

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

3 In the Matter of:

4 **GARY MILLER**

5 Holder of License No. LMSW-12279 for the
6 practice of Licensed Social Work in the State
of Arizona,

7 Respondent.

Case No. 2009-0059
Case No. 2010-0112

ORDER OF SUSPENSION

8
9 On July 9, 2010, the Arizona Board of Behavioral Health Examiners (“Board”) reviewed
10 Complaint No. 2010-0112. Respondent was properly noticed, but did not appear.

11 After having fully considered the matter, the Board issues the following Findings of Fact,
12 Conclusions of Law and Order.

13 **FINDINGS OF FACT**

14 1. Respondent is the holder of License No. LMSW-12279 for the practice
15 of licensed social work.

16 2. On March 9, 2010, the Consent Agreement resulting from Case No.
17 2009-0059 became effective (“2010 CA”). See Attached.

18 3. The 2010 CA suspended Respondent’s license and stayed the
19 suspension subject to Respondent’s successful completion of all terms of the 2010
20 CA.

21 4. Respondent failed to comply with paragraph 8 in the Order of the 2010
22 CA because he failed to notify the Board of his employment status on a quarterly
23 basis.

24 5. Respondent failed to comply with paragraph 10 in the Order of the 2010
25 CA because he failed to submit a qualified clinical supervisor for pre-approval in a
26 timely manner.

1 **CONCLUSIONS OF LAW**

2 The conduct and circumstances described in the Findings of Fact constitute
3 violations of A.R.S. § 32-3251(12)(n), failing to comply with a Board consent
4 agreement.

5 **ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED TO
7 SUSPEND License No. LMSW-12279 issued to Gary Miller for 24 months.

8 DATED this 22nd day of July 2010.

9 ARIZONA STATE BOARD OF
10 BEHAVIORAL HEALTH EXAMINERS

11 By: 
12 DEBRA RINAUDO, Executive Director

13 ORIGINAL of the foregoing filed
14 the 22nd day of July 2010, with:

15 Arizona State Board of Behavioral Health Examiners
16 3443 North Central Avenue, Suite 1700
17 Phoenix, Arizona 85012

18 COPY of the foregoing mailed this
19 22nd day of July 2010, by
20 certified mail no 71007800014503129

21 Gary Miller
22 Address of Record
23 Respondent

24 COPY of the foregoing mailed this
25 22nd day of July 2010, to:

26 Marc H. Harris
Assistant Attorney General
1275 W. Washington CIV/LES
Phoenix, Arizona 85007

By: 

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

3 **In the Matter of:**

4 **GARY MILLER, LMSW-12279,**
5 **Licensed Master Social Worker,**
6 **In the State of Arizona.**

CASE NO. 2009-0059
CONSENT AGREEMENT

7 **RESPONDENT**

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(H)
11 and 41-1092.07(F)(5), Gary Miller ("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 received by
17 the Board concerning the allegations, and all related materials and exhibits may be retained in
18 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 his right to such formal hearing concerning these allegations and irrevocably waives his
22 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 Agreement
2 and returning it to the Board's Executive Director, Respondent may not revoke his acceptance
3 of this Consent Agreement or make any modifications to it. Any modification of this original
4 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 are
6 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 only
9 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 and the Healthcare Integrity and Protection Data Bank.

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

22 9. The Board therefore retains jurisdiction over Respondent and may initiate
23 disciplinary action against Respondent if it determines that he has failed to comply with the
24 terms of this Consent Agreement or of the practice act.

25

1
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. LMSW-12279 for the practice of social
5 work in Arizona.

6 2. It is undisputed that Respondent's employment at Agency 1 ended on 11/02/06.

7 3. Respondent made multiple misrepresentations to the Board regarding his
8 separation from Agency 1, including the following:

9 a. On his 11/13/06 LMSW application, Respondent misrepresented on the first
10 page of the application and in the employment history section that he was still
11 employed at Agency 1.

12 b. On 12/01/06, Respondent submitted a revised employment history to the
13 Board that again misrepresented that he was still employed at Agency 1.

14 c. In his 01/09 response to the complaint, Respondent misrepresented that he
15 did not leave Agency 1 until 2007.

16 4. Agency 1 represented the following with regard to Respondent's termination:

17 a. Agency 1 decided to involuntarily terminate Respondent based on the
18 unsuccessful completion of his probation period.

19 b. On 11/02/06, Respondent's direct supervisor met with Respondent, advised
20 him that he was being terminated, and asked Respondent to immediately
21 leave the agency.

22 c. The supervisor gave Respondent a written notice advising Respondent that
23 he was being involuntary terminated as of 11/02/06, which Respondent
24 refused to sign.
25

1 d. Respondent was not given the opportunity to voluntarily resign and did not, in
2 fact, voluntarily resign from Agency 1.

3 5. On the Background Information sections of his 11/13/06 LMSW application and
4 his 04/09 license renewal application, Respondent failed to disclose his involuntary termination
5 from Agency 1, as required.

6 6. Respondent's contention that his failure to identify his separation from Agency 1
7 as an involuntary termination on 2 Board applications was appropriate because he reasonably
8 believed that his separation from HHS was voluntary is not credible.

9 7. During Respondent's 06/19/09 investigative interview:

10 a. Respondent indicated that he did not submit a written resignation to Agency 1.

11 b. Respondent indicated he refused to sign the termination form presented to him
12 for signature at the time of his termination because he felt the issue was a
13 "disagreement".

14 9. During the Social Work Credentialing Committee meeting on 12/11/09,
15 Respondent then claimed he had in fact submitted a written resignation letter to Agency 1 and
16 presented a copy to the Committee.

17 10. Respondent's personnel file from Agency 1 did not include a copy of
18 Respondent's resignation letter.

19 11. Agency 1 denied ever receiving a copy of Respondent's resignation letter.

20 **CONCLUSIONS OF LAW**

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

24 2. The conduct and circumstances described in the Findings of Fact constitute a
25 violation of A.R.S. §§ 32-3251(12)(c)(i) and 32-3251(12)(c)(ii), any oral or written

1 misrepresentation of a fact by an applicant or licensee to secure the issuance or renewal of a
2 license or in any statements provided during an investigation by the Board.

3 **ORDER**

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

6 **Stayed Suspension**

- 7 1. Respondent's license, LMSW-12279, shall be suspended for 24 months.
8 2. The suspension shall be stayed subject to successful completion of all the terms
9 in this Consent Agreement.
10 3. If Respondent fails to comply with any of the terms of probation, the stay shall be
11 lifted and the professional's licenses shall be immediately suspended for 24 months.

12 **Probation**

- 13 4. Respondent's license, LMSW-12279, will be placed on probation for 24 months,
14 effective from the date of entry as signed below.

15 **Education**

- 16 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
17 24 months of the effective date of this Consent Agreement, Respondent shall complete 3-clock
18 hours of continuing education addressing current behavioral health clinical documentation
19 requirements, such as the NASW course on recordkeeping. All required continuing education
20 shall be pre-approved by the Social Work Credentialing Committee Chair or designee. Upon
21 completion, Respondent shall submit a certificate of completion of the required continuing
22 education.

- 23 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
24 24 months of the effective date of this Consent Agreement, Respondent shall take and pass a
25 3-semester credit hour graduate level behavioral health ethics course from an accredited

1 college or university, pre-approved by the Social Work Credentialing Committee Chair or
2 designee. Upon completion, Respondent shall submit to the Board an official transcript
3 establishing completion of the required course.

4 Practice Restriction

5 7. While on probation, Respondent shall only provide behavioral health related
6 services while employed by an agency licensed by the Office of Behavioral Health Licensure
7 ("OBHL"). Despite this sentence and any other language in this Agreement, Respondent may
8 continue to provide behavioral health services for his current employer, Magellan.

9 8. While on probation, Respondent must notify the Board of his employment status
10 on a quarterly basis.

11 9. When Respondent obtains employment to provide behavioral health services at
12 an OBHL-licensed agency, Respondent shall notify the Board of this employment within five
13 working days.

14 Clinical Supervision

15 10. Upon acquisition of employment at an OBHL-licensed agency, Respondent shall
16 comply with the following clinical supervision stipulations.

17 11. Respondent shall submit to clinical supervision for 24 months by a masters or
18 higher level behavioral health professional licensed at the independent level. Within 30 days of
19 the date of this Consent Agreement, Respondent shall submit the name of a clinical supervisor
20 for pre-approval by the Social Work Committee Chair or designee. Also within 30 days of the
21 date of this Consent Agreement, the clinical supervisor shall submit a letter disclosing his/her
22 prior relationship to Respondent. In that letter, the supervisor must address why he/she should
23 be approved, acknowledge that he/she has reviewed the Consent Agreement and include the
24 results of an initial assessment and a supervision plan regarding the proposed supervision of
25 Respondent. The letter from the supervisor shall be submitted to the Board.

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

Focus and Frequency of Clinical Supervision

12. The focus of the supervision shall address recordkeeping, organization, and ethics affecting the practice of behavioral health in Arizona. Respondent shall meet in person with the supervisor at least weekly.

Reports

13. Once approved, the supervisor shall submit quarterly reports for review and approval by the Social Work Credentialing Committee Chair or designee. The quarterly reports shall include issues presented in this consent agreement that need to be reported and the supervisor shall notify the Board if more frequent supervision is needed. After 24 months, the supervisor shall submit a final summary report for review and approval by the Social Work Credentialing Committee 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

14. If, during the period of Respondent's probation, the clinical supervisor determines that he/she cannot continue as the clinical supervisor, he/she 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 Social Work Committee chair or designee within 30-days of cessation of clinical supervision by the approved clinical supervisor of 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.

Investigative Costs

15. Respondent shall reimburse the Board its investigation costs in the amount of \$600.95.

1 16. Respondent's payment of investigative costs shall be stayed so long as she
2 remains compliant with the terms of the Order. If Board staff determines that Respondent is
3 noncompliant with the terms of the Order in any respect, the stay of the payment of the
4 investigative costs shall be automatically lifted. Payment of the investigative costs set forth
5 above shall then be made to the Board by certified check or money order payable to the Board
6 within 30 days after being notified in writing of the lifting of the stay.

7 17. If within 10 days of being notified of the decision to lift the stay Respondent
8 makes a written request for the Board to review the decision, the Board will review the matter at
9 a regularly scheduled meeting for the sole purpose of determining whether the decision to lift
10 the stay is supported by substantial evidence. If the Board receives the written request within 10
11 days or less of the next regularly scheduled Board meeting, the request will not be heard at that
12 meeting, but will be heard at the next regularly scheduled Board meeting. If Respondent makes
13 a timely written request for a Board review of the decision, the time for remitting the investigative
14 cost shall be tolled until the Board makes a final determination on Respondent's compliance
15 with the Order. Should the Board affirm staff's decision to lift the stay, Respondent shall then
16 make payment to the Board by certified check or money order payable to the Board within 20
17 days after being notified in writing of the Board's decision. The Board's decision on this matter
18 shall not be subject to judicial review.

19 18. The Board reserves the right to take further disciplinary action against
20 Respondent for noncompliance with this consent agreement after affording Respondent notice
21 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
22 with the Order, the Board shall have continuing jurisdiction until the matter is final and the period
23 of probation shall be extended until the matter is final.

24 ...
25 ...

General Provisions

1
2 19. Within 10 days of the effective date of this Order, Respondent shall provide the
3 Social Work Credentialing Committee Chair or designee with a signed statement from
4 Respondent's employer confirming Respondent provided the employer with a copy of this
5 Consent Agreement. If Respondent does not provide the employer's statement to the Board
6 within 10 days of the effective date, the Board will provide Respondent's employer with a copy
7 of the Consent Agreement.

8 20. If, during the period of Respondent's probation, Respondent changes
9 employment, Respondent shall immediately inform the Board of the new employment and shall
10 within 10 days of starting each new employment, provide the Social Work Credentialing
11 Committee Chair or designee with a signed statement from Respondent's new employer
12 confirming Respondent provided the employer with a copy of this Consent Agreement. If
13 Respondent does not provide the employer's statement to the Board within 10 days of the
14 effective date, the Board will provide Respondent's employer with a copy of the Consent
15 Agreement.

16 21. Respondent shall practice social work using the name under which he is
17 licensed. If Respondent changes his name, he shall advise the Board of the name change as
18 prescribed under the Board's regulations and rules.

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

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

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

7 24. 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 25. This Consent Agreement shall be effective on the date of entry below.

10 26. 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.

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

15 Gary Miller
16 GARY MILLER

2/10/10
Date

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

19 Dated this 9th day of March, 2010.

20
21 By: Debra Rinaudo
22 DEBRA RINAUDO, Executive Director
23 Arizona Board of Behavioral Health Examiners
24
25

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

ORIGINAL of the foregoing filed
This 9th day of March, 2010, with:

Arizona Board of Behavioral Health Examiners
3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

COPY of the foregoing mailed via
Certified mail no. 7009 0820 0000 0094 1170
This 9th day of March, 2010, to:

Gary Miller
Address of Record
Respondent

James Burr Shields
Milligan, Lawless, Taylor, Murphy & Bailey, PC
4647 North 32nd Street, Suite 185
Phoenix, Arizona 85018
Attorney for Respondent

Mary Wilson, Compliance Officer
602-542-1832