

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

2 **In the Matter of:**

3 **Marian C. Eberly, LCSW-4127,**
4 **Licensed Clinical Social Worker**
5 **In the State of Arizona.**

6 **RESPONDENT**

CASE NO. 2021-0160

RELEASE FROM
CONSENT AGREEMENT AND ORDER

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 24th, 2022. After consideration,
9 the Board voted to release Respondent from the terms and conditions of the Consent
10 Agreement and Order dated March 24th, 2022.

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 24th, 2022.

15 By:  Apr 17, 2023
16 **TOBI ZAVALA, Executive Director** **Date**
Arizona Board of Behavioral Health Examiners

17
18 **ORIGINAL** of the foregoing filed Apr 17, 2023
19 with:

20 Arizona Board of Behavioral Health Examiners
21 1740 West Adams Street, Suite 3600
22 Phoenix, AZ 85007

23 **EXECUTED COPY** of the foregoing sent electronically Apr 17, 2023
24 to:

25 Marian C. Eberly
Address of Record
Respondent

Anne E. McClellan
Jennings, Strouss & Salmon, PLC
One East Washington Street Suite 1900

1 Phoenix, AZ 85004
2 Attorney for Respondent

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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 between only Respondent and the Board for
7 the final disposition of this matter and may be used for purposes of determining sanctions in any
8 future disciplinary matter. This Consent Agreement and its content are for purposes of this
9 Board matter only and the Consent Agreement and its contents do not constitute admissions or
10 findings as to any matter outside the Board's jurisdiction.

11 6. This Consent Agreement is subject to the Board's approval, and will be effective
12 only when the Board accepts it. In the event the Board in its discretion does not approve this
13 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,
14 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except
15 that Respondent agrees that should the Board reject this Consent Agreement and this case
16 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its
17 review and discussion of this document or of any records relating thereto.

18 7. Respondent acknowledges and agrees that the acceptance of this Consent
19 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
20 other proceedings as may be appropriate now or in the future. Furthermore, and
21 notwithstanding any language in this Consent Agreement, this Consent Agreement does not
22 preclude in any way any other state agency or officer or political subdivision of this state from
23 instituting proceedings, investigating claims, or taking legal action as may be appropriate now or
24 in the future relating to this matter or other matters concerning Respondent, including but not

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1 limited to violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other
2 than with respect to the Board, this Consent Agreement makes no representations, implied or
3 otherwise, about the views or intended actions of any other state agency or officer or political
4 subdivision of the state relating to this matter or other matters concerning Respondent.

5 8. Respondent understands that once the Board approves and signs this Consent
6 Agreement, it is a public record that may be publicly disseminated as a formal action of the
7 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

8 9. Respondent further understands that any violation of this Consent Agreement
9 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
10 disciplinary action pursuant to A.R.S. § 32-3281.

11 10. The Board therefore retains jurisdiction over Respondent and may initiate
12 disciplinary action against Respondent if it determines that they have failed to comply with the
13 terms of this Consent Agreement or of the practice act.

14 The Board issues the following Findings of Fact, Conclusions of Law and Order:

15 **FINDINGS OF FACT**

16 1. Respondent is the holder of License No. LCSW-4127 for the practice of Social
17 Work in the State of Arizona.

18 2. From 02/21 – 04/21, Respondent provided behavioral health services to the
19 minor son ("Son") of Complainant.

20 3 From 03/21 – 04/21, Respondent provided behavioral health services to the
21 minor daughter ("Daughter") of Complainant.

22 4. Throughout the course of treatment for Son and Daughter, Respondent provided
23 individual and family therapy services which included Complainant and the mother ("Mother")
24 attending sessions with Son and Daughter.

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1 5. On 02/16/21, Complainant signed informed consent documents for Son's
2 treatment and on 03/02/21 Complainant signed informed consent documents for Daughter's
3 treatment.

4 6. The informed consent documents indicated information will be released in
5 accordance with Arizona state law and clinical ethics.

6 7. On 05/06/21, Complainant emailed Respondent requesting Son and Daughter's
7 progress notes and treatment plans.

8 8. On 05/15/21, Complainant emailed Respondent following up on his request for
9 Son and Daughter's records.

10 9. On 05/17/21, Respondent emailed Complainant forms indicating he must
11 complete the forms in order for her to release Son and Daughter's records.

12 10. On 05/18/21, Complainant emailed Respondent signed releases of information
13 for Respondent to release Son and Daughter's records to him.

14 11. Respondent failed to respond to this 05/18/21 email from Complainant and
15 represented in an investigative interview that she never received this email, or else she would
16 have released the records to Complainant.

17 12. On 01/10/22, after notification from Board staff, Respondent provided
18 Complainant with Son and Daughter's records.

19 13. Son's 02/18/21 treatment plan goals included the restoration of the relationship
20 and visits with Complainant and decreased anxiety and depressive symptoms, as well as family
21 therapy to improve communication and conflicts.

22 14. Throughout Son's therapy, Respondent maintained email communication with
23 both Mother and Complainant.

24 15. On 05/02/21, Respondent sent an email to Mother only which included the
25 following:

- 1 a. Complainant will say he cannot afford the therapy and going to an attorney
2 will not help in terms of payment.
- 3 b. Mother might have greater success asking the judge to court order
4 Complainant anger management and parenting classes.
- 5 c. Complainant will not get the help he needs himself and will lose his children
6 and point the finger at everyone else.
- 7 d. Respondent hopes Complainant becomes an adult and learns to take
8 responsibility for his emotions, and humble himself and admit he does not
9 know how to parent properly.

10 16. Respondent acknowledged the following regarding this email:

- 11 a. This email placed Complainant in a poor light and Respondent would word
12 this email differently if she could.
- 13 b. Respondent was frustrated when she sent his email and reflected her
14 frustration in the email, and acknowledged the email is inappropriate.
- 15 c. Respondent's intent in sending this email was good and her rationale was to
16 help get Son back into therapy.

17 17. Respondent provided a recommendation to Mother regarding Complainant while
18 Respondent never treated or diagnosed Complainant.

19 **CONCLUSIONS OF LAW**

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

23 2. The conduct and circumstances described in the Findings of Fact constitute a
24 violation of A.R.S. § 32-3251(16)(m), engaging or offering to engage as a licensee in activities
25 that are not congruent with the licensee's professional education, training or experience.

1 All required continuing education shall be pre-approved by the Board Chair or designee. Upon
2 completion, Respondent shall submit a certificate of completion of the required continuing
3 education.

4 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
5 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
6 hours of continuing education in family systems and highly contested matters. All required
7 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
8 Respondent shall submit a certificate of completion of the required continuing education.

9 **Early Release**

10 6. After completion of the continuing education requirements set forth in this
11 Consent Agreement, Respondent may request early release from the Consent Agreement if all
12 other terms of the Consent Agreement have been met.

13 **GENERAL PROVISIONS**

14 **Provision of Clinical Supervision**

15 7. Respondent shall not provide clinical supervision while subject to this Consent
16 Agreement.

17 **Civil Penalty**

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

20 9. Respondent's payment of the civil penalty shall be stayed so long as Respondent
21 remains compliant with the terms of this Consent Agreement. If Board staff determines that
22 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
23 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
24 be automatically lifted and payment of the civil penalty shall be made by certified check or

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1 money order payable to the Board within 30 days after being notified in writing of the lifting of
2 the stay.

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

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

15 12. If Respondent currently sees clients in their own private practice, and obtains any
16 other type of behavioral health position, either as an employee or independent contractor, where
17 they provide behavioral health services to clients of another individual or agency, they shall
18 comply with requirements set forth in paragraphs 13 through 15 below.

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

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1 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
2 copy of the Consent Agreement.

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

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

25 ...

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 16. 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 17. 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 18. Respondent shall bear all costs relating to probation terms required in this
18 Consent Agreement.

19 19. 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 20. This Consent Agreement shall be effective on the date of entry below.

22 21. 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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1 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

2 *Marian Eberly*
Marian Eberly (Mar 23, 2022 23:07 PDT)

Mar 23, 2022

3 Marian C. Eberly

Date

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

5 By: *Tobi Zavala*

Mar 24, 2022

6 TOBI ZAVALA, Executive Director
7 Arizona Board of Behavioral Health Examiners

Date

8 **ORIGINAL** of the foregoing filed Mar 24, 2022
9 with:

10 Arizona Board of Behavioral Health Examiners
11 1740 West Adams Street, Suite 3600
12 Phoenix, AZ 85007

13 **EXECUTED COPY** of the foregoing sent electronically Mar 24, 2022
14 to:

15 Mona Baskin
16 Assistant Attorney General
17 2005 North Central Avenue
18 Phoenix, AZ 85004

19 Marian C. Eberly
20 Address of Record
21 Respondent

22 Anne E. McClellan
23 Jennings, Strouss & Salmon, PLC
24 One East Washington Street Suite 1900
25 Phoenix AZ 85004
26 Attorney for Respondent