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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Benjamin T. Harding, LCSW-15629,
Licensed Clinical Social Worker,
In the State of Arizona.

CASE NO. 2017-0094
CONSENT AGREEMENT

RESPONDENT

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

RECITALS

Respondent understands and agrees that:

1. Any record prepared in this matter, all investigative materials prepared or received by the Board concerning the allegations, and all related materials and exhibits may be retained in the Board's file pertaining to this matter.

2. Respondent has the right to a formal administrative hearing at which Respondent can present evidence and cross examine the State's witnesses. Respondent hereby irrevocably waives their right to such formal hearing concerning these allegations and irrevocably waives their 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 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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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:

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1 FINDINGS OF FACT

2 1. Respondent is the holder of License No. LCSW-15629 or the practice of social
3 work in Arizona.

4 2. From 10/15 – 02/17, Respondent was employed by a behavioral health agency
5 (“Agency”) where he provided behavioral health consultation.

6 3. Respondent did not make the Board aware, at any point, of his employment with
7 Agency as required.

8 4. On 01/24/17, an adult female client (“Client”) was admitted to Agency for issues
9 of reported sexual assault, depression, anxiety, and homelessness.

10 5. In the days that followed, Client’s stepfather contacted Agency and raised
11 concerns about Respondent driving Client home and texting with Client.

12 6. Following Agency’s investigation into the matter, Agency terminated
13 Respondent’s employment after Respondent admitted to driving Client home and texting with
14 her however, maintaining that his contact with Client was strictly in a supportive role.

15 7. During the Board’s investigation, Respondent again admitted to driving Client
16 home on 01/24/17 and exchanging text messages with Client, which he indicated were intended
17 to be supportive in nature.

18 8. Respondent provided the Board with screenshots of text messages between
19 himself and Client.

20 9. Respondent confirmed that he furnished the Board with all text messages
21 between himself and Client.

22 10. In an effort to corroborate Respondent’s representation, Board staff asked
23 Respondent to submit his cell phone call and text history, which would validate that Respondent
24 provided the Board with all communications with Client.

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1 11. In response to Board staff's request, Respondent provided an Excel spreadsheet
2 showing his communication history however, upon examination by Board staff, there were
3 various discrepancies identified in his Excel spreadsheet versus the screenshots previously
4 submitted.

5 12. After being informed of the discrepancies and being made aware that the Board
6 would be issuing a subpoena for his entire cell phone history, Respondent submitted a written
7 statement to the Board which indicated:

- 8 a. "There has been information attempted to be hidden in the form of text
9 messages."
- 10 b. "My heart was in the right place of helping her, but some of the conversation
11 did turn flirtatious in nature."
- 12 c. On 01/25/17, Client asked Respondent to return to her parents' home, which
13 he did.
- 14 d. "To hide this, I deleted text messages from my phone that I felt would upset
15 my wife."

16 13. In review of Respondent's subpoenaed cell phone records, Respondent and
17 Client exchanged approximately 185 text messages, which various included late night and early
18 morning communications.

19 14. When asked by Board staff why he lied about submitting his entire text message
20 conversation to Board staff, Respondent indicated, "Because I was trying to conceal it and
21 because I was being ridiculous."

22 15. When asked by Board staff if he manipulated the Excel spreadsheet that he
23 provided to the Board, Respondent, indicated, "Yes, I did. I was continuing to try to conceal."

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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.

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

3. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation application to the practice of behavioral health as it relates to:

- a. A.A.C. R4-6-205, Change of Contact Information.

ORDER

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

1. Respondent's license, LCSW-15629, will be placed on probation for 24 months, effective from the date of entry as signed below.

2. Respondent shall not practice under their license, LCSW-15629, unless they are fully compliant with all terms and conditions in this Consent Agreement. If, for any reason, Respondent is unable to comply with the terms and conditions of this Consent Agreement, they shall immediately notify the Board in writing and shall not practice under their license until they

...

1 submit a written request to the Board to re-commence compliance with this Consent
2 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

7 **Continuing Education**

8 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
9 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
10 three semester credit hour graduate level behavioral health ethics course from a regionally
11 accredited college or university, pre-approved by the Board Chair or designee. Upon
12 completion, Respondent shall submit to the Board an official transcript establishing completion
13 of the required course.

14 **Clinical Supervision**

15 5. While on probation, Respondent shall submit to clinical supervision for 24 months
16 by a masters or higher level behavioral health professional licensed at the independent level.
17 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of a
18 clinical supervisor for pre-approval by the Board Chair or designee. Also within 30 days of the
19 date of this Consent Agreement, the clinical supervisor shall submit a letter disclosing their prior
20 relationship to Respondent. In that letter, the clinical supervisor must address why they should
21 be approved, acknowledge that they have reviewed the Consent Agreement and include the
22 results of an initial assessment and a supervision plan regarding the proposed supervision of
23 Respondent. The letter from the supervisor shall be submitted to the Board.

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Focus and Frequency of Clinical Supervision

6. The focus of the supervision shall relate to professional boundaries, dual relationships, and codependency. Respondent shall meet individually in person with the supervisor twice monthly for the first 12 months. The frequency for the remaining time will be at the recommendation of the clinical supervisor.

Reports

7. Once approved, the supervisor shall submit quarterly reports for review and approval by the Board Chair or designee. The quarterly reports shall include issues presented in this Consent Agreement that need to be reported and the supervisor shall notify the Board if more frequent supervision is needed. Quarterly reports shall include the following:

- a. Dates of each clinical supervision session.
- b. A comprehensive description of issues discussed during supervision sessions.

8. All quarterly supervision reports shall include a copy of clinical supervision documentation maintained for that quarter. All clinical supervision documentation maintained by the supervisor shall comply with requirements set forth in A.A.C. R4-6-212(C).

9. After Respondent's probationary period, the supervisor shall submit a final summary report for review and approval by the Board Chair or designee. The final report shall also contain a recommendation as to whether the Respondent should be released from this Consent Agreement.

Change of Clinical Supervisor During Probation

10. If, during the period of Respondent's probation, the clinical supervisor determines that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of the end of supervision and provide the Board with an interim final report. Respondent shall advise the Board Chair or designee within 30 days of cessation of clinical supervision by the

1 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
2 proposed clinical supervisor shall provide the same documentation to the Board as was required
3 of the initial clinical supervisor.

4 Therapy

5 11. During the period of probation, Respondent shall attend therapy for 24 months
6 with a masters or higher level behavioral health professional licensed at the independent level.
7 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of
8 their therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or
9 designee. Also within 30 days of the date of this Consent Agreement, the therapist shall submit
10 a letter addressing why they should be approved, acknowledging that they have reviewed the
11 Consent Agreement and include the results of an initial assessment and a treatment plan
12 regarding the proposed treatment of Respondent.

13 12. Upon approval, the Board will provide the therapist with copies of any required
14 evaluations completed at the request of the Board prior to this Consent Agreement and the
15 Board's investigative report.

16 Focus and Frequency of Therapy

17 13. The focus of the therapy shall relate to grief and loss, boundaries, and self-
18 awareness. Respondent shall meet in person with the therapist twice monthly for the first 12
19 months. The frequency for the remaining time will be at the recommendation of the therapist.

20 Reports

21 14. Once approved, the therapist shall submit quarterly reports and a final summary
22 report to the Board for review and approval. The quarterly reports shall include issues presented
23 in this Consent Agreement that need to be reported and the therapist shall notify the Board if
24 more frequent therapy is needed. The reports shall address Respondent's current mental health
25 status, medications prescribed, if any, treatment recommendation, and shall report if, in their

1 professional opinion, Respondent becomes unable to practice psychotherapy safely and
2 competently. The final report shall also contain a recommendation as to whether the
3 Respondent should be released from this Consent Agreement.

4 Change of Therapist

5 15. In the event that, during the period of Respondent's probation, Respondent's
6 Board-approved therapist discontinues treatment, Respondent shall submit the name of a new
7 therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee
8 within 30 days of the discontinued treatment. Also within 30 days of the date of the discontinued
9 treatment, the proposed therapist shall submit a letter addressing why they should be approved,
10 acknowledging that they have reviewed the Consent Agreement, and include the results of an
11 initial assessment and a treatment plan regarding the proposed treatment of Respondent.

12 Early Release

13 16. After completion of the stipulations set forth in this Consent Agreement, and upon
14 the supervisor and therapist's recommendation, Respondent may request early release from the
15 Consent Agreement after 12 months.

16 GENERAL PROVISIONS

17 Provision of Clinical Supervision

18 17. Respondent shall not provide clinical supervision while subject to this Consent
19 Agreement.

20 Civil Penalty

21 18. Subject to the provisions set forth in paragraph 19, the Board imposes a civil
22 penalty against the Respondent in the amount of \$1,000.00.

23 19. Respondent's payment of the civil penalty shall be stayed so long as Respondent
24 remains compliant with the terms of this Consent Agreement. If Board staff determines that
25 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the

1 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
2 be automatically lifted and payment of the civil penalty shall be made by certified check or
3 money order payable to the Board within 30 days after being notified in writing of the lifting of
4 the stay.

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

12 21. The Board reserves the right to take further disciplinary action against
13 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
14 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
15 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
16 and the period of probation shall be extended until the matter is final.

17 22. If Respondent currently sees clients in their own private practice, and obtains any
18 other type of behavioral health position, either as an employee or independent contractor, where
19 they provide behavioral health services to clients of another individual or agency, they shall
20 comply with requirements set forth in paragraphs 23 through 25 below.

21 23. Within 10 days of the effective date of this Order, if Respondent is working in a
22 position where Respondent provides any type of behavioral health related services or works in a
23 setting where any type of behavioral health, health care, or social services are provided,
24 Respondent shall provide the Board Chair or designee with a signed statement from
25 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this

1 Consent Agreement. If Respondent does not provide the employer's statement to the Board
2 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
3 copy of the Consent Agreement.

4 24. If Respondent is not employed as of the effective date of this Order, within 10
5 days of accepting employment in a position where Respondent provides any type of behavioral
6 health related services or in a setting where any type of behavioral health, health care, or social
7 services are provided, Respondent shall provide the Board Chair or designee with a written
8 statement providing the contact information of their new employer and a signed statement from
9 Respondent's new employer confirming Respondent provided the employer with a copy of this
10 Consent Agreement. If Respondent does not provide the employer's statement to the Board
11 within 10 days, as required, Respondent's failure to provide the required statement to the Board
12 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
13 employer(s) with a copy of the Consent Agreement.

14 25. If, during the period of Respondent's probation, Respondent changes
15 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
16 extended leave of absence for whatever reason that may impact their ability to timely comply
17 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
18 the Board of their change of employment status. After the change and within 10 days of
19 accepting employment in a position where Respondent provides any type of behavioral health
20 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 a written
22 statement providing the contact information of their new employer(s) and a signed statement
23 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
24 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
25 the Board within 10 days, as required, Respondent's failure to provide the required statement to

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

3 26. Respondent shall practice behavioral health using the name under which they
4 are licensed. If Respondent changes their name, they shall advise the Board of the name
5 change as prescribed under the Board's regulations and rules.

6 27. Prior to the release of Respondent from probation, Respondent must submit a
7 written request to the Board for release from the terms of this Consent Agreement at least 30
8 days prior to the date they would like to have this matter appear before the Board. Respondent
9 may appear before the Board, either in person or telephonically. Respondent must provide
10 evidence that they have successfully satisfied all terms and conditions in this Consent
11 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
12 this Consent Agreement have been met and whether Respondent has adequately demonstrated
13 that they have addressed the issues contained in this Consent Agreement. In the event that the
14 Board determines that any or all terms and conditions of this Consent Agreement have not been
15 met, the Board may conduct such further proceedings as it determines are appropriate to
16 address those matters.

17 28. Respondent shall bear all costs relating to probation terms required in this
18 Consent Agreement.

19 29. Respondent shall be responsible for ensuring that all documentation required in
20 this Consent Agreement is provided to the Board in a timely manner.

21 30. This Consent Agreement shall be effective on the date of entry below.

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

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PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Benjamin T. Harding
Benjamin T. Harding

7/10/17
Date

BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Dated this 11th day of July, 2017.

By: Tobi Zavala
TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

ORIGINAL of the foregoing filed
This 11th day of July, 2017 with:

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

COPY of the foregoing mailed via Interagency Mail
This 11th day of July, 2017, to:

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

COPY of the foregoing mailed via
Certified mail no: 7016214000018042123
This 11th day of July, 2017, to:

Benjamin T. Harding
Address of Record
Respondent