

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

3 **In the Matter of:**

4 **Ellen K. A. Day, LAC-Applicant**
5 **Licensed Associate Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2023-0056
CONSENT AGREEMENT
FOR ISSUANCE OF LICENSE

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), Ellen K. A. Day ("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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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
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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 an applicant for licensure for the practice of counseling in the
15 State of Arizona.

16 2. On 01/03/22, the Board received Respondent's LAC application.

17 3. Within her LAC application, Respondent answered yes to the background
18 questions regarding prior terminations from a behavioral health agency.

19 4. Respondent represented she was terminated from Agency 2 due to using
20 prompts when dealing with maladaptive behaviors such as physically moving a client away from
21 the door who was attempting to elope.

22 5. Respondent represented she was terminated from Agency 3 for contacting the
23 mother of a client to notify them of another coworker's departure from Agency 3.

24 6. Respondent's personnel records with Agency 2 included the following:

25 a. On 11/11/21, Respondent was terminated.

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- b. An 11/10/21 corrective action indicated the following:
 - Respondent used inappropriate language with a client.
 - Respondent grabbed a client with force to get them off of the table.
 - Respondent was observed being overly forceful in prompting to evoke behaviors on a client.
 - A mother reported Respondent was overly stern with a client.

- 7. Respondent's personnel records with Agency 3 included the following:
 - a. A 12/11/19 email noted Respondent physically grabbed a client by the leg and dragged them across the carpet to get something out of their mouth.
 - b. On 02/12/20, Respondent was placed on a Performance Improvement Plan for patterns of speaking poorly about clients and/or family in front of clients such as making a statement that a mother should not have kept reproducing.
 - c. A 05/29/20 email noted Respondent made a racial comment that a person was perpetuating their own stereotype.
 - d. On 02/19/21, Respondent was terminated for failing to comply with company rules and the handbook.

- 8. During an investigative interview, Respondent represented the following:
 - a. Respondent acknowledged making a comment that a mother should not have kept reproducing but there was no malicious intent.
 - b. Respondent made the comment in terms of mother continuing to have children who all had autism.
 - c. Clients were nearby when she made this comment but she spoke in a low tone.

- d. Respondent could not recall physically dragging a client across the ground but may have grabbed a client to remove something from their mouth to avoid a choking hazard.
- e. Respondent made a racially derogatory comment in front of multiple coworkers and reported it was meant to be a joke.
- f. Respondent assumed she was friends with her coworkers and her comment was in response to someone else's comment they made about African Americans not knowing how to swim.
- g. Respondent was not thinking rationally when she messaged a client's mother through her personal Facebook.
- h. Respondent acknowledges the comments she made about the mother and the racial comment were not appropriate at all.

9. Respondent physically grabbed clients on multiple occasions while the ACA Code of Ethics outline it is a counselor's responsibility to protect clients from any physical, emotional, or psychological trauma.

10. On at least two separate occasions, Respondent failed to display or consider racial or cultural sensitivity by making inappropriate comments in the workplace.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(16)(k), engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger

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1 to the health, welfare or safety of a client, as it relates to following sections of the ACA Code of
2 Ethics:

3 **A.4.b. Personal Values**

4 Counselors are aware of—and avoid imposing—their own values, attitudes,
5 beliefs, and behaviors. Counselors respect the diversity of clients, trainees, and
6 research participants and seek training in areas in which they are at risk of
7 imposing their values onto clients, especially when the counselor’s values are
8 inconsistent with the client’s goals or are discriminatory in nature.

9 **A.9.b. Protecting Clients**

10 In a group setting, counselors take reasonable precautions to protect clients from
11 physical, emotional, or psychological trauma.

12 **ORDER**

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

- 15 1. Respondent’s application to be a licensed associate counselor is approved.
- 16 2. The license issued to Respondent pursuant to paragraph 1 will be immediately
17 placed on probation for 24 months.
- 18 3. Respondent shall not practice under their license unless they are fully compliant
19 with all terms and conditions in this Consent Agreement. If, for any reason, Respondent is
20 unable to comply with the terms and conditions of this Consent Agreement, they shall
21 immediately notify the Board in writing and shall not practice under their license until they submit
22 a written request to the Board to re-commence compliance with this Consent Agreement. All
23 such requests shall be pre-approved by the Board Chair or designee.
- 24 4. In the event that Respondent is unable to comply with the terms and conditions
25 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until

1 such time as they are granted approval to re-commence compliance with the Consent
2 Agreement.

3 **Continuing Education**

4 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
5 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
6 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course.
7 All required continuing education shall be pre-approved by the Board Chair or designee. Upon
8 completion, Respondent shall submit to the Board a certificate of completion of the required
9 continuing education.

10 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
11 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
12 hours of pre-approved continuing education in Cultural Sensitivity. All required continuing
13 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
14 shall submit to the Board a certificate of completion of the required continuing education.

15 7. In addition to the continuing education requirements of A.R.S. § 32-3273, within
16 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
17 hours of pre-approved continuing education in Unconscious Bias. All required continuing
18 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
19 shall submit to the Board a certificate of completion of the required continuing education.

20 **Clinical Supervision**

21 8. While on probation, Respondent shall submit to clinical supervision for 24
22 months by a masters or higher-level behavioral health professional licensed by the Arizona
23 Board of Behavioral Health Examiners at the independent level. Within 30 days of the date of
24 this Consent Agreement, Respondent shall submit the name of a clinical supervisor for pre-

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

7 **Focus and Frequency of Clinical Supervision**

8 9. The focus of the supervision shall focus on Board statutes and rules, ethics and
9 boundaries, burnout, compassion fatigue, cultural humility, bullying, and professional conduct.
10 Respondent shall meet individually in person with the supervisor for a minimum of one hour
11 weekly for the first 12 months. The frequency for the remaining time will be at the
12 recommendation of the clinical supervisor, but no less than twice monthly.

13 **Reports**

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

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

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

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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 17. 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 18. 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 19. 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 20 through 22 below.

19 20. 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

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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 21. 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 22. 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

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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 23. 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 24. 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 25. Respondent shall bear all costs relating to probation terms required in this
18 Consent Agreement.

19 26. 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 27. This Consent Agreement shall be effective on the date of entry below.

22 28. 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.

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