

**State of New Hampshire
Board of Mental Health Practice
Concord, New Hampshire 03301**

In the matter of:

Traci McCarthy, LCMHC

License No.: 380

(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the mental health profession, the New Hampshire Board of Mental Health Practice ("Board") and Traci McCarthy ("Respondent"), a Clinical Mental Health Counselor licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 330-A:27, 1, 330-A:28, and 330-A:29, and Mental Health Practice Administrative Rules ("Mhp") 207 and 208, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by mental health practitioners. Pursuant to RSA 330-A:28, VIII, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice as a Clinical Mental Health Counselor in the State of New Hampshire on January 19, 2001. Respondent holds license number 380. Respondent's license expires September 5, 2022.
3. On February 10, 2020, the Board received a written complaint from Mr. Dominick Latino, Director of Prevent ESA Fraud which is a Florida non-profit company. The complaint alleged that the Respondent issued an emotional support animal ("ESA") letter to an

individual with whom she did not have a therapeutic relationship in violation of statutes, rules, and ethical codes governing the mental health profession in New Hampshire.

4. In response to the complaint, the Board conducted an investigation and obtained information from various sources pertaining to the Respondent issuing emotional support letters to individuals with whom she did not have a therapeutic relationship.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel could prove that Respondent engaged in professional misconduct in violation of RSA 330-A:27 II. (c) and (i) by the following facts:
 - A. Respondent has no prior history of misconduct or professional discipline.
 - B. Respondent has worked in the mental health field for over 25 years with experience in development and management of addictions and co-occurring diagnosed outpatient programs.
 - C. In August 2019, Respondent applied for a position with Animal Access after seeing a listing on Indeed.com for a “Licensed Mental Health Professional for New Teletherapy” that was “centered around ESA authorization letters.”
 - D. Animal Access is an online service that, for a fee, provides individuals with qualifying emotional or psychological conditions with an ESA letter based on the individual's answers to a questionnaire that is reviewed by a licensed practitioner.
 - E. The Respondent stated she had interest in telemedicine and was passionate about emotional support animals after experiencing the benefits of an ESA herself; however, Respondent was new to both telemedicine and assessing ESA applications and had not received proper training in either.
 - F. On or about August 8, 2019, Respondent during an interview with representatives

of Animal Access asked about HIPAA compliance and relied on the representatives' statements that Animal Access is HIPAA compliant. The Respondent relied on Animal Access and believed that Animal Access obtained each patient's informed consent during the intake. Respondent did not confirm whether Animal Access provides New Hampshire clients with the Mental Health Bill of Rights as it appears in Mhp 502.02 (a).

G. On August 13, 2019, Respondent signed document titled "Exhibit A Statement of Work" that states the following:

- i. Under the section titled "Services," "Professionals will review a mental health questionnaire completed by an individual customer of the Company. Based on Professional's review and medical opinion of that questionnaire, Professional will determine the suitability of issuing an Emotional Support Animal ("ESA") Letter to the individual customer via the online platform. If Professional determines an ESA Letter is warranted, Professional will issue such ESA Letter via the online platform using a template provided to Professional by Company. Professional shall have 8 hours from notification of assignment of a questionnaire, between 9am to 5pm local time in the state of practice, to review, make the applicable determination, and issue the letter/forms (if warranted.)"
- ii. Under the section titled "Additional Requirements:" "(b) The Professional agrees that the provision of Services shall comply with accepted clinical standards and the professional and ethical standards by which Professional is bound."

- iii. Under the section titled "Additional Requirements": "(d) Professional agrees that it is prohibited from contacting or counseling a customer of the Company unless such activities are conducted within the policies and procedures of the Company. If Professional determines in its professional judgement that such activities are warranted with respect to a particular customer, Professional shall immediately notify the Company."
 - iv. Under the section titled "Additional Requirements": "(e) All records related to a customer of the Company shall remain the property of the Company."
- H. The online Animal Access application for an ESA letter consisted of five web pages: 1. "ESA letter from the comfort of your home" page, 2. "Letters" page, 3. "Please answer all questions to proceed" page, 4. "Patient Information" page, and 5. "Checkout" page. On the third page, the Animal Access questionnaire begins with the statement "Please answer this questionnaire for approval of your ESA letter by a licensed practitioner. This information is 100% confidential with full HIPAA privacy compliance." The questionnaire consists of eighteen (18) closed ended questions and two (2) open ended questions. On the fourth page, "Patient Information," there is one additional open ended question for the client to provide any additional information.
- I. Respondent believes that the questionnaire was an appropriate assessment tool and that she can justify the logic of her choices in relation to the client's needs and the clinical context in which the assessment occurred.
- J. Throughout the application process, there are no specific or separate signature box

with any statement to the effect that the patient consents to treatment or informs the patient of the risks and benefits of proposed treatments beyond the three benefits listed on the first page; and no information providing patients with the Mental Health Bill of Rights as it appears in Mhp 502.02 (a).

- K. Respondent relied on Animal Access to obtain informed consent and to provide patients with the Mental Health Bill of Rights.
- L. On or about August 27, 2019, Respondent received, evaluated, approved, and personally wrote and sent an ESA Letter for her first case. Respondent asked Animal Access if there were any letterhead requirements. Animal Access responded with an email stating: "When you approve a case, we generate letters for you automatically, on letterhead we created for you (see the sample documents we sent you August 16th). . . You never need to write letters yourself or email them (in fact, it is best you don't, as we need to stick with verbiage on the letter we create)."
- M. In the letterhead sent to the Respondent for the ESA letters, the Professional, (in this case, the Respondent), electronically signs to the following statements when an ESA letter is approved:
- i. "I am a licensed/mental health professional treating the customer's mental or emotional disability."
 - ii. "I have prescribed treatment that requires the animal identified to accompany the above named customer to accommodate this individual's mental or emotional disability."
 - iii. "I certify that the customer has a mental health related disability listed in

the Diagnostic and Statistical Manual of Mental Disorders and is under my care.”

- N. The Respondent was assigned a total of nineteen (19) assessments for Animal Access and approved ESA Letters for all nineteen (19) assessments. Respondent did not deny any applications.
- O. In each of the nineteen (19) assessments, the Respondent did not provide the client with the Mental Health Bill of Rights as it appears in Mhp 502.02 (a), nor can she demonstrate that Animal Access provided the Mental Health Bill of Rights to each of the clients.
- P. On or about January 21, 2020, Respondent completed an assessment for a customer named Roberta Nicole of Amherst, NH. Respondent approved an ESA Letter for Roberta Nicole. ESA Letters for multiple airlines were sent containing the certifications that Respondent has diagnosed Roberta Nicole with a mental or emotional disability and is under the Respondent’s care.
- Q. For the assessment of Roberta Nicole, Respondent did not directly communicate with or otherwise directly observe Roberta Nicole via phone, text, email, video-conference, or other means. Respondent did not personally provide Roberta Nicole with the Mental Health Client Bill of Rights. Respondent based her diagnosis and assessment based solely on the answers provided in the questionnaire which she assumed were truthful statements made by Roberta Nicole.
- R. However, Roberta Nicole is in fact a fictitious individual and is an alias used by Cody Oelker, an investigator for Prevent ESA Fraud. Mr. Oelker audits various emotional support animal services by applying with an alias and answers the

questions with fictitious answers. Mr. Oelker provides his contact information including his phone number on the application so that the practitioner can call him. When a practitioner calls or contacts Mr. Oelker, he informs them that he is an investigator using an alias to audit the website. Mr. Oelker states that he does not get paid for his investigative work.

S. After merely paying the fee and filling out a questionnaire, Mr. Oelker received an ESA Letter for the fictitious Roberta Nicole electronically signed by the Respondent in her capacity as a licensee of the Board stating that the Respondent had diagnosed Roberta Nicole with a mental or emotional disability and the Roberta Nicole was under the care of the Respondent.

T. Mr. Oelker states that he never had any kind of direct communication with the Respondent. Mr. Oelker states that there was no specific HIPAA form filled out or discussed. Mr. Oelker states that there were no discussions about viability and limitations of treatment or expectations. Between submitting the questionnaire and receiving the letter, Mr. Oelker did not know who the “licensed practitioner” was that was reviewing his questionnaire. Mr. Oelker states that he was never informed by the Respondent or Animal Access of what specific mental or emotional disorder that Roberta Nicole that the Respondent diagnosed.

U. On or about February 10, 2020, Mr. Oelker filed a complaint against the Respondent with the Board.

V. On February 12, 2020, Respondent tendered her resignation to Animal Access.

6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 330-A:27, II (c); and RSA

Settlement Agreement
In re Traci McCarthy, LCMHC

- 330-A:27, II (i) by violating Board Rule 502.02 (c) and provisions of the American Mental Health Counselors Association Code of Ethics (2015) AMHCA Code of Ethics (2015): 1. B. 7. (a); 1. B. 7. (b) 1. and 2.; 1. C. 1. (d); 1. D. 2. (a) and (b) which are binding on New Hampshire licensees under Board rules Mhp 501.01, 501.02 (a) (3), and 502.01 (a).
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's mental health practitioner license in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 330-A:27, III:
- A. Respondent is **REPRIMANDED**.
 - B. Respondent shall be assessed an **ADMINISTRATIVE FINE** in the amount of **two thousand dollars (\$2,000.00)**, Payment shall be made payable to the Treasurer, State of New Hampshire. The payment shall be sent with a copy of this *Settlement Agreement* within thirty (30) days of the effective date of this *Settlement Agreement* to:
 - ATTN: OPLC Finance and New Hampshire Physical Therapy
Governing Board
Office of Professional Licensure and Certification
7 Eagle Sq.
Concord, NH 03301
 - A separate mailed copy of the payment shall also be sent to:
 - ATTN: Collin Phillips, Attorney I and Ashley Czechowicz,
Administrator,
Office of Professional Licensure and Certification
7 Eagle Sq.
Concord, NH 03301
 - C. Respondent shall meaningfully participate in a program of a total of twelve (12)

hours of **CONTINUING EDUCATION** with six (6) hours in the area of telemedicine and six (6) hours in the area of ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure. These hours shall be completed within **ninety (90) days** of the effective date of this *Settlement Agreement*, but Respondent shall be given credit for continuing education hours in the aforementioned areas for hours completed during the period between the complaint and the effective date of the *Settlement Agreement* beyond the hours required by the Board for renewal of licensure. Respondent shall notify the Board in writing and provide written proof of completion within fifteen (15) days of completing these hours, or for courses already completed between the complaint and the effective date, within (15) days of the effective date of this *Settlement Agreement*.

- D. Respondent shall bear all costs of education and reporting required by this *Settlement Agreement*, but shall be permitted to share such costs with third parties.
- E. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
- F. Within ten (10) days of the effective date of this *Settlement Agreement*, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a licensed mental health practitioner or work which requires education, training, or degree in counseling or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials counselors, with which

Respondent is presently affiliated.

- G. For a continuing period of one (1) year from the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a licensed mental health practitioner or for work in any capacity which requires education training or degree in counseling or directly or indirectly involves patient care; and to any agency or authority that licenses, certifies or credentials mental health counselors, to which Respondent may apply for any such professional privileges or recognition.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 330-A:27, II (c), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this Settlement Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.

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In re Traci McCarthy, LCMHC

13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based on the facts described herein.
14. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity seek and obtain the advice of an attorney of her choosing in connection with her decision to enter into this *Settlement Agreement*.
16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
17. Respondent is not under the influence of any drugs or alcohol at the time she signs the *Settlement Agreement*.
18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities, and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed

Settlement Agreement
In re Traci McCarthy, LCMHC

by an authorized representative of the Board.

FOR RESPONDENT

Dated: October 21, 2021


Traci McCarthy, LCMHC

Respondent

On this 21st day of October A.D. 2021 personally
appeared the person who subscribe to the following instrument and acknowledged the
same as her/his voluntary act and deed before me.



Justice of the Peace/Notary

Public My commission expires:

KRIS A. LANG, Justice of the Peace
State of New Hampshire
My Commission Expires October 11, 2022

FOR THE BOARD

ACCEPTED BY BOARD OF MENTAL HEALTH PRACTICE on this 19th day of
November, 2021 (Effective Date).

Settlement Agreement
In re Traci McCarthy, LCMHC

Date: 11/19/2021

Ashley Czechowicz
(Signature)

Ashley Czechowicz
(Print or Type Name)

Authorized Representative of the
Board of Allied Health Professionals and/or
Physical Therapy Governing Board

Scribner's error
pgs 8 and 13
Board of Mental
Health Practice

**State of New Hampshire
Board of Mental Health Practice
Concord, New Hampshire 03301**

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G. On August 13, 2019, Respondent signed document titled "Exhibit A Statement of Work" that states the following:

- i. Under the section titled "Services," "Professionals will review a mental health questionnaire completed by an individual customer of the Company. Based on Professional's review and medical opinion of that questionnaire, Professional will determine the suitability of issuing an Emotional Support Animal ("ESA") Letter to the individual customer via the online platform. If Professional determines an ESA Letter is warranted, Professional will issue such ESA Letter via the online platform using a template provided to Professional by Company. Professional shall have 8 hours from notification of assignment of a questionnaire, between 9am to 5pm local time in the state of practice, to review, make the applicable determination, and issue the letter/forms (if warranted.)"
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with any statement to the effect that the patient consents to treatment or informs the patient of the risks and benefits of proposed treatments beyond the three benefits listed on the first page; and no information providing patients with the Mental Health Bill of Rights as it appears in Mhp 502.02 (a).

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S. After merely paying the fee and filling out a questionnaire, Mr. Oelker received an ESA Letter for the fictitious Roberta Nicole electronically signed by the Respondent in her capacity as a licensee of the Board stating that the Respondent had diagnosed Roberta Nicole with a mental or emotional disability and the Roberta Nicole was under the care of the Respondent.

T. Mr. Oelker states that he never had any kind of direct communication with the Respondent. Mr. Oelker states that there was no specific HIPAA form filled out or discussed. Mr. Oelker states that there were no discussions about viability and limitations of treatment or expectations. Between submitting the questionnaire and receiving the letter, Mr. Oelker did not know who the “licensed practitioner” was that was reviewing his questionnaire. Mr. Oelker states that he was never informed by the Respondent or Animal Access of what specific mental or emotional disorder that Roberta Nicole that the Respondent diagnosed.

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V. On February 12, 2020, Respondent tendered her resignation to Animal Access.

6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 330-A:27, II (c); and RSA

330-A:27, II (i) by violating Board Rule 502.02 (c) and provisions of the American Mental Health Counselors Association Code of Ethics (2015) AMHCA Code of Ethics (2015): 1. B. 7. (a); 1. B. 7. (b) 1. and 2.; 1. C. 1. (d); 1. D. 2. (a) and (b) which are binding on New Hampshire licensees under Board rules Mhp 501.01, 501.02 (a) (3), and 502.01 (a).

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's mental health practitioner license in the State of New Hampshire.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 330-A:27, III:

A. Respondent is **REPRIMANDED**.

B. Respondent shall be assessed an **ADMINISTRATIVE FINE** in the amount of **two thousand dollars (\$2,000.00)**, Payment shall be made payable to the Treasurer, State of New Hampshire. The payment shall be sent with a copy of this *Settlement Agreement* within thirty (30) days of the effective date of this *Settlement Agreement* to:

ATTN: OPLC Finance and New Hampshire Board of Mental Health
Practice
Office of Professional Licensure and Certification
7 Eagle Sq.
Concord, NH 03301

A separate mailed copy of the payment shall also be sent to:

ATTN: Collin Phillips, Attorney I and Ashley Czechowicz,
Administrator,
Office of Professional Licensure and Certification
7 Eagle Sq.
Concord, NH 03301

C. Respondent shall meaningfully participate in a program of a total of twelve (12)

hours of **CONTINUING EDUCATION** with six (6) hours in the area of telemedicine and six (6) hours in the area of ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure. These hours shall be completed within **ninety (90) days** of the effective date of this *Settlement Agreement*, but Respondent shall be given credit for continuing education hours in the aforementioned areas for hours completed during the period between the complaint and the effective date of the *Settlement Agreement* beyond the hours required by the Board for renewal of licensure. Respondent shall notify the Board in writing and provide written proof of completion within fifteen (15) days of completing these hours, or for courses already completed between the complaint and the effective date, within (15) days of the effective date of this *Settlement Agreement*.

- D. Respondent shall bear all costs of education and reporting required by this *Settlement Agreement*, but shall be permitted to share such costs with third parties.
- E. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
- F. Within ten (10) days of the effective date of this *Settlement Agreement*, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a licensed mental health practitioner or work which requires education, training, or degree in counseling or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials counselors, with which

Respondent is presently affiliated.

- G. For a continuing period of one (1) year from the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a licensed mental health practitioner or for work in any capacity which requires education training or degree in counseling or directly or indirectly involves patient care; and to any agency or authority that licenses, certifies or credentials mental health counselors, to which Respondent may apply for any such professional privileges or recognition.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 330-A:27, II (c), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this Settlement Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.

13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based on the facts described herein.
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17. Respondent is not under the influence of any drugs or alcohol at the time she signs the *Settlement Agreement*.
18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities, and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed

by an authorized representative of the Board.

FOR RESPONDENT

Dated: _____, 2021

Traci McCarthy, LCMHC
Respondent

On this _____ day of _____ A.D. 2021 personally
appeared the person who subscribe to the following instrument and acknowledged the
same as her/his voluntary act and deed before me.

Justice of the Peace/Notary
Public My commission expires:

FOR THE BOARD

ACCEPTED BY BOARD OF MENTAL HEALTH PRACTICE on this 19th day of
November, 2021 (Effective Date).

Settlement Agreement
In re Traci McCarthy, LCMHC

Date: 11/19/2021

Ashley Czuchra
(Signature)

Ashley Czuchra
(Print or Type Name)

Authorized Representative of the
Board of Mental Health Practice