



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 their  
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 only between Respondent and the Board for  
7 the final disposition of this matter and may be used for purposes of determining sanctions in any  
8 future disciplinary matter.

9           6.       This Consent Agreement is subject to the Board's approval, and will be effective  
10 only when the Board accepts it. In the event the Board in its discretion does not approve this  
11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,  
12 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except  
13 that Respondent agrees that should the Board reject this Consent Agreement and this case  
14 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its  
15 review and discussion of this document or of any records relating thereto.

16          7.       Respondent understands that once the Board approves and signs this Consent  
17 Agreement, it is a public record that may be publicly disseminated as a formal action of the  
18 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

19          8.       Although Respondent does not agree that all the Findings of Fact set forth in this  
20 Consent Agreement are supported by the evidence, Respondent acknowledges that it is the  
21 Board's position that, if this matter proceeded to a formal hearing, the Board could establish  
22 sufficient evidence to support a conclusion that certain of Respondent's conduct constituted  
23 unprofessional conduct. Therefore, Respondent has agreed to enter into this Consent  
24 Agreement as an economical and practical means of resolving the issues associated with the  
25 complaint filed against Respondent. Further, Respondent acknowledges that the Board may use

1 the evidence in its possession relating to this Consent Agreement for purposes of determining  
2 sanctions in any further disciplinary matter.

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

4 **FINDINGS OF FACT**

5 1. Respondent is the holder of License No. LPC-17055 for the practice of  
6 counseling in Arizona.

7 2. From 08/13 – 12/18, Respondent worked at a behavioral health agency  
8 (“Agency”) as a therapist.

9 3. During Respondent’s tenure at Agency, from 01/18 – 03/18, Respondent  
10 provided behavioral health services to an adult female client (“Client”).

11 4. On 03/26/18, Client was discharged from Agency’s intensive outpatient program.

12 5. Although Agency had several policies that strictly prohibited any ongoing contact  
13 or dialogue with former patients, Respondent breached those polices and continued his contact  
14 with Client.

15 6. On 03/27/18, the day after Client’s discharge, Respondent and Client began  
16 communicating extensively with each other.

17 7. Initially, Respondent provided Client with continued treatment through his private  
18 practice.

19 8. At no point, prior to the Board’s investigation into this matter, did Respondent  
20 make the Board aware that he maintained a private practice.

21 9. Respondent’s private practice records of Client failed to meet the Board’s  
22 documentation standards, failed to include any treatment planning documentation, and failed to  
23 include any telephonic communications with Client regarding her health and treatment, as  
24 required.

25

1           10.    Within months of Client's private practice treatment, Respondent and Client's  
2 relationship developed into a highly inappropriate relationship.

3           11.    From 03/27/18 – 11/08/18, Respondent and Client exchanged 3,282 text  
4 messages with each other.

5           12.    Included in those text messages were inappropriate gestures such as emojis of  
6 hearts and winks.

7           13.    In review of Respondent's cell phone records, which were subpoenaed directly  
8 from his cell phone carrier, Respondent and Client exchanged numerous text messages during  
9 inappropriate hours of the night.

10          14.    In example, Respondent's subpoenaed cell phone records reveal that he and  
11 Client exchanged over 300 text messages between the hours of 10 p.m. to 5 a.m.

12          15.    Further, there were recurrent instances in which Respondent and Client  
13 exchanged hundreds of text messages in the course of the same day, such as:

14               a.  10/20/18 – 246 text messages.

15               b.  10/28/18 – 261 text messages.

16               c.  11/03/18 – 133 text messages.

17               d.  11/04/18 – 244 text messages.

18               e.  11/05/18 – 150 text messages.

19               f.  11/06/18 – 414 text messages.

20          16.    Although the Board is aware of Respondent's 3,282 text messages with Client,  
21 the Board is still, however, unaware of the full extent of messaging and dialogue that occurred  
22 between Respondent and Client.

23          17.    The cause for this lack of information is due to Respondent's failure to furnish the  
24 Board with all his communications with Client, and because Respondent and Client began using  
25 a secret, encrypted messaging application.

1           18.    On or around 11/08/18, Respondent and Client transitioned their communications  
2 from text message to an electronic application or app, known as Signal.

3           19.    With respect to Signal:

4               a.   Signal is an encrypted messaging app that allows for encrypted texts, phone  
5               calls, and video chats between its users.

6               b.   Because Signal is encrypted, its data and information is converted into coded  
7               language that is specifically designed to prevent unauthorized access.

8               c.   Signal users have the option to set their chat history to be erased.

9           20.    With respect to Respondent's failure to furnish all his communications:

10               a.   In response to a subpoena commanding that Respondent furnish all  
11               electronic communications with Client, Respondent submitted screenshots of  
12               1,509 text messages with Client.

13               b.   It was later discovered through a subpoena to Respondent's cell phone  
14               carrier, that Respondent and Client exchanged 3,283 text messages; which is  
15               more than double the amount that Respondent furnished to the Board.

16               c.   Thus, Respondent has failed to furnish, or withheld, 1,773 text messages with  
17               Client.

18           21.    None of Respondent's communications with Client, including text messages or  
19 encrypted messages, were documented in the clinical record.

20           22.    On the evening of 11/28/18, Respondent invited Client to his home, where she  
21 stayed with him from approximately 8:00 p.m. to 5:00 a.m.

22           23.    While Client with Respondent for those 9 hours of the night, there were no other  
23 persons present.

24           24.    In the early morning hours of 11/29/18, Client's husband ("Husband") located  
25 Client's car outside of Respondent's home.

1           25.     However, unbeknownst to Husband, Respondent had instructed Client to park  
2 her car down the road from his house to avoid parking in front of a fire hydrant.

3           26.     According to Husband's disclosures later that same morning with his marriage  
4 counselor, he reported the following:

5           a.     'I'm so angry now. I found [Client's] car at her therapist's home at 3:00 in the  
6 morning. I knocked on the door, no one came, God stepped in.'

7           b.     Husband had a weird feeling in the middle of the night and texted Client that  
8 he was coming by her home.

9           c.     When Husband went to Client's home, her car wasn't there so he looked up  
10 Respondent's address and drove to his home.

11          d.     Husband saw Client's car in front.

12          27.     In response to the allegation that Respondent and Client engaged in sexual  
13 activities, Respondent denied the allegation but acknowledged that a dual relationship occurred.

14          28.     During a 12/14/18 interview with Board staff, Client also denied the allegation  
15 that she and Respondent had sex.

16          29.     However, during a follow-up interview with Board staff on 02/11/19, Client  
17 relayed the following information:

18          a.     During sessions, Respondent would use light touch, which calmed Client.

19          b.     Respondent would touch Client's body all over in various places like her  
20 arms, back, etc.

21          c.     Client has done a lot of research about somatic experience and how touch  
22 therapy can be incorporated so she felt comfortable allowing Respondent to  
23 touch her.

24          d.     At some point, the touching seemed different to Client, so it made her feel a  
25 little uncomfortable.

- 1 e. Respondent never expressed that he had romantic feelings toward her.
- 2 f. During the time that he was her therapist, Client never believed she had
- 3 romantic feelings toward Respondent.
- 4 g. However, considering that they ultimately had sex, maybe Client did but didn't
- 5 realize it.
- 6 h. On the evening of 11/28/18:
- 7 • She reached out to Respondent for help around 7 p.m. as she needed
- 8 someone to talk to.
- 9 • Since Client was reaching out after-hours, she said that she could come
- 10 to Respondent's house if that was more convenient, which he agreed to.
- 11 • This was the first time that Client went to Respondent's home.
- 12 • For the first few hours, Client and Respondent talked, and then things
- 13 turned physical.
- 14 • Client had sexual intercourse with Respondent that night.
- 15 • The sex was mutual.
- 16 • Client only had sex with Respondent on this one occasion.
- 17 i. Client acknowledges previously telling Board staff that she didn't have sex
- 18 with Respondent, but her reasons were as follows:
- 19 • Client was really upset with Husband's actions.
- 20 • Husband made Respondent out to be a predator, which is not true as the
- 21 sex was mutual.
- 22 • At the time, Client felt that if she came out and admitted to having sex
- 23 with Respondent, Husband would use that as justification for why their
- 24 marriage failed.
- 25

- Husband feels the need to make someone else accountable, so Client did not want to add fuel to his fire at the time by admitting to having sex with Respondent.

30. In her communications with the Board, Client notified Board staff that she has a sponsor ("Sponsor") from her Co-Dependents Anonymous ("CoDA") group, and that Client has told Sponsor about everything that occurred with Respondent in real time, when it happened.

31. During a 02/13/19 interview by Board staff, Sponsor relayed the following information:

- a. Sponsor is an elementary school teacher and a certified educator with the Arizona Department of Education.
- b. She previously held a substance abuse counselor certification from another state so she has experience working in the counseling field.
- c. Sponsor has known Client for 9 years and has been her sponsor at CoDA for the last 1.5 years.
- d. Towards the end of summer 2018, Sponsor recalls a few occasions where Client reported that her sessions with Respondent were 3-4 hours, which seemed very unusual to Sponsor.
- e. Sponsor urged Client that this was not appropriate and to consider seeing a new therapist.
- f. Sponsor also became aware that Client and Respondent were communicating through a secret messaging app at some point.
- g. This was another red flag to Sponsor because there is no reason for a client and a therapist to be having secret communications.
- h. In the fall, Client reported that some of the touch therapy used by Respondent had made her feel a little uncomfortable.



- 1 i. When Sponsor asked Client what was making her uncomfortable about the  
2 touching, Client stated that Respondent would touch her back, from behind,  
3 for an extended period of time.
- 4 j. Client ended up terminating therapy with Respondent.
- 5 k. Less than a week later, Sponsor received a call from Husband sometime in  
6 the middle of the night, after 3 a.m.
- 7 l. Husband was freaking out because he found Client's car in front of  
8 Respondent's house, and Client wasn't responding to his calls or texts.
- 9 m. The situation was confusing to Sponsor at that moment, considering that she  
10 thought Client had recently stopped seeing Respondent for therapy.
- 11 n. After getting off the phone with Husband, Sponsor immediately tried calling  
12 Client.
- 13 o. Client relayed that she was at Respondent's home so Sponsor told Client to  
14 come to her home immediately.
- 15 p. Client was hysterical and crying when she showed up.
- 16 q. During their conversation, Client told Sponsor that she went to Respondent's  
17 house after having a bad day and ended up having sex with him.
- 18 r. Respondent knew that Client was in a vulnerable state and took advantage of  
19 that.
- 20 s. For some time after the incident, Client felt really guilty about the situation,  
21 and thought that what happened with Respondent was her fault.
- 22 t. When Client spoke with the Board the first time, she told Sponsor about it.
- 23 u. Client explained that she initially didn't tell the Board about having sex with  
24 Respondent because she felt responsible for everything and didn't want  
25 Respondent to lose his license.

1 v. Client's perspective about the situation seemed to change after she and  
2 Husband began seeing a new therapist last week.

3 w. Client relayed to Sponsor that their new therapist explained that  
4 Respondent's actions were unethical and that Client was not to blame.

5 x. Client now seems to understand what Sponsor has been trying to tell her  
6 about the entire situation, and she has been talking about it more openly.

7 32. Sponsor also furnished the Board with screenshots of her text messages with  
8 Client in the early morning hours of 11/29/18.

9 33. During a follow-up interview with Respondent on 02/14/19, after being informed  
10 of Client and Sponsor's statements to the Board, Respondent maintained his denial that he and  
11 Client engaged in sexual activities.

12 **CONCLUSIONS OF LAW**

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

16 2. The conduct and circumstances described in the Findings of Fact constitute a  
17 violation of A.R.S. § 32-3251(16)(v), engaging in any sexual conduct between a licensee and a  
18 client or former client.

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

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



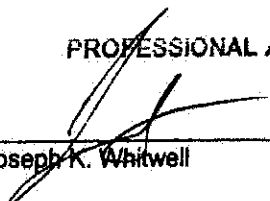
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Practice Termination Plan

3. Within 14 days of the effective date of the consent agreement, Respondent shall submit a written plan for terminating their private practice for pre-approval by the Board Chair or designee. At a minimum, the proposed termination plan must include each of the following:

- a. A written protocol for the secure storage, transfer and access of the clinical records of Respondent's clients and former clients.
- b. The procedure by which Respondent shall notify each client and former client in a timely manner regarding the future location of the clinical records of Respondent's clients and former clients and how those records can be accessed after the termination of Respondent's practice.
- c. A written protocol for developing an appropriate referral for continuation of care for Respondent's current clients.
- d. A list of Respondent's current clients and the timeframe for terminating services to each client. The timeframe for terminating services shall not exceed 30 days.

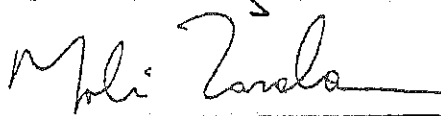
**PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

  
\_\_\_\_\_  
Joseph K. Whitwell

2/19/19  
\_\_\_\_\_  
Date

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

Dated this 21 day of February, 2019.

By:   
\_\_\_\_\_  
TOBI ZAVALA, Executive Director  
Arizona Board of Behavioral Health Examiners

1 ORIGINAL of the foregoing filed  
2 This 21 day of February, 2019 with:

3 Arizona Board of Behavioral Health Examiners  
4 1740 West Adams Street, Suite 3600  
5 Phoenix, AZ 85007

6 COPY of the foregoing mailed via Interagency Mail  
7 This 21 day of February, 2019, to:

8 Marc Harris  
9 Assistant Attorney General  
10 2005 North Central Avenue  
11 Phoenix, AZ 85004

12 COPY of the foregoing mailed via  
13 Certified mail no. 9489009000276047001426,  
14 This 21 day of February, 2019, to:

15 Joseph K. Whitwell  
16 Address of Record  
17 Respondent

18 COPY of the foregoing mailed via Mail  
19 This 21 day of February, 2019, to:

20 Charles S. Hover, III  
21 Renaud Cook Drury Mesaros, PA  
22 One North Central Ave, #900  
23 Phoenix, AZ 85004-4417  
24 Attorney for Respondent  
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