

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 Robert P. Whitney, LCSW-0946,
4 Licensed Clinical Social Worker,
5 In the State of Arizona.

6 RESPONDENT

CASE NO. 2011-0124

RELEASE FROM
7 CONSENT AGREEMENT AND ORDER

8 The Board received a request from Respondent to release him from the terms and
9 conditions of the Consent Agreement and Order dated April 20, 2015. After consideration, the
10 Board voted to release Respondent from the terms and conditions of the Consent Agreement
11 and Order dated April 20, 2015.

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 April 20, 2015.

15 Dated this 9th day of June, 2015.

16 By: 

17 TOBIN ZAVALA, Executive Director
18 Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed

20 This 9th day of June, 2015, with:

21 Arizona Board of Behavioral Health Examiners
22 3443 N. Central Ave., Suite 1700
23 Phoenix, AZ 85012

24 COPY of the foregoing mailed via

25 Certified mail no. 70142870 0001 8957 0520

This 9th day of June, 2015, to:

Robert P. Whitney
Address of Record
Respondent

1 **COPY** of the foregoing mailed via Mail
This 9th day of June, 2015 to:

2
3 Stephen Myers
4 One East Camelback Road
5 STE 500
6 Phoenix, AZ 85012
7 Attorney for Respondent
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**BEFORE THE ARIZONA BOARD
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In the Matter of
Robert P. Whitney, LCSW-0946
Licensed Clinical Social Worker,
In the State of Arizona.

Case No. 2011-0124

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), Robert P. Whitney ("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 his right to such formal hearing concerning these allegations and irrevocably waives his 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 Agreement
2 and returning it to the Board's Executive Director, Respondent may not revoke his acceptance of this
3 Consent Agreement or make any modifications to it. Any modification of this original document is
4 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 are
6 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 only
9 when the Board accepts it. In the event the Board in its discretion does not approve this Consent
10 Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value, nor shall it be
11 relied upon or introduced in any disciplinary action by any party hereto, except that Respondent
12 agrees that should the Board reject this Consent Agreement and this case proceeds to hearing,
13 Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this
14 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 Board,
17 and that it shall be reported as required by law to the National Practitioner Data Bank and the
18 Healthcare Integrity and Protection Data Bank.

19 8. Respondent further understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(n) and may result in disciplinary
21 action pursuant to A.R.S. § 32-3281.

22 9. The Board therefore retains jurisdiction over Respondent and may initiate disciplinary
23 action against Respondent if it determines that he has failed to comply with the terms of this Consent
24 Agreement or of the practice act.
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1 The Board issues the following Findings of Fact, Conclusions of Law and Order:

2 FINDINGS OF FACT

- 3 1. Respondent is the holder of License No. LCSW-0946 for the practice of social work in
4 the state of Arizona.
- 5 2. Respondent began seeing a client ("Client") at Licensee's private practice in 11/10.
- 6 3. During Client's 11/01/10 initial assessment, Client indicated that she wanted to
7 address relationship problems with members of her family.
- 8 4. Client's mother ("Mother"), father ("Father"), and brother ("Brother") all attended one
9 family session with Respondent on 11/12/10.
- 10 5. This was the only time Respondent met with Mother and Brother.
- 11 6. Respondent continued to provide therapy to Client and Father until 05/11.
- 12 7. On 03/08/11, Client informed Respondent that Brother and Mother had filed for
13 guardianship of Father.
- 14 8. Client asked Respondent to write a letter to the Court recommending that Father's
15 guardianship proceedings be dismissed.
- 16 9. In response to this request, Respondent authored a 03/21/11 letter ("03/11 Letter") to
17 the Court that:
- 18 a. Recommended that the emergency proceedings for the guardianship of Father be
19 dismissed.
- 20 b. Included several negative statements regarding Mother and Brother.
- 21 10. Respondent indicated he wrote the 03/11 Letter to advocate for Father.
- 22 11. Respondent's decision to include a statement in the 03/11 Letter recommending that
23 the guardianship petition regarding Father be denied was inappropriate where:
- 24 a. Respondent met with Father on 9 occasions before writing the 03/11 Letter.
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- b. Given these contacts, had he obtained Father's written permission to do so, it may have been appropriate for Respondent to have submitted a letter detailing his contacts with Father and addressing Respondent's perception of Father's physical and cognitive abilities.
- c. Respondent did not limit the information contained in the 03/11 Letter.
- d. Instead, even though he acknowledges that Mother and Brother were his identified clients, Respondent recommended that Mother's and Brother's guardianship petition regarding Father be denied.
- e. Given his role as therapist to the "family" where Client, Father, Mother and Brother were all his identified clients, it was inappropriate for Respondent to have inserted himself in the family's legal issues by advocating for Client and Father and actively opposing Mother's and Brother's attempt to obtain guardianship over Father.

12. Respondent's 03/11 Letter contained a number of statements pertaining to Brother and Mother, including the following:

- a. Respondent has known Client and all of her family members living near Arizona since 11/01/10.
- b. ..."It would also seem to be in the best interests of all concerned to require [Brother] to find other suitable living arrangements away from the family (Out of the home of [Father])."
- c. Family relationships began to decline when Brother divorced, lost his home, and moved to Arizona to live in Father's home.
- d. "It should be emphasized that problems in relationships with [Brother] are not new and appear to have existed for quite some time."

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- e. "[Brother] appears strongly opinionated, aggressive, and seems to have a sense of entitlement that manipulates for what he wants."
- f. Mother exhibits a depressive condition, which clouds her thinking and perceptions.
- g. Mother appears easily swayed and influenced by Brother.

13. Respondent's inclusion of these statements in his 03/11 Letter was inappropriate

where:

- a. As of the date of the 03/11 Letter, Respondent's only direct contact with Mother and Brother consisted of one family session that Client, Father, Brother, and Mother attended.
- b. Given his limited contact with Mother and Brother, Respondent's representation that he had known these individuals since 11/01/10 was not entirely candid.
- c. Respondent acknowledges the following:
 - Respondent authored the 03/11 Letter in response to Client's request that Respondent provide an opinion as to whether Father needed a guardian.
 - Client did not ask Respondent to incorporate any information regarding Brother and Mother in his letter to the Court.
 - To a degree, Respondent relied on information Client provided with regard to the information included in his 03/11 Letter, which Respondent did not personally verify.
- d. Respondent did not document completion of any type of assessment or any other information supporting his statement that Mother exhibited a depressive condition that affected her thinking and perceptions.

14. On 11/12/10, Respondent saw Father, Brother, Mother, and Client for a family therapy session.

- 1 15. Respondent acknowledges that all family members were his identified clients.
- 2 16. Respondent's 03/11 Letter included a number of statements containing confidential
- 3 information regarding Father, Mother, and Brother.
- 4 17. Respondent acknowledges the following:
 - 5 a. He did not have any type of written authorization allowing the disclosure of any
 - 6 information regarding Client, Father, Mother, or Brother.
 - 7 b. "As I look back, I did breach confidentiality and I understand the potential harm
 - 8 that could have occurred with the letter."
- 9 18. Despite Respondent's acknowledgement that he considered that Client, Father,
- 10 Mother, and Brother were all his clients, Respondent only obtained written informed consent for
- 11 treatment for Client.
- 12 19. The informed consent for treatment form that Client signed did not include the
- 13 following required elements:
 - 14 a. Purpose of treatment.
 - 15 b. General procedures to be used in treatment, including benefits, limitations, and
 - 16 potential risks.
 - 17 c. A client's right to have client records and all information regarding the client kept
 - 18 confidential and an explanation of the limitations on confidentiality.
 - 19 d. Methods for a client to obtain information about the client's records.
 - 20 e. The client's right to participate in treatment decisions and in the development and
 - 21 periodic review and revision of the client's treatment plan.
- 22 20. Licensees are required to maintain written treatment plans for all clients seen.
- 23 21. Respondent saw Client and Father for 13 sessions from 11/10 through 05/11.
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1 22. Respondent did not maintain any treatment planning documentation setting forth the
2 goals and objectives of this treatment, as required.

3 23. Respondent's failure to develop a written treatment plan in the present matter was
4 particularly problematic where:

- 5 a. There is no documentation indicating that Respondent made any effort to
6 discuss/develop Father's therapy goals and objectives directly with Father.
- 7 b. Instead, it appears that Respondent simply assumed that Client's "wishes" also
8 applied to Father.

9 24. Respondent's progress notes lack the following required elements:
10 a. Whether the counseling services were individual counseling, family counseling, or
11 group counseling.
12 b. The date of Respondent's signature.

13 25. Respondent states that prior to meeting with the Social Work Credentialing
14 Committee on August 9, 2013, Respondent proactively initiated clinical supervision. With the clinical
15 supervisor's assistance, Respondent states that he has revised his Consent to Treatment form,
16 Treatment Plan form, and Progress Note form.

17 26. Respondent states that all charts have been brought into regulatory compliance
18 regarding both new patients as well as established patients.

19 27. Respondent states that prior to the Social Work Credentialing Committee meeting of
20 August 9, 2013, he completed 23 total hours of continuing education in ethics.

21 28. Respondent acknowledges that his 03/11 Letter to the Court could potentially have
22 caused harm. However, the 03/11 Letter was never admitted into evidence.
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A handwritten signature in the bottom right corner of the page, appearing to be 'Ran'.

1 **CONCLUSIONS OF LAW**

2 1. The Board has jurisdiction over Respondent pursuant to A.R.S. §32-3251 *et seq.* and
3 the rules promulgated by the Board relating to Respondent's professional practice as a licensed
4 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(12)(l), any conduct, practice or condition that impairs the ability of the
7 licensee to safely and competently practice the licensee's profession.

8 3. The conduct and circumstances described in the Findings of Fact
9 constitute a violation of A.R.S. § 32-32-51(12)(p) failing to conform to minimum practice
10 standards as developed by the board, as it relates to the following:

11 A.A.C. R4-6-1101, Consent for Treatment

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

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

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

15 **ORDER**

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

18 **Probation**

19 1. Respondent's license, LCSW-0946, will be placed on probation for 12 months,
20 effective from the date of entry as signed below.

21 2. Respondent shall not practice under his license, LCSW-0946, unless he is fully
22 compliant with all terms and conditions in this Consent Agreement. If, for any reason, Respondent is
23 unable to comply with the terms and conditions of this Consent Agreement, he shall immediately
24 notify the Board in writing and shall not practice under his license until he submits a written request
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1 to the Board to re-commence compliance with this Consent Agreement. All such requests shall be
2 pre-approved by the Board Chair or designee.

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

6 Continuing Education

7 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within 12
8 months of the effective date of this Consent Agreement, Respondent shall complete 6-clock hours of
9 the NASW Staying Out of Trouble continuing education course or an equivalent course addressing
10 current behavioral health documentation standards in Arizona. All required continuing education shall
11 be pre-approved by the Board Chair or designee. Upon completion, Respondent shall submit a
12 certificate of completion of the required continuing education.

13 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within 12
14 months of the effective date of this Consent Agreement, Respondent shall take and pass a three
15 semester credit hour graduate level behavioral health ethics course from an accredited college or
16 university, pre-approved by the Board Chair or designee. Upon completion, Respondent shall submit
17 to the Board an official transcript establishing completion of the required course.

18 6. Respondent may submit continuing education completed since the complaint was
19 filed for consideration by the Board Chair or designee.

20 Audit

21 7. Respondent shall submit to an audit of all his private practice records by a practice
22 monitor. The audit shall be completed within 60 days of the effective date of this consent agreement.
23 Also within 60 days of the effective date of this Consent Agreement, the practice monitor shall
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1 provide an audit report and a proposed audit plan addressing any deficiencies found during the audit
2 to the Board Chair or designee for review and approval.

3 **Early Release**

4 8. After completion of the continuing education requirements set forth in this Consent
5 Agreement and after the practice monitor has performed an audit and submitted a
6 report to the Board, Respondent may request early release from the Consent Agreement if all other
7 terms of the Consent Agreement have been met.

8 **General Provision**

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

11 10. 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 be
15 automatically lifted and payment of the civil penalty shall be made by certified check or money order
16 payable to the Board within 30 days after being notified in writing of the lifting of the stay.

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

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

4 13. Respondent currently sees clients in his own private practice. If Respondent obtains
5 any other type of behavioral health position, either as an employee or independent contractor, where
6 he provides behavioral health services to clients of another individual or agency, he shall comply with
7 requirements set forth in Paragraphs 18 through 19 below.

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

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

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

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

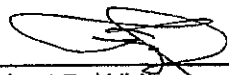
3 19. Respondent shall bear all costs relating to probation terms required in this Consent
4 Agreement.

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

7 21. This Consent Agreement shall be effective on the date of entry below.

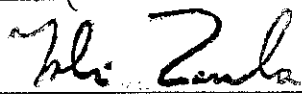
8 22. This Consent Agreement is conclusive evidence of the matters described herein and
9 may be considered by the Board in determining appropriate sanctions in the event a subsequent
10 violation occurs.

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

12
13  April 1, 2015
14 Robert P. Whitney _____ Date

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

16
17 Dated this 20th day of April, 2015.

18 By: 
19 TOBIN ZAVALA, Executive Director
20 Arizona Board of Behavioral Health Examiners

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24 **ORIGINAL** of the foregoing mailed
This 20th day of April, 2015, with:

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



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COPY of the foregoing mailed via Interagency Mail
This 20th day of April, 2015, to:

Beth Campbell
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

COPY of the foregoing mailed via
Certified mail no. 7041200000046337062
This 20th day of April, 2015, to:

Robert P. Whitney
Address of Record
Respondent

COPY of the foregoing mailed via Mail
This 20th day of April, 2015, to:

Stephen W. Myers, Esq.
Myers & Jenkins, P.C.
One East Camelback Road, Suite 500
Phoenix, Arizona 85012
Attorney for Respondent



Tobi Zavaia, Executive Director
602-542-1617

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