

1 **BEFORE THE ARIZONA BOARD**
2 **OF BEHAVIORAL HEALTH EXAMINERS**

3 **In the Matter of:**

4 **Roland Machlowski, LPC-17410**
5 **Licensed Professional Counselor, In the**
6 **State of Arizona.**

7 **RESPONDENT**

CASE NO. 2022-0150
CONSENT AGREEMENT

8 In the interest of a prompt and speedy settlement of the above captioned matter,
9 consistent with the public interest, statutory requirements and responsibilities of the Arizona
10 State Board of Behavioral Health Examiners ("Board"), and pursuant to A.R.S. §§ 32-3281(F)
11 and 41-1092.07(F)(5), Roland Machlowski ("Respondent") and the Board enter into this Consent
12 Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final
13 disposition of this matter.

14 **RECITALS**

15 Respondent understands and agrees that:

16 1. Any record prepared in this matter, all investigative materials prepared or
17 received by the Board concerning the allegations, and all related materials and exhibits may be
18 retained in the Board's file pertaining to this matter.

19 2. Respondent has the right to a formal administrative hearing at which Respondent
20 can present evidence and cross examine the State's witnesses. Respondent hereby irrevocably
21 waives their right to such formal hearing concerning these allegations and irrevocably waives
22 their right to any rehearing or judicial review relating to the allegations contained in this Consent
23 Agreement.

24 3. Respondent has the right to consult with an attorney prior to entering into this
25 Consent Agreement.

1 4. Respondent acknowledges and agrees that upon signing this Consent
2 Agreement and returning it to the Board's Executive Director, Respondent may not revoke their
3 acceptance of this Consent Agreement or make any modifications to it. Any modification of this
4 original document is ineffective and void unless mutually approved by the parties in writing.

5 5. The findings contained in the Findings of Fact portion of this Consent Agreement
6 are conclusive evidence of the facts stated herein between only Respondent and the Board for
7 the final disposition of this matter and may be used for purposes of determining sanctions in any
8 future disciplinary matter.

9 6. This Consent Agreement is subject to the Board's approval, and will be effective
10 only when the Board accepts it. In the event the Board in its discretion does not approve this
11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,
12 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except
13 that Respondent agrees that should the Board reject this Consent Agreement and this case
14 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its
15 review and discussion of this document or of any records relating thereto.

16 7. Respondent acknowledges and agrees that the acceptance of this Consent
17 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
18 other proceedings as may be appropriate now or in the future. Furthermore, and
19 notwithstanding any language in this Consent Agreement, this Consent Agreement does not
20 preclude in any way any other state agency or officer or political subdivision of this state from
21 instituting proceedings, investigating claims, or taking legal action as may be appropriate now or
22 in the future relating to this matter or other matters concerning Respondent, including but not
23 limited to violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other
24 than with respect to the Board, this Consent Agreement makes no representations, implied or
25 ...

1 otherwise, about the views or intended actions of any other state agency or officer or political
2 subdivision of the state relating to this matter or other matters concerning Respondent.

3 8. Respondent understands that once the Board approves and signs this Consent
4 Agreement, it is a public record that may be publicly disseminated as a formal action of the
5 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

6 9. Respondent further understands that any violation of this Consent Agreement
7 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
8 disciplinary action pursuant to A.R.S. § 32-3281.

9 10. The Board therefore retains jurisdiction over Respondent and may initiate
10 disciplinary action against Respondent if it determines that they have failed to comply with the
11 terms of this Consent Agreement or of the practice act.

12 The Board issues the following Findings of Fact, Conclusions of Law and Order:

13 **FINDINGS OF FACT**

14 1. Respondent is the holder of License No. LPC-17410 for the practice of
15 Counseling in the State of Arizona.

16 2. From 11/21 – 03/22, Respondent provided direct behavioral health services to
17 Minor who was a minor female client at the time of services.

18 3. Agency had a virtual platform that used a chat room feature where clinicians and
19 clients could communicate via messages.

20 4. During an Agency audit, QA discovered a number of concerning boundary
21 concerns and conducted an audit of all of Respondent's minor clients which yielded the
22 following in part:

23 a. On 02/28/22, Respondent engaged in a conversation about drug use and
24 alcohol with a minor client.

25 b. On 01/19/22, Respondent provided his personal email to a minor client.

1 c. Minor messaged Respondent a number of concerning things which included
2 the following in part:

- 3 • Minor cares about Respondent and loves Respondent, and will keep him
4 in her life.
- 5 • Minor asks if Respondent could kiss her if he would.
- 6 • Minor asked if Respondent has ever done drugs and what he thought
7 about her physical appearance.
- 8 • She asked if they were to hangout when she was an adult if he would let
9 her sit on his lap and do a skin care routine.
- 10 • Minor loves Respondent's voice and wants to cuddle him.
- 11 • Minor would hug Respondent for 5 years because she feels bad.
- 12 • She stated maybe Respondent should kidnap her.
- 13 • Minor asked why Respondent was coming off as flirting.
- 14 • Minor is very attached to Respondent and asks Respondent to not leave
15 her.

16 d. Respondent sent the following messages to Minor:

- 17 • Respondent was hanging out with friends and angry seeing a happy
18 couple wishing he was married.
- 19 • Respondent was angry at the world for having to live life with one eye.
- 20 • Respondent is 37, with a house, two cats, nice care, good career, and
21 good friends, but did not have his first girlfriend until he was 25.
- 22 • Respondent just wants the love out of a relationship to feel connected.
- 23 • Respondent was saying in an indirect way he feels unloved.
- 24 • Respondent partied it up and drank a lot of alcohol in his college years.
- 25 • Respondent sent some messages after 10:00pm.

1 e. Respondent sent Minor a video of himself dancing and reported it was play
2 therapy but there was no evidence in Minor's clinical records that play
3 therapy would be used in Minor's treatment.

4 5. For a period of four months, Minor continuously pushed professional boundaries
5 with Respondent, yet Respondent represents he was establishing and maintaining boundaries
6 with Minor.

7 6. There is no documentation in Minor's clinical record that Respondent worked on
8 setting and maintaining professional boundaries with Minor.

9 7. According to Agency's QA audit, Respondent did not appropriately set
10 professional boundaries with Minor.

11 8. Additionally, Respondent shared personal information about himself with other
12 clients without any sort of documentation regarding the therapeutic rationale for doing so.

13 9. When Respondent initiated services with Minor, he failed to obtain any sort of
14 signed consent for treatment from Minor or her legal guardians.

15 10. Throughout four months of services, Respondent failed to develop any sort of
16 treatment plan for Minor.

17 11. During the course of four months, Respondent only documented two progress
18 notes and failed to document any other progress notes despite a number of communications
19 with Minor.

20 12. These two progress notes were missing the following minimum Board
21 requirements:

- 22 a. Respondent's dated signature.
- 23 b. The duration of the session.
- 24 c. Whether the session was individual, family, group, or couples.

1 13. During an investigative interview Respondent acknowledged he understood an
2 informed consent needed to be signed prior to the initiation of services.

3 14. In Respondent's initial written response to the complaint, he indicated he was
4 catching up on his progress notes.

5 15. Later during an investigative interview, Respondent then represented he was
6 unsure of Agency's protocol on documentation and thought the messages exchanged through
7 the chat room were considered the progress notes.

8 16. Respondent knew he needed to maintain progress notes since he in fact
9 documented two progress notes in 11/21 and 03/22.

10 17. During an investigative interview, Respondent represented he knew the Board's
11 rules required entering progress notes within 24 hours of the session.

12 18. Due to Respondent not maintaining progress notes for a period of four months, it
13 is not clear specifically how many progress notes Respondent failed to document with Minor.

14 19. Agency's internal confidential investigation showed the following issues with
15 Respondent's documentation for his other minor clients:

16 a. At least 9 other clients did not have any informed consents completed.

17 b. Agency confirmed in a later email to Board staff that Respondent failed to
18 keep progress notes similar to Minor's case with all of his clients.

19 20. Due to Agency becoming aware of concerns with the treatment of Minor, QA
20 conducted an internal audit of other charts for minors.

21 21. During the audit, it was found in 10/21 Respondent offered to write a letter for a
22 separate minor client due to a school absence caused by anxiety.

23 22. Respondent specifically messaged this minor client that he would write a note for
24 school and asked the client if anything needed to be changed in it.

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1 23. During the audit it was also found that in 12/21, a separate client asked
2 Respondent to fill out documentation for their leave from work and Respondent provided his
3 email address to send the paperwork.

4 24. During an investigative interview, Respondent represented the following
5 regarding letters her has written for clients:

6 a. Respondent wrote a letter for an Agency client and sent it the client through
7 his personal email address, but cannot recall specifically what he wrote in
8 that letter.

9 b. Respondent has written roughly 15-20 letters for clients over the past year
10 which include ESA letters and letters for school for a day off.

11 c. Respondent may write a letter about a client's mental state and that they
12 need a day off due to depression or being sick, or that the client missed
13 school due to having a panic attack.

14 d. It was very common for Respondent to write ESA letters.

15 e. Respondent denied writing any sort of disability letters or paperwork.

16 f. Respondent thought he was able to write these letters based on his licensure.

17 g. It did not occur to consult with anyone at Agency to see if this was within his
18 scope.

19 25. By offering to write ESA letters and letters of absence for clients, Respondent
20 extended his boundaries of competence by opining that a client was either qualified for ESA or
21 was in fact experiencing some sort of disability prohibiting them from going to school or work.

22 26. The Board's rules indicate Respondent's scope is to diagnose, assess, and treat,
23 not provide either an opinion on justifying an absence or a rationale for an ESA.

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1 **CONCLUSIONS OF LAW**

2 1. The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-3251 *et seq.*
3 and the rules promulgated by the Board relating to Respondent’s professional practice as a
4 licensed behavioral health professional.

5 2. The conduct and circumstance described in the Findings of Fact constitute a
6 violation of A.R.S. § 32-3251(16)(l), engaging in any conduct, practice or condition that impairs
7 the ability of the licensee to safely and competently practice the licensee's profession.

8 3. The conduct and circumstance described in the Findings of Fact constitute a
9 violation of A.R.S. § 32-3251(16)(k), engaging in any conduct or practice that is contrary to
10 recognized standards of ethics in the behavioral health profession or that constitutes a danger
11 to the health, welfare or safety of a client, as it relates to the following section of the ACA Code
12 of Ethics:

13 **H.4.b. Professional Boundaries in Distance Counseling**

14 Counselors understand the necessity of maintaining a professional relationship with
15 their clients. Counselors discuss and establish professional boundaries with clients
16 regarding the appropriate use and/or application of technology and the limitations of
17 its use within the counseling relationship (e.g., lack of confidentiality, times when not
18 appropriate to use).

19 4. The conduct and circumstances described in the Findings of Fact constitute a
20 violation of A.R.S. § 32-3251(16)(q), failing or refusing to maintain adequate records of
21 behavioral health services provided to a client.

22 5. The conduct and circumstances described in the Findings of Fact constitute a
23 violation of A.R.S. § 32-3251(16)(p), failing to conform to minimum practice standards as
24 developed by the board, as it relates to:

25 A.A.C. R4-6-1101. Consent for Treatment

1 A.A.C. R4-6-1102. Treatment Plan

2 A.A.C. R4-6-1103. Client Record

3 6. The conduct and circumstances described in the Findings of Fact constitute a
4 violation of A.R.S. § 32-3251(16)(m), engaging or offering to engage as a licensee in activities
5 that are not congruent with the licensee's professional education, training or experience.

6 **ORDER**

7 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to
8 the provisions and penalties imposed as follows:

9 1. Respondent's license, LPC-17410, will be placed on probation for 24 months,
10 effective from the date of entry as signed below.

11 2. Respondent shall not practice under their license, LPC-17410, unless they are
12 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
13 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
14 shall immediately notify the Board in writing and shall not practice under their license until they
15 submit a written request to the Board to re-commence compliance with this Consent Agreement.
16 All such requests shall be pre-approved by the Board Chair or designee.

17 3. In the event that Respondent is unable to comply with the terms and conditions
18 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until such
19 time as they are granted approval to re-commence compliance with the Consent Agreement.

20 **Continuing Education**

21 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
22 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
23 hours of continuing education addressing Childhood Trauma. All required continuing education
24 shall be pre-approved by the Board Chair or designee. Upon completion, Respondent shall
25 submit a certificate of completion of the required continuing education.

1 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
2 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
3 hours of continuing education addressing working with adolescents. All required continuing
4 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
5 shall submit a certificate of completion of the required continuing education.

6 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
7 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
8 hours of continuing education addressing Clinical Documentation. All required continuing
9 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
10 shall submit a certificate of completion of the required continuing education.

11 7. In addition to the continuing education requirements of A.R.S. § 32-3273, within
12 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
13 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course.
14 All required continuing education shall be pre-approved by the Board Chair or designee. Upon
15 completion, Respondent shall submit a certificate of completion of the required continuing
16 education.

17 8. In addition to the continuing education requirements of A.R.S. § 32-3273, within
18 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
19 hours of continuing education in Telehealth. All required continuing education shall be pre-
20 approved by the Board Chair or designee. Upon completion, Respondent shall submit a
21 certificate of completion of the required continuing education.

22 **Clinical Supervision**

23 9. While on probation, Respondent shall submit to clinical supervision for 24 months
24 by a masters or higher-level behavioral health professional licensed by the Arizona

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1 Board of Behavioral Health Examiners at the independent level. Within 30 days of the date of
2 this Consent Agreement, Respondent shall submit the name of a clinical supervisor for pre-
3 approval by the Board Chair or designee. Also, within 30 days of the date of this Consent
4 Agreement, the clinical supervisor shall submit a letter disclosing their prior relationship to
5 Respondent. In that letter, the clinical supervisor must address why they should be approved,
6 acknowledge that they have reviewed the Consent Agreement and include the results of an
7 initial assessment and a supervision plan regarding the proposed supervision of Respondent.
8 The letter from the supervisor shall be submitted to the Board.

9 **Focus and Frequency of Clinical Supervision**

10 10. The focus of the supervision shall relate to scope of practice, Board statutes and
11 rules, documentation, boundaries, seeking consultation, behavioral health ethics, and working
12 with adolescents. Respondent shall meet individually in person with the supervisor twice
13 monthly for the first 12 months. After the first 12 months, clinical supervision shall be at the
14 recommendation of the clinical supervisor but no less than once monthly.

15 **Reports**

16 11. Once approved, the supervisor shall submit quarterly reports for review and
17 approval by the Board Chair or designee. The quarterly reports shall include issues presented in
18 this Consent Agreement that need to be reported and the supervisor shall notify the Board if
19 more frequent supervision is needed. Quarterly reports shall include the following:

- 20 a. Dates of each clinical supervision session.
- 21 b. A comprehensive description of issues discussed during supervision
22 sessions.

23 12. All quarterly supervision reports shall include a copy of clinical supervision
24 documentation maintained for that quarter. All clinical supervision documentation maintained by
25 the supervisor shall comply with requirements set forth in A.A.C. R4-6-212(C).

1 13. After Respondent’s probationary period, the supervisor shall submit a final
2 summary report for review and approval by the Board Chair or designee. The final report shall
3 also contain a recommendation as to whether the Respondent should be released from this
4 Consent Agreement.

5 **Change of Clinical Supervisor During Probation**

6 14. If, during the period of Respondent’s probation, the clinical supervisor determines
7 that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of
8 the end of supervision and provide the Board with an interim final report. Respondent shall
9 advise the Board Chair or designee within 30 days of cessation of clinical supervision by the
10 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
11 proposed clinical supervisor shall provide the same documentation to the Board as was required
12 of the initial clinical supervisor.

13 **GENERAL PROVISIONS**

14 **Provision of Clinical Supervision**

15 15. Respondent shall not provide clinical supervision while subject to this Consent
16 Agreement.

17 **Civil Penalty**

18 16. Subject to the provisions set forth in paragraph 17, the Board imposes a civil
19 penalty against the Respondent in the amount of \$1,000.00.

20 17. Respondent’s payment of the civil penalty shall be stayed so long as Respondent
21 remains compliant with the terms of this Consent Agreement. If Board staff determines that
22 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
23 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
24 be automatically lifted and payment of the civil penalty shall be made by certified check or

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1 money order payable to the Board within 30 days after being notified in writing of the lifting of
2 the stay.

3 18. Within 10 days of being notified of the lifting of the stay, Respondent may request
4 that the matter be reviewed by the Board for the limited purpose of determining whether the
5 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
6 receives the written request within 10 days or less of the next regularly scheduled Board
7 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
8 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
9 review.

10 19. The Board reserves the right to take further disciplinary action against
11 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
12 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
13 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
14 and the period of probation shall be extended until the matter is final.

15 20. If Respondent currently sees clients in their own private practice, and obtains any
16 other type of behavioral health position, either as an employee or independent contractor, where
17 they provide behavioral health services to clients of another individual or agency, they shall
18 comply with requirements set forth in paragraphs 21 through 23 below.

19 21. Within 10 days of the effective date of this Order, if Respondent is working in a
20 position where Respondent provides any type of behavioral health related services or works in a
21 setting where any type of behavioral health, health care, or social services are provided,
22 Respondent shall provide the Board Chair or designee with a signed statement from
23 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
24 Consent Agreement. If Respondent does not provide the employer's statement to the Board

25 ...

1 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
2 copy of the Consent Agreement.

3 22. If Respondent is not employed as of the effective date of this Order, within 10
4 days of accepting employment in a position where Respondent provides any type of behavioral
5 health related services or in a setting where any type of behavioral health, health care, or social
6 services are provided, Respondent shall provide the Board Chair or designee with a written
7 statement providing the contact information of their new employer and a signed statement from
8 Respondent's new employer confirming Respondent provided the employer with a copy of this
9 Consent Agreement. If Respondent does not provide the employer's statement to the Board
10 within 10 days, as required, Respondent's failure to provide the required statement to the Board
11 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
12 employer(s) with a copy of the Consent Agreement.

13 23. If, during the period of Respondent's probation, Respondent changes
14 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
15 extended leave of absence for whatever reason that may impact their ability to timely comply
16 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
17 the Board of their change of employment status. After the change and within 10 days of
18 accepting employment in a position where Respondent provides any type of behavioral health
19 related services or in a setting where any type of behavioral health, health care, or social
20 services are provided, Respondent shall provide the Board Chair or designee a written
21 statement providing the contact information of their new employer(s) and a signed statement
22 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
23 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
24 the Board within 10 days, as required, Respondent's failure to provide the required statement to

25 ...

1 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
2 Respondent's employer(s) with a copy of the Consent Agreement.

3 24. Respondent shall practice behavioral health using the name under which they
4 are licensed. If Respondent changes their name, they shall advise the Board of the name
5 change as prescribed under the Board's regulations and rules.

6 25. Prior to the release of Respondent from probation, Respondent must submit a
7 written request to the Board for release from the terms of this Consent Agreement at least 30
8 days prior to the date they would like to have this matter appear before the Board. Respondent
9 may appear before the Board, either in person or telephonically. Respondent must provide
10 evidence that they have successfully satisfied all terms and conditions in this Consent
11 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
12 this Consent Agreement have been met and whether Respondent has adequately demonstrated
13 that they have addressed the issues contained in this Consent Agreement. In the event that the
14 Board determines that any or all terms and conditions of this Consent Agreement have not been
15 met, the Board may conduct such further proceedings as it determines are appropriate to
16 address those matters.

17 26. Respondent shall bear all costs relating to probation terms required in this
18 Consent Agreement.

19 27. Respondent shall be responsible for ensuring that all documentation required in
20 this Consent Agreement is provided to the Board in a timely manner.

21 28. This Consent Agreement shall be effective on the date of entry below.

22 29. This Consent Agreement is conclusive evidence of the matters described herein
23 and may be considered by the Board in determining appropriate sanctions in the event a
24 subsequent violation occurs.

25 ...

1 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**


2 
3 Roland Machlowski (Jan 19, 2023 08:25 MST)

Jan 19, 2023

4 _____
5 Roland Machlowski

Date

6 **BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

7 By: 
8 _____
9 TOBI ZAVALA, Executive Director

Jan 19, 2023

10 Arizona Board of Behavioral Health Examiners
11 1740 West Adams Street, Suite 3600
12 Phoenix, AZ 85007

Date

13 **ORIGINAL** of the foregoing filed Jan 19, 2023
14 with: _____

15 Arizona Board of Behavioral Health Examiners
16 1740 West Adams Street, Suite 3600
17 Phoenix, AZ 85007

18 **EXECUTED COPY** of the foregoing sent electronically Jan 19, 2023
19 to: _____

20 Mona Baskin
21 Assistant Attorney General
22 2005 North Central Avenue
23 Phoenix, AZ 85004

24 Roland Machlowski
25 Address of Record
26 Respondent