

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE PROFESSIONAL COUNSELOR SECTION OF THE MARRIAGE AND  
FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING  
BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVIENE L. SMITTIE, L.P.C.-I.T.,  
RESPONDENT.

FINAL DECISION AND ORDER

0006023

Division of Legal Services and Compliance Case Nos. 17 CPC 015 and 17 CPC 026

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Daviene L. Smittie, L.P.C.-I.T.  
2803 North 52<sup>nd</sup> Street  
Milwaukee, WI 53210

Professional Counselor Section of the Wisconsin Marriage and Family Therapy,  
Professional Counseling, and Social Work Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section). The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Daviene L. Smittie, L.P.C.-I.T., (dob January 7, 1961) is licensed to practice professional counseling in training in the state of Wisconsin, having license number 2147-226, first issued on May 27, 2014. This license expired on May 27, 2018, and has not been renewed. Pursuant to Wis. Stat. § 457.13(2), Respondent may renew this license at the discretion of the Section. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2803 North 52<sup>nd</sup> Street, Milwaukee, Wisconsin 53210.

2. At all times relevant to this proceeding, Respondent was employed as a professional counselor in training at two clinics located in Milwaukee, Wisconsin.

3. On February 20, 2017, Respondent attended a meeting at Clinic A to discuss possible disciplinary action as a result of events that occurred the prior week.

4. Respondent became angry during the meeting, raised his hand and slapped the clinic manager in the face. Respondent then spit on the clinic manager.

5. On February 20, 2017, Respondent was issued City of Milwaukee Municipal Citation J980761GJ5 for assault and battery of an adult, in violation of City of Milwaukee Ordinance Number 105-2.

6. On June 21, 2017, there was a second complaint filed against Respondent.

7. The second complaint alleged Respondent made inappropriate comments to a person who was not his client.

8. Respondent denies the allegations of the second complaint.

9. Respondent has agreed to surrender his right to renew his credential to resolve both complaint 17 CPC 015 and 17 CPC026.

10. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

#### CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 457.26(2), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

#### ORDER

1. The attached Stipulation is accepted.

2. The permanent SURRENDER of the right to renew the license to practice professional counseling in training in the state of Wisconsin issued to Daviene L. Smittie, L.P.C.-I.T. (license no. 2147-226) is hereby accepted.

3. This surrender constitutes the permanent relinquishment of Respondent's credential to practice professional counseling in training in the state of Wisconsin.

4. Respondent shall not apply for any credential in Wisconsin to practice as a mental health professional.

5. In the event Respondent petitions the Section for reinstatement of his license to practice professional counseling in training in the state of Wisconsin or applies for another

credential with the Department, Respondent shall pay the costs of this matter in the amount of \$843.00, before any application is considered.

6. This Order is effective on the date of its signing.

PROFESSIONAL COUNSELOR SECTION OF THE WISCONSIN MARRIAGE AND  
FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING  
BOARD

by: Tammy Scherdegger  
A Member of the Section

1/29/2019  
Date

STATE OF WISCONSIN  
BEFORE THE PROFESSIONAL COUNSELOR SECTION OF THE MARRIAGE AND  
FAMILY THERAPY, PROFESSIONAL COUNSELING AND SOCIAL WORK EXAMINING  
BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVIENE L. SMITTIE, L.P.C.-I.T.,  
RESPONDENT.

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STIPULATION

0006028

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Division of Legal Services and Compliance Case Nos. 17 CPC 015 and 17 CPC 026

Respondent Daviene L. Smittie, L.P.C.-I.T. and the Division of Legal Services and Compliance,  
Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the  
Division of Legal Services and Compliance. Respondent consents to the resolution of this  
investigation by Stipulation.
2. Respondent understands that by signing this Stipulation, Respondent voluntarily  
and knowingly waives the following rights:
  - the right to a hearing on the allegations against Respondent, at which time the State has  
the burden of proving those allegations by a preponderance of the evidence;
  - the right to confront and cross-examine the witnesses against Respondent;
  - the right to call witnesses on Respondent's behalf and to compel their attendance by  
subpoena;
  - the right to testify on Respondent's own behalf;
  - the right to file objections to any proposed decision and to present briefs or oral  
arguments to the officials who are to render the final decision;
  - the right to petition for rehearing; and
  - all other applicable rights afforded to Respondent under the United States Constitution,  
the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code,  
and other provisions of state or federal law.
3. Respondent is aware of Respondent's right to seek legal representation and has  
been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent  
is represented by Attorney Karen M. Gallagher.
4. Respondent agrees to the adoption of the attached Final Decision and Order by  
the Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional  
Counseling and Social Work Examining Board (Section). The parties to the Stipulation consent  
to the entry of the attached Final Decision and Order without further notice, pleading, appearance


or consent of the parties. Respondent waives all rights to any appeal of the Section's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Section, the parties agree not to contend that the Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.


6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

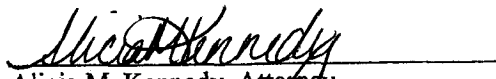
8. The Division of Legal Services and Compliance joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.

  
Daviene L. Smittie, L.P.C.-I.T., Respondent  
2803 North 52<sup>nd</sup> Street  
Milwaukee, WI 53210  
License no. 2147-226

12/3/2018  
Date

  
Karen M. Gallagher, Attorney for Respondent  
Coyne, Schultz, Becker & Bauer, S.C.  
150 East Gilman Street, Suite 1000  
Madison, WI 53703

12/3/2018  
Date

  
Alicia M. Kennedy, Attorney  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

12/3/18  
Date