

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 James M. Sims, LPC-10241,  
4 Licensed Professional Counselor,  
5 In the State of Arizona.

6 RESPONDENT

CASE NO. 2016-0026

RELEASE FROM  
CONSENT AGREEMENT AND ORDER


7 The Board received a request from Respondent to release him from the terms and  
8 conditions of the Consent Agreement and Order dated October 26, 2015. After consideration,  
9 the Board voted to release Respondent from the terms and conditions of the Consent  
10 Agreement and Order dated October 26, 2015.

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 26, 2015.

15 Dated this 10<sup>th</sup> day of March, 2016.

16  
17 By:   
18 TOBI ZAVALA, Executive Director  
Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed  
20 This 10<sup>th</sup> day of March, 2016, with:

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

23 COPY of the foregoing mailed via  
24 Certified mail no. 70142870000189575617  
This 10<sup>th</sup> day of March, 2016, to:

25 James M. Sims  
Address of Record  
Respondent

1 **COPY** of the foregoing mailed via Mail  
This 10<sup>th</sup> day of March, 2016 to:

2 Steven Perlmutter  
3 Medical Law, LLC.  
4 8655 E Via de Ventura, Ste. G-200  
5 Scottsdale, AZ 85258  
6 Attorney for Respondent

7 **COPY** of the foregoing mailed via Mail  
8 This 10<sup>th</sup> day of March, 2016 to:

9 Flynn Carey  
10 Mitchell, Stein, Carey, Attorneys at Law  
11 One Renaissance Square  
12 2 North Central Ave, Ste 1900  
13 Phoenix, AZ 85004  
14 Attorney for Respondent  
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1                                   **BEFORE THE ARIZONA BOARD**  
2                                   **OF BEHAVIORAL HEALTH EXAMINERS**

3 **In the Matter of:**

4 **James M. Sims, LPC-10241,**  
5 **Licensed Professional Counselor,**  
6 **In the State of Arizona.**

**CASE NO. 2016-0026**  
**CONSENT AGREEMENT**

7                                   **RESPONDENT**

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), James M. Sims ("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 his right to such formal hearing concerning these allegations and irrevocably waives his  
22 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 his  
3 acceptance of this Consent Agreement or make any modifications to it. Any modification of this  
4 original document is ineffective and void unless mutually approved by the parties in writing.

5           5.       The findings contained in the Findings of Fact portion of this Consent Agreement  
6 are conclusive evidence of the facts stated herein and may be used for purposes of determining  
7 sanctions in any future disciplinary matter.

8           6.       This Consent Agreement is subject to the Board's approval, and will be effective  
9 only when the Board accepts it. In the event the Board in its discretion does not approve this  
10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,  
11 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except  
12 that Respondent agrees that should the Board reject this Consent Agreement and this case  
13 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its  
14 review and discussion of this document or of any records relating thereto.

15           7.       Respondent understands that once the Board approves and signs this Consent  
16 Agreement, it is a public record that may be publicly disseminated as a formal action of the  
17 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

18           8.       Respondent further understands that any violation of this Consent Agreement  
19 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in  
20 disciplinary action pursuant to A.R.S. § 32-3281.

21           9.       The Board therefore retains jurisdiction over Respondent and may initiate  
22 disciplinary action against Respondent if it determines that he has failed to comply with the  
23 terms of this Consent Agreement or of the practice act.

24           The Board issues the following Findings of Fact, Conclusions of Law and Order:

25       ...

1 **FINDINGS OF FACT**

2 1. Respondent is the holder of License No. LPC-10241 for the practice of  
3 counseling in Arizona.

4 2. In 03/13, Respondent was arrested for assault and disorderly conduct.

5 3. On 08/08/13, the charges were dismissed without prejudice.

6 4. Respondent failed to report his arrest to the Board within ten days as required.

7 5. Respondent reported the arrest three months later on his license renewal  
8 application.

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(12)(I), any conduct, practice or condition that impairs the ability of  
15 the licensee to safely and competently practice the licensee's profession.

16 3. The conduct and circumstances described in the Findings of Fact constitute a  
17 violation of A.R.S. § 32-3251(12)(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. § 32-3208, a health professional who has been charged with a misdemeanor  
20 involving conduct that may affect patient safety or a felony after receiving or renewing a license  
21 or certificate must notify the health professional's regulatory board in writing within 10 days after  
22 the charge is filed.

23 **ORDER**

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



1 Civil Penalty

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

4 8. 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 9. 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 substantial evidence. If the Board receives the  
14 written request within 10 days or less of the next regularly scheduled Board meeting, the  
15 request will not be heard at that meeting, but will be heard at the next regularly scheduled Board  
16 meeting. The Board's decision on this matter shall not be subject to further review.

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

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

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

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

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



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

8 15. Respondent shall practice behavioral health using the name under which he is  
9 licensed. If Respondent changes his name, he shall advise the Board of the name change as  
10 prescribed under the Board's regulations and rules.

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

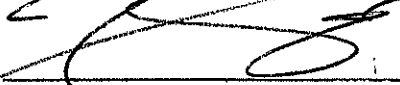
22 17. Respondent shall bear all costs relating to probation terms required in this  
23 Consent Agreement.

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

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

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


5  
6 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

7   
8 James M. Sims

Date 10/9/15

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

10 Dated this 26th day of October, 2015.

11   
12 By: Tobi Zavala  
13 TOBI ZAVALA, Executive Director  
Arizona Board of Behavioral Health Examiners

14 ORIGINAL of the foregoing filed  
15 This 26th day of October, 2015 with:

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

18 COPY of the foregoing mailed via Interagency Mail  
19 This 26th day of October, 2015, to:

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

22 COPY of the foregoing mailed via  
Certified mail no. 7043710000189573811  
23 This 26th day of October, 2015, to:

24 James M. Sims  
Address of Record  
25 Respondent

1 **COPY** of the foregoing mailed via Mail  
This 20<sup>th</sup> day of October, 2015 to:

2  
3 Steven Perlmutter  
4 Medical Law, LLC  
5 8655 E. Via de Ventura, Suite G-200  
6 Scottsdale, AZ 85258  
7 Attorney for Respondent

8 **COPY** of the foregoing mailed via Mail  
9 This 20<sup>th</sup> day of October, 2015 to:

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