

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

2 **In the Matter of:**

3 **David C. Waselkow, LPC-17492,**  
4 **Licensed Professional Counselor,**  
5 **In the State of Arizona.**

6 **RESPONDENT**

**CASE NO. 2024-0112**


**RELEASE FROM  
CONSENT AGREEMENT AND ORDER**

7 The Board received a request from Respondent to release them from the terms and  
8 conditions of the Consent Agreement and Order dated July 30<sup>th</sup>, 2024. After consideration, the  
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement  
10 and Order dated July 30<sup>th</sup>, 2024.

11 **ORDER**

12 **GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:**

13 Respondent is hereby released from all terms and conditions of the Consent Agreement  
14 and Order dated July 30<sup>th</sup>, 2024.

15 By:  Sep 25, 2024  
16 **TOBI ZAVALA, Executive Director** **Date**  
**Arizona Board of Behavioral Health Examiners**

17  
18 **ORIGINAL** of the foregoing filed Sep 25, 2024  
19 with:

20 Arizona Board of Behavioral Health Examiners  
21 1740 West Adams Street, Suite 3600  
22 Phoenix, AZ 85007

23 **EXECUTED COPY** of the foregoing sent electronically Sep 25, 2024  
24 to:

25 David C. Waselkow  
Address of Record  
Respondent

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

3 **In the Matter of:**

4 **David C. Waselkow LPC-17492**  
5 **Licensed Professional Counselor,**  
6 **In the State of Arizona.**

7 **RESPONDENT**

**CASE NO. 2024-0112**  
**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), David C. Waselkow (“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-17492 for the practice of  
15 counseling in the State of Arizona.

16 2. From 04/23 – 06/23, Respondent provided behavioral health services to  
17 Complainant at Agency.

18 3. A 04/20/23 psychiatric diagnostic evaluation completed by Respondent included  
19 the following:

- 20 a. Respondent conducted a clinical interview.
- 21 b. Complainant was referred to Licensee by the doctor.
- 22 c. Complainant presents for a psychological evaluation for a spring peripheral  
23 nerve stimulator.
- 24 d. She presents with anxiety symptoms which are chronic and enduring as well  
25 as some obsessive-compulsive traits.

1 e. Complainant reported she would be interested in pursuing individual  
2 psychotherapy to address trauma and anxiety symptoms, which was  
3 discussed at the end of the interview.

4 f. Conclusion: Complainant is clear for trial.

5 4. Respondent represented the following regarding completing these types of  
6 evaluations:

7 a. The outcome of the evaluation is a recommendation to the physician and  
8 then the physician makes the final decision.

9 b. Respondent is making a prognosis about the probability of success, as well  
10 as an assessment of potential difficulty for distress that could come to a  
11 patient.

12 c. Reasons to not clear someone for a procedure could be things that might  
13 produce unnecessary or increased risk to a person's health.

14 d. Respondent looks at the entire history and contributing factors, then makes a  
15 hypothesis about the probability of success or lack thereof, and the risk of  
16 emotional distress for a person.

17 e. Respondent has completed roughly 200 evaluations at Agency.

18 f. If a psychological outcome is the reason why the stimulator may not be  
19 effective, it can be distressing to the patient and Respondent wants to  
20 prevent that but also be able to tell if a client can tolerate the treatment.

21 g. Respondent does not have any formal training or certification in completing  
22 these types of evaluations.

23 h. Given Respondent's training and experience he believes it is within his scope  
24 to make a recommendation about whether a client could proceed with a  
25 procedure or not.

1           5.       Respondent believes it is within his scope to make a recommendation for a  
2 behavioral health client to engage in a medical procedure when Licensee in fact is not a  
3 licensed medical practitioner.

4           6.       Respondent believes it is within his scope of practice yet acknowledges he does  
5 not have any sort of formal training or certification in this area.

6           7.       Nowhere within Board rules or statutes is it indicated that licensed behavioral  
7 health professionals are able to make medical recommendations for medical procedures as part  
8 of their licensure.

9           8.       Since 11/16/20, Respondent has been the Director at Agency.

10          9.       Respondent's employment offer letter and employment agreement with Agency  
11 defined Respondent as a psychologist and even indicated he understood he was duly licensed  
12 to practice as a psychologist in Arizona when Respondent in fact is not cleansed as a  
13 psychologist in Arizona.

14          10.      Complainant's 04/20/23 informed consent failed to include the following minimum  
15 Board requirements:

16           a.      The client's right to participate in treatment decisions and in the development  
17                and periodic review and revisions of the client's treatment plan.

18           b.      The client's right to be advised of the consequences of refusal or withdrawal  
19                of consent to treatment.

20           c.      Potential for technology failure.

21           d.      Emergency procedures when the licensee is unavailable.

22           e.      Manner of identifying the client when using electronic communication that  
23                does not involve video.

24          11.      Complainant's clinical records failed to include any sort of treatment plan.

25      ...

1           12.    On 06/16/23, Respondent provided a telehealth session to Complainant which  
2 failed to include the follow minimum telehealth Board requirements:

3                   a. Mode of session, whether interactive audio, video, or electronic  
4                   communication.

5                   b. Verification of the client's physical locations during the session and local  
6                   emergency contacts.

7           13.    Despite Respondent representing that the Master Plan section in progress notes  
8 are considered the treatment plan, this master plan fails to include the following minimum Board  
9 requirements for a treatment plan:

10                   a. One or more treatment goals.

11                   b. One of more treatment methods.

12                   c. The date when the client's treatment plan will be reviewed.

13                   d. The dated signature of the client or the client's legal guardian.

14           14.    Respondent represented he finds having a traditional treatment plan as arbitrary  
15 and meaningless.

16           15.    Respondent has been independently licensed since 2018 and had a role in the  
17 development of Agency's practice forms and fails to ensure the clinical documentation meets all  
18 minimum Board requirements.

19           16.    In 10/20 and 07/22, Respondent completed license renewal applications which  
20 required him to complete the Board's Tutorial regarding statutes and regulations, which  
21 specifically provided education and training on clinical documentation standards.

22           17.    Since the filing of this complaint, Respondent has provided updated clinical  
23 documentation that meets all minimum Board requirements that he represents he will present to  
24 Agency to begin utilizing.

25 ...

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 (c)(iii), making any oral or written misrepresentation of a fact  
7 regarding the licensee's skills or the value of any treatment provided or to be provided.

8 3. The conduct and circumstances described in the Findings of Fact constitute a  
9 violation of A.R.S. § 32-3251(16)(p), failing to conform to minimum practice standards as  
10 developed by the board as it relates to:

11 A.A.C. R4-6-1101, Consent for Treatment

12 A.A.C. R4-6-1102, Treatment Plan

13 A.A.C. R4-6-1106, Tele-practice

14 **ORDER**

15 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to  
16 the provisions and penalties imposed as follows:

17 1. Respondent's license, LPC-17492, will be placed on probation for 12 months,  
18 effective from the date of entry as signed below.

19 2. Respondent shall not practice under their license, LPC-17492, unless they are  
20 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,  
21 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they  
22 shall immediately notify the Board in writing and shall not practice under their license until they  
23 submit a written request to the Board to re-commence compliance with this Consent  
24 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

25 ...



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

5 **Continuing Education**

6 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within  
7 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock  
8 hours of continuing education addressing behavioral health ethics. All required continuing  
9 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent  
10 shall submit a certificate of completion of the required continuing education.

11 **GENERAL PROVISIONS**

12 **Provision of Clinical Supervision**

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

16 **Civil Penalty**

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

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

1           8.       Within 10 days of being notified of the lifting of the stay, Respondent may request  
2 that the matter be reviewed by the Board for the limited purpose of determining whether the  
3 automatic lifting of the stay was supported by clear and convincing evidence. If the Board  
4 receives the written request within 10 days or less of the next 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. The Board's decision on this matter shall not be subject to further  
7 review.

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

13           10.      If Respondent currently sees clients in their own private practice, and obtains any  
14 other type of behavioral health position, either as an employee or independent contractor, where  
15 they provide behavioral health services to clients of another individual or agency, they shall  
16 comply with requirements set forth in paragraphs 11 through 13 below.

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

25 ...

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

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

25 ...

1           14. Respondent shall practice behavioral health using the name under which they  
2 are licensed. If Respondent changes their name, they shall advise the Board of the name  
3 change as prescribed under the Board's regulations and rules.

4           15. Prior to the release of Respondent from probation, Respondent must submit a  
5 written request to the Board for release from the terms of this Consent Agreement at least 30  
6 days prior to the date they would like to have this matter appear before the Board. Respondent  
7 may appear before the Board, either in person or telephonically. Respondent must provide  
8 evidence that they have successfully satisfied all terms and conditions in this Consent  
9 Agreement. The Board has the sole discretion to determine whether all terms and conditions of  
10 this Consent Agreement have been met and whether Respondent has adequately demonstrated  
11 that they have addressed the issues contained in this Consent Agreement. In the event that the  
12 Board determines that any or all terms and conditions of this Consent Agreement have not been  
13 met, the Board may conduct such further proceedings as it determines are appropriate to  
14 address those matters.

15           16. Respondent shall bear all costs relating to probation terms required in this  
16 Consent Agreement.

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

19           18. This Consent Agreement shall be effective on the date of entry below.

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


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

24 David Waselkow  
25 David C. Waselkow

Jul 30, 2024  
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

By:  Jul 30, 2024  
TOBI ZAVALA, Executive Director Date  
Arizona Board of Behavioral Health Examiners

**ORIGINAL** of the foregoing filed Jul 30, 2024  
with:

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

**EXECUTED COPY** of the foregoing sent electronically Jul 30, 2024  
to:

Mona Baskin  
Assistant Attorney General  
2005 North Central Avenue  
Phoenix, AZ 85004

David C. Waselkow  
Address of Record  
Respondent