

SOUTH DAKOTA BOARD OF EXAMINERS FOR
COUNSELORS AND MARRIAGE & FAMILY THERAPISTS

In the Matter of the Application of ELLY C. KELLER for Licensure as a Licensed Professional Counselor-Mental Health,))))))	FINDINGS OF FACT, DECISION, CONCLUSIONS OF LAW ORDER
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The above captioned matter having come on for hearing on October 27, 2017 pursuant to the notice of contested case hearing, and the Board having heard the testimony and considered the evidence, makes and enters, Findings of Fact, Decision, and Conclusions of Law as follow:

FINDINGS OF FACT

1. Elly C. Keller is an applicant for licensure as a South Dakota Licensed Professional Counselor of Mental Health (LPC-MH) by reciprocity. She has also applied pursuant to South Dakota Codified Law 36-32-41 and 42.
2. Keller is licensed in Nebraska as a Licensed Mental Health Practitioner (LMHP).
3. Keller applied for, and received, a South Dakota license as a professional counselor (LPC) in November 2016, by reciprocity.
4. Keller has not completed the plan of supervision required by ARSD 20:73:04.
5. Keller contends the Nebraska licensing requirements for a Nebraska LMHP are substantially the same as the South Dakota licensing requirements for an LPC-MH.

DECISION

The Board has before it yet another application for licensure by reciprocity where the applicant claims her experience as a licensee in a foreign state should qualify her for license in South Dakota as a licensed professional counselor of mental health (LPC-MH). As it has in other cases, the Board recognizes and appreciates the applicant's foreign state experience. It is common for reciprocity statutes to allow licensure based upon the applicant holding a license in good standing in foreign state, and also have a specified number of years of experience. South Dakota has not adopted this approach for licensing by reciprocity for licensed professional counselors (LPC) or LPC-MH. The South Dakota reciprocity statute does not take into consideration the quantity or quality of the applicant's experience in the foreign state.

The South Dakota legislature has established and set forth requirements for licensing of out of state applicants as an LPC or LPC-MH in South Dakota. (See, SDCL 36-32-16). The legislature has given the Board permission to grant a license to any person who at the time of the applications is licensed under the laws of another state...that imposes substantially the same or greater requirements as South Dakota. Keller fails to qualify for an LPC-MH license by reciprocity in South Dakota because the Nebraska licensing requirements for LMHP are not substantially the same or greater than the requirements for an LPC-MH in South Dakota. The Board does not have authority to grant a license by reciprocity based upon an applicant's experience.

The Board is compelled to deny Keller's application for licensure by reciprocity as an LPC-MH in South Dakota, but only after giving the application careful and thorough consideration. The requirements of Keller's licensure in Nebraska as a Nebraska LMHP are not substantially the same as South Dakota's requirements for licensure as an LPC-MH. The differences between the South Dakota LPC-MH license requirements and the Nebraska LMHP license requirements are significant and substantial. It is substantially easier to obtain a Nebraska LMHP license than it is a South Dakota LPC-MH. The Board has suggested, and continues to suggest, that consideration should be given to legislation changing the South Dakota reciprocity statute to reflect a more common and typical form of reciprocity statute, based in part on experience. The Board, however, cannot disregard the legislatively mandated requirements of the South Dakota reciprocity statute in its current form, and substitute an alternative set of requirements for licensure based upon experience.

CONCLUSIONS OF LAW

6. To be eligible for licensure by reciprocity an applicant must show that she is licensed in a state that imposes licensing requirements that are substantially the same or greater than the requirements imposed by South Dakota.
7. The requirements for a Nebraska LMHP are not substantially the same or greater than the requirements imposed by South Dakota for a South Dakota LPC-MH.
8. The Nebraska LMHP is substantially the same as a South Dakota LPC. The South Dakota LPC and the Nebraska LMHP are both licenses of a lower tier than the South Dakota LPC-MH.
9. South Dakota requires an applicant for licensure as an LPC-MH to submit and obtain pre-approval for a plan of supervision. Nebraska doesn't have an analogous provision. Instead it simply requires an applicant to document the hours on a form provided by the board.

10. South Dakota and Nebraska have substantially different requirements for supervision of an applicant for licensure. South Dakota requires that an applicant's supervisor possess the highest level of licensure in his or her field. The South Dakota supervisor must also meet one of four requirements set forth in ARSD 20:73:04:02. Nebraska has no similar provisions. A Nebraska supervisor need only hold a current, active license and have not been subjected to any discipline in the year immediately preceding supervision.
11. South Dakota requires an applicant under a plan of supervision to have at least 100 hours of direct contact with his or her supervisor, and at least one hour weekly. Nebraska has no similar requirements.
12. South Dakota requires a forty-eight-hour post graduate degree (Doctor, Masters, or Specialist) with an emphasis on mental health counseling (ARSD 20:73:01:02(3)). Nebraska has no minimum credit hour requirement and does not restrict degrees to mental health counseling programs.
13. South Dakota and Nebraska's licensing requirements are not substantially similar. They are substantially different. A Nebraska LMHP is most similar to a South Dakota LPC. Nebraska authorizes someone licensed as an LMHP to refer to herself as a, "Licensed Professional Counselor."
14. An applicant for licensure an LPC-MH (pursuant to SDCL 36-32-41 and 42) must complete 2000 hours of post graduate clinical supervision under a licensed mental health professional in accordance with a written plan of supervision.
15. The plan of supervision must be proposed to the Board, and accepted by the Board, before the applicant begins accruing supervision hours under the plan.
16. Keller has not completed 2000 hours of post graduate clinical supervision under a pre-approved plan meeting the requirements of ARSD 20:73:04.
17. Keller has failed to show that her Nebraska LMHP is substantially the same as a South Dakota LPC-MH.
18. Keller has failed to show that she has completed the plan of supervision required by ARSD 20:73:04 for licensure as an LPC-MH in South Dakota.

19. Keller is not eligible to be licensed in South Dakota as an LPC-MH.
20. An order should be entered denying Keller's application for licensure as a South Dakota LPC-MH by reciprocity, or pursuant to SDCL 36-32-41 and 42.

Dated this _____ day of _____, 2018

Lynell Rice Brinkworth, President
South Dakota Board of Examiners for
Counselors and Marriage & Family Therapists

ORDER

The Board having heard the testimony and considered the evidence, and having entered Findings of Fact, Decision, and Conclusions of Law, and for good cause, it is hereby,

ORDERED that the application for licensure by reciprocity, and the application for licensure pursuant to SDCL 36-32- 41 and 42 of Elly C. Keller be and the same is hereby denied.

Dated this _____ day of _____, 2018

Lynell Rice Brinkworth, President
South Dakota Board of Examiners for
Counselors and Marriage & Family Therapists