

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

3 **In the Matter of:**

4 **Matthew L. Wheeler, LPC-16749,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NOS. 2020-0127
2020-0131

CONSENT AGREEMENT

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), Matthew L. Wheeler ("Respondent") and the Board enter into this
12 Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as
13 a final 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 their right to such formal hearing concerning these allegations and irrevocably waives
22 their 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 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 between only 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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 acknowledges and agrees that the acceptance of this Consent
17 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
18 other proceedings as may be appropriate now or in the future. Furthermore, and
19 notwithstanding any language in this Consent Agreement, this Consent Agreement does not
20 preclude in any way any other state agency or officer or political subdivision of this state from
21 instituting proceedings, investigating claims, or taking legal action as may be appropriate now or
22 in the future relating to this matter or other matters concerning Respondent, including but not
23 limited to violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other
24 than with respect to the Board, this Consent Agreement makes no representations, implied or
25 ...

1 otherwise, about the views or intended actions of any other state agency or officer or political
2 subdivision of the state relating to this matter or other matters concerning Respondent.

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

6 9. Respondent further understands that any violation of this Consent Agreement
7 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
8 disciplinary action pursuant to A.R.S. § 32-3281.

9 10. The Board therefore retains jurisdiction over Respondent and may initiate
10 disciplinary action against Respondent if it determines that they have failed to comply with the
11 terms of this Consent Agreement or of the practice act.

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

13 **FINDINGS OF FACT**

14 1. Respondent is the holder of License No. LPC-16749 for the practice of
15 counseling in the State of Arizona.

16 2. From 08/19 – 03/20, adult female client (“Client”) received behavioral health
17 services at behavioral health facility (“Agency”).

18 3. During this time period, Respondent was employed by Agency and was Client’s
19 primary therapist.

20 4. Another therapist (“Therapist”) at Agency referred Client to Agency and
21 previously reached out to Respondent and asked if Respondent could treat Client.

22 5. Client signed a release of information authorizing Therapist and his wife, Client’s
23 friends, to access Client’s clinical records from Agency or discuss her treatment with
24 Respondent. However, no information was actually released or discussed.

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1 6. Despite Client's disclosure of physical and sexual trauma, as well as feeling she
2 needed to perform sexually for others, Respondent encouraged Client to participate in some
3 type of holding therapy with Therapist, who Respondent was aware Client knew personally and
4 worked at Agency simultaneously as a licensed clinician.

5 7. When Client advised Respondent that she did not want to ask someone to hold
6 her because it felt "super weird," Respondent did not address her concerns and at their next
7 session, specifically gave Client homework of reaching out to Therapist for a "fatherly hug."

8 8. Although Respondent represents he has taken many training courses, he does
9 not know if or how he was trained on fatherly hugs.

10 9. Client and other Therapist, not Respondent, ultimately engaged in an
11 extramarital affair.

12 10. Respondent did not view Client's relationship with Therapist and his wife as a
13 potential conflict of interest.

14 11. Respondent never consulted with another professional regarding involving
15 Therapist in Client's therapy, nor was Agency Owner ("Owner") aware that Respondent involved
16 Therapist in Client's therapy.

17 12. Owner represented that had Respondent staffed Client's case with him, Owner
18 would have told Respondent not to involve Therapist and his wife in Client's therapy due to their
19 friendship with Client.

20 13. Respondent did not feel that Therapist having an extramarital affair with Client
21 warranted a report to the Board because while Therapist's behavior was inappropriate, it did not
22 impact Therapist's ability to practice.

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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)(k), engaging in any conduct or practice that is contrary to
7 recognized standards of ethics in the behavioral health profession or that constitutes a danger
8 to the health, welfare or safety of a client, as it relates to the following sections of the ACA Code
9 of Ethics:

10 **C.2.e. Consultations on Ethical Obligations**

11 Counselors take reasonable steps to consult with other counselors, the ACA
12 Ethics and Professional Standards Department, or related professionals when
13 they have questions regarding their ethical obligations or professional practice.

14 **C.7.c. Harmful Practices**

15 Counselors do not use techniques/procedures/modalities when substantial
16 evidence suggests harm, even if such services are requested.

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

20 4. The conduct and circumstances described in the Findings of Fact constitute a
21 violation of A.R.S. § 32-3251(16)(ff), failing to report in writing to the board
22 information that would cause a reasonable licensee to believe that another licensee is guilty of
23 unprofessional conduct or is physically or mentally unable to provide behavioral health services
24 competently or safely.

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 license, LPC-16749, will be placed on probation for 24 months,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under their license, LPC-16749, unless they are
7 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
8 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
9 shall immediately notify the Board in writing and shall not practice under their license until they
10 submit a written request to the Board to re-commence compliance with this Consent
11 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 they are granted approval to re-commence compliance with the Consent
15 Agreement.

16 **Continuing Education**

17 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
18 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
19 hours of continuing education addressing therapeutic boundaries. All required continuing
20 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
21 shall submit a certificate of completion of the required continuing education.

22 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
23 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
24 three semester credit hour graduate level behavioral health ethics course from a regionally
25 accredited college or university, pre-approved by the Board Chair or designee. Upon

1 completion, Respondent shall submit to the Board an official transcript establishing completion
2 of the required course.

3 6. Respondent may submit continuing education completed since the complaint
4 was filed for consideration of approval by the Board Chair or designee.

5 6 **Clinical Supervision**

7 7. While on probation, Respondent shall submit to clinical supervision for 24 months
8 by a masters or higher level behavioral health professional licensed by the Arizona Board of
9 Behavioral Health Examiners at the independent level. Within 30 days of the date of this
10 Consent Agreement, Respondent shall submit the name of a clinical supervisor for pre-approval
11 by the Board Chair or designee. Also within 30 days of the date of this Consent Agreement, the
12 clinical supervisor shall submit a letter disclosing their prior relationship to Respondent. In that
13 letter, the clinical supervisor must address why they should be approved, acknowledge that they
14 have reviewed the Consent Agreement and include the results of an initial assessment and a
15 supervision plan regarding the proposed supervision of Respondent. The letter from the
16 supervisor shall be submitted to the Board.

17 **Focus and Frequency of Clinical Supervision**

18 8. The focus of the supervision shall relate to therapeutic boundaries, clinical
19 consultation, ethics and Board statutes/rules. Respondent shall meet individually in person with
20 the supervisor for a minimum of one hour weekly.

21 **Reports**

22 9. Once approved, the supervisor shall submit quarterly reports for review and
23 approval by the Board Chair or designee. The quarterly reports shall include issues presented in
24 this Consent Agreement that need to be reported and the supervisor shall notify the Board if
25 more frequent supervision is needed. Quarterly reports shall include the following:

- a. Dates of each clinical supervision session.
- b. A comprehensive description of issues discussed during supervision sessions.

10. All quarterly supervision reports shall include a copy of clinical supervision documentation maintained for that quarter. All clinical supervision documentation maintained by the supervisor shall comply with requirements set forth in A.A.C. R4-6-212(C).

11. After Respondent's probationary period, the supervisor shall submit a final summary report for review and approval by the Board Chair or designee. The final report shall also contain a recommendation as to whether the Respondent should be released from this Consent Agreement.

Change of Clinical Supervisor During Probation

12. If, during the period of Respondent's probation, the clinical supervisor determines that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of the end of supervision and provide the Board with an interim final report. Respondent shall advise the Board Chair or designee within 30 days of cessation of clinical supervision by the approved clinical supervisor and provide the name of a new proposed clinical supervisor. The proposed clinical supervisor shall provide the same documentation to the Board as was required of the initial clinical supervisor.

Early Release

13. After completion of the stipulations set forth in this consent agreement, and upon the supervisor's recommendation, Respondent may request early release from the consent agreement after 12 months.

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1 **GENERAL PROVISIONS**

2 **Provision of Clinical Supervision**

3 14. Respondent shall not provide clinical supervision while subject to this Consent
4 Agreement.

5 **Civil Penalty**

6 15. Subject to the provisions set forth in paragraph 16, the Board imposes a civil
7 penalty against the Respondent in the amount of \$1,000.00.

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

15 17. Within 10 days of being notified of the lifting of the stay, Respondent may request
16 that the matter be reviewed by the Board for the limited purpose of determining whether the
17 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
18 receives the written request within 10 days or less of the next regularly scheduled Board
19 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
20 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
21 review.

22 18. The Board reserves the right to take further disciplinary action against
23 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
24 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply

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1 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is
2 final and the period of probation shall be extended until the matter is final.

3 19. If Respondent currently sees clients in their own private practice, and obtains any
4 other type of behavioral health position, either as an employee or independent contractor, where
5 they provide behavioral health services to clients of another individual or agency, they shall
6 comply with requirements set forth in paragraphs 20 through 22 below.

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

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

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

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

18 24. Prior to the release of Respondent from probation, Respondent must submit a
19 written request to the Board for release from the terms of this Consent Agreement at least 30
20 days prior to the date they would like to have this matter appear before the Board. Respondent
21 may appear before the Board, either in person or telephonically. Respondent must provide
22 evidence that they have successfully satisfied all terms and conditions in this Consent
23 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
24 this Consent Agreement have been met and whether Respondent has adequately demonstrated
25 that they have addressed the issues contained in this Consent Agreement. In the event that the

1 Board determines that any or all terms and conditions of this Consent Agreement have not been
2 met, the Board may conduct such further proceedings as it determines are appropriate to
3 address those matters.

4 25. Respondent shall bear all costs relating to probation terms required in this
5 Consent Agreement.

6 26. Respondent shall be responsible for ensuring that all documentation required in
7 this Consent Agreement is provided to the Board in a timely manner.

8 27. This Consent Agreement shall be effective on the date of entry below.

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

12
13 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

14 Matthew Wheeler

Matthew Wheeler (Sep 1, 2020 10:13 PDT)

Matthew L. Wheeler

Sep 1, 2020

Date

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

18 By:

M. Zavala

19 TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

Sep 1, 2020

Date

20
21 **ORIGINAL** of the foregoing filed
22 with:

Sep 1, 2020

23 Arizona Board of Behavioral Health Examiners
1740 West Adams Street, Suite 3600
24 Phoenix, AZ 85007

25 **EXECUTED COPY** of the foregoing sent electronically
to:

Sep 1, 2020

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