



STATE OF OHIO COUNSELOR AND SOCIAL WORKER BOARD

ADJUDICATION ORDER in the Matter of:

Ms. Kastner completed the terms of the
consent agreement as of 12/18/2008

Mary E. Kastner
206 Arion Street
Bellevue, OH 44811

IN THE MATTER OF THE ELIGIBILITY OF MARY E. KASTNER TO MAINTAIN
LICENSURE AS AN INDEPENDENT SOCIAL WORKER IN THE STATE OF OHIO.

THE MATTER OF MARY E. KASTNER CAME BEFORE THE SOCIAL WORK
PROFESSIONAL STANDARDS COMMITTEE OF THE OHIO COUNSELOR AND
SOCIAL WORKER BOARD ON JANUARY 18, 2002.

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Opportunity for Hearing was issued to Mary E. Kastner by the Counselor and Social Worker Board on January 22, 2001. An administrative hearing was held on October 17, 2001, at 10:00 a.m. in the offices of the Ohio Counselor and Social Worker Board, 77 S. High Street, Columbus, Ohio 43215, pursuant to Chapter 119 and Section 4757 of the Ohio Revised Code. The State was represented by Assistant Attorney General Barbara Petrella. Mary E. Kastner was present and represented by counsel, Sean P. Allan.

The Board has reviewed the Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Board has also reviewed the Objections to the Hearing Officer Report and Recommendations submitted by Ms. Kastner through her counsel. The Board finds that Ms. Kastner violated Ohio Administrative Code Section 4757-5-01(B)(2). The Board modifies the Hearing Officer's recommendation as to require additional continuing education units. Instead, the Board ORDERS that Mary E. Kastner

1. Take for credit and pass a social work ethics course, with a letter grade of "C" or higher from an accredited educational institution. Said course must be pre-approved by the Board. Kastner should contact the Investigative Supervisor at the Board offices to seek the pre-approval. After completion of the course, Kastner must arrange for an official transcript to be mailed to the Board directly from the educational institution. Kastner has until September 1, 2003, to complete the course and ensure the Board receives an official transcript.

2. Notify the Board where she is employed. Kastner is required to be supervised for a period of one (1) year by a supervisor pre-approved by the Board. The approved supervisor will be required to submit quarterly reports directly to the Board discussing the supervision of Ms. Kastner. Once Kastner gains employment, she should immediately notify the Investigative Supervisor of the Board with a proposed supervisor. The one (1) year period will begin when the supervisor is approved by the Board.

This ORDER was approved by unanimous vote of the Members of the Board who reviewed this case.

Motion carried by order of the Social Work Professional Standards Committee of the Ohio Counselor and Social Worker Board.

It is hereby certified by this Board that the above language is incorporated into the Board's journal in this matter.

APPEAL RIGHTS

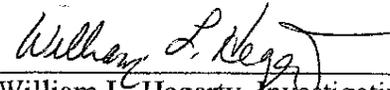
This *Order* may be appealed in accordance with Section 119.12 of the Ohio Revised Code by filing the original Notice of Appeal with the Ohio Counselor and Social Worker Board, 77 S. High Street, 16th Floor, Columbus, Ohio 43215, and also a copy of that Notice of Appeal with the Court of Common Pleas in Franklin County, Ohio. The Notice of Appeal shall set forth the Order appealed from and the grounds of the Party's appeal. Such Notice of Appeal and copy shall be filed and must be delivered within fifteen (15) days after the mailing of this *Adjudication Order*.

By Order of the State of Ohio Counselor and Social Worker Board.


Jane Daroff, ISW
Chair

Certification of Service

I hereby certify that a true copy of the foregoing ADJUDICATION ORDER was sent via U. S. Certified Mail, Return Receipt Requested, Article #7099 3400 0013 9258 3805, to Mary E. Kastner, 206 Arion Street, Bellevue, Ohio 44811 on this 1st day of February 2002.


William L. Hegarty, Investigative Supervisor
Ohio Counselor and Social Worker Board

STATE OF OHIO

COUNSELOR AND SOCIAL WORKER BOARD

IN THE MATTER OF THE
LICENSURE OF

REPORT AND RECOMMENDATION OF
HEARING EXAMINER

Mary E. Kastner

AS AN INDEPENDENT SOCIAL WORKER
IN THE STATE OF OHIO

November 23, 2001

COPY

FOR THE LICENSEE:

Sean P. Allan
Allan & Gallagher
614 W. Superior Ave.
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216/377-0598

HEARING EXAMINER:

Ronda S. Shamansky
245 East Gay Street
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FOR THE BOARD:

Barbara Petrella
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FINDINGS OF FACT:

1. The hearing on this matter was held on Wednesday, October 17, 2001 commencing at 10:00 a.m. in the offices of the Counselor and Social Worker Board, 77 South High Street, Columbus, Ohio. The State was represented by Barbara Petrella, and Ms. Kastner was represented by Sean Allan. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made. Because this hearing involves a client who is a minor, the parties at the hearing agreed that only the child's first name "Claudia" should be used. The parties agreed that if these records are made public (such as through a records request or the certification of a record on appeal) all references to the family's last name will be redacted. In this report, I will also refer to Claudia's parents simply as "Claudia's mother" and "Claudia's father," since disclosing the parents' last names would also disclose Claudia's last name. The parties also agreed that to avoid confusion, the exhibits that Mr. Allan presented on behalf of Ms. Kastner would be renumbered using letters instead of numbers.
2. The Board has proposed disciplinary action against the social work license of Mary Elizabeth Kastner (a.k.a. "Betsy Kastner") because it alleges that she treated a minor child, "Claudia," without getting the consent of the child's mother who was the custodial parent, and without contacting the psychologist appointed by the court to treat Claudia. The State further alleges that relying solely on information provided by Claudia and her father, Ms. Kastner filed an affidavit alleging neglect and abuse with the court in connection with the father's motion to change custody. The State charges that this conduct violates O.A.C. Rule 4757-5-01(B)(2) and R.C. 4757.36(A). Board's Notice of Opportunity for Hearing was sent to Ms. Kastner on or about January 22, 2001, and Ms. Kastner made a timely request for a hearing dated February 1, 2001. (State's Exhibits 1 and 2.) Ms. Kastner was given notice of the hearing date, a continuance of that date, and notice of the hearing ultimately held on October 17, 2001. (State's Exhibits 3-6)
3. The facts in this case stem from what several witnesses characterized as a very bitter and ugly divorce, and a bad relationship between the spouses following the divorce. In 1994, the parents of a three-year

old girl named Claudia divorced. They shared custody for two years, until it was almost time for her to start kindergarten. At that point, it was necessary to choose a custodial parent, and the court awarded custody to her mother. (See court order attached to State's Exhibit 8(A)). Claudia's father had visitation rights, and he saw Claudia every Tuesday night, plus every other weekend. The court had ordered counseling for Claudia, and her mother began taking her to see Jeanne Dennler, Ph.D., a psychologist, for therapy related to problems such as night terrors and bedwetting. Dr. Dennler testified at the hearing that Claudia's pediatrician, Dr. David Gemmill, had referred this family to her to deal with the tension surrounding the visitation arrangement between the parents, and that she saw Claudia for counseling from March 1997 through May 1998. She testified that the large majority of these sessions involved the whole family, and that she encouraged both parents to cooperate in communicating about the child. She testified that she found Claudia's father often not cooperative, wanting to complain about his ex-wife rather than talk about Claudia, and that he did not want Dr. Dennler's recommendations. She testified that Claudia sometimes made accusing statements against her mother that did not seem to be in a child's language, and that this is typical for children involved in custody battles. Dr. Dennler testified that Claudia's accusations were not validated in follow-up questions about them, and further, that Claudia sometimes exaggerated or was simply not truthful, often to please one parent or the other. She commented that Claudia's father acknowledged that Claudia had lied in his presence at some of the sessions. Dr. Dennler testified that Claudia was clearly attached to both parents, had good things to say about both of them, and wanted them to remarry, which she testified is typical for children in this situation.

4. After almost a year of counseling, Dr. Dennler stopped having regular sessions with Claudia and her family, but continued to monitor her school progress, and would sometimes have a session at Claudia's mother's request if there was a problem with school or some sort of family incident that was of concern. In May 1998, it was determined that Claudia was doing well, and Dr. Dennler made the decision that Claudia no longer needed regular sessions. Claudia's mother also began taking her a couple months after this time to Medical College Hospital for testing related to attention deficit problems, which were

reported by her school. Her mother testified that Claudia wasn't hyperactive, but rather a "daydreamer," and that Claudia would have to work a long time to complete a task that would take a typical child a short time to complete. Dr. Dennler testified that after May 1998, she didn't see Claudia again until December 1, 1999, when her mother requested an emergency appointment following an affidavit by Mary Kastner filed in court alleging that Claudia's mother was abusing and neglecting her.

5. It is clear from the records that following the order awarding custody to Claudia's mother, Claudia's father was devastated, and wanted desperately to gain custody of his daughter. In June 1998, shortly after Claudia had stopped seeing Dr. Dennler, her father took her to an agency called, "Just Tell," which encourages victims of sexual abuse to report it. According to Ms. Kastner's testimony at the hearing, Claudia's father had taken her there so that Claudia could report that her mother had sexually abused her. That agency referred Claudia's father to Ms. Kastner at the agency where she was employed, Cornerstone Psychological Associates, a private Christian counseling agency. Ms. Kastner testified that she had become licensed as a Licensed Independent Social Worker (LISW) in May 1998, just one month prior to when she met Claudia. However, she had been a Licensed Social Worker (LSW) for about ten years before that, and she testified that she did individual and marital therapy. Ms. Kastner began seeing Claudia on June 16, 1998. First she met with Claudia's father, and then met with Claudia. She testified that she prefers to meet with the parent and child individually because sometimes the parent answers questions for the child in joint sessions.
6. Ms. Kastner testified at the hearing that she didn't know there was a difference in the ability of a custodial versus a non-custodial parent to give consent to treatment, and in the presentation of her case in chief, she testified that she had never heard of any requirement that the consent to treat a child had to come from the custodial parent. However, Board investigator Tamara Tingle testified at the hearing that when she spoke with Ms. Kastner during the investigation, Ms. Kastner told her she knew she was wrong to treat the child without the mother's consent, but that she felt she had no choice because it was such a bit-

ter custody battle. Ms. Kastner also testified at the hearing that she had never read or heard of anything that required her to consult the prior treating professional, which in this case was Dr. Dennler. Ms. Kastner testified at the hearing that in this case, she believed it was in Claudia's best interests not to contact her mother because Claudia had said she didn't want her mother to know about this, and seemed afraid of her mother's getting angry with her. She testified that she decided not to contact Dr. Dennler for records because Claudia's father did not have confidence in Dr. Dennler's opinions, thought she was very biased in favor of Claudia's mother, and therefore, he thought that those records would not be helpful. Ms. Kastner also testified that Claudia had indicated to her that she did not trust Dr. Dennler because Dr. Dennler had told her mother things that she wanted kept secret. She testified that the information she used in compiling Claudia's family history was gleaned only from Claudia and her father.

7. Ms. Kastner's sessions were held without any knowledge or involvement by Claudia's mother or by Dr. Dennler, and Claudia's father paid for the sessions as a "private pay" client, without billing insurance. Ms. Kastner's notes indicate that during her session with Claudia on June 26, 1998, (approximately ten days after their first meeting) Claudia reported to her that her mom had done "secret touching," consisting of "checking her private parts" and "holding open her private parts" and that "it hurt and felt like she was also pushing on it," demonstrating by pushing on Ms. Kastner's hand. There is no record of any report to Children's Services at that time. There is a letter in Claudia's file less than one month after treatment began from the paternal grandmother, who also appears to be deeply involved in the custody battle, attesting to Claudia's desire to stay with her father and his family, and accusing Claudia's mother of various unkind things. Many letters from the paternal grandmother follow, each one a numbered list of the things that Claudia's mother has done, which, in the opinion of the grandmother, are wrong or damaging. The letter dated July 16, 1998, does acknowledge, however, that Claudia "is feeling guilty about not telling her mom that she goes to Dr. Betsy." A later letter notes that Claudia "seems to be all torn up about things," and that she isn't as happy as she used to be.

8. After approximately one month of therapy with Claudia, Ms. Kastner received a phone call from Elisabeth Ladd, who was Claudia's father's lawyer. She had a conversation with her, and pursuant to a release of information signed by Claudia's father, released her records of treatment to Ms. Ladd. Ms. Ladd remained in contact with Ms. Kastner throughout the remainder of Claudia's therapy, as the records indicate ongoing contact through phone calls or memos. Ms. Kastner testified that Attorney Ladd first brought up the subject of a motion to change custody, and that she wanted to help so that she could advocate for Claudia's interests. It wasn't until approximately three months after Attorney Ladd became involved that Ms. Kastner met with Claudia's court-appointed guardian ad litem, Theodore Tucker, III to discuss her concerns about Claudia. In one of Ms. Kastner's letters to Mr. Tucker, she suggested that he try to meet with Claudia at school to discuss these concerns, so that her mother would not be made aware of when he met with her. Ms. Kastner testified at the hearing that Mr. Tucker suggested that she not contact the Children's Services Board because there had been several prior investigations alleging abuse by the mother, and all of the investigations had found the abuse allegations unsubstantiated. Ms. Kastner testified that, over time, she believed that Claudia was being truthful when she accused her mother of abusive behavior because of her "affect" when she said these things. She testified that when she first began counseling her, Claudia was very shy and spoke very softly, but that later on, she made eye contact and gave detailed statements, which Ms. Kastner found credible.

9. On January 12, 1999, Ms. Kastner signed a seven page affidavit alleging that Claudia's mother was abusing her, verbally, physically, and sexually, and that she was neglecting the child's health and medical needs. The affidavit was filed in the Lucas County Domestic Relations Court the same day, in conjunction with Claudia's father's motion for an ex parte emergency order changing custody. Even though Ms. Kastner's notes indicate that Claudia had said she would like to live with her dad and visit her mom two days a week, Ms. Kastner suggests in her affidavit to the court that Claudia be removed from the home immediately and that her mother be permitted to visit Claudia only with supervision by a third party, such as at the Village House in Fremont, Ohio. (State's Exhibit 9(B), pages 7 and affidavit contained within State's Exhibit 9(B).

10. Two days later, when Ms. Kastner appeared in court, the judge informed her of her legal duty to contact the Children's Services Board if she believed Claudia was being abused, and Ms. Kastner notified Children's Services that same day. Claudia's mother testified at the hearing that Children's Services then commenced its sixth or seventh investigation, including Claudia's having a pelvic examination, and that all of the allegations of abuse were again unsubstantiated. (See also, letter dated March 3, 1999 from Children's Services caseworker Bridget Young notifying Ms. Kastner of the closure of the investigation, contained within State's Exhibit 9(B)).

11. Claudia's mother testified that the first time she had ever heard of Ms. Kastner or her treatment of Claudia was the day in January 1999 when she received the court papers wherein Claudia's father was seeking an emergency change of custody. She contacted Dr. Dennler and arranged for a meeting. Dr. Dennler testified at the hearing that she was alarmed that Ms. Kastner had treated Claudia without any input from Claudia's mother and without getting any other information from her, from Claudia's school, or her pediatrician. She testified that she recommended that Claudia's counseling with Ms. Kastner be suspended while an objective professional could be consulted to rule out "parental alienation syndrome." Dr. Dennler first met with Ms. Kastner in March 1999, and spoke with her briefly before being joined by Attorney Elisabeth Ladd and Claudia's father. Dr. Dennler testified that she had asked Ms. Kastner why she did not report this alleged abuse to the Children's Services Board, and that she said she had been told by Elisabeth Ladd that "CSB" was very biased. Dr. Dennler testified that she did not doubt that Claudia had told Ms. Kastner these things alleging abuse by her mother, but she testified that she believes it is bad practice to take these statements at face value without consulting others to attempt to verify them. She testified that she believes it is necessary to get input from both parents when doing a custody evaluation.

12. Dr. Dennler resumed treatment of Claudia in January 1999, and quickly contacted Claudia's father to request his participation in the meetings. On February 1, 1999, Ms. Kastner sent a letter to Clau-

dia's mother, which appears to be her first attempt at contact. She offered Claudia's mother "a free half hour" to discuss any concerns about Claudia. (State's Exhibit 9(B).) Ms. Kastner testified at the hearing that offering a free half hour is her usual practice in this kind of case. The next day, Attorney Ladd sent a letter to Dr. Dennler, advising Dr. Dennler of Claudia's father's reluctance to meet with her and suggesting that "it seems reasonable to request that you consult with Ms. Kastner and at least take her assessment and concerns into consideration as you counsel Claudia," despite the fact that Ms. Kastner had purposefully chosen not to contact Dr. Dennler for her records or opinions before she (Ms. Kastner) began treating Claudia. Claudia's mother did not avail herself of Ms. Kastner's offer for a free half hour, and as of March 12, 1999, a letter in the file indicates that Ms. Kastner no longer considered Claudia to be her client. (State's Exhibit 9)

13. The court acting on the change of custody motion from Claudia's father rejected his motion and terminated his visitation rights. However, on appeal, the higher court reinstated his visitation rights and found that the lower court had abused its discretion in terminating visitation, and in permitting Dr. Dennler to have sole discretion in implementing a visitation schedule with Claudia's father, noting that in the court's opinion, Dr. Dennler exhibited some bias in favor of the mother.

DISCUSSION

At the hearing of this case, and in my subsequent review of the documents, I was easily convinced that Ms. Kastner's standard of care in treating Claudia was very low and even deceitful in the way that she deliberately concealed her treatment of Claudia from Claudia's mother, whom she knew to be the custodial parent. I believe that Claudia's father intended Ms. Kastner to be his "hired gun" to assist in his attempt to get custody of his daughter, and that she willingly participated in his plan, working alongside his attorney from early on, and purposefully participating in the secrecy which Claudia's father wanted to maintain from Claudia's mother.

It is difficult to imagine that Ms. Kastner believed everything Claudia told her, even when Ms. Kastner's own notes and letters regarding her treatment of Claudia indicate statements that clearly suggest this child

sometimes contradicted herself, or may have been grossly exaggerating or fabricating events. For example, in Ms. Kastner's letter to the guardian ad litem dated October 20, 1998, she notes that Claudia stated "My mom doesn't hit me. She's not allowed to hit me." However, she noted that Claudia preceded this statement with "My mom spansks me." In the same letter, Ms. Kastner notes that Claudia perceives that she has a teacher who "bites on Tuesdays" and that "the devil was in the classroom, making kids misbehave." It is puzzling that amidst these kinds of statements, it did not occur to Ms. Kastner that perhaps Claudia was not always truthful or accurate in her perceptions, which may be perfectly understandable for a child under stress.

As the trier of fact, I also believe that Ms. Kastner's affidavit alleging abuse was unfounded. After hearing the testimony of Claudia's mother at the hearing, and cross-examining Ms. Kastner on whether she truly believed the allegations in the complaint, I do not believe that Claudia's mother abused or neglected her, aside from perhaps the "abuse" that Claudia was continually subjected to as a result of her parents' ongoing battle. The vast majority of the allegations in Ms. Kastner's court affidavit are things that many children complain of and do not seem to rise to the level of abuse that would necessitate the involvement of an agency like Children's Services or the emergency removal of the child from the parent's home. For example, Ms. Kastner alleges that Claudia's mother yells at her, spansks her, makes her sit and do homework for unreasonable periods of time, and doesn't spend very much fun time with her. Another of the paragraphs in the affidavit alleging abuse states that the Claudia's maternal grandfather has violated her privacy by entering the bathroom while she is bathing, and that Claudia does not have the courage to ask him to leave. It seems quite possible that a grandfather simply would not realize that a child of approximately seven years old would object to his entering the room while she was in the bathtub, especially if she did not ask him to leave.

I also do not believe the allegations that Claudia's mother neglected her medical or nutritional needs. Claudia's mother testified at the hearing that she is a registered nurse, and as such, it seems likely that she is well aware of the importance of good nutrition and medical care. She testified at the hearing that Claudia saw not only her pediatrician, but also psychologist Dr. Dennler and had testing related to attention deficit problems at the Medical College Hospital. Moreover, the appellate court decision included at Respondent's Exhibit F indicates that Claudia's mother has taken Clau-

dia to "a myriad of specialists including a gastroenterologist (for stomach problems), a psychiatrist (for medications), and other therapists to determine if she suffers from Attention Deficit Disorder."

The accusation that I found by far the most serious and shocking was the allegation in Ms. Kastner's affidavit that Claudia's mother had engaged in "secret touching," which she documents in an exhibit attached to her affidavit as "holding Claudia's private parts open," and pressing on her private parts" which Claudia said was painful. It simply stands far apart from the allegations of yelling, spanking, and not being any fun. Claudia's mother testified very directly at the hearing that she did not do this, and I believe her testimony, based on her very straightforward demeanor. Moreover, I was not convinced that Ms. Kastner truly believed that this had happened. When asked on my examination if she believed Claudia's mother had sexually abused her, she acted puzzled about which allegation I was referring to, and she was referred to the paragraph and notes alleging this "secret touching" of Claudia's genitalia. She responded that she believed that *Claudia* believed it had happened. When pressed for a response to whether *she* actually believed such a thing really did occur, Ms. Kastner answered only "I don't know." It would seem to be a very serious thing to accuse someone of sexually abusing his or her child, and it seems grossly irresponsible to do so if she was unsure. It also seems unlikely that she truly believed this child was being sexually abused (or subjected to any other kind of abuse, for that matter) because of the fact that there was no report made to Children's Services until after her affidavit was filed with the court and the judge told her she was obligated to do so, about seven months after her notes document this alleged abuse. Ms. Kastner states in the second paragraph of her court affidavit that she has been involved in providing mental health services and counseling to children and families, with an emphasis on children and parenting concerns, including neglect and abuse, since 1984. (State's Exhibit 9(B).) With this many years of experience in this area of practice, surely she was aware of her legal obligation to report child abuse if she believed it was actually taking place.

With that said, Ms. Kastner's counsel correctly points out that this is not a standard of care case. He contended at the hearing that Ms. Kastner has not been charged with "malpractice," but rather a violation of a specific administrative rule, 4757-5-01(B)(2), which provided, at the relevant time period as follows: "Counselors or social workers shall inform clients/consumers of services the extent and nature of services avail-

able to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might [sic] effect the clients/consumers of decisions to enter into or continue the relationship.

¹ Ms. Kastner submits through her counsel that this rule is vague, and that it does not sufficiently advise her of a requirement that she get consent from the custodial parent when treating a child, or that she consult the prior treating professional. The State acknowledges that the Rule was amended, effective August 2, 2001, so as to specifically state that if a client cannot provide informed consent because of age or mental condition, the social worker or counselor will obtain consent from the parent, guardian, or court-appointed representative. Ms. Kastner submits that the reason that rule was amended was that it was vague, but adds that even under this rule's standards, she did have the consent of a parent, even if not the custodial parent.

I find that it is a close call whether Ms. Kastner violated this Rule. On its face, the Rule says nothing about the need to get consent from the custodial parent or the need to contact another professional who has treated the child. However, it does require her to inform her client of the "limits" associated with those services. The hearing did not include any expert testimony about the limits of a social worker's ability to provide services. As a lawyer, however, I am aware that when a couple divorces, the custody order or divorce decree usually sets forth who has the right to consent to a child's medical or therapeutic treatment. That decree has the force of law. Claudia's mother testified at the hearing that she was the custodial parent, and that the custody order in this case provided that when Claudia was on visitation with her father, he had authority to consent to treatment for her only on an emergency basis, such as if she were injured and required being seen in the hospital emergency room. If Ms. Kastner was "limited" so as to be able to provide services pursuant to the non-custodial parent's consent only in emergency circumstances, then she had the duty to inform Claudia's father of that limit, and there is no evidence that she did that, or that she even inquired as to the terms of the custody order in that respect.

¹The Board also alleges that Ms. Kastner violated R.C. 4757.36(A). It would be more correct for the Board to allege that Ms. Kastner had violated Rule 4757-5-01, and that R.C. 4757.36(A) gives it the authority to take action against her license based on a violation of that Rule. However, I find that this is harmless error. If Ms. Kastner looked up R.C. 4757.36, I believe it would be clear to her that this is the section under which the Board claims its authority, and that Rule 4757-5-01 is actually the Rule that the Board claims has been "violated."

As a professional who had worked with families in therapy since 1984, she must have had some knowledge of custody arrangements and the rights of a custodial versus a non-custodial parent.

It is also clear that Claudia called Ms. Kastner "Dr. Betsy," which may suggest that she is a psychologist rather than a social worker, especially since Claudia had called her psychologist "Dr. Jeanne" prior to being treated by Ms. Kastner. It sounds as though they are both the same kind of professional with the same credentials. Ms. Kastner testified at the hearing that her highest degree is a master's degree in counseling. If the Board finds that her use of the title "Dr." in her therapy with Claudia goes beyond the limits of her scope of practice, then Ms. Kastner did not adequately inform this client of the limits of her ability to treat this patient.

In addition, Rule 4757-5-01(A)(4) incorporates by reference the Codes of Ethics and practice standards for the National Association of Social Workers," which was presented at the hearing. In reading that code of ethics, I did not find an express requirement that the social worker must consult the prior treating professional. However, Section 2.01(c) of that document provides that the social worker should cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients. Although Ms. Kastner testified about why she believed it was not in Claudia's best interest to consult Dr. Dennler, the social workers who make up roughly half of this Board may disagree. I also did not find a requirement in this ethical code that plainly states that only a custodial parent may consent to treatment. However, Section 1.03 states that social workers should provide services to clients based on valid, informed consent. No expert testimony was presented as to what constitutes valid informed consent, as that term is used in the practice of social work. The social workers on this Board may have knowledge of what "valid informed consent" consists of, but as a layperson to the field of social work, I do not have that evidence before me. I can only refer back to any requirements that were set forth in Claudia's parents' custody order. Ms. Kastner should have known or at least inquired as to what the custody order said about who may consent to what kinds of treatment, and there is no evidence that she did.

Finally, in reading the Code of Ethics of the National Association of Social Workers, I found that the major theme of the whole code concerns making sure that people who are vulnerable are not exploited, and acting

honestly and responsibly for the good of clients and those people with whom they have relationships. It is questionable whether Ms. Kastner acted for the good of her client, Claudia, by meeting with only one parent in a hostile divorce situation, and in doing things which seemed to have added "fuel to the fire" rather than meeting with both parents to encourage the family to work together. However, the Board's Notice of Opportunity for Hearing cites Rule 4757-5-01, subsection (B)(2), specifically, and so once again, there is a legitimate legal question whether Ms. Kastner was given sufficient notice that she was being charged with a violation of the NASW Code of Ethics, as incorporated by reference into the Ohio Administrative Rules. Counsel did not engage in any discourse about this legal question at the hearing, although Ms. Kastner's counsel did not object to its relevance or its introduction into evidence at the hearing.

Because of the lack of expert testimony at the hearing about what some of the relevant terms mean in the course of practice of social work, the Board members who are social workers are in by far the best position to determine if there was a violation of the Administrative Rule in this case. I do find that there is a likelihood that Claudia's father violated the terms of the custody order by taking her for treatment in a non-emergency situation, and that when presented with this client, Ms. Kastner should have alerted Claudia's father to the "limits" of her ability to treat this client without the consent of the custodial parent. Therefore, the Board could reasonably find that Ms. Kastner violated the part of Rule 4757-5-01 that deals with informing clients of the limits of one's services.

I think the best course of action in this case is for the Board to require Ms. Kastner to obtain a significant amount of continuing education, specifically related to families with divorced parents. The continuing education might focus on how the social worker can assist those families in learning to work together despite their hostilities, for the good of the children involved. This is the remedy that I believe will most effectively help Ms. Kastner to become a more competent therapist, and will best serve the troubled families who are often the social worker's clients. The Board might also choose to require some supervision of Ms. Kastner's work following her continuing education.

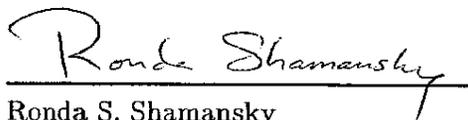
CONCLUSION OF LAW

If the Board finds that Ms. Kastner's conduct did not adequately set

forth the limits of her ability to provide services to her client in this case, then she has violated Rule 4757-5-01(B)(2), and the Board is authorized by R.C. 4757.36(A) to take the action it deems appropriate against her license. I find that it is likely that she did not sufficiently advise Claudia and her father of these limits—specifically, the limits of her ability to treat the child in a non-emergency setting with only the consent of the non-custodial parent as well as the limits of her practice, which may have been confusing by her use of the name “Dr. Betsy.” However, the Board’s expertise is necessary to make this determination.

RECOMMENDATION

For the reasons detailed in this report, I recommend that the Board require Ms. Kastner to complete additional continuing education, at her own expense, beyond that necessary for the renewal of her license, in the amount that the Board finds appropriate. I recommend that the continuing education concern the needs of families going through divorce, and how to work with the entire family to resolve conflicts and encourage cooperative behavior. The Board might also require some supervision of Ms. Kastner’s practice for a period of time following the completion of this continuing education, and it might wish to request quarterly reports from that supervisor, documenting her progress.



Ronda S. Shamansky
Hearing Examiner

CONSENT AGREEMENT

CSWMFTB

BETWEEN

MARY E. KASTNER

2006 AUG -8 A 9: 33

AND THE

STATE OF OHIO COUNSELOR, SOCIAL WORKER AND MARRIAGE AND FAMILY THERAPIST BOARD

This CONSENT AGREEMENT is entered into by and between Mary E. Kastner, hereinafter, "KASTNER," and the STATE OF OHIO COUNSELOR, SOCIAL WORKER AND MARRIAGE AND FAMILY THERAPIST BOARD, hereinafter "BOARD," the state agency charged with enforcing Chapter 4757 of the Ohio Revised Code and all rules promulgated therein.

KASTNER hereby acknowledges that she has read and understands this CONSENT AGREEMENT and has voluntarily entered into it without threat or promise by the BOARD or any of its members, employees or agents.

KASTNER is fully aware of her rights, including her right to be advised by counsel and her right to a hearing pursuant to Chapter 119 of the Ohio Revised Code on the issues which are the subject of this CONSENT AGREEMENT. Should KASTNER fail to comply with any provisions of this CONSENT AGREEMENT, KASTNER knowingly waives her rights under ORC Chapter 119 with respect to the claims in this agreement.

This CONSENT AGREEMENT contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

1. KASTNER is an independent social worker (I-0008207) licensed in the State of Ohio, and is subject to the laws and rules of Ohio regulating the practice of social work as outlined in Ohio Revised Code Chapter 4757 and Ohio Administrative Code Chapter 4757. KASTNER received her independent social work license on May 22, 1998.
2. KASTNER, while employed with Catholic Charities, Fremont, OH, between September 2, 2005, and September 12, 2005, made a recommendation regarding visitation that was not supported by sound clinical data in the opinion of her employer and the Board. This inappropriate conduct constitutes a violation of Ohio Revised Code Section 4757.36(A) (1) and Ohio Administrative Code Sections 4757-6-01(F) and (K).
3. KASTNER, while employed with Catholic Charities, Fremont, OH failed to maintain sufficient and timely documentation in records. Upon review of several files, (7 files as reported by Catholic Charities)

those files were delinquent for over a one year period. This inappropriate conduct constitutes a violation of Ohio Revised Code Section 4757.36(A) (1) and Ohio Administrative Code Sections 4757-5-01(I) (1) and (2).

4. **KASTNER** was terminated by Catholic Charities, Fremont, OH, on September 21, 2005. After termination **KASTNER** had telephone contact with an ex-client. This inappropriate conduct constitutes a violation of Ohio Revised Code Section 4757.36(A) (1) and Ohio Administrative Code Section 4757-5-01(B) (5).
5. **KASTNER ADMITS** the allegations referenced in paragraphs 2, 3 and 4 above.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal disciplinary proceedings, **KASTNER** knowingly and voluntarily agrees with the **BOARD** to the following terms and conditions:

1. **KASTNER** will take, at her own expense, six (6) hours of continuing education focused on social work supervision issues. The workshops must be pre-approved by the **BOARD'S** Deputy Director or his designee. These six (6) hours will not count toward the thirty (30) continuing education hours needed for renewal of her license as an independent social worker. **KASTNER** must send copies of her attendance certificates of these workshops upon completion to the Investigation Unit of the **BOARD**. **KASTNER** will have until May 19, 2007, to complete, and submit verification to the **BOARD** office, of this requirement.
2. **KASTNER**, will be on probation for a period of two (2) years, upon employment or at her current place of employment. During the two year probationary period, **KASTNER** must be supervised in all aspects of her practice of social work and receive face-to-face supervision one hour every two weeks. **KASTNER'S** supervisor must be pre-approved by the **BOARD**. All cost associated with supervision will be at **KASTNER'S** expense. The request for supervisor approval must be made in writing, include a copy of the supervisor's vita and be submitted no later than two weeks after the signing of this consent agreement. Supervision should focus on, but not be limited to, supervision, ethical decision making and accurate and timely documentation. Supervision should be considered training in nature and should not be limited to simply approving and denying case plans. **KASTNER'S** supervisor must submit quarterly reports to the **BOARD** for the entire two year period detailing topics discussed during supervision sessions, areas of concern, areas of improvement and make a recommendation with regards to **KASTNER'S** suitability to practice. However, if **KASTNER'S** supervisor is concerned with **KASTNER'S** practice at any time during the probationary period the

BOARD should be notified immediately. It is **KASTNER'S** responsibility to ensure that the **BOARD** receives all supervisory reports.

It is hereby agreed by and between both parties that this **CONSENT AGREEMENT** hereby settles all issues concerning this matter.

By her signature on this **CONSENT AGREEMENT**, **KASTNER** acknowledges that in the event the **BOARD**, in its discretion, does not approve this **CONSENT AGREEMENT**, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. **KASTNER** agrees that should the **BOARD** reject this **CONSENT AGREEMENT** and if this case proceeds to hearing, she will assert no claim that the **BOARD** was prejudiced by its review and discussion of this **CONSENT AGREEMENT** or of any information relating thereto.

KASTNER hereby releases the members of the **BOARD**, its officers and employees, jointly and severally, from any and all liability arising from the matter within.

This **CONSENT AGREEMENT** shall be considered a public record as that term is used in Section 149.43 of the Ohio Revised Code. Pursuant to 42 USC Section 132a-73(b), 5 USC Section 552a, 45 CFR part 61 and Ohio Revised Code Section 2301.373(E), the **BOARD** may be required to provide **KASTNER'S** social security number to requesting governmental agencies.

The **BOARD** shall incorporate this **CONSENT AGREEMENT** into a formal journal entry at its September 22, 2006, meeting.

This **CONSENT AGREEMENT** shall take effect upon the date of the last signature below:

THE OHIO COUNSELOR,
SOCIAL WORKER AND MARRIAGE AND
FAMILY THERAPIST BOARD

Mary E. Kastner, LISW
MARY E. KASTNER, LISW

Theresa Cluse-Tolar
Theresa Cluse-Tolar, LISW, Ph.D.
Chair, Counselor, Social Worker and Marriage and Family Therapist Board

July 31, 2006
Date

9-22-06
Date

Ronald R. Smith
Ronald R. Smith
Attorney At Law
Counsel for Ms. Kastner

Peter R. Casey, IV, Esq.
Peter R. Casey, IV, Esq.
Assistant Attorney General
Counselor, Social Worker and Marriage and Family Therapist Board

Aug 1, 2006
Date

9/22/06
Date