

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 Karen E. Merry, LPC-13478,
4 Licensed Professional Counselor,
In the State of Arizona.

CASE NO. 2017-0020

RELEASE FROM
CONSENT AGREEMENT AND ORDER

5 RESPONDENT

6
7 The Board received a request from Respondent to release them from the terms and
8 conditions of the Consent Agreement and Order dated March 21, 2017. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated March 21, 2017.

11 ORDER

12 GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:

13 Respondent is hereby released from all terms and conditions of the Consent Agreement
14 and Order dated March 21, 2017.

15 Dated this 9th day of May, 2017,

16 By:

17 Tobi Zavala
18 TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed

This 9th day of May, 2017, with:

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

22 COPY of the foregoing mailed via

Certified mail no. 70167190 0000 18042437

23 This 9th day of May, 2017, to:

24 Karen E. Merry
25 Address of Record
Respondent

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 their
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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 they have 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 ...

1 **FINDINGS OF FACT**

2 1. Respondent is the holder of License No. LPC-13478 for the practice of
3 counseling in Arizona.

4 2. From 10/15 to 07/16, Respondent provided behavioral health services to a
5 female client ("Wife").

6 3. On 10/26/15, Wife's husband ("Husband") attended a therapy session with Wife
7 and Respondent.

8 4. Respondent's clinical notes from the 10/26/15 session:

9 a. Indicate that wife expressed interest in couples counseling.

10 b. Respondent determined that couples counseling was not appropriate at
11 that time and recommended that Husband and Wife each seek individual
12 counseling for their specific issues.

13 c. Do not indicate that expectations or limitations of confidentiality were
14 discussed.

15 5. In 07/16, Wife's attorney requested a summary letter of treatment for an
16 upcoming hearing regarding Husband and Wife's divorce.

17 6. Respondent's 07/22/16 letter to attorney included:

18 a. Behavioral health information regarding Husband.

19 b. Information regarding Husband's treatment with Respondent's colleague.

20 7. Respondent did not have any documentation indicating:

21 a. Husband was a client of Respondent or collateral participant in Wife's
22 therapy.

23 b. Husband consented to be treated by Respondent.

24 c. Husband had given authorization to release behavioral health or
25 treatment information to a third party.

1 **CONCLUSIONS OF LAW**

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

5 2. The conduct and circumstances described in the Findings of Fact constitute a
6 violation of A.R.S. § 32-3251(16)(t), disclosing a professional confidence or privileged
7 communication except as may otherwise be required by law or permitted by a valid written
8 release.

9 **ORDER**

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

12 1. Respondent's license, LPC-13478, will be placed on probation, effective from the
13 date of entry as signed below.

14 2. Respondent shall not practice under their license, LPC-13478, unless they are
15 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
16 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
17 shall immediately notify the Board in writing and shall not practice under their license until they
18 submit a written request to the Board to re-commence compliance with this Consent
19 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

20 3. In the event that Respondent is unable to comply with the terms and conditions
21 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until
22 such time as they are granted approval to re-commence compliance with the Consent
23 Agreement.

24 **Continuing Education**

25 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within

1 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
2 hours of continuing education addressing ethics and confidentiality. All required continuing
3 education shall be pre-approved by the Board Chair or designee. Upon completion, Respondent
4 shall submit a certificate of completion of the required continuing education.

5 **GENERAL PROVISIONS**

6 **Provision of Clinical Supervision**

7 5. Respondent shall not provide clinical supervision while subject to this Consent
8 Agreement.

9 **Civil Penalty**

10 6. Subject to the provisions set forth in paragraph 7, the Board imposes a civil
11 penalty against the Respondent in the amount of \$1,000.00.

12 7. Respondent's payment of the civil penalty shall be stayed so long as Respondent
13 remains compliant with the terms of this Consent Agreement. If Board staff determines that
14 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
15 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
16 be automatically lifted and payment of the civil penalty shall be made by certified check or
17 money order payable to the Board within 30 days after being notified in writing of the lifting of
18 the stay.

19 8. Within 10 days of being notified of the lifting of the stay, Respondent may request
20 that the matter be reviewed by the Board for the limited purpose of determining whether the
21 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
22 receives the written request within 10 days or less of the next regularly scheduled Board
23 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
24 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
25 review.

1 9. The Board reserves the right to take further disciplinary action against
2 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
3 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
4 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
5 and the period of probation shall be extended until the matter is final.

6 10. If Respondent currently sees clients in their own private practice, and obtains any
7 other type of behavioral health position, either as an employee or independent contractor, where
8 they provide behavioral health services to clients of another individual or agency, they shall
9 comply with requirements set forth in paragraphs 11 through 13 below.

10 11. Within 10 days of the effective date of this Order, if Respondent is working in a
11 position where Respondent provides any type of behavioral health related services or works in a
12 setting where any type of behavioral health, health care, or social services are provided,
13 Respondent shall provide the Board Chair or designee with a signed statement from
14 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
15 Consent Agreement. If Respondent does not provide the employer's statement to the Board
16 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
17 copy of the Consent Agreement.

18 12. If Respondent is not employed as of the effective date of this Order, within 10
19 days of accepting employment in a position where Respondent provides any type of behavioral
20 health related services or in a setting where any type of behavioral health, health care, or social
21 services are provided, Respondent shall provide the Board Chair or designee with a written
22 statement providing the contact information of their new employer and a signed statement from
23 Respondent's new employer confirming Respondent provided the employer with a copy of this
24 Consent Agreement. If Respondent does not provide the employer's statement to the Board
25 within 10 days, as required, Respondent's failure to provide the required statement to the Board

1 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
2 employer(s) with a copy of the Consent Agreement.

3 13. If, during the period of Respondent's probation, Respondent changes
4 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
5 extended leave of absence for whatever reason that may impact their ability to timely comply
6 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
7 the Board of their change of employment status. After the change and within 10 days of
8 accepting employment in a position where Respondent provides any type of behavioral health
9 related services or in a setting where any type of behavioral health, health care, or social
10 services are provided, Respondent shall provide the Board Chair or designee a written
11 statement providing the contact information of their new employer(s) and a signed statement
12 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
13 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
14 the Board within 10 days, as required, Respondent's failure to provide the required statement to
15 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
16 Respondent's employer(s) with a copy of the Consent Agreement.

17 14. Respondent shall practice behavioral health using the name under which they
18 are licensed. If Respondent changes their name, they shall advise the Board of the name
19 change as prescribed under the Board's regulations and rules.

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

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

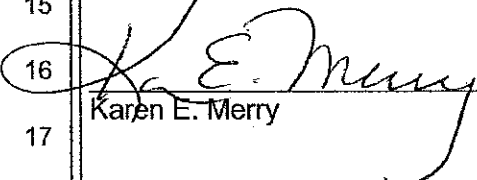
6 16. Respondent shall bear all costs relating to probation terms required in this
7 Consent Agreement.

8 17. Respondent shall be responsible for ensuring that all documentation required in
9 this Consent Agreement is provided to the Board in a timely manner.

10 18. This Consent Agreement shall be effective on the date of entry below.

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


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

16 
17 Karen E. Merry

16 3-21-17
17 Date

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

19 Dated this 21st day of March, 2017.

20
21 By: 
22 TOBIN ZAVALA, Executive Director
23 Arizona Board of Behavioral Health Examiners

24 **ORIGINAL** of the foregoing filed
25 This 21st day of March, 2017 with:

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

3 **COPY** of the foregoing mailed via Interagency Mail
This 21st day of March, 2017, to:

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

7 **COPY** of the foregoing mailed via
Certified mail no. 7011214000018037785
8 This 21st day of March, 2017, to:

9 Karen E. Merry
Address of Record
10 Respondent

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