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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:
Ruth E. Zum Mallen, LPC-10819,
Licensed Professional Counselor,
In the State of Arizona.

CASE NOS. 2017-0118
2018-0007

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), Ruth E. Zum Mallen ("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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 ...

25 ...

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-10819 for the practice of
4 counseling in Arizona.

5 **Case No. 2017-0118**

6 2. On 03/13/17, Respondent conducted an intake session with a minor client
7 ("Minor").

8 3. Minor's intake documentation included the following information:

9 a. Initial Engagement Session:

- 10 • Minor says she feels depressed, empty, lonely and damaged.
11 • She always has plans for killing herself but refuses to say what they are.
12 • Minor says she is depressed and feels suicidal.

13 b. Risk Assessment:

- 14 • Minor has suicidal thoughts and they are with her all the time.
15 • Minor says two months ago, she made a suicide attempt.

16 • Risk of Harm to Self and Others:

- 17 > Prior suicide attempt: Yes
18 > Repeated attempts, increasing severity: yes
19 > Stated plan with intent: Yes
20 > Access to means (e.g. weapons): Yes
21 > Behavioral cues: Yes

22 • Explanation:

- 23 > Minor said she wanted to do it and will most likely do it again.
24 > When asked if she wanted to die, she thought for a long time then
25 said, "I wanted to die."

1 > She says life feels unbearable.

2 4. Despite the significant suicide risk factors and Minor's disclosure that she had
3 plans and means of attempting suicide, Respondent failed to contact a crisis team or, at a
4 minimum, generate and document a crisis prevention or safety plan with Minor.

5 5. Six days following Minor's intake with Respondent, Minor made a suicide
6 attempt.

7 6. During her investigative interview with Board staff, Respondent indicated the
8 following regarding this matter:

9 a. Respondent slipped up with all the things she was weighing out and
10 completing a safety plan slipped her mind.

11 b. They did discuss the topics in a safety plan like how to sooth her thoughts
12 and what to do with her thoughts, but they did not complete a formal safety
13 plan.

14 c. Respondent has always completed safety plans with prior clients but as far as
15 she knows, this is the only time she has not.

16 **Case No. 2018-0007**

17 7. In 06/13, Respondent began working at a behavioral health agency ("Agency").

18 8. In review of Respondent's personnel records from Agency, the following was
19 documented from a 05/05/17 Employee Counseling Session:

20 a. A client ("Client") reported to Respondent that she was in need of housing.

21 b. Instead of following protocol and providing Client with housing in the
22 community, Respondent coordinated to have Client live in Respondent's
23 neighbor's ("Neighbor") house.

24 c. As time passed, Neighbor began receiving unwelcomed visitors.

25 d. Respondent intervened for Neighbor and eventually kicked Client out.

- 1 e. Respondent reported that Neighbor's debit card and check were missing.
- 2 f. It was later discovered that the check was written out to another individual
- 3 who was a former client of Respondent's for \$50.
- 4 g. Respondent came forward to the program director to report this information
- 5 rather than wait to receive any complaints from Client or Neighbor.
- 6 h. Respondent displayed lack of judgment and overstepped her therapeutic
- 7 boundaries by getting Client involved with Neighbor.

8 9. During her investigative interview with Board staff, Respondent indicated the
9 following regarding this matter:

- 10 a. Respondent failed to see the potential harmful consequences, but she
- 11 learned an important lesson, has acknowledged her mistake, and is
- 12 committed to never repeating.
- 13 b. Respondent realized her mistake and self-reported the incident to her
- 14 supervisor at the time.

15 **CONCLUSIONS OF LAW**

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

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

22 3. The conduct and circumstances described in the Findings of Fact constitute a
23 violation of A.R.S. § 32-3251(16)(y), engaging in a dual relationship with a client that could
24 impair the licensee's objectivity or professional judgment or create a risk of harm to the client.
25 For the purposes of this subdivision, "dual relationship" means a licensee simultaneously

1 engages in both a professional and nonprofessional relationship with a client that is avoidable
2 and not incidental.

3 **ORDER**

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

6 1. Respondent's license, LPC-10819, will be placed on probation for 24 months,
7 effective from the date of entry as signed below.

8 2. Respondent shall not practice under their license, LPC-10819, unless they are
9 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
10 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
11 shall immediately notify the Board in writing and shall not practice under their license until they
12 submit a written request to the Board to re-commence compliance with this Consent
13 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

18 **Practice Restriction**

19 4. While on probation, Respondent shall not provide behavioral health services to
20 minors.

21 **Continuing Education**

22 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
23 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
24 hours of continuing education addressing suicide risk assessment in adolescents and children.
25 All required continuing education shall be pre-approved by the Board Chair or designee. Upon

1 completion, Respondent shall submit a certificate of completion of the required continuing
2 education.

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

9 Clinical Supervision

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

19 Focus and Frequency of Clinical Supervision

20 8. The focus of the supervision shall relate to education on working with
21 adolescents, suicide risk assessments, self-awareness, case management,
22 countertransference, caseload, and decision making. Respondent shall meet individually in
23 person with the supervisor for a minimum of one hour at least weekly if working fulltime or twice
24 monthly if working less than 20 hours per week.

25 ...

1 Reports

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

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

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

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

16 Change of Clinical Supervisor during Probation

17 12. If, during the period of Respondent's probation, the clinical supervisor determines
18 that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of
19 the end of supervision and provide the Board with an interim final report. Respondent shall
20 advise the Board Chair or designee within 30 days of cessation of clinical supervision by the
21 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
22 proposed clinical supervisor shall provide the same documentation to the Board as was required
23 of the initial clinical supervisor.

24 Early Release

25 13. After completion of the stipulations set forth in this Consent Agreement, and upon

1 the Clinical Supervisor's recommendation, Respondent may request early release from the
2 Consent Agreement after 12 months.

3 **GENERAL PROVISIONS**

4 **Provision of Clinical Supervision**

5 14. Respondent shall not provide clinical supervision while subject to this Consent
6 Agreement.

7 **Civil Penalty**

8 15. Subject to the provisions set forth in paragraph 16, the Board imposes a civil
9 penalty against the Respondent in the amount of \$1,000.00.

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

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

24 18. The Board reserves the right to take further disciplinary action against
25 Respondent for noncompliance with this Consent Agreement after affording Respondent notice

1 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
2 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
3 and the period of probation shall be extended until the matter is final.

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

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

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

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

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

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

1 Board determines that any or all terms and conditions of this Consent Agreement have not been
2 met, the Board may conduct such further proceedings as it determines are appropriate to
3 address those matters.

4 25. Respondent shall bear all costs relating to probation terms required in this
5 Consent Agreement.

6 26. Respondent shall be responsible for ensuring that all documentation required in
7 this Consent Agreement is provided to the Board in a timely manner.

8 27. This Consent Agreement shall be effective on the date of entry below.

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

12
13 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

14 Ruth E. Zum Mallen
15 Ruth E. Zum Mallen

11-29-2017
Date

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

17 Dated this 1st day of December, 2017.

18
19 By: Tobi Zavala
20 TOBI ZAVALA, Executive Director
21 Arizona Board of Behavioral Health Examiners

22
23 **ORIGINAL** of the foregoing filed
24 This 1st day of December, 2017 with:

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

1 COPY of the foregoing mailed via Interagency Mail
This 18th day of December, 2017, to:

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

5 COPY of the foregoing mailed via
Certified mail no. 70714500008689 B84
6 This 18th day of December, 2017, to:

7 Ruth E. Zum Mallen
8 Address of Record
9 Respondent

9 COPY of the foregoing mailed via Mail
10 This 18th day of December, 2017 to:

11 Sandra Creta
12 Creta Law Firm, PLLC
13 12725 W. Indian School Rd
14 Ste. E-101
15 Avondale, AZ 85392
16 Attorney for Respondent

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