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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Ellen D. Vimmerstedt, LPC-1266,
Licensed Professional Counselor,
In the State of Arizona.

CASE NO. 2015-0032
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), Ellen D. Vimmerstedt ("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 their right to such formal hearing concerning these allegations and irrevocably waives their 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
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 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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 they have failed to comply with the
23 terms of this Consent 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. LPC-1266 for the practice of counseling
4 in Arizona.

5 2. Around 10/09, Respondent began providing counseling services to a male client
6 ("Ex-Husband").

7 3. On two occasions, 11/04/09 and 12/15/09, Ex-Husband's wife ("Wife") attended
8 counseling sessions with Ex-Husband, to which Respondent represents that Wife was in
9 attendance solely as a collateral participant to Ex-Husband's treatment.

10 4. According to Wife's written complaint, Wife believed that she was in attendance
11 for marriage counseling with Respondent.

12 5. In review of the progress notes from the two sessions that Wife was present for,
13 there appears to be no indication that Wife was clearly made aware of her purpose and role in
14 the sessions.

15 6. When questioned by Board staff about the matter of distinguishing Wife's role
16 during sessions, Respondent indicated the following:

17 a. Respondent explained that Wife's purpose of being there was to assist in
18 clarification between the two of them.

19 b. Respondent made it clear that it was Ex-Husband's session and that Wife
20 was there to go over her list of criticisms about him.

21 c. Although Respondent explained to Wife what her purpose in Ex-Husband's
22 session was, Respondent doesn't believe she clearly documented it.

23 7. Although Respondent represents that she explained to Wife her purpose for
24 being in Ex-Husband's sessions, Respondent's progress notes fail to clearly notate that Wife
25 was informed of the nature of her presence and participation.

1 8. Around 05/10, Ex-Husband filed for divorce from Wife, and matters subsequently
2 proceeded to family court.

3 9. Respondent acknowledges that this matter became a high conflict custody case.

4 10. In 08/14, the court-appointed parenting coordinator facilitated a conference call
5 with Wife's therapist, the co-parenting therapist, and Respondent.

6 11. The plan for the conference call was to discuss Wife's concerns and whether a
7 new co-parenting therapist was necessary.

8 12. Following that conference call, the parenting coordinator submitted a report to the
9 court where he summarized information provided by Respondent, including the following
10 statement: "[Respondent] explained that she has concerns about [Wife] and she believed that
11 the concerns have been consistent. She believes there are Axis 2 concerns."

12 13. The information provided by Respondent appears problematic for the following
13 reasons:

- 14 a. Respondent had not seen or spoken with Wife for approximately 5 years.
- 15 b. Respondent had only spoken with Wife on two occasions.
- 16 c. Respondent represents that Wife was a collateral participant, not her client.
- 17 d. Considering that there is no information documented during the 2 sessions
18 that Wife was present for regarding Axis II concerns, Respondent's statement
19 to the parenting coordinator appears inappropriate.
- 20 e. Even if Respondent had documented any Axis II concerns for Wife, it would
21 still appear inappropriate for Respondent to offer such information regarding
22 an individual whom she represents was not her client.
- 23 f. When questioned by Board staff about this matter, Respondent indicated:
 - 24 • The information provided by Respondent was in congruence with her
25 education and training.

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- All the information that Respondent provided to the parenting coordinator came from Ex-Husband.
- The information that Ex-Husband would show Respondent; in addition to the length of time that Respondent worked with Ex-Husband, Respondent felt she had enough information to share her concerns with the parenting coordinator.

14. In review of the clinical record that Respondent maintained for Ex-Husband, various documentation deficiencies were identified, including:

- a. Respondent failed to obtain a Consent for Treatment form from Ex-Husband.
- b. Ex-Husband's Treatment Plan failed to include various required elements.
- c. Ex-Husband's Progress Notes failed to include various required elements.
- d. The clinical record indicates that at least 3 phone calls occurred regarding client care. Aside from notation that phone calls occurred on specific dates, the clinical record does not contain any description of the client care that was provided.

15. In 03/16 and 04/16, Respondent completed the following continuing education:

- a. NASW Staying Out of Trouble: Documentation and Legal Processes in Social Work.
- b. Zur Institute: Record keeping in Psychotherapy & Counseling – Ethical, Legal and Clinical Issues.

16. Since this complaint, Respondent has revised and updated her clinical documentation forms including her Consent for Treatment and Treatment Plan.

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1 CONCLUSIONS OF LAW

2 1. The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-3251 *et seq.*
3 and the rules promulgated by the Board relating to Respondent's professional practice as a
4 licensed 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)(k), any conduct or practice that is contrary to recognized
7 standards of ethics in the behavioral health profession or that constitutes a danger to the health,
8 welfare or safety of a client, as it relates to the following section of the 2005 ACA Code of
9 Ethics:

10 **A.7. Multiple Clients**

11 When a counselor agrees to provide counseling services to two or more persons
12 who have a relationship, the counselor clarifies at the outset which person or
13 persons are clients and the nature of the relationships the counselor will have
14 with each involved person. If it becomes apparent that the counselor may be
15 called upon to perform potentially conflicting roles, the counselor will clarify,
16 adjust, or withdraw from roles appropriately.

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

20 4. The conduct and circumstances described in the Findings of Fact constitute a
21 violation of A.R.S. § 32-3251(15)(p), failing to conform to minimum practice standards as
22 developed by the Board, as it relates to the following:

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

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

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

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 1. Respondent's license, LPC-1266, will be placed on probation for 12 months,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under their license, LPC-1266, unless they are
7 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
8 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
9 shall immediately notify the Board in writing and shall not practice under their license until they
10 submit a written request to the Board to re-commence compliance with this Consent
11 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

16 Continuing Education

17 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
18 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
19 three semester credit hour graduate level course in ethics and family law from an accredited
20 college or university, pre-approved by the Board Chair or designee. Upon completion,
21 Respondent shall submit to the Board an official transcript establishing completion of the
22 required course.

23 Clinical Supervision

24 5. While on probation, Respondent shall submit to clinical supervision for 12 months
25 by a masters or higher level behavioral health professional licensed at the independent level.

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

8 Focus and Frequency of Clinical Supervision

9 6. The focus of the supervision shall relate to family law, boundaries, ethics, and
10 current behavioral health documentation standards in Arizona. Respondent shall meet
11 individually in person with the supervisor at a minimum of once monthly.

12 Reports

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

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

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

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

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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 10. 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 **GENERAL PROVISIONS**

12 **Provision of Clinical Supervision**

13 11. Respondent shall not provide clinical supervision while subject to this Consent
14 Agreement.

15 **Civil Penalty**

16 12. Subject to the provisions set forth in paragraph 13, the Board imposes a civil
17 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

13 16. If Respondent currently sees clients in their own private practice, and obtains any
14 other type of behavioral health position, either as an employee or independent contractor, where
15 they provide behavioral health services to clients of another individual or agency, they shall
16 comply with requirements set forth in paragraphs 17 through 19 below.

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

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

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

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

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

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

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

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

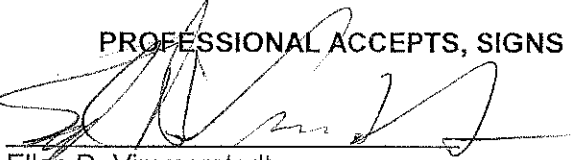
20 25. This Consent Agreement is conclusive evidence of the matters described herein
21 and may be considered by the Board in determining appropriate sanctions in the event a
22 subsequent violation occurs.

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1 PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

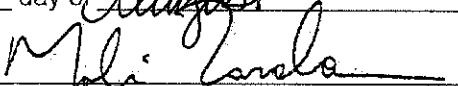
2 

3 Ellen D. Vimmerstedt

8.8.16
Date

4 BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

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6 Dated this 9th day of August, 2016.

7 By: 
8 TOBÍ ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

9
10 ORIGINAL of the foregoing filed
This 9th day of August, 2016 with:

11 Arizona Board of Behavioral Health Examiners
12 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

13 COPY of the foregoing mailed via Interagency Mail
14 This 9th day of August, 2016, to:

15 Marc Harris
16 Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

17 COPY of the foregoing mailed via
18 Certified mail no. 7042870000189576294
This 9th day of August, 2016, to:

19 Ellen D. Vimmerstedt
20 Address of Record
Respondent

21 COPY of the foregoing mailed via Mail
22 This 9th day of August, 2016 to:

23 Michael D. Wolver
24 Renaud Cook Drury Mesaros, PA
One N. Central Avenue, #900
25 Attorney for Respondent