

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

2
3 **In the Matter of:**
4 **Marisa Viterbo, LASAC-15114, Licensed**
5 **Associate Substance Abuse Counselor,**
6 **In the State of Arizona.**

COMPLAINT NO. 2016-0133

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF REVOCATION**

7 **Respondent.**

8 On January 6, 2017, the Arizona Board of Behavioral Health Examiners (“Board”) held a formal
9 hearing in the above matter. The State was represented by the Office of the Attorney General, Assistant
10 Attorney General Marc H. Harris. Assistant Attorney General, Anne Froedge, provided independent legal
11 advice to the Board. The Respondent did not appear.

12 After having considered all the testimony and evidence presented, the Board issues the following
13 Findings of Fact, Conclusions of Law and Order.

14 **FINDINGS OF FACT**

15 1. Respondent is the holder of License No. LASAC-15114, for the practice of substance
16 abuse counseling in Arizona.

17 2. From approximately 02/15 – 04/15, Respondent provided substance abuse counseling to
18 an adult male client (“Client”) through her employment at a behavioral health agency (“Agency”).

19 3. According to Client’s ex-wife (“Ex-Wife”), around 12/15, Client disclosed that he and
20 Respondent engaged in a sexual relationship following Client’s discharge from treatment.

21 4. In support of her complaint, Ex-Wife provided the Board with the following screen shots,
22 which appear to be taken from Client’s Facebook messenger:

23 a. Client to Respondent: “Why haven’t you responded to my txts [Respondent]? ☹”

24 b. Respondent to Client: “Because I’m in Iceland [Client]. And you told me I should get
25 over you?”

1 c. Respondent to Client: "What do you want me to tell you? I'm not ignoring you I'm
2 just doing what you told me to do. I'm confused [sic] what you want from me"

3 5. In addition, Ex-Wife provided the Board with a screenshot of Facebook activity that
4 shows Client and Respondent became Facebook friends on 05/30/16.

5 6. Ex-Wife also filed a complaint with Agency and furnished the same information from
6 Client's Facebook account.

7 7. Upon Agency's inquiry into the matter, Respondent denied the allegations and suggested
8 that the evidence was false or fabricated.

9 8. Although Respondent denied the allegations upon Agency's inquiry, Agency identified
10 that the detail about Respondent being in Iceland was accurate.

11 9. Upon the Board's investigation into this matter, Respondent provided a written response
12 indicating:

13 a. The complaint is false and there was no relationship with Client outside the
14 professional relationship during his treatment at Agency.

15 b. This complaint should be dismissed.

16 10. In consideration of the allegations, Board staff contacted Respondent by phone and
17 requested that she provide the Board with her cell phone carrier information and call history, which could
18 support her representation that she had no relationship with Client outside of treatment.

19 11. Respondent denied the Board's request and insisted that the Board lacks the authority to
20 acquire her cell phone records.

21 12. On 07/19/16, Board staff sent Respondent a letter indicating the following:

22 a. Due to the seriousness of the complaint allegations and supporting information, the
23 Board is requesting that Respondent provide the name of her cell phone provider and
24 communication history.

25 b. This request is made pursuant to the Board's authority under A.R.S. § 32-3281(A).

1 13. On 07/27/16, after receiving no response, Board staff again contacted Respondent
2 requesting that she provide the Board with the information no later than 08/08/16.

3 14. Upon Respondent's failure to furnish the requested information, Board staff issued a
4 subpoena to Respondent's cell phone provider.

5 15. Upon examination of Respondent's cell phone records which were acquired directly from
6 Respondent's cell phone provider, there were numerous communications between Client and Respondent,
7 each occurring after Client's discharge from Agency.

8 16. After determining that there was no reasonable or therapeutic basis for Respondent's cell
9 phone records to include communications with Client, Board staff made several attempts to conduct an
10 investigative interview with Respondent.

11 17. On 09/13/16, Board staff emailed Respondent asking her to respond with a date and time
12 that best suits her availability for an investigative interview.

13 18. On 09/20/16, after failing to respond to Board staff's email, Respondent was sent a letter,
14 which indicated:

- 15 a. Respondent's case is scheduled for the Board's review on 10/21/16.
- 16 b. It is imperative that Respondent contact Board staff immediately to schedule an
17 investigative interview.
- 18 c. Respondent is provided with a two-week window to select any date and time that best
19 suits her availability for an investigative interview.
- 20 d. Failure to cooperate with Board staff will result in a potential violation of A.R.S. §
21 32-3251(o).

22 19. On 09/28/16, after failing to respond to Board staff, Respondent was mailed a Subpoena
23 to Appear to her address of record, which stated:

- 24 a. Respondent is hereby commanded by the Board, pursuant to its authority under
25 A.R.S. § 32-3282(B)(2), to appear and testify concerning matters related to the
 complaint.

b. Respondent is subpoenaed to appear on 10/05/16 at 9:00 a.m.

c. "Disobedience of this subpoena may be punishable as contempt upon application to the Superior Court of the State of Arizona."

20. Respondent failed to appear or respond to the Board's subpoena.

21. When considering the allegation of a sexual relationship, and the highly concerning evidence including Facebook messages and cell phone records which reflect ongoing communication with Client, it appears highly concerning that a licensed behavioral health professional would demonstrate such an apparent disregard toward the Board's authority and its investigative process.

22. On 10/20/16, on the afternoon preceding the Board's scheduled meeting, Respondent appeared at the Board's office for an investigative interview.

23. In summary of Respondent's interview with Board staff:

a. Respondent initially stated that the only communication she had with Client was during his treatment at Agency.

b. Respondent indicated that the only relationship she had with Client was a professional one.

c. Once informed that the Board had obtained her cell phone records which showed ongoing communication with Client after his discharge, Respondent then acknowledged that she and Client became friends.

d. Respondent denies that she and Client have engaged in a sexual relationship.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(16)(l), any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

1 3. The conduct and circumstances described in the Findings of Fact constitute a violation of
2 A.R.S. § 32-3251(16)(o), failing to furnish information within a specified time to the Board or its
3 investigators or representatives if legally requested by the Board.

4 4. The conduct and circumstances described in the Findings of Fact constitute a violation of
5 A.R.S. § 32-3251(16)(k), any conduct or practice that is contrary to recognized standards of ethics in the
6 behavioral health profession or that constitutes a danger to the health, welfare or safety of a client, as it
7 relates to the following sections of the 2013 NAADAC Code of Ethics:

8 **Section I. The Counseling Relationship**

9 Standard 3: Dual Relationships (1): Because a relationship begins with a power
10 differential, the addiction professional will not exploit relationships with current or
11 former clients, current or former supervisees or colleagues for personal gain, including
12 social or business relationships.

13 **Section IV. Professional Responsibility**

14 Standard 4: Interprofessional Relationships (2): The addiction professional shall
15 cooperate with duly constituted professional ethics committees and promptly supply
16 necessary information unless constrained by the demands of confidentiality.

17 5. The conduct and circumstances described in the Findings of Fact constitute a violation of
18 A.R.S. § 32-3251(16)(c)(ii), any oral or written misrepresentation of a fact by an applicant or licensee in
19 any statements provided during an investigation or disciplinary proceeding by the Board.

20 **ORDER**

21 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following
22 order:


23 License No. LASAC-15114 issued to Marisa Viterbo is hereby REVOKED.
24 ...
25 ...

RIGHT TO PETITION FOR REHEARING OR REVIEW

1 Respondent is hereby notified of the right to petition for a rehearing or review by filing a petition
2 with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-
3 1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.A.C. R4-6-
4 1002. Service of this order is effective five (5) days after date of mailing. If a motion for rehearing is not
5 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.
6

7 Respondent is further notified that the filing of a motion for rehearing is required to preserve any
8 rights of appeal to the Superior Court.

9 Dated this 10th day of January, 2017.

10 
11 Tobi Zavala, Executive Director
12 Arizona Board of Behavioral Health Examiners

13 ORIGINAL of the foregoing filed

14 The 10th day of January, 2017, with:

15 The Board of Behavioral Health Examiners
16 3443 North Central Avenue, Suite 1700
Phoenix, AZ 85012

17 COPY of the foregoing sent certified mail
18 This 10th day of January, 2017, to:

19 Marisa Viterbo
20 Address of Record
Respondent

21 COPY of the foregoing sent by mail this
22 10th day of January, 2017 to:

23 Marc Harris
24 Assistant Attorney General
1275 West Washington CIV/LES
Phoenix, AZ 85007
25 Attorney for the State of Arizona

1 Anne Froedge
Assistant Attorney General
2 1275 West Washington CIV/LES
Phoenix, AZ 85007
3 Attorney for the Board of Behavioral Health Examiners

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