

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

CASE NO. 2015-0058

3 Joalene Whitmer, LPC-11851,
4 Licensed Professional Counselor,
5 In the State of Arizona.

RELEASE FROM
CONSENT AGREEMENT AND ORDER

6 RESPONDENT

7 The Board received a request from Respondent to release them from the terms and
8 conditions of the Consent Agreement and Order dated March 27, 2015. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated March 27, 2015.

11 ORDER

12 GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:

13 Respondent is hereby released from all terms and conditions of the Consent Agreement
14 and Order dated March 27, 2015.

15 Dated this 18th day of July, 2017.

16
17 By:

M. Zavalta
18 TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed

20 This 18th day of July, 2017, with:

21 Arizona Board of Behavioral Health Examiners
22 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

23 COPY of the foregoing mailed via

24 Certified mail no. 70162140000018042154

This 18th day of July, 2017, to:

25 Joalene Whitmer
Address of Record
Respondent

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 her
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 and may be used for purposes of determining
7 sanctions in any future disciplinary matter.

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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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

15 7. Respondent understands that once the Board approves and signs this Consent
16 Agreement, it is a public record that may be publicly disseminated as a formal action of the
17 Board, and that it shall be reported as required by law to the National Practitioner Data Bank
18 and the Healthcare Integrity and Protection Data Bank.

19 8. Respondent further understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(15)(n) and may result in
21 disciplinary action pursuant to A.R.S. § 32-3281.

22 9. The Board therefore retains jurisdiction over Respondent and may initiate
23 disciplinary action against Respondent if it determines that she has failed to comply with the
24 terms of this Consent Agreement or of the practice act.

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

1 **FINDINGS OF FACT**

2 1. Respondent is the holder of License No. LPC-11851 for the practice of
3 counseling in Arizona.

4 2. From 06/07 to 07/09, Respondent treated a female client ("Client").

5 3. In 07/09, Client moved out of state.

6 4. Respondent visited Client at her home on three occasions in the six months
7 following Client's move.

8 5. In 11/09, Client visited Respondent at her home.

9 6. Respondent and Client engaged in nonprofessional communication by phone, via
10 text, and on Facebook for several years following Client's move.

11 7. Although Client's record indicated the need for continued treatment, Respondent
12 failed to provide a therapeutic referral near Client's new residence.

13 8. Upon written requests by Client, Respondent failed to promptly make available
14 Client's clinical records.

15 9. From 06/13 to 01/15, Respondent was unaware of the location of Client's clinical
16 records.

17 **CONCLUSIONS OF LAW**

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

21 2. The conduct and circumstances described in the Findings of Fact constitute a
22 violation of A.R.S. § 32-3251(12)(k), any conduct or practice that is contrary to recognized
23 standards of ethics in the behavioral health profession, as it relates to:

- 24 a. ACA Code of Ethics A.5.c- Nonprofessional Interactions or Relationships:
25 Counselor-client nonprofessional relationships with clients, former

1 clients, their romantic partners, or their family members should be
2 avoided, except when the interaction is potentially beneficial to the
3 client.

4 3. The conduct and circumstances described in the Findings of Fact constitute a
5 violation of A.R.S. § 32-3251(12)(p), failing to conform to minimum practice standards as
6 developed by the board as it relates to:

7 a. A.A.C. R4-6-1103, Client Record.

8 4. The conduct and circumstances described in the Findings of Fact constitute a
9 violation of A.R.S. § 32-3251(12)(s), terminating behavioral health services to a client without
10 making an appropriate referral for continuation of care for the client if continuing behavioral
11 health services are indicated.

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 **Probation**

16 1. Respondent's license, LPC-11851, will be placed on probation for 24 months,
17 effective from the date of entry as signed below.

18 2. Respondent shall not practice under her license, LPC-11851, unless she is fully
19 compliant with all terms and conditions in this Consent Agreement. If, for any reason,
20 Respondent is unable to comply with the terms and conditions of this Consent Agreement, she
21 shall immediately notify the Board in writing and shall not practice under her license until she
22 submits a written request to the Board to re-commence compliance with this Consent
23 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

24 3. 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 she is granted approval to re-commence compliance with the Consent
2 Agreement.

3 Continuing Education

4 4. 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 addressing current behavioral health documentation standards in Arizona. All required
8 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
9 Respondent shall submit a certificate of completion of the required continuing education.

10 5. 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 take and pass a
12 three semester credit hour graduate level behavioral health ethics course from an accredited
13 college or university, pre-approved by the Board Chair or designee. Upon completion,
14 Respondent shall submit to the Board an official transcript establishing completion of the
15 required course.

16 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
17 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
18 three semester credit hour graduate level behavioral health course in assessment, diagnosis,
19 and treatment from an accredited college or university, pre-approved by the Board Chair or
20 designee. Upon completion, Respondent shall submit to the Board an official transcript
21 establishing completion of the required course.

22 Clinical Supervision

23 7. While on probation, Respondent shall submit to clinical supervision for 24 months
24 by a Licensed Clinical Social Worker, a Licensed Professional Counselor, or a Licensed
25 Marriage and Family Therapist. Within 30 days of the date of this Consent Agreement,

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

8 Focus and Frequency of Clinical Supervision

9 8. The focus of the supervision shall relate to boundaries, documentation, and
10 transitioning clients. Respondent shall meet individually in person with the supervisor twice a
11 month, for a minimum of one hour.

12 Reports

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

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

20 10. All quarterly supervision reports shall include a copy of clinical supervision
21 documentation maintained for that quarter. All clinical supervision documentation maintained by
22 the supervisor shall comply with requirements set forth in A.A.C. R4-6-212(F)(4).

23 11. After Respondent's probationary period, the supervisor shall submit a final
24 summary report for review and approval by the Board Chair or designee. The final report shall

25 ...

1 also contain a recommendation as to whether the Respondent should be released from this
2 Consent Agreement.

3 **Change of Clinical Supervisor During Probation**

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

11 **GENERAL PROVISIONS**

12 **Provision of Clinical Supervision**

13 13. Respondent shall not provide clinical supervision while subject to this Consent
14 Agreement.

15 **Civil Penalty**

16 14. Subject to the provisions set forth in paragraph 15, the Board imposes a civil
17 penalty against the Respondent in the amount of \$1,000.00.

18 15. Respondent's payment of the civil penalty shall be stayed so long as Respondent
19 remains compliant with the terms of this Consent Agreement. If Board staff determines that
20 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
21 exception of the tolling provision under Paragraph 3, the stay of the civil penalty payment shall
22 be automatically lifted and payment of the civil penalty shall be made by certified check or
23 money order payable to the Board within 30 days after being notified in writing of the lifting of
24 the stay.

25 ...

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

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

12 18. If Respondent currently sees clients in their own private practice, and obtains any
13 other type of behavioral health position, either as an employee or independent contractor, where
14 she provides behavioral health services to clients of another individual or agency, she shall
15 comply with requirements set forth in Paragraphs 19 through 20 below.

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

24 20. If Respondent is not employed as of the effective date of this Order, within 10
25 days of accepting employment in a position where Respondent provides any type of behavioral

1 health related services or in a setting where any type of behavioral health, health care, or social
2 services are provided, Respondent shall provide the Board Chair or designee with a written
3 statement providing the contact information of her new employer and a signed statement from
4 Respondent's new employer confirming Respondent provided the employer with a copy of this
5 Consent Agreement. If Respondent does not provide the employer's statement to the Board
6 within 10 days, as required, Respondent's failure to provide the required statement to the Board
7 shall be deemed a violation of A.R.S. § 32-3251(15)(n) and the Board will provide Respondent's
8 employer(s) with a copy of the Consent Agreement.

9 21. If, during the period of Respondent's probation, Respondent changes
10 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
11 extended leave of absence for whatever reason that may impact her ability to timely comply with
12 the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform the
13 Board of her change of employment status. After the change and within 10 days of accepting
14 employment in a position where Respondent provides any type of behavioral health related
15 services or in a setting where any type of behavioral health, health care, or social services are
16 provided, Respondent shall provide the Board Chair or designee a written statement providing
17 the contact information of her new employer(s) and a signed statement from Respondent's new
18 employer(s) confirming Respondent provided the employer(s) with a copy of this Consent
19 Agreement. If Respondent does not provide the employer's statement to the Board within 10
20 days, as required, Respondent's failure to provide the required statement to the Board shall be
21 deemed a violation of A.R.S. § 32-3251(15)(n) and the Board will provide Respondent's
22 employer(s) with a copy of the Consent Agreement.

23 22. Respondent shall practice behavioral health using the name under which she is
24 licensed. If Respondent changes her name, she shall advise the Board of the name change as
25 prescribed under the Board's regulations and rules.

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

12 24. Respondent shall bear all costs relating to probation terms required in this
13 Consent Agreement.

14 25. Respondent shall be responsible for ensuring that all documentation required in
15 this Consent Agreement is provided to the Board in a timely manner.

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

17 27. This Consent Agreement is conclusive evidence of the matters described herein
18 and may be considered by the Board in determining appropriate sanctions in the event a
19 subsequent violation occurs.

20
21 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

22 *Joalene Whitmer*
23 Joalene Whitmer

22 3-26-2015
23 Date

24 ...

25 ...

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

2 Dated this 27th day of March, 2015.

3
4 By: Tobi Zavala
5 TOBI ZAVALA, Executive Director
6 Arizona Board of Behavioral Health Examiners

7 **ORIGINAL** of the foregoing filed
8 This 27th day of March, 2015 with:

9 Arizona Board of Behavioral Health Examiners
10 3443 N. Central Ave., Suite 1700
11 Phoenix, AZ 85012

12 **COPY** of the foregoing mailed via Interagency Mail
13 This 27th day of March, 2015, to:

14 Marc Harris
15 Assistant Attorney General
16 1275 West Washington
17 Phoenix, Arizona 85007

18 **COPY** of the foregoing mailed via
19 Certified mail no. 70142870000189570247
20 This 27th day of March, 2015, to:

21 Joalene Whitmer
22 Address of Record
23 Respondent
24
25