

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

2 **In the Matter of:**

3 **Donald J. Miretsky, LPC-0144,**
4 **Licensed Professional Counselor,**
5 **In the State of Arizona.**

6 **RESPONDENT**

CASE NOS. 2016-0104, 2017-0049

**RELEASE FROM
CONSENT AGREEMENT AND ORDER**

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 21, 2016. After consideration,
9 the Board voted to release Respondent from the terms and conditions of the Consent
10 Agreement and Order dated December 21, 2016.

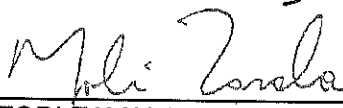
11 **ORDER**

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 21, 2016.

15 Dated this 12 day of February, 2019.

16
17 By:


18 **TOBI ZAVALA, Executive Director**
Arizona Board of Behavioral Health Examiners

19 **ORIGINAL** of the foregoing filed

20 This 12 day of February, 2019, with:

21 Arizona Board of Behavioral Health Examiners
22 1740 W. Adams St., Suite 3600
Phoenix, AZ 85007

23 **COPY** of the foregoing mailed via

24 Certified mail no. 9489009000276047001143

This 12 day of February, 2019, to:

25 Donald J. Miretsky
Address of Record
Respondent

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**Donald J. Miretsky, LPC-0144,
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RESPONDENT

**CASE NOS. 2016-0104
2017-0049**

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), Donald J. Miretsky ("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-0144 for the practice of counseling
3 in Arizona.

4 2. Respondent provided clinical supervision to two applicants for independent
5 licensure ("Applicant 1" and "Applicant 2") while employed at a behavioral health agency
6 ("Agency").

7 3. In 08/15, Applicant 1 submitted an application for professional counselor
8 licensure to the Board which included verification of supervision by Respondent from 07/11/11-
9 08/02/12.

10 4. Upon Board's review of the documentation, the following issues were identified:

- 11 a. Applicant 1 left the Agency on 08/02/12, yet some of the 2012 supervision
12 notes were dated after they had left employment.
- 13 b. The content from the 2012 supervision notes appeared to be exact
14 replicas of 2010 supervision notes.
- 15 c. Some of the dates from the 2010 supervision notes were altered to reflect
16 that the supervision occurred in 2012.

17 5. Respondent acknowledges he failed to properly review Applicant 1's supervision
18 verification form.

19 6. Of further concern, Respondent:

- 20 a. Directed Applicant 1 to fill in the dates of her supervised work experience
21 and prepare a worksheet that tracked her clinical supervision hours.
- 22 b. Allowed Applicant 1 to complete portions of the verification forms that he
23 was required to complete.
- 24 c. Signed, under penalty of perjury, that all information contained in the
25 verification form was true and correct to the best of his knowledge.

1 **ORDER**

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

4 1. Respondent's license, LPC-0144, will be placed on probation for 24 months,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under their license, LPC-0144, unless they are
7 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
8 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
9 shall immediately notify the Board in writing and shall not practice under their license until they
10 submit a written request to the Board to re-commence compliance with this Consent
11 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

16 **Continuing Education**

17 4. 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 the NASW Staying Out of Trouble continuing education course or an equivalent course
20 addressing current behavioral health documentation standards in Arizona. All required
21 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
22 Respondent shall submit a certificate of completion of the required continuing education.

23 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
24 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
25 three semester credit hour graduate level behavioral health ethics course from an accredited

1 college or university, pre-approved by the Board Chair or designee. Upon completion,
2 Respondent shall submit to the Board an official transcript establishing completion of the
3 required course.

4 **GENERAL PROVISIONS**

5 **Provision of Clinical Supervision**

6 6. Respondent shall not provide clinical supervision for 24 months, effective from
7 the date of entry as signed below.

8 **Civil Penalty**

9 7. Subject to the provisions set forth in paragraph 8, the Board imposes a civil
10 penalty against the Respondent in the amount of \$1,000.00.

11 8. Respondent's payment of the civil penalty shall be stayed so long as Respondent
12 remains compliant with the terms of this Consent Agreement. If Board staff determines that
13 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
14 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
15 be automatically lifted and payment of the civil penalty shall be made by certified check or
16 money order payable to the Board within 30 days after being notified in writing of the lifting of
17 the stay.

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

25 10. The Board reserves the right to take further disciplinary action against

1 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
2 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
3 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
4 and the period of probation shall be extended until the matter is final.

5 11. If Respondent currently sees clients in their own private practice, and obtains any
6 other type of behavioral health position, either as an employee or independent contractor, where
7 they provide behavioral health services to clients of another individual or agency, they shall
8 comply with requirements set forth in paragraphs 12 through 14 below.

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

17 13. If Respondent is not employed as of the effective date of this Order, within 10
18 days of accepting employment in a position where Respondent provides any type of behavioral
19 health 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 with a written
21 statement providing the contact information of their new employer and a signed statement from
22 Respondent's new employer confirming Respondent provided the employer with a copy of this
23 Consent Agreement. If Respondent does not provide the employer's statement to the Board
24 within 10 days, as required, Respondent's failure to provide the required statement to the Board
25 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's

1 employer(s) with a copy of the Consent Agreement.

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

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

19 16. Prior to the release of Respondent from probation, Respondent must submit a
20 written request to the Board for release from the terms of this Consent Agreement at least 30
21 days prior to the date they would like to have this matter appear before the Board. Respondent
22 may appear before the Board, either in person or telephonically. Respondent must provide
23 evidence that they have successfully satisfied all terms and conditions in this Consent
24 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
25 this Consent Agreement have been met and whether Respondent has adequately demonstrated

1 that they have addressed the issues contained in this Consent Agreement. In the event that the
 2 Board determines that any or all terms and conditions of this Consent Agreement have not been
 3 met, the Board may conduct such further proceedings as it determines are appropriate to
 4 address those matters.

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

7 18. Respondent shall be responsible for ensuring that all documentation required in
 8 this Consent Agreement is provided to the Board in a timely manner.

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

10 20. This Consent Agreement is conclusive evidence of the matters described herein
 11 and may be considered by the Board in determining appropriate sanctions in the event a
 12 subsequent violation occurs.

13
 14 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

15 Donald J. Miretsky 12/13/2016
 16 Donald J. Miretsky Date

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

18 Dated this 21st day of December, 2016.

19 By: M. Zavala
 20 TOBI ZAVALA, Executive Director
 21 Arizona Board of Behavioral Health Examiners

22
 23 **ORIGINAL** of the foregoing filed
 24 This 21st day of December, 2016 with:

25 Arizona Board of Behavioral Health Examiners
 3443 N. Central Ave., Suite 1700

1 Phoenix, AZ 85012

2 **COPY** of the foregoing mailed via Interagency Mail
3 This 21st day of December, 2016, to:

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

8 **COPY** of the foregoing mailed via
9 Certified mail no. 70141200 0000 6633 9028,
10 This 21st day of December, 2016, to:

11 Donald J. Miretsky
12 Address of Record
13 Respondent

14 **COPY** of the foregoing mailed via Mail
15 This 21st day of December, 2016 to:

16 Michele Thompson
17 Udall Law Firm, LLP
18 4801 E. Broadway Blvd., #400
19 Tucson, AZ 85711
20 Attorney for Respondent
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