

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 Anthony L. Rubin, LMFT-0202, LPC-0259,
4 Licensed Marriage and Family Therapist,
5 Licensed Professional Counselor,
6 In the State of Arizona.

CASE NO. 2013-0100

RELEASE FROM
CONSENT AGREEMENT AND ORDER

RESPONDENT

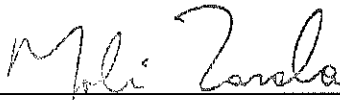
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8 The Board received a request from Respondent to release them from the terms and
9 conditions of the Consent Agreement and Order dated November 3rd, 2015. After consideration,
10 the Board voted to release Respondent from the terms and conditions of the Consent
11 Agreement and Order dated November 3rd, 2015.

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 November 3rd, 2015.

16 Dated this 12th day of April, 2018.

17 By: 
18 TOBÍ ZAVALA, Executive Director
19 Arizona Board of Behavioral Health Examiners

20 ORIGINAL of the foregoing filed
21 This 12th day of April, 2018, with:

22 Arizona Board of Behavioral Health Examiners
23 1740 W. Adams St., Suite 3600
24 Phoenix, AZ 85007

25 COPY of the foregoing mailed via
26 Certified mail no. 9489009000276049424285
27 This 12th day of April, 2018, to:

28 Anthony L. Rubin
29 Address of Record
30 Respondent

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

In the Matter of:

**Anthony L. Rubin, LPC-0259 & LMFT-0202,
Licensed Professional Counselor &
Licensed Marriage and Family Therapist,
In the State of Arizona.**

**CASE NO. 2013-0100
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), Anthony L. Rubin ("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 his right to such formal hearing concerning these allegations and irrevocably waives his right to any rehearing or judicial review relating to the allegations contained in this Consent 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 his
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 he has 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-0259 and LMFT-0202 for the
4 practice of counseling and marriage and family therapy in Arizona.

5 2. Respondent provided individual counseling to a minor child ("Son") and family
6 counseling with Son and his mother ("Mother").

7 3. Mother's attorney requested that Respondent evaluate Son and provide a
8 professional opinion on the safety of Son having unsupervised visitation with his father
9 ("Father").

10 4. Based on Respondent's review of documentation provided by Mother's attorney
11 and interviewing Son, Respondent gave recommendations to the court on at least three
12 occasions.

13 5. Respondent's decision to provide recommendations to the court appears
14 problematic where:

15 a. Respondent was aware that Mother and Father were in a highly
16 contested custody dispute.

17 b. Respondent did not reach out to Father for background information which
18 would have been pertinent in his recommendations.

19 c. Respondent indicated to the court that Son was fearful of Father, but
20 acknowledged that Son had not specifically told Respondent that.

21 d. Respondent's recommendations lacked objectivity because Respondent
22 failed to contact Father and based his recommendations on
23 documentation provided by Mother.

24 6. Although Respondent maintains that his role was forensic and not therapeutic,
25 documentation appears to contradict this including:

- 1 a. Respondent's new client information form indicated Son was coming in
2 for counseling.
- 3 b. Respondent's progress notes indicated that Mother wants Son to return to
4 counseling and that Son is willing to participate in counseling.
- 5 c. Respondent's involvement in this matter lasted over eight months, which
6 appears inconsistent with forensic evaluative research.
- 7 7. Respondent's clinical record for Son was missing required elements including:
- 8 a. The consent for treatment indicated records would be kept for three years
9 after treatment discontinued which is not consistent with minor record
10 retention laws in Arizona.
- 11 b. The consent for treatment also failed to include:
- 12 i. Purpose of treatment
- 13 ii. Methods for a client to obtain information about the client's
14 records
- 15 iii. The client's right to participate in treatment decisions and in the
16 development and periodic review and revision of the client's
17 treatment plan.
- 18 c. No treatment planning documentation existed.
- 19 d. Progress notes failed to indicate the duration of behavioral health
20 services.

21 **CONCLUSIONS OF LAW**

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

25 2. The conduct and circumstances described in the Findings of Fact constitute a

1 violation of A.R.S. § 32-3251(12)(l), any conduct, practice or condition that impairs the ability of
2 the licensee to safely and competently practice the licensee's profession.

3 3. The conduct and circumstances described in the Findings of Fact constitute a
4 violation of A.R.S. § 32-3251(12)(k), any conduct or practice that is contrary to recognized
5 standards of ethics in the behavioral health profession, as it relates to:

6 AAMFT Code of Ethics:

7 **3.13 Public Statements:** Marriage and family therapists, because of their ability
8 to influence and alter the lives of others, exercise special care when making
9 public their professional recommendations and opinions through testimony or
10 other public statements.

11 **3.14 Separation of Custody Evaluation from Therapy:** To avoid a conflict of
12 interest, marriage and family therapists who treat minors or adults involved in
13 custody or visitation actions may not also perform forensic evaluations for
14 custody, residence, or visitation of the minor. Marriage and family therapists who
15 treat minors may provide the court or mental health professional performing the
16 evaluation with information about the minor from the marriage and family
17 therapist's perspective as a treating marriage and family therapist, so long as the
18 marriage and family therapist does not violate confidentiality.

19 4. The conduct and circumstances described in the Findings of Fact constitute a
20 violation of A.R.S. § 32-3251(12)(p), failing to conform to minimum practice standards as
21 developed by the Board, as it relates to the following:

- 22 a. A.A.C. R4-6-1101, Consent for Treatment
- 23 b. A.A.C. R4-6-1102, Treatment Plan
- 24 c. A.A.C. R4-6-1103, Client Record

25 ...

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 licenses, LPC-0259 and LMFT-0202, will be placed on probation,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under his licenses, LPC-0259 and LMFT-0202,
7 unless he is fully compliant with all terms and conditions in this Consent Agreement. If, for any
8 reason, Respondent is unable to comply with the terms and conditions of this Consent
9 Agreement, he shall immediately notify the Board in writing and shall not practice under his
10 licenses until he submits a written request to the Board to re-commence compliance with this
11 Consent 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 he is granted approval to re-commence compliance with the Consent Agreement.

15 **Continuing Education**

16 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
17 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
18 hours of continuing education addressing 6 clock hours of the NASW Staying Out of Trouble
19 continuing education course or an equivalent course addressing current behavioral health
20 documentation standards in Arizona. All required continuing education shall be pre-approved by
21 the Board Chair or designee. Upon completion, Respondent shall submit a certificate of
22 completion of the required continuing education.

23 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
24 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
25 three semester credit hour graduate level behavioral health ethics course from an accredited

1 college or university, pre-approved by the Board Chair or designee. Upon completion,
2 Respondent shall submit to the Board an official transcript establishing completion of the
3 required course.

4 Audit

5 6. While on probation, Respondent shall submit to an audit of all of his private
6 practice records by a pre-approved auditor. Within 30 days of this consent agreement,
7 Respondent shall submit the name of an auditor and a plan for conducting the audit for pre-
8 approval by the Board Chair or designee. The audit shall be completed within 60 days of the
9 effective date of this consent agreement. Also within 60 days of the effective date of this
10 consent agreement, the auditor shall provide an audit report and a proposed audit plan
11 addressing any deficiencies found during the audit to the Board Chair or designee for review
12 and approval.

13 Practice Monitor

14 7. While on probation, Respondent shall establish and maintain a relationship with a
15 practice monitor who is a masters or higher level behavioral health professional licensed at the
16 independent level. The practice monitor shall provide training and assistance to Respondent
17 regarding setting up appropriate forms and formats for Respondent's clinical records,
18 implementing current behavioral health standards of practice related to behavioral health
19 assessment and treatment planning, providing treatment consistent with the documented
20 treatment plan, and documenting the treatment provided in accordance with current behavioral
21 health standards. Respondent and the practice monitor shall review the clinical documentation
22 produced for each and every active client Respondent sees at least once per month. The
23 practice monitor shall ensure that Respondent complies with the audit plan approved by the
24 Board Chair or designee. Respondent shall meet with the practice monitor a minimum of twice a
25 month for the first 12 months of probation and monthly for the second 12 months of probation.

1 8. Within 30 days of the effective date of this Consent Agreement, Respondent shall
2 submit the name of a practice monitor for pre-approval by the Board Chair or designee. Also
3 within 30 days of the effective date of this Consent Agreement, the proposed Practice Monitor
4 shall submit a letter disclosing his/her prior relationship to Respondent. In that letter, the
5 practice monitor shall address why he/she should be approved, acknowledge that he/she has
6 reviewed the Consent Agreement and include the results of an initial assessment and a
7 monitoring plan regarding the proposed practice monitoring of Respondent. The letter from the
8 proposed Practice Monitor shall be submitted to the Board.

9 **Monitoring Quarterly Reports**

10 9. Once approved, the practice monitor shall submit quarterly reports for review and
11 approval by the Board Chair or designee. The quarterly reports shall include issues presented in
12 this consent agreement that need to be reported and the practice monitor shall notify the Board
13 if more frequent monitoring is needed. The practice monitor shall submit a final summary report
14 for review and approval by the Board Chair or designee. The final summary report submitted by
15 the practice monitor shall address Respondent's competency to engage in independent practice
16 in accordance with current standards of practice.

17 **Change of Practice Monitor During Probation**

18 10. If, during the period of Respondent's probation, the practice monitor determines
19 that he/she cannot continue as the practice monitor, he/she shall notify the Board within 10 days
20 of the end of monitoring and provide the Board with an interim final report. Respondent shall
21 advise the Board Chair or designee within 30 days of cessation of monitoring by the approved
22 practice monitor of the name of a new proposed practice monitor. The proposed practice
23 monitor shall provide the same documentation to the Board as was required of the initial
24 practice monitor.

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GENERAL PROVISIONS

Provision of Clinical Supervision

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

Civil Penalty

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

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

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

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

1 16. If Respondent currently sees clients in their own private practice, and obtains any
2 other type of behavioral health position, either as an employee or independent contractor, where
3 he provides behavioral health services to clients of another individual or agency, he shall
4 comply with requirements set forth in Paragraphs 17 through 19 below.

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

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

23 19. If, during the period of Respondent's probation, Respondent changes
24 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
25 extended leave of absence for whatever reason that may impact his ability to timely comply with

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

12 20. Respondent shall practice behavioral health using the name under which he is
13 licensed. If Respondent changes his name, he shall advise the Board of the name change as
14 prescribed under the Board's regulations and rules.

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

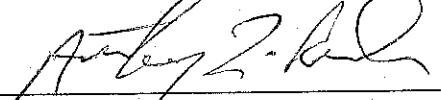
1 22. Respondent shall bear all costs relating to probation terms required in this
2 Consent Agreement.

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

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

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

9
10 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

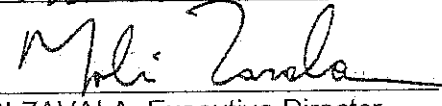
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12 _____
Anthony L. Rubin

10-29-15

DATE

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

14 Dated this 3rd day of November, 2015.

15 By: 
16 _____
17 TOBIN ZAVALA, Executive Director
18 Arizona Board of Behavioral Health Examiners

19 **ORIGINAL** of the foregoing filed
This 3rd day of November, 2015 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 Interagency Mail
23 This 3rd day of November, 2015, to:

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

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COPY of the foregoing mailed via
Certified mail no. 7014 2870 00018957/404
This 3rd day of November, 2015, to:

Anthony L. Rubin
Address of Record
Respondent