

1 **Case No. 2013-0011**

2 3. As a LASAC, Respondent's scope of practice is limited to substance abuse,
3 chemical dependency and related issues.

4 4. In 06/12, a probation department ("Probation") referred a probationer/client
5 ("Client") to Respondent for a psychological evaluation.

6 5. Respondent accepted Client's referral and performed a Comprehensive
7 Personality Assessment Inventory consisting of various tests, including the Abel Assessment
8 Sexual Inventory and the Minnesota Sex Offender Screening Tool-Revised, which are both
9 exclusively used to evaluate sexual behavior problems.

10 6. Respondent's evaluation of Client included various sections which pertained to
11 Client's sexual history and ongoing sexual deviant behaviors.

12 7. In example, Respondent's Assessment Summary of Client indicated:

- 13 a. Client was referred for a mental health assessment targeting possible prior
14 diagnosis on Bipolar Disorder, Sexual Deviant Behavior due to sexual
15 interaction with a minor boy and prior intervention with the educational and
16 behavioral health field.
- 17 b. Because of the type of offense, and to ensure that the diagnoses do not
18 correlate at a psychological level, specific testing and subscales were utilized.
- 19 c. Being exposed to inappropriate sexual issues as a child created a deviant
20 sexual condition on him.

21 8. Respondent's Conclusion and Recommendations for Client indicated:

- 22 a. This assessment is not focusing on Client's sexual deviant behavior however,
23 because of a possible correlation between the sexual deviant behavior and
24 personality disorders, 2 related scales were utilized.

25 ...

1 b. After the evaluation, clinical interview and mental status examination, Client is
2 in need of treatment to deal with this mental health and sexual deviant
3 disorder.

4 c. Therefore, based on clinical findings, recommendations are as follows:

- 5 • Treatment for underlying mental health disorder involving PTSD, Sexual
6 Deviant Behavior, Depression, Acute Stress, and Substance Induced
7 Psychotic Condition.
- 8 • Continue participating in sex offender treatment.
- 9 • Psychotherapy for PTSD.

10 9. Considering that Respondent's scope of practice is limited to associate level
11 substance abuse counseling, it appears highly problematic that Respondent conducted a
12 Comprehensive Personality Assessment Inventory consisting of various mental health tests
13 including 2 separate sexual evaluations.

14 10. Respondent's inappropriate actions not only relate to his conduct and
15 communication with Probation, but also to Client who was the subject of various unsolicited
16 evaluations, which were conducted by an untrained and unqualified associate level substance
17 abuse counselor.

18 11. When Probation questioned Respondent about his reasoning for conducting
19 these sexual evaluations on Client, Respondent attempted to offer a clinical justification rather
20 than acknowledge that he was out of scope.

21 12. When asked by Board staff why he accepted a referral for a psychological
22 evaluation considering his scope of practice is limited to substance abuse, Respondent
23 indicated the following:

- 24 a. "We'd been struggling financially and I thought, I thought it could help our
25 business do something for probation."

1 b. "I've never denied making a mistake and I've been waiting for the Board to
2 punish me for that."

3 13. In retrospect, Respondent acknowledges that it was inappropriate for him to
4 complete a psychological evaluation and inappropriate for him to have billed Probation for one.

5 14. Respondent is fully aware that the tests he conducted are out of the scope of as
6 LASAC.

7 15. In further support that Respondent was practicing outside the scope of his
8 license, Probation provided the Board with correspondence pertaining to another client ("Client
9 2") that Respondent treated.

10 16. In example, an 08/11 letter from Respondent to Probation indicated:

11 a. Based on the screening results and clinical interview, Client 2 was found to
12 be having problems related to posttraumatic stress and possible borderline
13 personality disorder.

14 b. Although Client 2 did not participate in a full psychological evaluation, she
15 presented obvious indications of the above mentioned disorders.

16 c. Therefore, she requested individual sessions for these matters.

17 17. In addition, a 09/11 email from Respondent to Probation indicated:

18 a. Client 2 was diagnosed with Borderline Personality Disorder and
19 recommended to attend anger management and individual cognitive behavior
20 therapy to deal with issues related to Borderline Personality Disorder and
21 PTSD.

22 b. In 07/11, Client 2 began attending individual psychotherapy to deal with
23 issues related to prior diagnosis of Borderline Personality Disorder and
24 PTSD.

25 ...

1 18. When questioned by Board staff about this issue, Respondent indicated the
2 following:

- 3 a. Respondent acknowledges that Client 2 was his client, although he does not
4 remember the details of her treatment.
- 5 b. "I might have seen that lady, yes."
- 6 c. "Trying to make my business, trying to make some money, yes."
- 7 d. Respondent acknowledges that the services provided to Client 2 were out of
8 the scope of his license.

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10 19. In 10/06, Respondent was issued his LASAC.

11 20. As a LASAC, Respondent is required to:

- 12 a. Work under direct and clinical supervision.
- 13 b. Not have ownership interest of the entity in which the associate counselor is
14 providing behavioral health services.

15 21. Despite these rules, in 06/08, Respondent and his wife ("Wife") opened a
16 behavioral health agency ("Agency") and acquired the contractual services of a clinical
17 supervisor ("Clinical Supervisor").

18 22. Upon the Board's knowledge of this issue in 2011, Board staff informed
19 Respondent of the following in writing:

- 20 a. "[Clinical Supervisor] cannot provide direct or clinical supervision to you
21 because you employ her."
- 22 b. "It does not appear there is any way for [Clinical Supervisor] to be objective
23 while supervising the person who employers her."
- 24 c. "It appears that your practice at [Agency] puts you in violation of Board rules."

25 23. In response, Respondent submitted an 11/11 letter to the Board that indicated:

- 1 a. Respondent informed Clinical Supervisor of Respondent's inability to own an
2 agency.
3 b. "Based on the fact that we have a rental agreement for period of five years
4 and that [Agency] has engaged in multiple other responsibilities, [Clinical
5 Supervisor] has decided to take ownership of [Agency]."

6 24. During further correspondence about this issue, Respondent sent a 08/12 letter
7 to the Board that indicated:

- 8 a. In 11/11, Clinical Supervisor took partial ownership of Agency.
9 b. "The manner by which the change of ownership was effected is by verbal
10 agreement."
11 c. "[Clinical Supervisor's] obligation to return ownership: Upon [Respondent]
12 obtains his LISAC, [Respondent] will return to his previous position as
13 statutory agent, [Clinical Supervisor] will no longer be partial owner and the
14 only owner will be [Wife]."

15 25. Respondent's conduct surrounding the ownership issues of Agency appear
16 problematic for the following reasons:

- 17 a. Recognizing that he needed a direct and clinical supervisor, Respondent
18 acquired the contractual services of Clinical Supervisor.
19 b. However, even after being informed of the rule A.A.C. R4-6-210 that prohibits
20 such a supervision relationship to exist due to his ownership interest, and
21 even after being educated on the potential conflict of interest that existed as a
22 result of him receiving supervision from a person whom he employs,
23 Respondent replied with, "With all due respect, this statement is a matter of
24 opinion."

25 ...

1 c. Furthermore, Respondent acknowledges that upon the time he obtains his
2 LISAC, Clinical Supervisor will no longer be a partial owner and the only
3 owner will be Wife.

4 d. This statement appears to further clarify that Respondent's corrective efforts
5 were merely a temporary attempt to appease the Board until he receives
6 independent licensure, as his ownership interest of Agency remains.

7 e. Despite repeated efforts by Board staff over the course of several years
8 informing Respondent of the issues surrounding his ownership interest of a
9 behavioral health agency as an associate counselor, Respondent has still not
10 fully complied with the Board's rules and regulations regarding this issue.

11 **CONCLUSIONS OF LAW**

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

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

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

21 4. The conduct and circumstances described in the Findings of Fact constitute a
22 violation of A.R.S. §32-3251(12)(k), any conduct or practice that is contrary to recognized
23 standards of ethics as it relates to the NAADAC Code of Ethics: Evaluation, Assessment and
24 Interpretation of Client Data – Standard 1: Scope of Competency.

25 ...

1 ORIGINAL of the foregoing filed
This 31st day of May, 2016 with:

2 Arizona Board of Behavioral Health Examiners
3 3443 N. Central Ave., Suite 1700
4 Phoenix, AZ 85012

5 COPY of the foregoing mailed via Interagency Mail
This 31st day of May, 2016, to:

6 Marc Harris
7 Assistant Attorney General
8 1275 West Washington
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11 Certified mail no. 701428700001 8957 6669
This 31st day of May, 2016, to:

12 Martin J. Lara
13 Address of Record
14 Respondent
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