

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT****University of Louisville****Plaintiff**

v.

**Commonwealth of Kentucky
Kentucky Board of Licensed Professional Counselors****Defendant**

Serve: Dr. Hannah Coyt, Chair
Kentucky Board of Licensed Professional Counselors
P.O. Box 1360
Frankfort, Ky 40602

Serve: Attorney General of Kentucky
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Frankfort, Kentucky 40601-3449
ServetheCommonwealth@ky.gov

Verified Complaint for Declaratory and Injunctive Relief

The University of Louisville seeks declaratory and injunctive relief from this Court against the Kentucky Board of Licensed Professional Counselors (“Board”). The Board has unlawfully threatened to revoke the licenses of some of the University’s graduates, who are qualified mental health counselors providing vital care and treatment for some of the Commonwealth’s most vulnerable citizens. Unfortunately, the Board’s unlawful regulation requires that the Council on Accreditation of Counseling and Related Programs (“CACREP”) accredit the University’s Clinical Mental Health Counseling Program (“Program”). The regulation violates the Board’s statutory authority and misapprehends the applicable

accreditation requirements. It also irreparably harms the University, its current and future students, its graduates, and Kentuckians who need mental health counseling. The Court should enjoin the Board from enforcing its unlawful regulation and revoking the licenses or denying future ones based on that unlawful regulation.

PARTIES, JURISDICTION, AND VENUE

1. The University of Louisville is a state-supported research university located in Kentucky's largest city, Louisville.
2. The Board is a part of the executive branch of the Commonwealth of Kentucky, under the Public Protection Cabinet. Its principal office is at 500 Mero Street, Frankfort, Kentucky 40601.
3. This Court has jurisdiction to decide this case under Sections 14 and 112(5) of the Kentucky Constitution and KRS 23A.010(1).
4. The Court has power to grant the declaratory relief requested under KRS 418.040.
5. The Court possesses inherent power to grant the injunctive relief sought incidental to this Court's constitutional grant of power.
6. Venue is proper in this Court under KRS 452.480 because the Board's principal office is in Franklin County.
7. In addition, venue is proper in this Court under KRS 335.550 because the Board's unlawful decision harms the University.

BACKGROUND

8. The Board “**shall issue**” a license to a professional who, among other things, “has received a master’s specialist, or doctoral degree in counseling or a related field from a **regionally accredited institution.**” KRS 335.525(d) (emphasis added).

9. The Southern Association of Colleges and Schools Commission on Colleges (“SACSCC”) is a regional accreditation body.

10. The SACSCC accredits the University. That accreditation enables the University to award associate, bachelor, master, specialist, doctoral, and first-professional degrees.

11. Thus, graduates of the Program satisfy the statute’s requirement that they earn a degree “from a regionally accredited institution.” KRS 335.525(d).

12. However, the Board’s regulation exceeds the statutory requirement for regional accreditation and additionally requires program accreditation, which the statute does not even mention, much less require.

13. Specifically, the regulation says, “[a]n applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates.” 201 KAR 36:070 Section 2(2).

14. Nothing in KRS 335.525(d) grants the Board authority to require program accreditation separate from regional accreditation.

15. Instead, the only accreditation requirement the statute supports is requiring the University to hold a regional accreditation, which it does.

16. The Board's statutory power extends only to promulgating 1) administrative regulations "necessary to carry out and enforce the provisions of KRS 335.500 to 335.599, including the establishment of fees," KRS 355.515(3) and 2) "a code of ethics for and standards of practice for all credential holders." KRS 335.515(11).

17. Requiring the Program to carry a program accreditation beyond what the statute requires is unnecessary to carry out and enforce the provisions of KRS 335.500 to 335.599 none of which speak to program accreditation at all.

18. Requiring the Program to carry a program accreditation beyond what the statute requires contradicts the statutory regime.

19. The Program prepares its graduates to practice professional counseling in a community-based setting.

20. Graduates of the Program earn a Masters of Education in Counseling and Personnel Services.

21. There is a dire nationwide shortage of qualified mental health counselors.

22. The shortage is particularly acute in the Commonwealth of Kentucky, where our citizens suffer from mental health issues and need qualified counselors.

23. The shortage is especially critical in rural areas.

24. The Council on Accreditation of Counseling and Related Programs ("CACREP") is a program-specific accreditation body.

25. In contrast, the SACSCC is a regional accreditation body.

26. In other words, the University's regional accreditation under the SACSCC is separate from the Program's accreditation under CACREP.

27. In January 2022, CACREP extended the University's Program accreditation through May 14, 2022.

28. The University's summer semester began on May 9, 2022.

29. The Program held courses during the summer semester, and the graduates whose licenses are at issue here participated in classes during the summer semester.

30. On May 13, 2022, after the summer semester began, the University submitted its self-study to CACREP, initiating the reaccreditation process.

31. CACREP's Policy 5(b) governs recognition of graduates. It says, "Students in a CACREP accredited program for which accreditation is withdrawn or denied must graduate before or in the academic term during which accreditation is withdrawn or denied to be recognized as graduates of a CACREP program."

32. In other words, under CACREP's own policies, students who graduated in August 2022 are still graduates of, and recognized as, graduates of an accredited program.

33. In August 2022, several students (the "Mental Health Professionals") graduated from the University's Program.

34. Soon after, the Board approved three of the Mental Health Professionals' license applications. They began to practice and serve patients in dire need of their expertise and services.

35. Now, however, the Board has threatened to “rescind” those licenses based on its conclusion that the Mental Health Professionals did not graduate from an accredited program.

36. In its letters, the Board relied on its understanding that the University’s Program lacks CACREP accreditation as its sole basis for revoking the licenses.

37. Specifically, on October 26, 2022, the Board issued letters to the Mental Health Professionals, “rescind[ing]” its September 2022 approval of their licenses, effective November 15, 2022.

38. The letters asserted, “Kentucky law requires that an applicant be a graduate of a CACREP-accredited institution in order to be licensed by the Board to practice in Kentucky. See KRS 325.525(1)(c) and 201 KAR 36:070 Section 2(2).”

39. The letters went on, “Since the CACREP website shows the University of Louisville’s accreditation expired on May 14, 2022, **at the end of the spring semester**, the Board had no authority to approve your application.” (emphasis added).

40. In the letters, the Board characterized its decision as “rescind[ing]” the Mental Health Professionals’ licenses, rather than using the statutory term “revoking.” KRS 335.545.

41. That misleading paraphrase suggests an effort by the Board to take away licenses before a hearing, rather than granting a hearing before revocation, as the statute mandates. KRS 335.545.

42. The letters did not notify the Mental Health Professionals of their statutory or constitutional rights to a hearing before the Board revokes their licenses.

43. The Board's position is that the University's Program is not accredited, even though the University satisfies the only accreditation requirement in the statute.

44. The Board's decision to revoke the Mental Health Professionals' licenses is arbitrary and unlawful because the Board based that decision on its conclusion that the University's Program lacks accreditation.

45. In addition, the Board's threat to revoke the Mental Health Professionals' licenses violates due process, which requires that the Mental Health Professionals have notice and the right to a hearing before the Board revokes their licenses.

46. Similarly, the Board's threat to rescind the graduates' licenses violates their statutory right to a hearing before the Board may revoke their licenses. KRS 335.545.

47. The Board's decision harms the University.

48. The Board's conclusion that the Program lacks accreditation, and that graduates of the Program cannot obtain licenses to practice, will harm current students and the University.

49. In addition, the Board's position threatens the University's ability to recruit future students.

50. Most of all, the Board's decision threatens Kentucky patients everywhere, who are already suffering due to the shortage of qualified counselors. Determining that graduates from the University's Program cannot obtain licenses to practice will only exacerbate that crisis, further risking lives.

51. In fact, the Board's decision to revoke the licenses of the Mental Health Professionals, who are already practicing, will specifically harm those professionals' patients.

52. Continuity is key in mental health care. Transitioning counselors harms patients, who need stability in who provides their care.

53. Ultimately, the Board's regulation contradicts the statutory scheme, and as applied here, irreparably harms the University, its graduates, current and future students. Patients will suffer most of all.

COUNT I

ARBITRARY POWER FOR EXCEEDING STATUTORY AUTHORITY (KY. CONST. § 2)

54. The University asserts all its previous allegations.

55. The Board "**shall issue** credentials to qualified candidates." KRS 335.515(5) (emphasis added).

56. Among other things, KRS 335.525 requires a professional clinical counselor to graduate from a regionally accredited institution before earning a license.

57. The SACSCC, a regional accreditation institution, accredited the University.

58. Thus, the graduates of the Program all hold degrees from a regionally accredited institution, which is the statute's only accreditation requirement.

59. In addition, graduates from the University's Program will hold degrees from a regionally accredited institution, which is the statute's only accreditation requirement.

60. But 201 KAR 36:070 Section 2(2) poses an additional requirement of program accreditation: "An applicant shall have a degree from a program that is accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates." The regulation is inconsistent with the statutory mandate.

61. The program-specific accreditation requirement is outside the statutory authority the General Assembly granted to the Board to promulgate regulations.

62. The General Assembly only authorized the Board to promulgate regulations that are "necessary to carry out and enforce the provisions of KRS 335.500 to 335.599..." KRS 355.515(3).

63. Requiring program accreditation separate from regional accreditation is not necessary to carry out and enforce the provisions of KRS 335.500 to 355.599.

64. Instead, requiring regional accreditation, among the statute's other requirements, is all that is necessary to carry out the General Assembly's objectives.

65. If the General Assembly had wanted to require program-specific accreditation in addition to regional accreditation, KRS 335.525(1) would say so.

66. By requiring program accreditation in addition to regional accreditation, the Board's application of a regulation that exceeds the Board's statutory authority is void as a matter of law.

67. In addition, the Board's present and future denial of licenses to the University's graduates based on a regulation that exceeds its statutory authority is void as a matter of law.

68. In addition, the Board may deny licenses to the University's future graduates based on a regulation that exceeds its statutory authority and is therefore void as a matter of law.

COUNT II

VIOLATING KRS CHAPTER 13A

69. The University reasserts all its previous allegations.

70. 201 KAR 36:070 Section 2(2) is void as a matter of law under KRS 13A.120.

71. The Board promulgated 201 KAR 36:070 Section 2(2) in violation of KRS 13A.120.

72. Therefore, 201 KAR 36:070 Section 2(2) violates the letter and spirit of KRS Chapter 335 and is "null, void, and unenforceable." KRS 13A.120(3).

COUNT III

VIOLATING KRS CHAPTER 13B

73. The University asserts all its previous allegations.

74. KRS Chapter 13 provides for judicial review of the Board's decision to revoke or deny licenses and apply the unlawful regulation against the University.

75. The Board's decisions violate constitutional or statutory provisions.

76. The Board's decisions exceed its statutory authority.

77. The Board's decisions lack the support of substantial evidence in the whole record.

78. The Board's decisions are arbitrary, capricious, or characterized by abuse of discretion.

79. The Board's decisions are deficient as provided by law.

COUNT IV

ARBITRARY POWER FOR THREATENING TO REVOKE AND DENY LICENSES ISSUED TO QUALIFIED CANDIDATES (KY. CONST. § 2)

80. The University asserts all its previous allegations.

81. The Board "shall issue credentials to qualified candidates." KRS 335.515(5).

82. Notwithstanding that statutory command, the Board is threatening to revoke licenses issued to the Mental Health Professionals based on its conclusion that they did not graduate from an accredited program.

83. In addition, the Board may deny licenses to the University's qualified future graduates based on the same conclusion that the University's Program is not accredited.

84. Under CACREP's own rules, the Mental Health Professionals graduated from an accredited program in the summer semester, and they are therefore "recognized" as having graduated from an accredited program.

85. The Board is exercising its authority arbitrarily and in an unreasonable manner by applying an unlawful regulation.

86. The Board's acts have defied and are defying the fundamental purposes of the underlying statutory regime.

87. Specifically, by threatening to revoke licenses issued to qualified counselors, the Board will contribute to the widespread shortage of qualified counselors in the Commonwealth and deprive clients of the services of the mental health counselors they need for treatment.

88. In addition, by determining that the University's Program lacks accreditation and that graduates from that Program cannot obtain licenses, the Board will exacerbate the widespread shortage of qualified counselors in the Commonwealth and deprive clients of the mental health counselors they need for treatment.

89. The Board has not and is not legitimately exercising its statutory power or complying with its statutory duty.

COUNT V

VIOLATING KRS 335.545 AND KRS CHAPTER 13B BY FAILING TO PROVIDE NOTICE AND CONDUCT A PRE-REVOICATION HEARING

90. The University reasserts all its previous allegations.

91. KRS 335.545 requires the Board to conduct a hearing “[b]efore ... revoking” a license.

92. The Board intends to revoke the Mental Health Professionals’ licenses without first conducting the hearing KRS 335.545 requires.

93. The Board’s letters did not notify the recipients of their statutory or constitutional rights to a hearing.

94. Revoking the licenses without a hearing violates the Mental Health Professionals’ statutory rights.

95. The Board’s unlawful position harms the University.

COUNT VI

VIOLATING DUE PROCESS BY FAILING TO CONDUCT A HEARING (KY. CONST. § 2)

96. The University reasserts all its previous allegations.

97. The Mental Health Professionals have a constitutionally protected property interest in their licenses.

98. Due process requires the Board to conduct a hearing before revoking the Mental Health Professionals’ licenses.

99. The Board intends to revoke the Mental Health Professionals’ licenses without first providing the Mental Health Professionals an opportunity to be heard.

100. Revoking the licenses without a hearing violates the Mental Health Professionals’ due process rights.

101. The Board’s unlawful position harms the University.

COUNT VII**DECLARATION OF RIGHTS**

102. The University reasserts all its previous allegations.

103. The University is entitled to a Declaration that the University's Program satisfies KRS 335.525(1)(c); that 201 KAR 36:070 Section 2(2) is void as a matter of law; and that the Board has no authority to revoke or deny licensure based on that unlawful regulation.

COUNT VIII**INJUNCTION**

104. The University reasserts all its previous allegations.

105. The Court should issue a restraining order, temporary injunction, and permanent injunction barring the Board from revoking licenses and taking other actions based on its conclusion that the University's Program lacks accreditation.

PRAYER FOR RELIEF

106. The University reasserts all its previous allegations.

107. The University respectfully requests:

- a. That the Court declare that the University's Program satisfies KRS 335.515(1)(c); that 201 KAR 36:070 Section 2(2) is void as a matter of law; and that the Board has no authority to revoke or deny licensure based on that unlawful regulation.

- b. That the Court issue a restraining order, temporary injunction, and permanent injunction barring the Board from revoking licenses and taking other actions based on 201 KAR 36:070 Section 2(2);
- c. An award of recoverable costs in this action; and
- d. All other relief to which it may be entitled.

Respectfully submitted,

/s/ Sarah D. Reddick
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Verification

I verify that the allegations in this Complaint are true and correct to the best of my knowledge and belief.

Amy Lingo

Signature

By: Amy Lingo

Title: Interim Dean

Commonwealth of Kentucky
County of Jefferson

The verification statement was SUBSCRIBED and SWORN to before me by Amy Lingo, as Interim Dean of College of Education & Human Development, on this 15th day of November 2022.

[Signature] KYNP43833
My commission expires: February 1, 2026

Presiding Judge: HON. THOMAS DAWSON WINGATE (648243)

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