

BEFORE THE ARIZONA BOARD  
OF BEHAVIORAL HEALTH EXAMINERS

**In the Matter of:  
Kimberly L. Simich, LPC-11200,  
Licensed Professional Counselor,  
In the State of Arizona.**

**CASE NO. 2014-0027  
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), Kimberly L. Simich ("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 her right to such formal hearing concerning these allegations and irrevocably waives her right to any rehearing or judicial review relating to the allegations contained in this Consent Agreement.

3. Respondent has the right to consult with an attorney prior to entering into this 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 her  
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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,  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.     Although Respondent does not agree that all the Findings of Fact set forth in this  
19 Consent Agreement are supported by the evidence, Respondent acknowledges that it is the  
20 Board's position that, if this matter proceeded to formal hearing, the Board could establish  
21 sufficient evidence to support a conclusion that certain of Respondent's conduct constituted  
22 unprofessional conduct. Therefore, Respondent has agreed to enter into this Consent  
23 Agreement as an economical and practical means of resolving the issues associated with the  
24 complaint(s) filed against her. Further, Respondent acknowledges that the Board may use the  
25 evidence in its possession relating to this Consent Agreement for purposes of determining

1 sanctions in any further disciplinary matter.

2 The Board issues the following Findings of Fact, Conclusions of Law and Order:

3 **FINDINGS OF FACT**

4 1. Respondent is the holder of License No. LPC-11200 for the practice of  
5 counseling in Arizona.

6 2. From 12/12 – 06/13, Respondent provided behavioral health services to a minor  
7 child (“Daughter”).

8 3. Respondent was aware that Daughter’s parents (“Mother”) and (“Father”) were  
9 divorced and that Mother had sole custody of Daughter.

10 4. In 06/13, at Father’s request, Respondent authored a letter to the court  
11 containing recommendations concerning custody.

12 5. Respondent’s decision to submit a letter to the court is concerning where:

13 a. There is no evidence that court requested information from her.

14 b. Respondent did not notify Mother that she would be providing  
15 recommendations to the court.

16 c. Respondent had only met with Mother and Father one time on separate  
17 occasions, so her limited contact would not provide her the knowledge to  
18 make custody recommendations.

19 d. Custody recommendations were outside Respondent’s scope of practice  
20 as a counselor.

21 6. In 08/13, upon receiving a voicemail from a detective (“Detective”) inquiring about  
22 Daughter’s counseling, Respondent contacted Father prior to returning Detective’s call.

23 7. Respondent indicated she contacted Father to obtain authorization to speak to  
24 Detective.

25 8. Respondent’s decision to contact Father is concerning where:

- 1 a. Respondent was aware that Mother had sole legal custody of Daughter.  
2 b. Father was not a legal health care decision maker and not able to provide  
3 authorization to release information.

4 9. Respondent's consent for treatment and progress notes lacked required  
5 elements, and Daughter's clinical record contained no treatment plan.

6 **CONCLUSIONS OF LAW**

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

10 2. The conduct and circumstances described in the Findings of Fact constitute a  
11 violation of A.R.S. § 32-3251(12)(l), any conduct, practice or condition that impairs the ability of  
12 the licensee to safely and competently practice the licensee's profession.

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

- 16 a. A.A.C. R4-6-1101, Consent for Treatment.  
17 b. A.A.C. R4-6-1102, Treatment Plan.  
18 c. A.A.C. R4-6-1103, Client Record.

19 **ORDER**

20 Based upon the foregoing Findings of Fact and Conclusion of Law, the parties agree to  
21 the provision and penalties imposed as follows:

- 22 1. As of the effective date of the Consent Agreement, Respondent shall not practice  
23 under her license.  
24 2. Respondent's license, LPC-11200, shall by rule, expire on 01/31/16.  
25 3. Respondent agrees not to renew her license.

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

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

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

Kimberly L. Simich  
Kimberly L. Simich

11-24-2015  
Date

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

Dated this 7<sup>th</sup> day of December, 2015.

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

**ORIGINAL** of the foregoing filed  
This 7<sup>th</sup> day of December, 2015 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 7<sup>th</sup> day of December, 2015, to:

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

**COPY** of the foregoing mailed via  
Certified mail no. 70142870000189571718  
This 7<sup>th</sup> day of December, 2015, to:

Kimberly L. Simich  
Address of Record  
Respondent

**COPY** of the foregoing mailed via Mail

This 7<sup>th</sup> day of December, 2015 to:

Faren Akins  
Renaud Cook Drury Mesaros, PA  
One North Central Avenue, Suite #900  
Phoenix, AZ 85004-4417  
Attorney for Respondent

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