LOUISIANA STATE BOARD OF
SOCIAL WORK EXAMINERS

IN THE MATTER OF	**FINDINGS OF FACT, CONCLUSIONS**
ROBYN R. KINCEL	**OF LAW AND SANCTIONS**
LICENSE NO. 5797	**NUMBER 2013-116**

This matter came before the Louisiana State Board of Social Work Examiners ("Board") on June 27, 2014 for a hearing on an Administrative Complaint filed with the Board by Emalie Boyce, Assistant Attorney General. Board members, Lisa Lipsey, LCSW, Robert Showers, RSW, Judith Haspel, LCSW, Carla Moore, LMSW, and Parker Sternbergh, LCSW, served on the hearing panel. George M. Papale served the hearing panel as the Board's Independent Legal Counsel.

Complaint History and Pre-hearing Issues

This matter originated with a complaint filed by Jody S. West, LCSW-BACS, alleging that on February 26, 2013, Robyn Kincel was observed at Moss Preparatory School having difficulty walking, that she was staring off, had glazed eyes, and had to lean on desks and walls to maintain her balance. The complaint also alleged that Robyn Kincel was observed at David Thibodeaux Tech acting in a manner indicative of impairment. Ms. Kincel was not allowed to return to either school to provide services to students.

During the investigation of the complaint, it was discovered that Robyn Kincel responded "no" to the question, "Have you within the past year or are you currently using, drugs, chemical substances (including controlled substances obtained either with or without a valid prescription), or intoxicating liquors to an extent that it impairs your functioning as a social worker on the delivery of social work services?" in her renewal application. This renewal application was filed on August 30, 2013.

Because the services provided were within the field of social work practice, the Board turned the matter over to the Attorney General's office. The Assistant Attorney General prepared a draft administrative complaint which alleged that Ms. Kincel had violated La R.S. 37:2717(A)(2), 2717(A)(3), 2717(A)(5), 2717(A)(7) and Rule 117(A). This draft complaint was served on Ms. Kincel through her attorney on record by certified mail, return receipt requested on December 5, 2013. A response from Ms. Kincel to the draft complaint was not received.

Thereafter, the Assistant Attorney General filed the Final Administrative Complaint with the Board and the Board set the matter for hearing at 8:30 a.m. on June 27, 2014. This Administrative Complaint, along with notice of the administrative hearing, was served on Ms. Kincel by certified mail, return receipt requested on March 5, 2014.

The Complaint alleges that Respondent violated provisions of the Social Work Practice Act by reporting to work with the intent to see clients in a state that concerned administrators on February 26, 2013, and March 4, 2013, i.e., stumbling, confused and glassy eyes, and by doing so, Ms. Kincel has violated Rule 117(A), which prohibits a social worker from practicing while impaired by medication, alcohol, drugs, or other chemicals, and also prohibiting a social worker from practicing while under a mental or physical condition that impairs the ability to safely practice which is cause for the Board to take disciplinary action pursuant to La. R.S. 37:2717(A)(5). These incidents are consistent with a professional who is using drugs or intoxicating beverages to an extent which has affected her professional competence, which is cause for the Board to take disciplinary action pursuant to La. R.S. 37:2717(A)(2). In addition, by reporting to work with the intent to see clients in a state that concerned administrators, Ms. Kincel practiced in a manner detrimental or potentially detrimental to the client by act or omission, which is cause for the Board to take disciplinary action pursuant to La. R.S. 37:2717(A)(7).

By responding "no" to the question, "Have you within the past year or are you currently using, drugs, chemical substances (including controlled substances obtained either with or without a valid prescription), or intoxicating liquors to an extent that it impairs your functioning as a social worker on the delivery of social work services?" in her renewal application on August 30, 2013, Robyn Kincel has not been honest in the information submitted to the Board in a renewal application. This conduct is cause for the Board to take disciplinary action pursuant to La. R.S. 37:2717(A)(3).

RESPONDENT'S FAILURE TO APPEAR

At the time the case was called, Respondent, Robyn R. Kincel was not present. The Board was provided with a copy of the hearing notice letter and the certified return receipt documenting Ms. Kincel was served on March 5, 2014.

AUTHORITY FOR ADJUDICATION BY DEFAULT

The Louisiana Administrative Procedure Act (LAPA) allows for the disposition of an Administrative Complaint by default under LA R. S. 49:955 (D) unless such action is "precluded by law". No other provision of LAPA or the Social Work Practice Act precludes the adjudication of the captioned complaint by default. Furthermore, neither Ms. Kincel nor any attorney acting on her behalf notified the Board of good cause for her absence as required by Rule 941 (B). The Board, satisfied that the requirements for due process of law had been met, allowed the case to proceed in the absence of the Respondent.

THE HEARING

The Assistant Attorney General introduced the licensing information from the Board's database as documentary evidence to support the Board's jurisdiction in this matter. The Assistant Attorney General provided notice of pending action and the hearing through the Board's Administrator, Emily Efferson. Also, through Ms. Efferson's testimony, was the introduction of the renewal application filed online by Robyn Kincel on August 30, 2013 in which

Ms. Kincel answered no to the question, "Have you within the past year or are you currently using, drugs, chemical substances (including controlled substances obtained either with or without a valid prescription), or intoxicating liquors to an extent that it impairs your functioning as a social worker on the delivery of social work services?". Jody West, the supervisor of mental health for Lafayette Parish School System, was called by the Assistant Attorney General to testify. Ms. West testified that Robyn Kincel reported directly to her. Ms. West received information from Paul Breaux Middle School that they did not want Ms. Kincel to return to that school because of continued absences, failing to report when she would be absent, and coming in late. Ms. West also testified that she was contacted by the principal of N. P. Moss, an alternative school, on February 26, 2013 because Ms. Kincel was glassy-eyed and slurring her words. The Assistant Attorney General had Jody West testify to the events that occurred on March 4, 2013 at Moss Prep. Ms. West testified that she received a call from the assistant principal advising that Robyn Kincel was attempting to see students in an impaired state. When Ms. West arrived at Moss Prep, she observed Ms. Kincel to be glassy-eyed, have slurred and delayed speech, and to require leaning on a file cabinet because she could not stand on her own. Exhibit A, the complaint filed by Jody West, was entered into evidence through Ms. West's testimony. A summation of the events that occurred which led Ms. West to recommend termination of Ms. Kincel was entered into evidence as Exhibit B. When asked if Robyn Kincel was unfit to provide services, Ms. West replied, "yes". The Assistant Attorney General also entered Exhibit E and Exhibit F into evidence through the testimony of Jody West. Exhibit E is a statement from the assistant principal at Thibodaux STEM Academy describing Ms. Kincel's behavior and stating that it is not their intention to proceed using her services. Exhibit F is a letter from Jody Duhon, principal at Moss Prep, stating that it is not their intention to proceed using her services. The Assistant Attorney General had Bradley Cruice, director of Health and Wellness for the Lafayette Parish School System, testify. Through Mr. Cruice's testimony, the

Assistant Attorney General entered Exhibit C and Exhibit D into the record. Exhibit C is a performance and counseling report completed by Mr. Cruice in February 2013. The performance and counseling report documents Robyn Kincel's failure to follow the school day scheduled, and that she was routinely late or would leave early. Exhibit D is a letter written by Mr. Cruice regarding Robyn Kincel's regarding her impaired state while at their alternative school, where the district's most at-risk students attend. When asked by the Assistant Attorney General if he felt she could provide social work services, he replied that she could not. The Assistant Attorney General called Jody Duhon to testify. Ms. Duhon is principal at N. P. Moss. The Assistant Attorney General had Ms. Duhon identify Exhibit F. Ms. Duhon identified it as the letter she wrote describing Robyn Kincel's behavior. The last person called to testify was R.E. Thompson. Mr. Thompson investigated the complaint on behalf of the board. Mr. Thompson testified that Robyn Kincel reported to him that she is on three medications for depression that she does not always remember to take on the required schedule. Ms. Kincel told the investigator that on the days her medications may have been off on the days she was reported as appearing impaired. Because the Respondent elected not to appear for the hearing, the testimony and documents offered by the Assistant Attorney General were admitted into evidence without objection. In this adjudication the Board has required proof by a preponderance of evidence relative to each of the allegations contained in the Administrative Complaint. At the close of the presentation of evidence the Board took the matter under deliberation and, after thorough review of all of the evidence, unanimously made the following Findings of Fact, Conclusions of Law and Sanctions.

FINDINGS OF FACT

1. Robyn R. Kincel is a Licensed Clinical Social Worker (LCSW), number 5797, since November 21, 2001.

2. Ms. Kincel was employed as a social worker, providing services for the Lafayette Parish

School System.

3. In February 2013, Ms. Kincel was reprimanded for failure to report absences in the appropriate manner, repeated unapproved absences and excessive tardiness while assigned at Paul Breaux Middle.

4. On the afternoon of February 26, 2013, a principal for N.P. Moss Preparatory Program, a school for which she was scheduled to provide services, contacted Ms. Kincel's supervisor, Ms. West, reporting Ms. Kincel was having difficulty walking and had glazed over eyes, and had to lean against desks and walls to maintain her balance.

5. Multiple individuals observed the same behavior from Ms. Kincel, reporting glossy eyes and having trouble maintaining balance.

6. On March 4, 2013, Ms. West was contacted by the Assistant Principal for David Thibodaux STEM Magnet Academy, who reported unusual behavior by Ms. Kincel. Ms. West observed Ms. Kincel with glassy eyes and bags under her eyes. She stumbled as she walked and was distracted as she spoke. Ms. West did not permit Ms. Kincel to provide services to clients.

7. The Assistant Principal specifically expressed concerns that Ms. Kincel was willing to see students in the state he observed, and further, that she appeared to have no knowledge that her behavior was unusual. He expressed reservations about her continuing to provide services to students.

8. After the above-described incidents, Ms. West reported that administrators from Paul Breaux Middle, N.P. Moss Preparatory Program and David Thibodaux STEM Magnet Academy did not wish for Ms. Kincel to provide services to students at their respective institutions.

9. On March 6, 2013, Ms. West recommended Ms. Kincel's employment be terminated.

10. On March 11, 2013, Ms. Kincel resigned from her positions, effective March 5, 2013.

11. Ms. Kincel informed the Complaint Investigation Officer that she is taking three types of depression medication. She further stated that she has a set schedule for those medications,

but sometimes forgets to take them.

12. On August 30, 2013, Ms. Kincel renewed her application for licensure and responded "no" to the question "[h]ave you within the past year or are you currently using drugs, chemical substances (including controlled substances obtained either with or without a valid prescription), or intoxicating liquors to an extent that it impairs your functioning as a social worker or the delivery of social work services.

CONCLUSIONS OF LAW

Based on the evidence presented and, in accord with the above-stated Findings of Fact, the Board concludes that Ms. Kincel has used drugs and medications to an extent which affects her professional competency as a social worker in violation of La. R. S. 37:2717 (A) (2); that Ms. Kincel has engaged in social work practice while impaired by medication and drugs in violation of Rule 117 (A) and thereby is in violation of La. R. S. 37:2717 (A) (5); that Ms. Kincel, by practicing social work in an impaired state also as practiced in a manner detrimental or potentially detrimental to a client in violation of La. R. S. 37:2717 (A) (7) and by providing a false response to a question inquiring about her use of drugs to the extent that it impaired her functioning as a social worker, Ms. Kincel has obtained or attempted to obtain a license by fraud or deception, in violation of La. R. S. 37:2717 (A) (3).

SANCTIONS

IT IS ORDERED that:

1. Robyn Kincel's LCSW license #5797 is hereby suspended for one year from the date this order is signed.

2. Ms. Kincel shall be evaluated by the Board's Impaired Professional Program within 30 days from the date this order is signed and follow all recommendations of the evaluator and the IPP Manager.

3. Ms. Kincel shall pay the investigative and legal costs associated with Complaint 2013-116 in the amount of $4,752.56 within one year from the date this order is signed. Payments shall be made quarterly with the first payment due within 90 days from the date this order is signed.

8/25/14

Date

Judith Haspel, LCSW

Judith Haspel, LCSW

Chairperson