



1           3.     Respondent has the right to consult with an attorney prior to entering into this  
2 Consent Agreement.

3           4.     Respondent acknowledges and agrees that upon signing this Consent  
4 Agreement and returning it to the Board's Executive Director, Respondent may not revoke their  
5 acceptance of this Consent Agreement or make any modifications to it. Any modification of this  
6 original document is ineffective and void unless mutually approved by the parties in writing.

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

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12 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,  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

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

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

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

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 Nos. LPC-12362 and LISAC-11503 for the  
4 practice of counseling in Arizona.

5 2. From 06/14 – 11/14, Respondent provided behavioral health services to an adult  
6 female ("Client").

7 3. Respondent failed to perform an adequate suicide risk assessment despite  
8 Client's numerous disclosures of suicidal ideation including:

- 9 a. 06/04/14 – intake note indicated Client had suicidal thoughts and previous  
10 suicide attempts.
- 11 b. 06/04/14 – progress note indicated Client has history of suicidal/self harm  
12 thoughts.
- 13 c. 06/17/14 – progress note: "Thoughts of Hx and fear of not knowing what  
14 to do to stop anxiety/depression/thoughts of self harm."
- 15 d. 07/01/14 – progress note: "[Client] spoke of self harm."
- 16 e. 07/05/14 – treatment plan indicated that Client was not currently suicidal,  
17 but has had thoughts/previous attempt.

18 4. On 11/28/14, following her last session, Client sent Respondent a letter which  
19 indicated in part: "After our last session I felt so fucked up. It was the first time in weeks that I  
20 felt like dying/hurting myself."

21 5. Respondent indicated that he immediately called Client after receipt of the letter  
22 and left her a voice mail, but he did not feel that she was at risk and did not believe Client  
23 warranted a welfare check.

24 6. Respondent's lack of effort to make contact with Client following receipt of her  
25 letter appears concerning considering Client's statements in the letter and her previous

1 disclosures of thoughts of self harm.

2 7. Respondent's clinical documentation was missing required elements as follows:

3 a. The consent for treatment lacked:

4 i. The procedures to be used in treatment, including benefits,  
5 limitations and potential risks.

6 ii. Client's right to participate in treatment decisions and in the  
7 development and periodic review and revision of their treatment  
8 plan.

9 b. The treatment plan lacked the signature and date signed by Client.

10 c. Progress notes lacked the signature and date signed by Respondent.

11 8. On 11/20/14, Respondent acknowledges facilitating a behavioral health session  
12 with Client's husband ("Husband") to discuss Client's treatment, however Client's clinical file  
13 lacked:

14 a. A progress note documenting session with Husband.

15 b. A release of information from Client that would allow Respondent to  
16 discuss Client's treatment with Husband.

17 9. Respondent acknowledges submitting Client's behavioral health billing  
18 information to Client's brother without obtaining a release of information from Client to release  
19 protected health information.

#### 20 CONCLUSIONS OF LAW

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

24 2. The conduct and circumstances described in the Findings of Fact constitute a  
25 violation of A.R.S. § 32-3251(15)(l), any conduct, practice or condition that impairs the ability of

1 the licensee to safely and competently practice the licensee's profession.

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

- 5 a. A.A.C. R4-6-1101, Consent for Treatment.
- 6 b. A.A.C. R4-6-1102, Treatment Plan.
- 7 c. A.A.C. R4-6-1103, Client Record.
- 8 d. A.A.C. R4-6-1105, Confidentiality.

9 **ORDER**

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

12 1. Respondent's licenses, LPC-12362 and LISAC-11503, will be placed on  
13 probation, effective from the date of entry as signed below.

14 2. Respondent shall not practice under their licenses, LPC-12362 and LISAC-  
15 11503, unless they are fully compliant with all terms and conditions in this Consent Agreement.  
16 If, for any reason, Respondent is unable to comply with the terms and conditions of this  
17 Consent Agreement, they shall immediately notify the Board in writing and shall not practice  
18 under their license until they submit a written request to the Board to re-commence compliance  
19 with this Consent Agreement. All such requests shall be pre-approved by the Board Chair or  
20 designee.

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

1 **Continuing Education**

2 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within  
3 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock  
4 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course  
5 addressing current behavioral health documentation standards in Arizona. All required  
6 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,  
7 Respondent shall submit a certificate of completion of the required continuing education.

8 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within  
9 12 months of the effective date of this Consent Agreement, Respondent complete 3 clock hours  
10 of continuing education addressing suicide risk assessment. All required continuing education  
11 shall be pre-approved by the Board Chair or designee. Upon completion, Respondent shall  
12 submit a certificate of completion of the required continuing education.

13 **Early Release**

14 6. After completion of the continuing education requirements set forth in this  
15 Consent Agreement, Respondent may request early release from the Consent Agreement if all  
16 other terms of the Consent Agreement have been met.

17 **GENERAL PROVISIONS**

18 **Provision of Clinical Supervision**

19 7. Respondent shall not provide clinical supervision while subject to this Consent  
20 Agreement.

21 **Civil Penalty**

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

24 9. Respondent's payment of the civil penalty shall be stayed so long as Respondent  
25 remains compliant with the terms of this Consent Agreement. If Board staff determines that

1 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the  
2 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall  
3 be automatically lifted and payment of the civil penalty shall be made by certified check or  
4 money order payable to the Board within 30 days after being notified in writing of the lifting of  
5 the stay.

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

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

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

22 13. Within 10 days of the effective date of this Order, if Respondent is working in a  
23 position where Respondent provides any type of behavioral health related services or works in a  
24 setting where any type of behavioral health, health care, or social services are provided,  
25 Respondent shall provide the Board Chair or designee with a signed statement from

1 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this  
2 Consent Agreement. If Respondent does not provide the employer's statement to the Board  
3 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a  
4 copy of the Consent Agreement.

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

15 15. If, during the period of Respondent's probation, Respondent changes  
16 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on  
17 extended leave of absence for whatever reason that may impact their ability to timely comply  
18 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform  
19 the Board of their change of employment status. After the change and within 10 days of  
20 accepting employment in a position where Respondent provides any type of behavioral health  
21 related services or in a setting where any type of behavioral health, health care, or social  
22 services are provided, Respondent shall provide the Board Chair or designee a written  
23 statement providing the contact information of their new employer(s) and a signed statement  
24 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a  
25 copy of this Consent Agreement. If Respondent does not provide the employer's statement to

1 the Board within 10 days, as required, Respondent's failure to provide the required statement to  
2 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide  
3 Respondent's employer(s) with a copy of the Consent Agreement.

4 16. Respondent shall practice behavioral health using the name under which they  
5 are licensed. If Respondent changes their name, they shall advise the Board of the name  
6 change as prescribed under the Board's regulations and rules.

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

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

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

22 20. This Consent Agreement shall be effective on the date of entry below.

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

1 PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

2 Michael K. Finecey  
3 Michael K. Finecey

5-16-16  
Date

4 BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

5 Dated this 17<sup>th</sup> day of May, 2016.

6  
7 By: M. Zavala  
8 TOBI ZAVALA, Executive Director  
9 Arizona Board of Behavioral Health Examiners

10  
11 ORIGINAL of the foregoing filed  
12 This 17<sup>th</sup> day of May, 2016 with:

13 Arizona Board of Behavioral Health Examiners  
14 3443 N. Central Ave., Suite 1700  
15 Phoenix, AZ 85012

16 COPY of the foregoing mailed via Interagency Mail  
17 This 17<sup>th</sup> day of May, 2016, to:

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

22 COPY of the foregoing mailed via  
23 Certified mail no. 70142870000189576522

24 This 17<sup>th</sup> day of May, 2016, to:

25 Michael K. Finecey  
Address of Record  
Respondent

COPY of the foregoing mailed via Mail  
This 17<sup>th</sup> day of May, 2016 to:

Terry F. Hall  
817 North Second Street  
Phoenix, AZ 85004  
Attorney for Respondent