

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

3 **In the Matter of:**

4 **Joalene Whitmer, LPC-11851,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2022-0148
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), Joalene Whitmer (“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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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-11851 for the practice of
15 counseling in Arizona.

16 2. Since 07/21, Respondent has provided therapeutic services to a client ("Client").

17 3. Throughout the course of treatment, Respondent wrote at least eight letters for
18 Client for various purposes.

19 4. Approximately a month after commencing treatment, Respondent wrote a letter
20 addressed To Whom It May Concern, and included the following, in part:

21 a. Client was making good progress until he had supervised visitation with his
22 mother.

23 b. During the visit, Client experienced unwanted stroking of his back.

24 c. Client is unable to focus in school, is behind on his schoolwork, and
25 experiences violent flashbacks several times a week.

1 d. Respondent strongly advises that he not be forced to have visitation with his
2 mother at this time, since such interactions caused additional trauma, making
3 his recovery extremely difficult.

4 3 In 11/21, Respondent wrote another letter noting the following, in part:

5 a. Although Client has been showing gradual improvement, this progress is
6 stopped and reversed whenever he has any contact with his mother.

7 b. After reading one of Complainant's emails during a session, he experienced
8 increased nightmares.

9 c. Client will need additional time without any contact with Complainant to
10 overcome this recent trauma and gain more control of his anxiety and
11 depression.

12 4. Respondent represented the following in her investigative interview:

13 a. The letters Respondent wrote for Client were presented to the court and she
14 knew they would be.

15 b. Respondent felt she was objective in her letters.

16 c. Respondent's therapeutic rationale for writing the letters was for safety.

17 5. Respondent's letter went beyond providing factual information and failed to
18 properly outline client representations.

19 6. Respondent's letters signify a bias towards Complainant, given that letters written
20 for Client discuss negative reactions following interactions with Complainant and
21 recommendations regarding the time Client spends with Complainant.

22 7. Respondent was not only writing letters for Client, but also writing emotional
23 support animal letters and short-term disability letters as evidenced by the following:

24 a. On 11/20/20, Respondent wrote a letter for a client noting he was being seen
25 for counseling due to depression and anxiety, and due to these disabilities,

1 he requires his dog as an emotional support animal for affection and
2 companionship.

3 b. On 11/24/20, Respondent wrote a letter for a client, noting she was being
4 seen for counseling due to depression and anxiety, and due to these
5 problems, she requires her dog as an emotional support animal for affection
6 and companionship.

7 c. Respondent filled out an Attending Physician Statement Behavioral Health
8 form noting a diagnosis and rationale for recommending disability leave.

9 d. Respondent filled out form for a vocational Rehabilitation Consultant outlining
10 when a client could return to work, how severe the impairment was, current
11 psychiatric restrictions, what changes need to occur, and signed her name on
12 the physician signature line after crossing it out and indicating counselor.

13 10. Respondent represented the following during her investigative interview:

14 a. Respondent has written emotional support animal letters and short-term
15 disability letters.

16 b. Respondent has written about 50 letters since she began to practice because
17 clients ask for them due to mental health issues.

18 c. Respondent writes short term disability if it is needed to mental health issues.

19 d. Respondent writes approximately 3 short term disability letters a year.

20 11. Once more, Respondent was acting outside of her scope of practice on multiple
21 occasions by indicating someone has a disability preventing them from completing a task or
22 requiring animal support.

23 12. Submitted as part of her response to the complaint and included in Client's
24 clinical record there are two letters, that appear to be inappropriate, from Client's family
25 members.

1 13. A letter from Client's father ("Father") mentions it is written on behalf of
2 Respondent after being informed of a complaint filed against her, and it contains mention of her
3 professionalism, while making negative comments regarding Complainant.

4 14. A second letter, written by Client's grandfather ("Grandfather") mentions he found
5 out about a complaint filed against Respondent by Complainant.

6 15. This letter outlined positive feedback regarding Respondent while making
7 negative comments regarding Complainant.

8 16. Respondent represented the following in written statements to the Board:

9 a. Respondent does not know how Father found out about the complaint.

10 b. When asking Father for court proceedings, he inquired about the reason for
11 the request, and Respondent informed him it was regarding a complaint.

12 c. Respondent assumes Father told Grandfather about the complaint, as she
13 did not inform him.

14 d. Licensee did not ask Father or Grandfather to write a letter or provide
15 information about the complaint.

16 e. Father handed her the following a session, and Respondent put it in the
17 chart.

18 f. Similarly, Respondent did the same when Grandfather gave her a letter.

19 g. When Respondent provided the entire chart, it included the letters, and the
20 purpose was not to help with the complaint.

21 17. Despite representing she did not request the letters, Respondent's disclosure of
22 a complaint prompted the letters to be written.

23 18. Respondent displayed a lack of insight in accepting the letters and not realizing
24 the possibility of exploiting a professional relationship.

25 ...

1 19. Lastly, following a review of Client's clinical record, some documentation
2 deficiencies were discovered.

3 20. Respondent's consent for treatment was missing three required elements.

4 21. Client's treatment plan was missing two required elements.

5 22. Client's progress notes, while signed by Respondent, did not include a date for
6 her signature.

7 23. Respondent's release of information is missing the date or circumstance when
8 the authorization expires.

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)(m), engaging or offering to engage as a licensee in activities
15 that are not congruent with the licensee's professional education, training or experience.

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

19 4. The conduct and circumstances described in the Findings of Fact constitute a
20 violation of A.R.S. § 32-3251(16)(p), failing to conform to minimum practice standards as
21 developed by the Board as it relates to:

22 A.A.C. R4-6-1102, Treatment Plan

23 A.A.C. R4-6-1103, Client Record

24 A.A.C. R4-6-1105, Confidentiality

25 ...

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 **Stayed Suspension**

5 1. As of the effective date of this Consent Agreement, Respondent's license, LPC-
6 11851, shall be **SUSPENDED** for 24 months. However, the suspension shall be stayed and
7 Respondent's license shall be placed on probation.

8 2. During the stayed suspension portion of the Order, if Respondent is
9 noncompliant with the terms of the Order in any way, the stay of the suspension shall be lifted
10 and Respondent's license shall be automatically suspended as set forth above.

11 3. If Respondent contests the lifting of the stay as it relates to this paragraph,
12 Respondent shall request in writing, within 10 days of being notified of the automatic
13 suspension of licensure, that the matter be placed on the Board agenda for the Board to review
14 and determine if the automatic suspension of Respondent's license was supported by clear and
15 convincing evidence.

16 4. If the written request is received within 10 days of a regularly scheduled Board
17 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
18 scheduled Board meeting.

19 5. Pending the Board's review, Respondent's license shall be reported as
20 suspended - under review. Respondent may not work in any capacity as a licensed behavioral
21 health professional pending the Board's review. The Board's decision and Order shall not be
22 subject to further review.

23 **Probation**

24 6. Respondent's license, LPC-11851, will be placed on probation for 24 months,
25 effective from the date of entry as signed below.

1 Consent Agreement, Respondent shall submit the name of a clinical supervisor for pre-approval
2 by the Board Chair or designee. Also within 30 days of the date of this Consent Agreement, the
3 clinical supervisor shall submit a letter disclosing their prior relationship to Respondent. In that
4 letter, the clinical supervisor must address why they should be approved, acknowledge that they
5 have reviewed the Consent Agreement and include the results of an initial assessment and a
6 supervision plan regarding the proposed supervision of Respondent. The letter from the
7 supervisor shall be submitted to the Board.

8 **Focus and Frequency of Clinical Supervision**

9 12. The focus of the supervision shall relate to scope of practice, documentation,
10 professional and ethical practices, appropriate referrals, appropriate caseload, and self-care.
11 Respondent shall meet individually in person with the supervisor for a minimum of one hour,
12 twice a month.

13 **Reports**

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

- 18 a. Dates of each clinical supervision session.
- 19 b. A comprehensive description of issues discussed during supervision
20 sessions.

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

24 15. After Respondent's probationary period, the supervisor shall submit a final
25 summary report for review and approval by the Board Chair or designee. The final report shall

1 also contain a recommendation as to whether the Respondent should be released from this
2 Consent Agreement.

3 **Change of Clinical Supervisor During Probation**

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

11 **Audit**

12 17. While on probation, Respondent shall submit to an audit of all of their private
13 practice records by a pre-approved auditor. Within 30 days of this consent agreement,
14 Respondent shall submit the name of an auditor and a plan for conducting the audit for pre-
15 approval by the Board Chair or designee. The audit shall be completed within 60 days of the
16 effective date of this consent agreement. Also within 60 days of the effective date of this
17 consent agreement, the auditor shall provide an audit report and a proposed audit plan
18 addressing any deficiencies found during the audit to the Board Chair or designee for review
19 and approval.

20 **Practice Monitor**

21 18. While on probation, Respondent shall establish and maintain a relationship with a
22 practice monitor who is a masters or higher level behavioral health professional licensed by the
23 Arizona Board of Behavioral Health Examiners at the independent level. The practice monitor
24 shall provide training and assistance to Respondent regarding setting up appropriate forms and
25 formats for Respondent's clinical records, implementing current behavioral health standards of

1 **Change of Practice Monitor During Probation**

2 21. If, during the period of Respondent's probation, the practice monitor determines
3 that they cannot continue as the practice monitor, they shall notify the Board within 10 days of
4 the end of monitoring and provide the Board with an interim final report. Respondent shall
5 advise the Board Chair or designee within 30 days of cessation of monitoring by the approved
6 practice monitor of the name of a new proposed practice monitor. The proposed practice
7 monitor shall provide the same documentation to the Board as was required of the initial
8 practice monitor.

9 **GENERAL PROVISIONS**

10 **Provision of Clinical Supervision**

11 22. Respondent shall not provide clinical supervision while subject to this Consent
12 Agreement.

13 **Civil Penalty**

14 23. Subject to the provisions set forth in paragraph 24, the Board imposes a civil
15 penalty against the Respondent in the amount of \$1,000.00.

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

23 25. Within 10 days of being notified of the lifting of the stay, Respondent may request
24 that the matter be reviewed by the Board for the limited purpose of determining whether the
25 automatic lifting of the stay was supported by clear and convincing evidence. If the Board

1 receives the written request within 10 days or less of the next regularly scheduled Board
2 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
3 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
4 review.

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

10 27. If Respondent currently sees clients in their own private practice, and obtains any
11 other type of behavioral health position, either as an employee or independent contractor, where
12 they provide behavioral health services to clients of another individual or agency, they shall
13 comply with requirements set forth in paragraphs 28 through 30 below.

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

22 29. If Respondent is not employed as of the effective date of this Order, within 10
23 days of accepting employment in a position where Respondent provides any type of behavioral
24 health related services or in a setting where any type of behavioral health, health care, or social
25 services are provided, Respondent shall provide the Board Chair or designee with a written

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

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

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

24 32. Prior to the release of Respondent from probation, Respondent must submit a
25 written request to the Board for release from the terms of this Consent Agreement at least 30

1 days prior to the date they would like to have this matter appear before the Board. Respondent
2 may appear before the Board, either in person or telephonically. Respondent must provide
3 evidence that they have successfully satisfied all terms and conditions in this Consent
4 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
5 this Consent Agreement have been met and whether Respondent has adequately demonstrated
6 that they have addressed the issues contained in this Consent Agreement. In the event that the
7 Board determines that any or all terms and conditions of this Consent Agreement have not been
8 met, the Board may conduct such further proceedings as it determines are appropriate to
9 address those matters.

10 33. Respondent shall bear all costs relating to probation terms required in this
11 Consent Agreement.

12 34. Respondent shall be responsible for ensuring that all documentation required in
13 this Consent Agreement is provided to the Board in a timely manner.

14 35. This Consent Agreement shall be effective on the date of entry below.

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

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

19 *Joalene Whitmer*
Joalene Whitmer (Apr 28, 2023 11:29 PDT)

20 Joalene Whitmer

Apr 28, 2023

Date

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

22 By: *Mpli Zavala*

23 TOBI ZAVALA, Executive Director
24 Arizona Board of Behavioral Health Examiners

May 5, 2023

Date

1 **ORIGINAL** of the foregoing filed May 5, 2023
with:

2
3 Arizona Board of Behavioral Health Examiners
4 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

5 **EXECUTED COPY** of the foregoing sent electronically May 5, 2023
to:

6 Mona Baskin
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8 2005 North Central Avenue
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9 Joalene Whitmer
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