

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

3 **In the Matter of:**

4 **Shelly M. Osborne, LPC-19064,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2022-0090
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), Shelly M. Osborne ("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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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
25

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. LPC-19064 for the practice of
15 counseling in Arizona.

16 2. From 08/12 – 05/19, Respondent worked at an agency (“Agency”), which was not
17 licensed by the Department of Health Services.

18 3. From approximately 02/16 – 09/21, an applicant (“Applicant”) worked at Agency
19 as a Primary Therapist.

20 4. On 10/05/21, Applicant submitted a Clinical Supervisor Exemption Request for
21 LPC licensure with Respondent as a proposed supervisor at Agency.

22 5. Applicant was not licensed and there was no application on file; therefore, it was
23 unclear as to why this request was sent.

24 6. On 10/29/21, Board staff received Applicant’s LPC application and a Counseling
25 Verification of Supervised Work Experience form.

1 7. The Counseling Verification of Supervise Work Experience form outlined a
2 reporting period of 05/16 – 05/20, confirmation qualifying clinical supervision was provided, 300
3 noted hours of supervised work experience, and certification that Applicant was engaged in the
4 supervised practice of counseling that met the Board’s requirements and was observed as such.

5 8. Respondent’s written response represented the following:

6 a. On 10/19/21, Respondent mistakenly executed a Verification of Supervised
7 Work Experience form for Applicant.

8 b. After executing the form, she realized that she was not authorized to execute
9 the form because she was not and has never been Applicant’s clinical
10 supervisor.

11 9. By signing the form, Respondent attested that Applicant was engaged in the
12 supervised practice of counseling and that Applicant was observed during the supervised hours
13 to have demonstrated satisfactory competency.

14 10. Respondent represented the following in her investigative interview:

15 a. Respondent thought she was helping Applicant because she needed
16 verification of hours that she had gathered during that time frame and thought
17 she would be confirming that information.

18 b. Respondent wanted to be supportive of Applicant’s career path.

19 11. Respondent misrepresented as it relates to Applicant’s application when she
20 signed a form attesting to Applicant’s supervised work experience, having not participated in
21 that role.

22 12. Additionally, Respondent initially worked at Agency’s Idaho location.

23 13. On 06/01/20, Respondent obtained her LPC license by endorsement in Arizona.

24 14. Respondent represented the following in her investigative interview:

25 ...

- 1 a. Respondent believed that because it was a federal contract, they were
2 working under the owner's ("Owner") license.
- 3 b. Respondent provided psychotherapy services in Arizona from approximately
4 2014 or 2015 until the time she no longer worked at Agency in 2019.
- 5 c. When Respondent was in Arizona more frequently, she would have a
6 caseload of approximately 30 to 40 clients.

7 15. Respondent provided psychotherapy services in Arizona while unlicensed, and
8 while working at an agency that was not licensed by the Department of Health Services.

9 **CONCLUSIONS OF LAW**

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

13 2. The conduct and circumstances described in the Findings of Fact constitute a
14 violation of A.R.S. § 32-3251(16)(c)(i), making any oral or written misrepresentation of a fact to
15 secure or attempt to secure the issuance or renewal of a license.

16 3. The conduct and circumstances described in the Findings of Fact constitute a
17 violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation
18 applicable to the practice of behavioral health as it relates to:

19 A.R.S. § 32-3286, Unlawful practice

20 **ORDER**

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

23 1. Respondent's license, LPC-19064, will be placed on probation for 24 months,
24 effective from the date of entry as signed below.

25 ...

1 R4-6-214. All required continuing education shall be pre-approved by the Board Chair or
2 designee. Upon completion, Respondent shall submit a certificate of completion of the required
3 continuing education.

4 **Clinical Supervision**

5 7. While on probation, Respondent shall submit to clinical supervision for 24 months
6 by a masters or higher level behavioral health professional licensed by the Arizona Board of
7 Behavioral Health Examiners at the independent level. Within 30 days of the date of this
8 Consent Agreement, Respondent shall submit the name of a clinical supervisor for pre-approval
9 by the Board Chair or designee. Also within 30 days of the date of this Consent Agreement, the
10 clinical supervisor shall submit a letter disclosing their prior relationship to Respondent. In that
11 letter, the clinical supervisor must address why they should be approved, acknowledge that they
12 have reviewed the Consent Agreement and include the results of an initial assessment and a
13 supervision plan regarding the proposed supervision of Respondent. The letter from the
14 supervisor shall be submitted to the Board.

15 **Focus and Frequency of Clinical Supervision**

16 8. The focus of the supervision shall relate to behavioral health ethics, Board
17 statutes and rules, documentation, and how to supervise. Respondent shall meet individually via
18 telehealth, but not telephonically, with the supervisor for a minimum of once monthly for the first
19 12 months, and for the remaining time will be at the recommendation of the clinical supervisor.

20 **Reports**

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

- 25 a. Dates of each clinical supervision session.

1 b. A comprehensive description of issues discussed during supervision
2 sessions.

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

6 11. After Respondent's probationary period, the supervisor shall submit a final
7 summary report for review and approval by the Board Chair or designee. The final report shall
8 also contain a recommendation as to whether the Respondent should be released from this
9 Consent Agreement.

10 **Change of Clinical Supervisor During Probation**

11 12. If, during the period of Respondent's probation, the clinical supervisor determines
12 that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of
13 the end of supervision and provide the Board with an interim final report. Respondent shall
14 advise the Board Chair or designee within 30 days of cessation of clinical supervision by the
15 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
16 proposed clinical supervisor shall provide the same documentation to the Board as was required
17 of the initial clinical supervisor.

18 **Early Release**

19 13. After completion of the stipulations set forth in this consent agreement, and upon
20 the supervisor's recommendation, Respondent may request early release from the consent
21 agreement after 12 months.

22 **GENERAL PROVISIONS**

23 **Provision of Clinical Supervision**

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

Civil Penalty

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

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

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

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

23 19. If Respondent currently sees clients in their own private practice, and obtains any
24 other type of behavioral health position, either as an employee or independent contractor, where
25

1 they provide behavioral health services to clients of another individual or agency, they shall
2 comply with requirements set forth in paragraphs 20 through 22 below.

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

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

21 22. If, during the period of Respondent's probation, Respondent changes
22 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
23 extended leave of absence for whatever reason that may impact their ability to timely comply
24 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
25 the Board of their change of employment status. After the change and within 10 days of

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

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

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

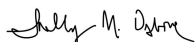
24 25. Respondent shall bear all costs relating to probation terms required in this
25 Consent Agreement.

1 26. Respondent shall be responsible for ensuring that all documentation required in
2 this Consent Agreement is provided to the Board in a timely manner.

3 27. This Consent Agreement shall be effective on the date of entry below.

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

7
8 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

9 

Aug 31, 2022

10 _____
Shelly M. Osborne

Date

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

12 By:



Aug 31, 2022

13 _____
TOBI ZAVALA, Executive Director
14 Arizona Board of Behavioral Health Examiners

Date

15 **ORIGINAL** of the foregoing filed Aug 31, 2022
16 with:

17 Arizona Board of Behavioral Health Examiners
18 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

19 **EXECUTED COPY** of the foregoing sent electronically Aug 31, 2022
20 to:

21 Mona Baskin
22 Assistant Attorney General
2005 North Central Avenue
Phoenix, AZ 85004

23 Shelly M. Osborne
24 Address of Record
Respondent