of the individual.

Important regulations

- 201 KAR 23:015, Temporary Permission to Practice:
 - This regulation allows candidates for licensure who have met all requirements for licensure except the examination and have applied for licensure to engage in the practice of social work at the non-clinical or clinical level for a maximum of 240 days.

Case history

- 05/20/2010 – Application and temporary permit received. A temporary clinical social work permit was approved by the KBSW. The temporary permit expiration date was 09/20/2010.
- 02/09/2011 – Unofficial score report was received without documentation of supervision as directed by regulation and approval letter.
- 02/15/2011 – Email was sent to the approved supervisor on the temporary permit requesting documentation of supervision and employment status.

Timeline

- 02/15/2011 – Board staff was notified that Ms. Eversman ceased clinical practice on 09/17/2010 and was given the option of a Mental Health Associate (MHA) position. Candidate chose to resign. A copy of the MHA position was forwarded to the Board. The agency is a for-profit agency.
- 02/28/2011 – Application committee reviewed the file, which included a sticky note from the Executive Director stating “practiced sw after temporary ended worked as MH associate from 09/20/10 until 01/18/11?”

Timeline

- 04/05/2011 – Board issued a preliminary denial of license. This denial was nonpunitive but did reference the appropriate legal references.
- 04/25/2011 – Candidate requested a reconsideration of the denial and a hearing before the Board.
- 06/07/2011 – Hearing with the application committee was held, and the committee determined the candidate was practicing social work without a license.

Timeline

- 10/13/2011 – Administrative hearing was held and the Board determined that the candidate was practicing social work at a nonexempt agency without a license. The Board also determined that the agency was complicit in shifting the candidate to a position that requires a license.

Timeline

- The conclusion of the hearing was that Ms. Eversman would be granted a license after the completion of a three (3) hour Board-approved course based on the Kentucky Code of Ethical Conduct, 201 KAR 23:080, which is above and beyond the required continuing education, and payment of a \$300 administrative fine.
- 02/10/2012 – Appeal petition was filed in Franklin Circuit Court by Ms. Eversman to overturn the order of the administrative hearing.

Issues raised before the court by the Petitioner (candidate)

- The order of the Board is contrary to law.
- The Board's reliance on the information from the clinical supervisor was erroneous and the MHA position did not involve the practice of social work.
- The Board exceeded its authority in denying the license as the duties of an MHA III are not the practice of social work.

Issues raised before the court by the Petitioner (candidate)

- The Board exceeded its statutory authority due to the fact that the Petitioner at no time held herself out to be a social worker, nor did she at any time mislead the public or hold herself out to be a social worker while working as an MHA.

Issues raised before the court by the Petitioner (candidate)

- The Board's determination to deny Petitioner's application for licensure because she practiced social work without a license in violation of KRS 335.150(e) is arbitrary and capricious and denied Petitioner her statutory right to be licensed in accordance with KRS 335.080.

Issues raised before the court by the Respondents (Board)

- Pursuant to KRS 335.070: The Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; impose an administrative fine; issue a written reprimand or admonishment; or any combination of actions regarding any application, license, or licensee upon proof that the application or licensee has: (e) violated any statute any state statute or administrative regulation governing the practice of social work or activities undertaken by a social worker.

Issues raised before the court by the Respondents (Board)

- KRS 335.010 – The purpose of KRS 335.010 to 335.160 and KRS 335.909 is to promote high standards of professional performance for those engaged in the profession of social work by regulating the title and by setting standards of qualification, training, and experience for those who seek to engage in the practice of social work.
- The Board maintained that the burden was on the candidate to show entitlement to the license she was seeking from the Board.

Issues raised before the court by the Respondents (Board)

- KRS 335.010 – It is the purpose and policy of the Commonwealth of Kentucky to protect the public from being misled by incompetent and unauthorized persons, and from unprofessional conduct on the part of qualified social workers by providing regulatory authority over persons who hold themselves out to the public as social workers.

Issues and order of Franklin Circuit Court

- Respondents were listed as KBSW and Executive Director Margaret Hazlette.
- Ms. Eversman's MHA III supervisor was a registered nurse, not a social worker.
- Hazlette concluded that Eversman had been practicing social work without a license.
- The Board decision was arbitrary, as arbitrariness means "clearly erroneous" and by "erroneous" the Court means "unsupported by substantial evidence."

Issues raised by the Court

- The practice of social work is extraordinarily broad, and it is foreseeable that a wide variety of activities could fall within the scope.
- The Court believed that one clear requirement is that the individual allegedly in violation of practicing social work without a license must hold himself or herself out to the public as a licensed social worker.

Issues raised by the Court

- Eversman did not believe she was practicing social work, nor did she hold herself out as a social worker.
- Since the Board found that her social work degree enabled her to respond to her duties therapeutically and that her therapeutic response constituted the unlicensed practice of social work, there was no substantial evidence in the record; therefore, it was an arbitrary determination.

Issues raised by the Court

- The conclusion by the Board was made on the job description while the candidate testified that her duties differed significantly from her actual job duties submitted by the for-profit (nonexempt) agency.

Final Ruling

Franklin Circuit Court ruled in favor of the candidate and ruled against the Board for the following reasons:

1. The candidate did not identify herself as a licensed social worker.
2. The definition of social worker as codified in KRS 335.020 (2) is too broad.
3. The Board's decision was an arbitrary and capricious decision and not based on substantial evidence in the record.
4. The Board abused its powers in placing conditions on her becoming fully licensed.

Lessons learned

- Face-to-face application committee meetings are held with candidates in which concerns with the application, temporary permit, or other issues are reviewed prior to action taken on applications.
- The candidate and supervisor are immediately notified when the temporary permit expires to ascertain information for Board staff to review.
- Staff must be careful when preparing files for Board review. In Kentucky, members have immunity, staff do not.