

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

2 **In the Matter of:**

3 **Michelle J. Maliniak, LPC-13723,**  
4 **Licensed Professional Counselor,**  
5 **In the State of Arizona.**

**CASE NO. 2016-0072**

**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 December 13, 2016. After consideration,  
9 the Board voted to release Respondent from the terms and conditions of the Consent  
10 Agreement and Order dated December 13, 2016.

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 December 13, 2016.

15 Dated this 9<sup>th</sup> day of May, 2017,

16 By:

17 M. J. Zavala  
18 **TOBI ZAVALA, Executive Director**  
**Arizona Board of Behavioral Health Examiners**

19 **ORIGINAL** of the foregoing filed

This 9<sup>th</sup> day of May, 2017, with:

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

22 **COPY** of the foregoing mailed via

Certified mail no. 72162140000018047420

23 This 9<sup>th</sup> day of May, 2017, to:

24 Michelle J. Maliniak  
25 Address of Record  
Respondent

1 **COPY** of the foregoing mailed via Mail  
2 This 25<sup>th</sup> day of May, 2017 to:

3 Ms. Susan McLellan  
4 Schneider & Onofry, P.C.  
5 3101 N Central Ave, Ste 600  
6 Phoenix, AZ 85012  
7 Attorney for Respondent

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

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**In the Matter of:**

**Michelle J. Maliniak, LPC-13723,  
Licensed Professional Counselor,  
In the State of Arizona.**

**RESPONDENT**

**CASE NO. 2016-0072  
CONSENT AGREEMENT**

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

**RECITALS**

Respondent understands and agrees that:

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

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

3. Respondent has the right to consult with an attorney prior to entering into this 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 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          8.     Respondent further understands that any violation of this Consent Agreement  
19 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in  
20 disciplinary action pursuant to A.R.S. § 32-3281.

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

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

25     ...

1 FINDINGS OF FACT

2 1. Respondent is the holder of License No. LPC-13723, for the practice of  
3 counseling in Arizona.

4 2. From approximately 07/15 – 12/15, Respondent provided 8 counseling sessions  
5 to a minor client ("Client").

6 3. At the onset of services, Respondent was made aware that Client's mother  
7 ("Mother") and father ("Father") shared joint legal custody.

8 4. Respondent provided services to Client with only Mother's written consent.

9 5. Around 10/15, Father learned of Client's treatment with Respondent.

10 6. In a 10/13/15 email to Respondent, Father stated that he "... withhold[s] consent  
11 to treat [Client], effectively immediately."

12 7. After receiving the email, Respondent continued providing services to Client.

13 8. Regarding her decision to continue treatment, Respondent indicated the  
14 following:

15 a. Respondent was concerned about Client's state of mind and anxiety over her  
16 visit with Father.

17 b. Considering Client's mental state and suicidal ideation, Respondent made the  
18 decision to treat her until there was a clear, unconditional refusal.

19 c. Respondent made the decision considering the best interests of Client.

20 d. Respondent represents that she received conflicting emails from Father and  
21 his attorney.

22 9. On 12/23/15, Respondent contacted Mother and terminated Client's services  
23 upon receiving a Board complaint filed by Father.

24 10. According to the clinical record, Respondent did not have a closure session with  
25 Client, provided her with treatment referrals or inquire about Client's emotional or mental

1 wellbeing.

2 11. Respondent represents that Mother told her that Client had begun inpatient  
3 services with another provider and that is why Respondent did not coordinate continuation of  
4 care. The clinical record contains no documentation of it.

5 12. According to Respondent's written response to the complaint allegations, Client  
6 experienced suicidal ideation.

7 13. Upon review of the clinical record, there is no indication or documentation that  
8 Client expressed any suicidal ideation or that any type of risk assessment was completed.

9 14. When questioned by Board staff about this matter, Respondent indicated the  
10 following:

- 11 a. Respondent spoke with Client about suicidal ideation during the 11/17/15  
12 session.
- 13 b. There is no clear documentation that states she spoke with Client about  
14 suicidal ideation, but she knows that the conversation took place.
- 15 c. Mother and Respondent and Client and Respondent discussed whether it  
16 was suicidal ideation or if Client mistakenly took the wrong medication.
- 17 d. Respondent talked to Mother about removing medication from the home.
- 18 e. Client denied suicidal ideation.

19 15. In review of the 11/17/15 progress note, the following information is documented:

- 20 a. Client saw Father and feels confused.
- 21 b. She took wrong medication.
- 22 c. She made a plan for safety.

23 16. Respondent's notation that Client took the wrong medication gives no indication  
24 that Client was experiencing suicidal ideation.

25 17. Respondent notated that Client made a plan for safety but there is no indication

1 of what the safety plan was created for, how it was to be implemented, or what steps the safety  
2 plan consisted of.

3 18. Respondent did not maintain a copy of the safety plan in the clinical record.

4 19. In review of other progress notes Respondent maintained for Client, it is difficult  
5 to understand the nature of treatment as many of Respondent's progress notes merely include a  
6 series of words.

7 20. Based on the content of the progress notes, it would be difficult for another  
8 behavioral health professional to understand the scope of, or progress of treatment.

9 21. Respondent's progress notes fail to include various required elements.

10 **CONCLUSIONS OF LAW**

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

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

17 3. The conduct and circumstances described in the Findings of Fact constitute a  
18 violation of A.R.S. § 32-3251(16)(s), terminating behavioral health services to a client without  
19 making an appropriate referral for continuation of care for the client if continuing behavioral  
20 health services are indicated.

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

24 **ORDER**

25 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to

1 the provisions and penalties imposed as follows:

2 1. Respondent's license, LPC- 13723, will be placed on probation, effective from  
3 the date of entry as signed below.

4 2. Respondent shall not practice under their license, LPC-13723, unless they are  
5 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,  
6 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they  
7 shall immediately notify the Board in writing and shall not practice under their license until they  
8 submit a written request to the Board to re-commence compliance with this Consent  
9 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

14 **Continuing Education**

15 4. 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 6 clock  
17 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course.  
18 All required continuing education shall be pre-approved by the Board Chair or designee. Upon  
19 completion, Respondent shall submit a certificate of completion of the required continuing  
20 education.

21 5. 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 6 clock  
23 hours of continuing education in family law. All required continuing education shall be pre-  
24 approved by the Board Chair or designee. Upon completion, Respondent shall submit a  
25 certificate of completion of the required continuing education.





1 scheduled Board meeting. The Board's decision on this matter shall not be subject to further  
2 review.

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

8 13. If Respondent currently sees clients in their own private practice, and obtains any  
9 other type of behavioral health position, either as an employee or independent contractor, where  
10 they provide behavioral health services to clients of another individual or agency, they shall  
11 comply with requirements set forth in paragraphs 14 through 16 below.

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

20 15. If Respondent is not employed as of the effective date of this Order, within 10  
21 days of accepting employment in a position where Respondent provides any type of behavioral  
22 health related services or in a setting where any type of behavioral health, health care, or social  
23 services are provided, Respondent shall provide the Board Chair or designee with a written  
24 statement providing the contact information of their new employer and a signed statement from  
25 Respondent's new employer confirming Respondent provided the employer with a copy of this

1 Consent Agreement. If Respondent does not provide the employer's statement to the Board  
2 within 10 days, as required, Respondent's failure to provide the required statement to the Board  
3 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's  
4 employer(s) with a copy of the Consent Agreement.

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

19 17. Respondent shall practice behavioral health using the name under which they  
20 are licensed. If Respondent changes their name, they shall advise the Board of the name  
21 change as prescribed under the Board's regulations and rules.

22 18. Prior to the release of Respondent from probation, Respondent must submit a  
23 written request to the Board for release from the terms of this Consent Agreement at least 30  
24 days prior to the date they would like to have this matter appear before the Board. Respondent  
25 may appear before the Board, either in person or telephonically. Respondent must provide

1 evidence that they have successfully satisfied all terms and conditions in this Consent  
2 Agreement. The Board has the sole discretion to determine whether all terms and conditions of  
3 this Consent Agreement have been met and whether Respondent has adequately demonstrated  
4 that they have addressed the issues contained in this Consent Agreement. In the event that the  
5 Board determines that any or all terms and conditions of this Consent Agreement have not been  
6 met, the Board may conduct such further proceedings as it determines are appropriate to  
7 address those matters.

8 19. Respondent shall bear all costs relating to probation terms required in this  
9 Consent Agreement.

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

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

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

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

17 *Michelle J. Maliniak*  
18 Michelle J. Maliniak

12/11/16  
Date

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

20 Dated this 13<sup>th</sup> day of December, 2016.

21 By: *Tobi Zavala*  
22 TOBI ZAVALA, Executive Director  
23 Arizona Board of Behavioral Health Examiners

24 ORIGINAL of the foregoing filed  
25 This 13<sup>th</sup> day of December, 2016 with:

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

3 **COPY** of the foregoing mailed via Interagency Mail  
This 13<sup>th</sup> day of December, 2016, to:

4  
5 Marc Harris  
6 Assistant Attorney General  
1275 West Washington  
Phoenix, Arizona 85007

7 **COPY** of the foregoing mailed via  
Certified mail no. 7012 292000 17794 87 02  
8 This 13<sup>th</sup> day of December, 2016, to:

9 Michelle J. Maliniak  
10 Address of Record  
Respondent

11 **COPY** of the foregoing mailed via Mail  
12 This 13<sup>th</sup> day of December, 2016 to:

13 Susan I. McLellan  
14 Scheider & Onofry, P.C.  
3101 N. Central Ave. #600  
Attorney for Respondent

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