

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

2 **In the Matter of:**

3 **Michael K. Elder, LCSW-19275,**
4 **Licensed Clinical Social Worker,**
5 **In the State of Arizona.**

6 **RESPONDENT**

CASE NO. 2021-0130


**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 October 22th, 2021. After consideration,
9 the Board voted to release Respondent from the terms and conditions of the Consent
10 Agreement and Order dated October 22th, 2021.

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 October 22th, 2021.

15 By: 
16 **TOBI ZAVALA, Executive Director**
Arizona Board of Behavioral Health Examiners

Feb 15, 2022
Date

17
18 **ORIGINAL** of the foregoing filed **Feb 15, 2022**
with:

19 Arizona Board of Behavioral Health Examiners
20 1740 West Adams Street, Suite 3600
21 Phoenix, AZ 85007

22 **EXECUTED COPY** of the foregoing sent electronically **Feb 15, 2022**
to:

23 Michael Elder
24 Address of Record
Respondent

25 Bretton Barber
Barber Law Group,
PLLC Renaissance Sq Tower One

1 2 N Central Ave #1800
Phoenix, AZ 85004

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

3 **In the Matter of:**

4 **Michael K. Elder, LCSW-19275,**
5 **Licensed Clinical Social Worker,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2021-0130
CONSENT AGREEMENT

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), Michael K. Elder (“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 the holder of License No. LCSW-19275 for the practice of social
15 work in the state of Arizona.

16 2. From 04/17 – 04/21, Respondent provided behavioral health services at a
17 behavioral health agency (“Agency”).

18 3. An investigation of Respondent’s telehealth sessions from 12/20 – 02/21
19 revealed the following overbilling issues:

20 a. 12/20 – 18.10 hours overbilled

21 b. 01/21 – 21.08 hours overbilled

22 c. 02/21 – 14.49 hours overbilled

23 4. Based on this overbilling, Respondent’s productivity numbers were inflated as
24 follows:

25 a. 12/20 – Productivity increased from 45.32% to 58.49%

1 b. 01/21 – Productivity increased from 42.74% to 57.21%

2 c. 02/21 – Productivity increased from 47.00% to 60.50%

3 5. Additionally, Agency’s investigation revealed the following overbilling
4 discrepancies in a one-year period between 04/20 – 03/21.

5 a. A total of 805 discrepancies with 57 different clients.

6 b. 191 instances of overbilling of between 11-20 minutes.

7 c. 237 instances of overbilling of more than 20 minutes.

8 d. 4 instances of overbilling of between 50-80 minutes.

9 6. Based on these findings, Respondent resigned in lieu of termination.

10 7. Respondent represented the following regarding the overbilling:

11 a. During the pandemic, it was an incredible challenge to switch from seeing
12 clients in person to seeing them over Zoom.

13 b. Respondent documented the time that he logged into Zoom as the start
14 time of the session.

15 ▪ Respondent felt that he was concentrating while waiting for the client.

16 ▪ He never thought that he was not providing a service if clients signed
17 into the meeting or were admitted into the meeting late.

18 ▪ There could be up to 15 minutes of time at the start of the session that
19 Respondent was not seeing a client that he billed for.

20 ▪ Respondent did not make a note of when a client would log in.

21 ▪ Respondent did not make a note of when the session ended.

22 ▪ Respondent would estimate the time.

23 c. Respondent does not have a good answer for why he chose to guess
24 when sessions started and ended rather than checking the clock for the
25 exact time.

1 d. This was never done for monetary gain as Respondent was a salaried
2 employee.

3 8. Additionally, despite resigning in lieu of termination from Agency, Respondent
4 was not transparent when he included the following when submitting his employment application
5 to his current employer:

6 a. Reason for leaving? – Seeking higher salary.

7 **CONCLUSIONS OF LAW**

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

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

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

17 **ORDER**

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

20 1. Respondent's license, LCSW-19275, will be placed on probation for 12 months,
21 effective from the date of entry as signed below.

22 2. Respondent shall not practice under their license, LCSW-19275, unless they are
23 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
24 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
25 shall immediately notify the Board in writing and shall not practice under their license until they

1 submit a written request to the Board to re-commence compliance with this Consent Agreement.

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

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

19 **Early Release**

20 6. After completion of the continuing education requirements set forth in this
21 Consent Agreement, Respondent may request early release from the Consent Agreement if all
22 other terms of the Consent Agreement have been met.

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1 **GENERAL PROVISIONS**

2 **Provision of Clinical Supervision**

3 7. Respondent shall not provide clinical supervision while subject to this Consent
4 Agreement.

5 **Civil Penalty**

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

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

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

22 11. The Board reserves the right to take further disciplinary action against
23 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
24 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply

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1 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
2 and the period of probation shall be extended until the matter is final.

3 12. If Respondent currently sees clients in their own private practice, and obtains any
4 other type of behavioral health position, either as an employee or independent contractor, where
5 they provide behavioral health services to clients of another individual or agency, they shall
6 comply with requirements set forth in paragraphs 13 through 15 below.

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

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

25 ...

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

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

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

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

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

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

8 20. This Consent Agreement shall be effective on the date of entry below.

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

12
13 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

14 *Michael K Elder*
Michael K Elder (Oct 22, 2021 07:58 PDT)
15 Michael K. Elder

Oct 22, 2021
Date

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

17 By: *Tobi Zavala*
18 TOBI ZAVALA, Executive Director
19 Arizona Board of Behavioral Health Examiners

Oct 22, 2021
Date

20 **ORIGINAL** of the foregoing filed Oct 22, 2021
21 with:

22 Arizona Board of Behavioral Health Examiners
23 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

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Oct 22, 2021

1 **EXECUTED COPY** of the foregoing sent electronically
to:

2
3 Mona Baskin
4 Assistant Attorney General
5 2005 North Central Avenue
6 Phoenix, AZ 85004

7 Michael K. Elder
8 Address of Record
9 Respondent

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