

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

3 **In the Matter of:**
4 **Sherry K. Malm, LPC-10672,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

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11 **RESPONDENT**

CASE NO. 2012-0083
 CONSENT AGREEMENT

12 In the interest of a prompt and speedy settlement of the above captioned matter,
13 consistent with the public interest, statutory requirements and responsibilities of the Arizona
14 State Board of Behavioral Health Examiners (“Board”), and pursuant to A.R.S. §§ 32-3281(F)
15 and 41-1092.07(F)(5), Sherry K. Malm (“Respondent”) and the Board enter into this Consent
16 Agreement, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final
17 disposition of this matter.
18

19 **RECITALS**

20 Respondent understands and agrees that:

- 21 1. Any record prepared in this matter, all investigative materials prepared or
22 received by the Board concerning the allegations, and all related materials and exhibits may be
23 retained in the Board's file pertaining to this matter.
- 24 2. Respondent has the right to a formal administrative hearing at which Respondent
25 can present evidence and cross examine the State's witnesses. Respondent hereby irrevocably
waives her right to such formal hearing concerning these allegations and irrevocably waives her
right to any rehearing or judicial review relating to the allegations contained in this Consent
Agreement.
3. Respondent has the right to consult with an attorney prior to entering into this
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 her
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 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
9 only 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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 8. Respondent further understands that any violation of this Consent Agreement
19 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
20 disciplinary action pursuant to A.R.S. § 32-3281.

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

24 The Board issues the following Findings of Fact, Conclusions of Law and Order:
25 ...

FINDINGS OF FACT

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2 1. Respondent is the holder of License No. LPC-10672 for the practice of
3 counseling in Arizona.

4 2. Respondent was contacted by court appointed attorney ("Attorney") to provide an
5 evaluation and complete an assessment on son ("Son") regarding Son's best interests regarding
6 visitation with father ("Father").

7 3. From 10/14/11 to 12/06/11, Respondent gathered information from various
8 sources and conducted individual sessions with Son and family sessions involving Son, Father
9 and Son's mother ("Mother").

10 4. On 12/06/11, Respondent submitted a report to the court which included the
11 following preliminary recommendations:

12 a. Mother and Son's grandmother ("Grandmother") should attend a
13 psychological evaluation to rule out delusional disorder.

14 b. If Mother cannot be supportive of Father's visits, full custody should be
15 awarded to Father.

16 5. Respondent's recommendations appear concerning where:

17 a. Respondent met Grandmother on only one occasion.

18 b. Respondent acknowledges she has no expertise or experience with
19 delusional disorder.

20 c. Respondent provided custodial recommendations as a consequence of
21 Mother's noncompliance with Respondent's recommendations.

22 6. Son's Psychologist regarding Respondent's assessment in this matter, indicated
23 in his 12/11 letter to Attorney:

24 a. Psychologist has not seen any indicators of Mother having delusional
25 disorder.

1 b. Mother is worried that Respondent has a bias against her and has used
2 guilt as a manipulative tool during their interactions.

3 7. Son's Custody Evaluator's 12/12 report to the court, indicated:

4 a. "This evaluator does have some concerns about Respondent's
5 participation in this case."

6 b. There are concerns that Respondent discussed Mother having delusional
7 disorder without the possibility of having considered that Mother's and
8 Grandmother's behaviors could be connected to PTSD as a result of past
9 domestic violence trauma.

10 c. "The lack of discussion and insight into this alternative hypothesis speaks
11 to the possibility that Respondent has not had requisite training in
12 domestic violence."

13 d. Custody Evaluator questions Respondent's foundation for her report and
14 the conclusions she drew.

15 **CONCLUSIONS OF LAW**

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

19 2. The conduct and circumstances described in the Findings of Fact constitute a
20 violation of A.R.S. § 32-3251(12)(l), any conduct, practice or condition that impairs the ability of
21 the licensee to safely and competently practice the licensee's profession.

22 3. The conduct and circumstances described in the Findings of Fact constitute a
23 violation of A.R.S. § 32-3251(12)(m), engaging or offering to engage as a licensee in activities
24 that are not congruent with the licensee's professional education, training, or experience.
25 ...

ORDER

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

1. As of the effective date of the Consent Agreement, Respondent shall not practice under her license.

2. Respondent's license, LPC-10672, shall by rule, expire on 08/31/16.

3. Respondent agrees not to renew her license.

4. Respondent agrees not to submit any type of new license application to the Board for a minimum of five (5) years.

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

PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Sherry K. Malin (Signature)  December 31, 2015 (Date)
Sherry K. Malin Date

BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Dated this 19th day of January, 2015.

By: *Tobi Zavala* (Signature)
TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

ORIGINAL of the foregoing filed
This 19th day of January, 2015 with:

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

COPY of the foregoing mailed via Interagency Mail

1 This 19th day of January, 201~~5~~⁶, to:

2 Marc Harris
3 Assistant Attorney General
4 1275 West Washington
5 Phoenix, Arizona 85007

6 **COPY** of the foregoing mailed via

7 Certified mail no. 7014 28700001 PPS 7 26 78

8 This 19th day of January, 201~~5~~⁶, to:

9 Sherry K. Malm
10 Address of Record
11 Respondent
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