

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

2 **In the Matter of:**

3 **Roberta A. Lewusz, LPC-10223,**
4 **Licensed Professional Counselor,**
5 **In the State of Arizona.**

CASE NO. 2018-0001

**RELEASE FROM
CONSENT AGREEMENT AND ORDER**

6 **RESPONDENT**

7 The Board received a request from Respondent to release them from the terms and
8 conditions of the Consent Agreement and Order dated July 19, 2018. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated July 19, 2018.

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 July 19, 2018.

15 Dated this 18th day of September, 2018.

16
17 By:



18 **TOBI ZAVALA, Executive Director**
19 **Arizona Board of Behavioral Health Examiners**

20 **ORIGINAL** of the foregoing filed

This 18th day of September, 2018, with:

21 Arizona Board of Behavioral Health Examiners
22 1740 W. Adams St., Suite 3600
Phoenix, AZ 85007

23 **COPY** of the foregoing mailed via

Certified mail no. 948900900027604365771

24 This 18th day of September, 2018, to:

25 Roberta A. Lewusz
Address of Record
Respondent

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COPY of the foregoing mailed via Mail

This 18th day of September, 2018 to:

Kasey C. Nye
1661 N. Swan Rd. Ste. 238
Tucson, AZ 85712
Attorney for Respondent

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

3 **In the Matter of:**

4 **Roberta A. Lewusz, LPC-10223,**
5 **Licensed Professional Counselor,**
6 **In the State of Arizona.**

CASE NO. 2018-0001

CONSENT AGREEMENT

7 **RESPONDENT**

8 In the interest of a prompt and speedy settlement of the above captioned matter,
9 consistent with the public interest, statutory requirements and responsibilities of the Arizona
10 State Board of Behavioral Health Examiners (“Board”), and pursuant to A.R.S. §§ 32-3281(F)
11 and 41-1092.07(F)(5), Roberta A. Lewusz (“Respondent”) and the Board enter into this Consent
12 Agreement, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final
13 disposition of this matter.

14 **RECITALS**

15 Respondent understands and agrees that:

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

19 2. Respondent has the right to a formal administrative hearing at which Respondent
20 can present evidence and cross examine the State’s witnesses. Respondent hereby irrevocably
21 waives their right to such formal hearing concerning these allegations and irrevocably waives
22 their right to any rehearing or judicial review relating to the allegations contained in this Consent
23 Agreement.

24 3. Respondent has the right to consult with an attorney prior to entering into this
25 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.

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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-10223 for the practice of
4 counseling in Arizona.

5 2. Respondent provides clinical and direct supervision to the staff of a behavioral
6 health agency ("Agency").

7 3. On 05/31/17, Respondent was forwarded an email from an Agency counselor
8 who recently conducted an intake assessment for behavioral health client, whom was referred
9 to complete domestic violence treatment and alcohol/substance abuse treatment.

10 4. In the counselor's email, which concerned a memo to Agency's file that would be
11 subject to additional review prior to being used by Agency for any other purpose, she indicated
12 the following:

- 13 a. The counselor did not believe the client met the criteria of medical necessity.
- 14 b. The client did not present with any identifiable substance abuse problems.

15 5. Immediately after receiving the email, Respondent replied with the following:

- 16 a. "...Please use F10.10 Alcohol use, mild and for the DV either Z63.0, Z69.12
17 or T74.11 XD."

18 6. When asked how Respondent could offer a diagnosis without reviewing the client
19 record, Respondent indicated the following:

- 20 a. Respondent did not need to physically see the client's file at that time
21 because the counselor provided all the relevant information in her email
22 necessary for the memo to the file, and because any initial diagnosis in the
23 memo would be subject to further review and analysis prior to recommending
24 a course of treatment or leaving Agency.

1 b. "It has long been the practice of [Agency] to assign substance abuse
2 treatment to defendants who commit a DV offense under the influence of a
3 substance."

4 c. The initial coding was corroborated upon subsequent file review based on
5 client behavior, their testing results, and their information.

6 7. At the time of Respondent's suggested diagnoses, Respondent did not have any
7 information regarding client's behavior or testing results.

8 **CONCLUSIONS OF LAW**

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

12 2. The conduct and circumstances described in the Findings of Fact constitute a
13 violation of A.R.S. § 32-3251 (16)(k), any conduct or practice that is contrary to recognized
14 standards of ethics in the behavioral health profession or that constitutes a danger to the health,
15 welfare or safety of a client, as it relates to the 2014 ACA Code of Ethics:

16 E.6.a. Appropriateness of Instruments:

17 Counselors carefully consider the validity, reliability, psychometric limitations, and
18 appropriateness of instruments when selecting assessments and, when possible,
19 use multiple forms of assessment, data, and/or instruments in forming
20 conclusions, diagnoses, or recommendations.

21 **ORDER**

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

24 1. Respondent's license, LPC-10223, will be placed on probation for 12 months,
25 effective from the date of entry as signed below.

1 2. Respondent shall not practice under their license, LPC-10223, unless they are
2 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
3 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
4 shall immediately notify the Board in writing and shall not practice under their license until they
5 submit a written request to the Board to re-commence compliance with this Consent
6 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

Continuing Education

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

GENERAL PROVISIONS

Provision of Clinical Supervision

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20 5. Respondent shall not provide clinical supervision while subject to this Consent
21 Agreement.

Civil Penalty

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23 6. Subject to the provisions set forth in paragraph 7, the Board imposes a civil
24 penalty against the Respondent in the amount of \$1,000.00.
25 ...

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

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

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

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

24 11. Within 10 days of the effective date of this Order, if Respondent is working in a
25 position where Respondent provides any type of behavioral health related services or works in a

1 setting where any type of behavioral health, health care, or social services are provided,
2 Respondent shall provide the Board Chair or designee with a signed statement from
3 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
4 Consent Agreement. If Respondent does not provide the employer's statement to the Board
5 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
6 copy of the Consent Agreement.

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

17 13. If, during the period of Respondent's probation, Respondent changes
18 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
19 extended leave of absence for whatever reason that may impact their ability to timely comply
20 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
21 the Board of their change of employment status. After the change and within 10 days of
22 accepting employment in a position where Respondent provides any type of behavioral health
23 related services or in a setting where any type of behavioral health, health care, or social
24 services are provided, Respondent shall provide the Board Chair or designee a written
25 statement providing the contact information of their new employer(s) and a signed statement

1 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
2 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
3 the Board within 10 days, as required, Respondent's failure to provide the required statement to
4 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
5 Respondent's employer(s) with a copy of the Consent Agreement.

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

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

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

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

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

25 ...

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

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

5 Roberta A. Lewusz 7-19-18
6 Roberta A. Lewusz Date

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

8 Dated this 19th day of July, 2018.

9
10 By: M. Zawala
11 TOBI ZAWALA, Executive Director
12 Arizona Board of Behavioral Health Examiners

13 **ORIGINAL** of the foregoing filed
14 This 19th day of July, 2018 with:

15 Arizona Board of Behavioral Health Examiners
16 1740 West Adams Street, Suite 3600
17 Phoenix, AZ 85007

18 **COPY** of the foregoing mailed via Interagency Mail
19 This 19th day of July, 2018, to:

20 Marc Harris
21 Assistant Attorney General
22 2005 North Central Avenue
23 Phoenix, AZ 85004-1592

24 **COPY** of the foregoing mailed via
25 Certified mail no. 9489009000276000730155
This 19th day of July, 2018, to:

Roberta A. Lewusz
Address of Record
Respondent

1 COPY of the foregoing mailed via
Certified mail no. 9489009000276060230162
2 This 19th day of July, 2018, to:

3 Kasey C. Nye
Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C.
4 5210 E. Williams Circle, Suite 800
Tucson, AZ 85711-4482
5 Attorney for Respondent

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