

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

3 **In the Matter of:**

4 **Michael L. Smith, LPC-19290,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2023-0063
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), Michael L. Smith (“Respondent”) and the Board enter into this Consent
12 Agreement, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final
13 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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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

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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-19290 for the practice of
15 counseling in Arizona.

16 2. From 03/22 – 05/23, Respondent was employed at Agency as a BHP which was
17 a DHS licensed facility.

18 3 A 10/20/22 complaint indicated that during a DHS audit it was found that
19 Respondent possibly used a stamp to stamp his signature on various documents including
20 incomplete documents without including his signature after the stamped signature.

21 4. A public record search for Agency through DHS's website showed the following
22 findings of an audit:

- 23 a. Documentation of a completed behavioral health assessment and diagnosis
24 provided by Respondent were requested but could not be provided.

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- 1 b. Patient 3's intake date was 05/04/22 and the treatment plan form was signed
2 with a rubber-stamp signature of Respondent and dated 08/12/22 with no
3 other content on the form.
- 4 c. Patient 4's intake and assessment were undated and signed with a rubber-
5 stamp signature of Respondent with no date and the intake portion was
6 completed by the patient and the assessment portion was blank.
- 7 d. Patient 5's intake and assessment were undated and the treatment plan was
8 signed with the rubber-stamp signature of Respondent and was dated
9 08/12/22 with no other content on the form.
- 10 e. A treatment plan found in Patient 5's medical records did not have Patient 5's
11 name on it and the form was rubber-stamped with Respondent's signature
12 and dated 08/12/22.
- 13 f. Patient 5 completed an undated intake portion of the intake/assessment form
14 and the assessment interview portion of the form was not completed by staff,
15 and included Respondent's undated rubber-stamped signature.
- 16 g. During a 10/26/22 interview with Respondent, he acknowledged possibly
17 giving a blank treatment plan pre-stamped with his rubber-stamped signature
18 to Agency but denied giving consent for it to be photocopied.

19 5. Respondent represented the following during Board staff's investigation:

- 20 a. Respondent used a stamped signature on treatment plans and assessments
21 he reviewed at Agency.
- 22 b. Respondent never stamped his signature on blank treatment plans but rather
23 they were incomplete because they did not have the client or staff's
24 signature.
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- 1 c. The treatment plans referenced by Complainant with his signature were
2 incomplete and not supposed to be returned to the files until completed but
3 were placed in the files.
- 4 d. Respondent did not leave his signature stamp at Agency for others to use.
- 5 e. Respondent did stamp his signature on some assessments that did not
6 include the client's signature yet and they were not supposed to go into the
7 file until they were fully complete.
- 8 f. Respondent was providing his signature on incomplete treatment plans to
9 help Agency catch up on documentation, but was only doing so with the
10 expectation that they would not be filed until they were complete.
- 11 g. Respondent represents he only used this stamp during one visit to Agency
12 and no longer uses this stamp.
- 13 h. Respondent would only physically go to the facility two times per month for
14 one day each time to review documents since he lived in Nevada and there
15 was no electronic health records system in place at that time.
- 16 i. Respondent was the only licensed therapist at Agency and was hired to
17 provide clinical oversight to BHTs.
- 18 j. Respondent would supervise anywhere from 5-15 BHTs at Agency at any
19 given time.

20 6. Respondent was using a stamp of his signature of various incomplete clinical
21 records with the understanding that the records would not be placed in the client's file until they
22 were completed by other staff at a later time.

23 7. This means Respondent was inappropriately providing his signature proactively
24 on documents that were not complete, therefore potentially falsifying clinical records.

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1 8. Respondent was hired at Agency as the BHP to provide clinical oversight to
2 clinical staff, and was in fact the only licensed employee at Agency.

3 9. It appears highly improbable that Respondent would be able to provide adequate
4 clinical oversight and sign off on all clinical documentation by only going to the facility two days
5 out of every month.

6 10. Pursuant to A.A.C R9-10-1909, any assessment completed by a BHT must be
7 reviewed and signed by a BHP within 72 hours, meaning Respondent was inappropriately
8 signing incomplete documents or other documents well after 72 hours since he was only coming
9 to Agency two days every month.

10 11. The purpose of a BHP signing off on clinical assessments within 72 hours of
11 completion is to ensure that the assessment identified the counseling needed by the client,
12 therefore affirming the client will be receiving the needed services.

13 12. Despite Respondent representing he was aware of the rule that treatment plans
14 and assessments needed to be signed off on by a BHP within 72 hours, he still signed off on
15 various documents at Agency well past the 72-hour window.

16 13. In Respondent's 07/20 LPC application with the Board, he indicated he was
17 subject to a previous complaint and board action with the Nevada Board for allowing another
18 clinician to sign an assessment for on his behalf for a non-client who was Respondent's
19 granddaughter.

20 14. Licensee has previously been subject to disciplinary action by another board for
21 similar concerns with signing off on documentation.

22 15. Responding in fact should not have signed any sort of clinical documentation that
23 was not complete.

24 16. During Board staff's initial investigative interview, Respondent reported two new
25 employments that Board staff was never aware of.

1 17. In addition to the concerns noted regarding Respondent's work at Agency, Board
2 staff requested a list of all employments Respondent held in Arizona since becoming licensed
3 by the Board to see if Respondent was also working as a BHP elsewhere in a similar manner.

4 18. Respondent in fact has held at least 5 separate positions for DHS licensed
5 facilities as a BHP since 2022, with one job beginning in 08/22 meaning Respondent went at
6 least 11 months without notifying the Board of this employment.

7 19. This means Respondent failed to update any of his employments with the Board
8 since 2022, which included his initial application and one renewal application where Respondent
9 failed to disclose any of these employments.

10 20. Board staff conducted a follow up interview with Respondent in which
11 Respondent acknowledged providing the exact services as a BHP at each agency as he did
12 with Agency.

13 21. Respondent acknowledged only physically coming to each agency one day every
14 two weeks to provide training and oversight to BHTs where there were anywhere from 4-10
15 BHTs at each agency.

16 22. Respondent did not see any concern with only being present for a few hours two
17 times per month to provide oversight and training to BHTs.

18 23. Respondent represented that part of his duties were to sit in on group session if
19 requested by a BHT and if a BHT were to request him to sit in on a session while he was in
20 Nevada, he would simply notify them that they would have to wait until the next time he was in
21 Arizona.

22 24. Respondent represents that DHS and Board staff would not see similar concerns
23 with signing off on treatment plans and assessments at the other 4 agencies outside of Agency
24 because they either had a way to electronically sign, or they would email Respondent
25 documents to be signed and he would sign then scan back to them.

1 of licensure, that the matter be placed on the Board agenda for the Board to review and
2 determine if the automatic revocation of Respondent's license was supported by clear and
3 convincing evidence.

4 4. If the written request is received within 10 days of a regularly scheduled Board
5 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
6 scheduled Board meeting.

7 5. Pending the Board's review, Respondent's license shall be reported as revoked -
8 under review. Respondent may not work in any capacity as a licensed behavioral health
9 professional pending the Board's review. The Board's decision and Order shall not be subject to
10 further review.

11 6. Respondent's license, LPC-19290, will be placed on probation for 12 months,
12 effective from the date of entry as signed below.

13 7. Respondent shall not practice under their license, LPC-19290, unless they are
14 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
15 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
16 shall immediately notify the Board in writing and shall not practice under their license until they
17 submit a written request to the Board to re-commence compliance with this Consent Agreement.
18 All such requests shall be pre-approved by the Board Chair or designee.

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

22 **Continuing Education**

23 9. 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 complete 3 clock

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1 hours of continuing education addressing current Arizona documentation standards. All required
2 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
3 Respondent shall submit a certificate of completion of the required continuing education.

4 10. In addition to the continuing education requirements of A.R.S. § 32-3273, within
5 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
6 hours of continuing education addressing behavioral health ethics. All required continuing
7 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
8 shall submit a certificate of completion of the required continuing education.

9 11. In addition to the continuing education requirements of A.R.S. § 32-3273, within
10 12 months of the effective date of this Consent Agreement, Respondent shall complete the
11 Arizona Statutes/Regulation Tutorial. All required continuing education shall be pre-approved by
12 the Board Chair or designee. Upon completion, Respondent shall submit a certificate of
13 completion of the required continuing education.

14 12. In addition to the continuing education requirements of A.R.S. § 32-3273, within
15 12 months of the effective date of this Consent Agreement, Respondent shall complete the
16 Clinical Supervision Tutorial on Arizona Statutes/Regulations. All required continuing education
17 shall be pre-approved by the Board Chair or designee. Upon completion, Respondent shall
18 submit a certificate of completion of the required continuing education.

19 **Early Release**

20 13. After completion of the continuing education requirements set forth in this
21 Consent Agreement, or after 12 months, Respondent may request early release from the
22 Consent Agreement if all other terms of the Consent Agreement have been met.

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1 **GENERAL PROVISIONS**

2 **Provision of Clinical Supervision**

3 14. Respondent shall not provide clinical supervision to associate level licensees
4 accruing and submitting hours towards independent licensure while subject to this Consent
5 Agreement.

6 **Civil Penalty**

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

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

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

23 18. The Board reserves the right to take further disciplinary action against
24 Respondent for noncompliance with this Consent Agreement after affording Respondent notice

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1 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
2 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
3 and the period of probation shall be extended until the matter is final.

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

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

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

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

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

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

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

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

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

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

15 *Michael Smith*

Aug 1, 2023

16 _____
Michael L Smith

Date

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

18 By:

M. Zavala

Aug 1, 2023

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

Date

21 Aug 1, 2023

22 **ORIGINAL** of the foregoing filed _____
with:

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

Aug 1, 2023

25 **EXECUTED COPY** of the foregoing sent electronically _____
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