

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

3 **In the Matter of:**
4 **Joseph M. Ponce, LPC-0252,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

CASE NO. 2016-0036
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), Joseph M. Ponce ("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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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

FINDINGS OF FACT

1
2 1. Respondent is the holder of License No. LPC-0252 for the practice of counseling
3 in Arizona.

4 2. On 9/23/15, Respondent was involuntarily terminated from a behavioral health
5 agency ("Agency") for the following:

- 6 a. Failure to report suspected child abuse/neglect
- 7 b. Lack of skill in assessment with families
- 8 c. Failure to properly assess and supervise interns new to the counseling
9 field
- 10 d. Violations of Agency's contract with the court to provide services
- 11 e. Ethical and poor judgment issues

12 3. Respondent failed to make a timely report to the Department of Child Safety
13 ("DCS") for minor clients from two families who were receiving services through Agency as
14 follows:

- 15 a. Father 1 completed a report through the intake process indicating his
16 minor daughters ("Daughters") needed services because they had
17 experienced physical, mental and sexual abuse by Mother 1 and her past
18 and current boyfriends.
- 19 b. Father 1 contacted Respondent about additional verbal abuse that took
20 place during Mother 1's visitation with Daughters, but Respondent did not
21 notify DCS until his Executive Director was made aware of the situation
22 almost three weeks later.
- 23 c. Mother 2 completed a report indicating she was concerned about sexual
24 abuse that her minor child ("Child") said occurred.
- 25 d. Respondent had Child write letters to Father 2 which indicated:

- "You made me see nasty movies" and "make me see bad things."
- "I hate you. You are disgusting and mean."
- "I don't want to go with you because you did something bad."
- "You made two girls hold me and make me look at you do nasty things and you showed me your private part and I am scared to see you and you were putting white stuff in your nose."

e. Agency filed a report with DCS on Father 2 following Mother 2 contacting them several weeks after Respondent was terminated.

f. As a mandated reporter, Respondent should have immediately reported both of these matters to DCS or a peace officer because of the nature and severity of the allegations.

4. In 08/15 during a supervised visit, Respondent allowed Mother 1 and Daughters to go into a restroom together despite a court order prohibiting Mother 1 from having any unsupervised contact with Daughters.

5. Respondent acknowledged receiving a copy and being aware of Agency's information technology policy which prohibited the storage of Agency data on personal devices or personal storage systems of any kind.

6. Agency's 09/23/15 termination summary documented that Respondent was using a USB memory stick to store identifying client information and data for court reports including client names, dates of birth and inmate information.

7. In review of Respondent's clinical documentation, Agency found his progress notes:

- a. Were typically 1-2 sentences to detail the entire session.
- b. Failed to include the duration of each session as required.
- c. Were difficult to understand as much of the notes were illegible.

1 d. Respondent did not include the clients' emotional state, a plan for the
2 next session and a clinical assessment which were Agency standards.

3 8. Upon Respondent's termination, he failed to report his change of business
4 address within 30 days as required by Board rule.

5 **CONCLUSIONS OF LAW**

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

9 2. The conduct and circumstances described in the Findings of Fact constitute a
10 violation of A.R.S. § 32-3251(16)(l), any conduct, practice or condition that impairs the ability of
11 the licensee to safely and competently practice the licensee's profession.

12 3. The conduct and circumstances described in the Findings of Fact constitute a
13 violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation
14 applicable to the practice of behavioral health, as it relates to: A.R.S § 13-3620, Duty to Report.

15 4. The conduct and circumstances described in the Findings of Fact constitute a
16 violation of A.R.S. § 32-3251(16)(k), any conduct or practice that is contrary to recognized
17 standards of ethics in the behavioral health profession as it relates to the 2014 ACA Code of
18 Ethics:

19 **A.1.b. Records and Documentation**

20 Counselors create, safeguard, and maintain documentation necessary for
21 rendering professional services. Regardless of the medium, counselors include
22 sufficient and timely documentation to facilitate the delivery and continuity of
23 services. Counselors take reasonable steps to ensure that documentation
24 accurately reflects client progress and services provided. If amendments are
25

1 made to records and documentation, counselors take steps to properly note the
2 amendments according to agency or institutional policies.

3 **D.1.g. Employer Policies**

4 The acceptance of employment in an agency or institution implies that
5 counselors are in agreement with its general policies and principles. Counselors
6 strive to reach agreement with employers regarding acceptable standards of
7 client care and professional conduct that allow for changes in institutional policy
8 conducive to the growth and development of clients.

9 5. The conduct and circumstances described in the Findings of Fact constitute a
10 violation of A.R.S. § 32-3251(15)(p), failing to conform to minimum practice standards as
11 developed by the Board as it relates to: A.A.C. R4-6-205, Change of Address.

12 **ORDER**

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

15 1. As of the effective date of the Consent Agreement, Respondent shall not practice
16 under his license.

17 2. Respondent's license, LPC-0252, by rule, expired on 01/31/16.

18 3. Respondent agrees not to renew his license.

19 4. Respondent agrees not to submit any type of new license application to the
20 Board for a minimum of five (5) years.

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

24 ...

25 ...

PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Joseph M. Ponce
Joseph M. Ponce

03/28/2016
Date

BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Dated this 9th day of May, 2016.

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

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

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

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

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

COPY of the foregoing mailed via
Certified mail no. 70142870 0001 8957 6133
This 9th day of May, 2016, to:

Joseph M. Ponce
Address of Record
Respondent