

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

3
4 **In the Matter of:**

5 **HEATH M. KILGORE, LPC-10562,**
6 **Licensed Professional Counselor,**
7 **In the State of Arizona.**

8 **RESPONDENT**

9 **CASE NO. 2013-0013**
10 **CONSENT AGREEMENT**

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

17 **RECITALS**

18 Respondent understands and agrees that:

- 19 1. Any record prepared in this matter, all investigative materials prepared or
20 received by the Board concerning the allegations, and all related materials and exhibits
21 may be retained in the Board's file pertaining to this matter.
- 22 2. Respondent has the right to a formal administrative hearing at which
23 Respondent can present evidence and cross examine the State's witnesses.
24 Respondent hereby irrevocably waives his right to such formal hearing concerning
25 these allegations and irrevocably waives his 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
3 revoke his acceptance of this Consent Agreement or make any modifications to it. Any
4 modification of this original document is ineffective and void unless mutually approved
5 by the parties in writing.

6 5. The findings contained in the Findings of Fact portion of this Consent
7 Agreement are conclusive evidence of the facts stated herein and may be used for
8 purposes of determining sanctions in any future disciplinary matter.

9 6. This Consent Agreement is subject to the Board's approval, and will be
10 effective only when the Board accepts it. In the event the Board in its discretion does
11 not approve this Consent Agreement, this Consent Agreement is withdrawn and shall
12 be of no evidentiary value, nor shall it be relied upon or introduced in any disciplinary
13 action by any party hereto, except that Respondent agrees that should the Board reject
14 this Consent Agreement and this case proceeds to hearing, Respondent shall assert
15 no claim that the Board was prejudiced by its review and discussion of this document
16 or of any records relating thereto.

17 7. Respondent understands that once the Board approves and signs this
18 Consent Agreement, it is a public record that may be publicly disseminated as a formal
19 action of the Board, and that it shall be reported as required by law to the National
20 Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

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

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

1 The Board issues the following Findings of Fact, Conclusions of Law and Order:

2 **FINDINGS OF FACT**

3 1. Respondent is the holder of License No. LPC-10562 for the practice of
4 professional counseling in Arizona. License No. LPC-10562 is presently suspended.¹

5 2. During the relevant time period, Respondent was the clinical director at an
6 agency (Agency).

7 3. Respondent provided clinical supervision to a supervisee (Supervisee) at
8 Agency where Supervisee is a program director.

9 4. Respondent agreed to provide Supervisee with clinical supervision to
10 qualify Supervisee for licensure as a Licensed Professional Counselor (LPC).

11 5. In February 2011, the mother of an Agency client filed a complaint (2011
12 Complaint) against Respondent and Supervisee.

13 6. The Board dismissed the 2011 Complaint with respect to Respondent.

14 7. In his response to the 2011 Complaint, Respondent included Supervisee's
15 November 2010 and December 2010 monthly clinical supervision forms (Nov-Dec/2010
16 supervision forms).

17 8. On those forms, Respondent dated his signature as November 30, 2010
18 and December 28, 2010 respectively.

19 9. Those forms contained a number of supervision dates that were
20 erroneously written as 2011 dates instead of 2010 dates.

21 10. Respondent indicated the following regarding these erroneous dates:

- 22 a. He does not know why the dates Supervisee wrote for her
23 November 2010 and December 2010 supervision sessions
24 were erroneously written as having occurred on November
25 12, 2011, November 15, 2011 November 18, 2011
December 8, 2011 and December 14, 2011.

¹ When Respondent chose not to renew his license, pursuant to A.R.S. § 32-3202, his license was deemed suspended rather than expired. His license remains suspended pending the outcome of this matter.

- b. He signed the Nov-Dec/2010 supervision forms on November 30, 2010 and December 28, 2010, respectively.
- c. When he reviewed those documents prior to signing them, he did not check the supervision dates included on those forms.
- d. The Nov-Dec/2010 supervision forms were not created for the purpose of responding to the 2011 Complaint.

11. Although Supervisee was the one who documented the clinical supervision sessions she participated in to obtain her LPC, as her clinical supervisor, Respondent remains responsible for ensuring the accuracy and veracity of any clinical supervision documentation submitted to the Board for the purpose of verifying Supervisee's clinical supervision hours.

12. In June 2012, in response to a request by the Counseling Credentialing Committee for Supervisee's clinical supervision documentation, the Human Resources Department at Agency (HR) provided Supervisee's 6/9/08-02/23/12 clinical supervision records.

13. Although the 4/09 monthly clinical supervision form was labeled "April 2009" and included a 05/01/09 signature date by both Respondent and Supervisee, it identified clinical supervision dates of "08/16/09" and "08/24/09".

14. Respondent denies that he backdated his signature on the 04/09 monthly clinical supervision form.

15. In Respondent's September 2012 complaint response, he indicated the following:

- a. It was his practice to review the content of Supervisee's notes "to ensure that they accurately reflected what had been discussed at the weekly supervisions."
- b. He did not check dates to make sure they were accurate and "was not aware that there was a need to do so."
- c. Since the forms were not used to track patient progress, treatment, or billing, he "reviewed the forms with an eye toward substance and not form."

1 d. Respondent signed the forms using the correct dates.

2 16. Based on the above, there is a preponderance of evidence that, by failing
3 to ensure that the weekly supervision forms contained accurate dates, Respondent
4 failed to maintain accurate records regarding client care.

5 17. LPC applicants must receive a minimum of 10 hours of clinical supervision
6 obtained either during direct observation or a review of audiotapes or videotapes by the
7 clinical supervisor of the applicant while the applicant is providing treatment and
8 evaluation services to a client.

9 18. On February 16, 2012, Respondent signed a Clinical Supervision
10 Verification Form in support of Supervisee's LPC application.

11 19. On that form, Respondent:

12 a. Attested that, between June 1, 2008 and February 16, 2012,
he provided Supervisee with 12 direct observation hours.

13 b. Signed an affidavit stating, in part:

14 i. "I certify under penalty of perjury that all information
15 contained in this verification, including all supporting
16 documents, is true and correct to the best of my
17 knowledge and belief with full knowledge that any
false statements or misrepresentations made in this
verification may be grounds for disciplinary action
against any license I hold."

18 20. Respondent's February 16, 2012 attestation that he had already
19 completed 12 direct observation hours for Supervisee is inconsistent with the following:

20 a. In June 2012, HR provided supervision records for
Respondent to the Board.

21 b. Those records reflect that, at that time, Supervisee had only
22 completed 4 direct observation hours, all of which were
provided on March 12, 2011.

23 c. A February 23, 2012 electronic clinical supervision form
24 (02/23/12 clinical supervision form) indicated that Supervisee
intended to complete 10 direct observation hours with
25 Respondent "next week".

1 21. During Respondent's July 13, 2012 investigative interview, the Board
2 identified discrepancies in Supervisee's clinical supervision documentation and asked
3 Respondent to explain the discrepancies. Respondent stated:

- 4 a. With regard to the 12 direct observation hours that he
5 attested on February 16, 2012 had already been completed:
- 6 i. All 12 hours were completed by Respondent directly
7 observing Supervisee providing services.
 - 8 ii. In order to calculate these hours, he "counted up all
9 the different hours" from the existing clinical
10 supervision documentation.
 - 11 iii. He could not explain why only 4 direct observation
12 hours were documented in the documentation HR
13 provided to the Board in June 2012.
- 14 b. With regard to the February 23, 2012 clinical supervision
15 form indicating that Supervisee intended to complete 10
16 hours of direct supervision with Respondent the following
17 week:
- 18 i. It is possible to erroneously enter supervision dates
19 into Agency's electronic records system.
 - 20 ii. Respondent believes that the date on the February
21 23, 2012 clinical supervision form was erroneous.

22 22. On July 13, 2012, after Respondent's interview, the Board received
23 Supervisee's entire personnel record from Agency.

24 23. Those records contained a March 10, 2012 clinical supervision form that
25 indicated that Supervisee completed 8 additional direct observation hours on that date.

26 24. On July 16, 2012, Board staff received an email from Respondent
27 indicating the following:

- 28 a. After Respondent's July 13, 2012 investigative interview, he
29 conducted an investigation to determine what had happened
30 with the reporting of Supervisee's clinical supervision hours
31 and why discrepancies existed in the records.
- 32 b. Respondent reviewed Agency's computer system and
33 determined that Supervisee had forgotten to document 8
34 hours of direct observation completed on February 10, 2012.

- 1 c. Because those supervision hours needed to be documented,
2 on July 13, 2012, HR instructed Supervisee to create the
3 missing supervision documentation.
4
5 d. Supervisee inadvertently entered a March 10, 2012 date for
6 the 8 direct observation hours that actually occurred on
7 February 10, 2012.
8
9 e. During Respondent's investigation into the reporting of
10 Supervisee's clinical supervision hours, Respondent recalled
11 that he did not actually count Supervisee's direct observation
12 hours because he had completed the license application
13 only 6 days after Supervisee completed the February 10,
14 2012 direct observation hours so Respondent already knew
15 how many hours to add to the 4 direct observation hours
16 already documented.

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20 25. In Respondent's September 12 complaint response, he indicated the
21 following:

- 22
23 a. He did not notice the date error on the February 23, 2012
24 clinical supervision form because he was reviewing the note
25 for substance when he signed it.
26
27 b. When he completed the February 16, 2012 Clinical
28 Supervision Verification Form, he failed to notice that
29 documentation of direct observation hours completed on
30 February 10, 2012 was missing.
31
32 c. Because the February 10, 2012 direct observation hours
33 were fresh in his mind when he signed the February 16,
34 2012 verification form, there was no need for him to actually
35 review Supervisee's supervision records prior to completing
36 the February 16, 2012 Clinical Supervision Verification Form.
37
38 d. He did not notice the date error in the March 10, 2012
39 clinical supervision form because he was in a hurry to submit
40 the document to the Board.

41
42 26. In support of his complaint response, Respondent submitted clinical
43 documentation regarding several assessments Supervisee completed on February 10,
44 2012.

45
46 27. Respondent contends that this documentation supports his representation
47 that Supervisee completed a total of 12 direct observation hours, with 8 of those hours
48 occurring on February 10, 2012.

1 28. The February 10, 2012 clinical assessment documentation Respondent
2 provided does not reflect the amount of time Supervisee spent providing the services.

3 29. Based on the clinical documentation provided and Supervisee's estimate
4 that each assessment took approximately 20 to 30 minutes, Respondent completed a
5 maximum of 6 ½ direct observation hours on February 10, 2012, not 8 hours as
6 Respondent recalled.

7 30. Therefore, Respondent completed a maximum of 10 ½ hours of direct
8 observation of Supervisee, not 12 hours as Respondent attested to on February 16,
9 2012 Clinical Supervision Verification Form.

10 31. The evidence shows that Respondent miscalculated the clinical
11 supervision hours for Supervisee to which Respondent attested on the February 16,
12 2012 Clinical Supervision Verification Form.

CONCLUSIONS OF LAW

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

16 2. The conduct and circumstances described in the Findings of Fact
17 constitute a violation of A.R.S. § 32-3251(16)(q), failing or refusing to maintain
18 adequate records of behavioral health services provided to a client.

ORDER

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

21 1. Respondent agrees not to renew his license. As of the effective date of
22 this Order, Respondent's license will be deemed expired.

23 2. Had Respondent chosen to renew his license, based upon the
24 aforementioned Findings of Fact and Conclusions of Law, the Board would have
25

1 placed Respondent's license on Probation subject to the following terms and
2 conditions:

- 3 • In addition to the continuing education requirements of A.R.S.
4 § 32-3273, Respondent would have been given 12 months to
5 take and pass a three semester credit hour graduate level
6 course addressing clinical practice issues, including clinical
7 supervision issues, from an accredited college or university.
8 During this same time period, Respondent would have also
9 been required to complete six clock hours of continuing
10 education addressing behavioral health ethics. The
11 aforementioned educational requirements would have been
12 subject to pre-approval by the Counseling Credentialing
13 Committee Chair or designee and upon completion,
14 Respondent would have been required to submit an official
15 transcript establishing completion of the required course and a
16 certificate of completion of the required continuing education.

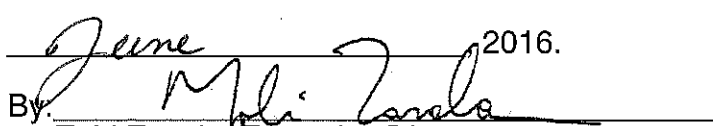
10 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

11 
12 HEATH M. KILGORE

5/11/16
Date

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

14 Dated this 7th day of June, 2016.

15 By 
16 Tobi Zavala, Executive Director
17 Arizona Board of Behavioral Health Examiners

18 **ORIGINAL** of the foregoing filed
19 this 7th day of June, 2016 with:

20 Arizona Board of Behavioral Health Examiners
21 3443 N. Central Ave., Suite 1700
22 Phoenix, AZ 85012

23 **COPY** of the foregoing mailed via Interagency Mail
24 this 7th day of June, 2016 to:

25 Marc H. Harris
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85007

1 **COPY** of the foregoing mailed via
2 Certified mail no. 704281000189576782,
3 this 7th day of June, 2016 to:

3 Heath M. Kilgore
4 Address of Record
5 Respondent

5 **COPY** of the foregoing mailed via Mail
6 this 7th day of June, 2016 to:

6 Sandra Creta
7 12725 W. Indian School Road, Suite E-101
8 Avondale, AZ 85392
9 Attorney for Respondent

9 By: _____
10 DOC#5034915

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