

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12 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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. LAC-12467 and LASAC-13067 for the
4 practice of counseling and substance abuse counseling in Arizona.

5 2. From 09/16 – 01/17, Respondent provided group counseling services to an adult
6 female client ("Client") through Respondent's employment at a behavioral health agency
7 ("Agency").

8 3. In review of Client's clinical records, Client was classified as a Seriously Mentally
9 Ill client with a history of physical, sexual and emotional abuse.

10 4. On 02/14/17, Client reported to Agency's Executive Director that Respondent
11 had called and left a voicemail on Client's personal cell phone.

12 5. Agency's Executive Director listened to the recorded voicemail and confirmed
13 that Respondent had left a message asking Client to 'go watch a game' and to 'call him' if she
14 was interested.

15 6. Client also reported to Agency's Executive Director that she and Respondent
16 previously went out to a bar to watch a football game together.

17 7. According to Agency's Executive Director's notes, when she confronted
18 Respondent about engaging with Client on a personal level, he denied the allegation.

19 8. After Agency's Executive Director informed Respondent that she heard his voice
20 on Client's voicemail, he admitted to seeing her but indicated it was not a date.

21 9. On 02/15/17, Agency terminated Respondent's employment.

22 10. During his investigative interview with Board staff, Respondent indicated the
23 following:

24 a. One day in group, Client wore a Green Bay Packers shirt, and Respondent
25 noticed it because he is a Green Bay Packers fan as well.

- b. Respondent and Client only went out one time.
- c. When Respondent dropped Client off at home after the game, he went into her home for approximately 10 minutes.
- d. They exchanged small talk before he left.
- e. No physical contact took place between Respondent and Client.
- f. Respondent called Client after their outing to see if she wanted to watch the Super Bowl with him.
- g. He left her a message but she never replied.
- h. That was the last time he reached out to her.

11. ~~Contrary to Respondent's representation, a review of his cell phone records shows that Respondent and Client shared 38 voice calls with each other between 12/31/16 and 02/08/17.~~

12. Since the filing of this complaint, Respondent has completed continuing education units related to behavioral health ethics.

13. On 07/14/17, the Board reviewed this matter and voted as follows:

- a. Respondent was Ordered to complete a comprehensive psychological evaluation including a psychosocial and psychosexual assessment.
- b. Respondent was offered an Interim Consent Agreement where he would agree not to practice.

14. Immediately following the Board's 07/14 meeting, Respondent signed and returned the Interim Consent Agreement, and underwent the comprehensive evaluation as Ordered by the Board.

15. At its meeting on 11/03/17, the Board reviewed the results of the evaluation and voted to release Respondent from the Interim Consent Agreement contingent upon his acceptance of a probationary Consent Agreement, which includes terms and conditions.

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(16)(y), engaging in a dual relationship with a client that could
7 impair the licensee's objectivity or professional judgement or create a risk of harm to the client.

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

11 4. The conduct and circumstances described in the Findings of Fact constitute a
12 violation of A.R.S. § 32-3251(16)(c)(ii), any oral or written misrepresentation of a fact by an
13 applicant or licensee in any statements provided during an investigation or disciplinary
14 proceeding by the board.

15 ORDER

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

18 1. Respondent's licenses, LAC-12467 and LASAC-13067 will be placed on
19 probation for 24 months, effective from the date of entry as signed below.

20 2. Respondent shall not practice under their licenses, LAC-12467 and LASAC-
21 13067, unless they are fully compliant with all terms and conditions in this Consent Agreement.
22 If, for any reason, Respondent is unable to comply with the terms and conditions of this
23 Consent Agreement, they shall immediately notify the Board in writing and shall not practice
24 under their license until they submit a written request to the Board to re-commence compliance
25 ...

1 with this Consent Agreement. All such requests shall be pre-approved by the Board Chair or
2 designee.

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

7 Continuing Education

8 4. 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 shall complete 3 clock
10 hours of continuing education addressing victim empathy. 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 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
14 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
15 hours of continuing education addressing sexual harassment. All required continuing education
16 shall be pre-approved by the Board Chair or designee. Upon completion, Respondent shall
17 submit a certificate of completion of the required continuing education.

18 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
19 12 months of the effective date of this Consent Agreement, Respondent shall participate in a
20 chaperone program in California regarding boundary violations or an equivalent program
21 approved by the Board designee.

22 Therapy

23 7. During the period of probation, Respondent shall attend therapy for 24 months
24 with a masters or higher level behavioral health professional licensed at the independent level.
25 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of

1 their therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or
2 designee. Also within 30 days of the date of this Consent Agreement, the therapist shall submit
3 a letter addressing why they should be approved, acknowledging that they have reviewed the
4 Consent Agreement and include the results of an initial assessment and a treatment plan
5 regarding the proposed treatment of Respondent.

6 8. Upon approval, the Board will provide the therapist with copies of any required
7 evaluations completed at the request of the Board prior to this Consent Agreement and the
8 Board's investigative report.

9 Focus and Frequency of Therapy

10 9. ~~The focus of the therapy shall relate to the issues raised in Respondent's~~
11 ~~previously completed psychological evaluation. Respondent shall meet in person with the~~
12 ~~therapist twice monthly for the first 12 month. After the first 12 months, the frequency shall be at~~
13 ~~the recommendation of the therapist.~~

14 Reports

15 10. Once approved, the therapist shall submit quarterly reports and a final summary
16 report to the Board for review and approval. The quarterly reports shall include issues presented
17 in this Consent Agreement that need to be reported and the therapist shall notify the Board if
18 more frequent therapy is needed. The reports shall address Respondent's current mental health
19 status, medications prescribed, if any, treatment recommendation, and shall report if, in their
20 professional opinion, Respondent becomes unable to practice psychotherapy safely and
21 competently. The final report shall also contain a recommendation as to whether the
22 Respondent should be released from this Consent Agreement.

23 Change of Therapist

24 11. In the event that, during the period of Respondent's probation, Respondent's
25 Board-approved therapist discontinues treatment, Respondent shall submit the name of a new

1 therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee
2 within 30 days of the discontinued treatment. Also within 30 days of the date of the discontinued
3 treatment, the proposed therapist shall submit a letter addressing why they should be approved,
4 acknowledging that they have reviewed the Consent Agreement, and include the results of an
5 initial assessment and a treatment plan regarding the proposed treatment of Respondent.

6 GENERAL PROVISIONS

7 Provision of Clinical Supervision

8 12. Respondent shall not provide clinical supervision while subject to this Consent
9 Agreement.

10 Civil Penalty

11 13. Subject to the provisions set forth in paragraph 14, the Board imposes a civil
12 penalty against the Respondent in the amount of \$1,000.00.

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

20 15. Within 10 days of being notified of the lifting of the stay, Respondent may request
21 that the matter be reviewed by the Board for the limited purpose of determining whether the
22 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
23 receives the written request within 10 days or less of the next regularly scheduled Board
24 meeting, the request will not be heard at that meeting, but will be heard at the next regularly

25 ...

1 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
2 review.

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

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

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

20 19. If Respondent is not employed as of the effective date of this Order, within 10
21 days of accepting employment in a position where Respondent provides any type of behavioral
22 health related services or in a setting where any type of behavioral health, health care, or social
23 services are provided, Respondent shall provide the Board Chair or designee with a written
24 statement providing the contact information of their new employer and a signed statement from
25 Respondent's new employer confirming Respondent provided the employer with a copy of this

1 Consent Agreement. If Respondent does not provide the employer's statement to the Board
2 within 10 days, as required, Respondent's failure to provide the required statement to the Board
3 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
4 employer(s) with a copy of the Consent Agreement.

5 20. If, during the period of Respondent's probation, Respondent changes
6 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
7 extended leave of absence for whatever reason that may impact their ability to timely comply
8 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
9 the Board of their change of employment status. After the change and within 10 days of
10 accepting employment in a position where Respondent provides any type of behavioral health
11 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 a written
13 statement providing the contact information of their new employer(s) and a signed statement
14 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
15 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
16 the Board within 10 days, as required, Respondent's failure to provide the required statement to
17 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
18 Respondent's employer(s) with a copy of the Consent Agreement.

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

22 22. Prior to the release of Respondent from probation, Respondent must submit a
23 written request to the Board for release from the terms of this Consent Agreement at least 30
24 days prior to the date they would like to have this matter appear before the Board. Respondent
25 may appear before the Board, either in person or telephonically. Respondent must provide

1 evidence that they have successfully satisfied all terms and conditions in this Consent
2 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
3 this Consent Agreement have been met and whether Respondent has adequately demonstrated
4 that they have addressed the issues contained in this Consent Agreement. In the event that the
5 Board determines that any or all terms and conditions of this Consent Agreement have not been
6 met, the Board may conduct such further proceedings as it determines are appropriate to
7 address those matters.

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

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

12 25. This Consent Agreement shall be effective on the date of entry below.

13 26. This Consent Agreement is conclusive evidence of the matters described herein
14 and may be considered by the Board in determining appropriate sanctions in the event a
15 subsequent violation occurs.

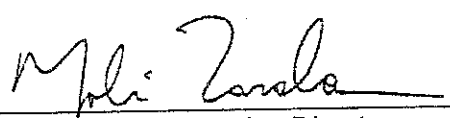
16
17 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

18 
19 David G. Switalski

11/19/2017
Date

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

21 Dated this 21st day of November, 2017.

22
23 By: 
24 TOBIN ZAVALA, Executive Director
25 Arizona Board of Behavioral Health Examiners

1 ORIGINAL of the foregoing filed
This 21st day of November, 2017 with:

2
3 Arizona Board of Behavioral Health Examiners
3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

4
5 COPY of the foregoing mailed via Interagency Mail
This 21st day of November, 2017, to:

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

8
9 COPY of the foregoing mailed via
Certified mail no. 701745000086891261
This 21st day of November, 2017, to:

10 David G. Switalski
11 Address of Record
12 Respondent

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1 administrative and/or judicial action, concerning the matters related to the Interim Consent
2 Agreement.

3 4. Respondent understands that this Interim Consent Agreement does not
4 constitute a dismissal or resolution of this matter or any matters that may be currently pending
5 before the Board and does not constitute any waiver, express or implied, of the Board's
6 statutory authority or jurisdiction regarding any other pending or future investigations, actions,
7 or proceedings. Respondent also understands that acceptance of this Interim Consent
8 Agreement does not preclude any other agency, subdivision, or officer of this State from
9 instituting civil or criminal proceedings with respect to the conduct that is the subject of this
10 Interim Consent Agreement. Respondent does not intend their acceptance of this Interim
11 Consent Agreement to constitute an admission of any fact or facts and they enter into this
12 agreement as an interim compromise of a pending matter. Respondent further does not
13 relinquish their rights to an administrative hearing, rehearing, review, reconsideration, judicial
14 review or any other administrative and/or judicial action, concerning the matters related to a
15 final disposition of this matter, unless they affirmatively does so as part of the final resolution of
16 this matter.

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

22 6. Respondent understands that this Interim Consent Agreement shall not become
23 effective unless and until it is adopted by the Board and signed by its Executive Director.

24 7. Respondent understands and agrees that if the Board does not adopt this
25 Interim Consent Agreement, they will not assert in any future proceedings that the Board's

1 consideration of this Interim Consent Agreement constitutes bias, prejudice, prejudgment, or
2 other similar defense.

3 8. Respondent understands that this Interim Consent Agreement is a public record
4 that may be publicly disseminated as a formal action of the Board, and that it shall be reported
5 as required by law to the National Practitioner Data Bank.

6 9. Respondent understands that this Interim Consent Agreement does not alleviate
7 their responsibility to comply with the applicable license-renewal statutes and rules. If this
8 Interim Consent Agreement remains in effect at the time Respondent's behavioral health
9 licenses come up for renewal, they must renew their license(s) if Respondent wishes to retain
10 their license(s). If Respondent elects not to renew their license(s) as prescribed by statute and
11 rule, Respondent's license(s) will not expire but rather, by operation of law (A.R.S. § 32-3202),
12 become suspended until the Board takes final action in this matter. Once the Board takes final
13 action, in order for Respondent to be licensed in the future, they must submit a new application
14 for licensure and meet all of the requirements set forth in the statutes and rules at that time.

15 10. Respondent understands that any violation of this Interim Consent Agreement
16 constitutes unprofessional conduct under A.R.S. § 32-3251(16)(n), violating a formal order,
17 consent agreement, term of probation or stipulated agreement, and may result in disciplinary
18 action under A.R.S. § 32-3281.

19 Respondent understands and agrees that:

20 **INTERIM FINDINGS OF FACT**

21 1. The Board is the duly constituted authority for licensing and regulating the
22 practice of counseling and substance abuse counseling in the State of Arizona.

23 2. Respondent is the holder of License Nos. LAC-12467 and LASAC-13067.

24 3. In 03/17, the Board received a complaint alleging that Respondent engaged in a
25 dual relationship with his behavioral health client, to which Respondent acknowledges.

INTERIM CONCLUSIONS OF LAW

1
2 1. The Board possesses subject matter and personal jurisdiction over Respondent
3 pursuant to A.R.S. § 32-3251 *et seq.*

4 2. The Board is authorized to enter into an interim consent agreement with a
5 counselor/substance abuse counselor to limit or restrict the professional's practice in order to
6 protect the public and ensure that the professional is able to safely engage in the practice of
7 counseling/substance abuse counseling pursuant to A.R.S. § 32-3281.

INTERIM ORDER


8
9 Based on the Interim Findings of Fact and Interim Conclusions of Law, and pursuant to
10 the authority granted to the Board under A.R.S. § 32-3281:

11 **IT IS HEREBY ORDERED** that Respondent shall not practice under their license until
12 such time as they submit a written request for the reinstatement of their license to the Board and
13 the Board affirmatively approves Respondent's request for reinstatement. The Board may, in its
14 discretion, require any combination of staff-approved physical, psychiatric, or psychological
15 examinations, or other types of examinations, evaluations or interviews it believes are
16 necessary to assist the Board in determining whether Respondent is able to safely and
17 competently return to the practice of counseling/substance abuse counseling. The Board's
18 affirmative approval to permit Respondent to return to practicing under their license shall not
19 preclude the Board from taking any other action it deems appropriate based upon the conduct
20 set forth in the Interim Findings of Fact.

21 Respondent's agreement not to practice under License Nos. LAC-12467 and LASAC-
22 13067 will be considered an interim suspension of their license.

PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

23
24
25 
David G. Switalski


Date

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

2 Dated this 7th day of August, 2017.

3
4 By: M. Zavalala
5 TOBI ZAVALA, Executive Director
6 Arizona Board of Behavioral Health Examiners

7 **ORIGINAL** of the foregoing filed
8 This 7th day of August, 2017, with:

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

10 **COPY** of the foregoing mailed via Interagency Mail
11 This 7th day of August, 2017, to:

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

14 **COPY** of the foregoing mailed via
15 Certified mail no. 7016214000018041270
16 This 7th day of August, 2017, to:

17 David G. Switalksi
Address of Record
Respondent

18 **COPY** of the foregoing mailed via Mail
19 This 7th day of August, 2017 to:

20 J. Arthur Eaves
21 Sanders and Parks: Attorneys at Law
3030 N. 3rd Street, Suite 1300
Phoenix, AZ 85012
Attorney for Respondent