

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

2 **In the Matter of:**

3 **Alex Heath, LPC-1716,**
4 **Licensed Professional Counselor,**
5 **In the State of Arizona.**

CASE NO. 2017-0114

**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 August 14, 2017. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated August 14, 2017.

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 August 14, 2017.

15 Dated this 18th day of September, 2017.

16
17 By:

M. Zawala
18 TOBI ZAWALA, Executive Director
19 Arizona Board of Behavioral Health Examiners

20 **ORIGINAL** of the foregoing filed

This 18th day of September, 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. 70171450000086887721
This 18th day of September, 2017, to:

25 Alex Heath
Address of Record
Respondent

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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Alex Heath, LPC-1716,
Licensed Professional Counselor,
In the State of Arizona.

CASE NO. 2017-0114
CONSENT AGREEMENT

RESPONDENT

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), Alex Heath ("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 ...

FINDINGS OF FACT

1
2 1. Respondent is the holder of License No. LPC-1716 for the practice of counseling
3 in Arizona.

4 2. From 12/16 – 03/17, Respondent was employed by a behavioral health agency
5 ("Agency") as the clinical director.

6 3. In 03/17, Respondent was involuntarily terminated.

7 4. Upon post-employment review of Respondent's work-issued laptop computer,
8 Agency discovered that on two separate occasions, Respondent had emailed Protected Health
9 Information from his work email address to his personal email address.

10 5. The client information that Respondent emailed himself included:

11 a. Approximately 40 client AHCCCS authorizations, which included ID numbers,
12 dates of birth and client names.

13 b. Approximately 42 client summaries, which included diagnoses and progress
14 notes.

15 c. A psychological tracking form, which included information for 37 clients.

16 6. Although there is no indication that Respondent used the client information for anything
17 other than work related purposes, Respondent's conduct was a clear breach of his
18 employer's policies.

19 7. Respondent maintains that, on the two separate occasions, he was given verbal
20 authorization by his supervisor.

21 8. The supervisor denies providing any such authorization.

22 9. The manner, in which Respondent emailed Protected Health Information to his personal
23 email address, the device in which Respondent opened and viewed the information, and
24 the lack of a safety encryption, were all in violation of his employer's policies.

25 ...

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 circumstances described in the Findings of Fact constitute a
6 violation of A.R.S. § 32-3251(16)(k), any conduct or practice that is contrary to recognized
7 standards of ethics in the behavioral health profession or that constitutes a danger to the health,
8 welfare or safety of a client, as it relates to the 2014 ACA Code of Ethics:

9 D.1.g. Employer Policies

10 The acceptance of employment in an agency or institution implies that
11 counselors are in agreement with its general policies and principles.
12 Counselors strive to reach agreement with employers regarding
13 acceptable standards of clients care and professional conduct that
14 allow for changes in institutional policy conducive to the growth and
15 development of clients

16 ORDER

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

19 1. Respondent's license, LPC-1716 will be placed on probation, effective from the
20 date of entry as signed below.

21 2. Respondent shall not practice under their license, LPC-1716, unless they are
22 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
23 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
24 shall immediately notify the Board in writing and shall not practice under their license until they

25 ...

1 submit a written request to the Board to re-commence compliance with this Consent
2 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

7 Continuing Education

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

13 Early Release

14 5. After completion of the continuing education requirements set forth in this
15 Consent Agreement, Respondent may request early release from the Consent Agreement if all
16 other terms of the Consent Agreement have been met.

17 GENERAL PROVISIONS

18 Provision of Clinical Supervision

19 6. Respondent shall not provide clinical supervision while subject to this Consent
20 Agreement.

21 Civil Penalty

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

24 ...

25 ...

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

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

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

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

24 12. Within 10 days of the effective date of this Order, if Respondent is working in a
25 position where Respondent provides any type of behavioral health related services or works in a

1 setting where any type of behavioral health, health care, or social services are provided,
2 Respondent shall provide the Board Chair or designee with a signed statement from
3 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
4 Consent Agreement. If Respondent does not provide the employer's statement to the Board
5 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
6 copy of the Consent Agreement.

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

17 14. If, during the period of Respondent's probation, Respondent changes
18 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
19 extended leave of absence for whatever reason that may impact their ability to timely comply
20 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
21 the Board of their change of employment status. After the change and within 10 days of
22 accepting employment in a position where Respondent provides any type of behavioral health
23 related services or in a setting where any type of behavioral health, health care, or social
24 services are provided, Respondent shall provide the Board Chair or designee a written
25 statement providing the contact information of their new employer(s) and a signed statement

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

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

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

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

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

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

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

PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Alex Heath

08/09/2017
Date

BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Dated this 14th day of August, 2017.

By:

Tobi Zavala
TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

ORIGINAL of the foregoing filed
This 14th day of August, 2017 with:

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

COPY of the foregoing mailed via Interagency Mail
This 14th day of August, 2017, to:

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

COPY of the foregoing mailed via
Certified mail no. 70162440 000180411004
This 14th day of August, 2017, to:

Alex Heath
Address of Record
Respondent