

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

CASE NO. 2015-0059

3 Michael K. Finecey, LISAC-11503, Licensed
4 Independent Substance Abuse Counselor,
5 LPC-12362, Licensed Professional
6 Counselor,
7 In the State of Arizona.

RELEASE FROM
CONSENT AGREEMENT AND ORDER

RESPONDENT

8 The Board received a request from Respondent to release them from the terms and
9 conditions of the Consent Agreement and Order dated May 17, 2016. After consideration, the
10 Board voted to release Respondent from the terms and conditions of the Consent Agreement
11 and Order dated May 17, 2016.

12 ORDER

13 GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:

14 Respondent is hereby released from all terms and conditions of the Consent Agreement
15 and Order dated May 17, 2016.

16 Dated this 12th day of June, 2017.

17 By:

Tobi Zavala
18 TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed

This 12th day of June, 2017, with:

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

22 COPY of the foregoing mailed via

23 Certified mail no. 7016214000018041768
This 12th day of June, 2017, to:

24 Michael K. Finecey
25 Address of Record
Respondent

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

3 **In the Matter of:**

4 **Michael K. Finecey, LPC-12362 & LISAC-**
5 **11503,**
6 **Licensed Professional Counselor &**
7 **Licensed Independent Substance Abuse**
8 **Counselor,**
9 **In the State of Arizona.**

CASE NO. 2015-0059
CONSENT AGREEMENT

RESPONDENT

10 In the interest of a prompt and speedy settlement of the above captioned matter,
11 consistent with the public interest, statutory requirements and responsibilities of the Arizona
12 State Board of Behavioral Health Examiners ("Board"), and pursuant to A.R.S. §§ 32-3281(F)
13 and 41-1092.07(F)(5), Michael K. Finecey ("Respondent") and the Board enter into this Consent
14 Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final
15 disposition of this matter.

16 **RECITALS**

17 Respondent understands and agrees that:

18 1. Any record prepared in this matter, all investigative materials prepared or
19 received by the Board concerning the allegations, and all related materials and exhibits may be
20 retained in the Board's file pertaining to this matter.

21 2. Respondent has the right to a formal administrative hearing at which Respondent
22 can present evidence and cross examine the State's witnesses. Respondent hereby irrevocably
23 waives their right to such formal hearing concerning these allegations and irrevocably waives
24 their right to any rehearing or judicial review relating to the allegations contained in this Consent
25 Agreement.

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 17th day of May, 2016.

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

10 ORIGINAL of the foregoing filed
11 This 17th day of May, 2016 with:

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

15 COPY of the foregoing mailed via Interagency Mail
16 This 17th day of May, 2016, to:

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

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

23 This 17th day of May, 2016, to:

24 Michael K. Finecey
25 Address of Record
Respondent

26 COPY of the foregoing mailed via Mail
27 This 17th day of May, 2016 to:

28 Terry F. Hall
29 817 North Second Street
30 Phoenix, AZ 85004
31 Attorney for Respondent