

1                   **BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS**  
2                   **FOR THE STATE OF ARIZONA**

3                   In the Matter of:

Case Nos. 18-08 & 18-33

4  
5                   Mark Magier, Psy.D.,  
6                   Holder of License No. PSY-004010  
7                   For the Practice of Psychology  
8                   In the State of Arizona.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND CONSENT  
AGREEMENT FOR SURRENDER OF  
PSYCHOLOGIST LICENSE**

9                   In the interest of a prompt and judicious settlement of the above-captioned matter before  
10                  the Arizona Board of Psychologist Examiners ("Board") and consistent with public interest,  
11                  statutory requirements and responsibilities of the Board and pursuant to A.R.S. § 32-2061 *et seq.*,  
12                  and A.R.S. § 41-1092.07(F)(5), Mark Magier, Psy.D. ("Respondent"), holder of License No. PSY-  
13                  004010 and the Board enter into this Consent Agreement for Voluntary Surrender ("Consent  
14                  Agreement") as the final disposition of these matters.

15                                   **JURISDICTION**

16                  1.       The Board is authorized to regulate the practice of psychology in Arizona pursuant  
17                  to A.R.S. § 32-2061, *et seq.*, and the rules promulgated thereunder, found in Arizona  
18                  Administrative Code ("A.A.C." or "rules") at R4-26-101, *et seq.*, to regulate and control the  
19                  licensing of psychologists in the State of Arizona.

20                  2.       Respondent is the holder of license number PSY-004010 for the practice of  
21                  psychology in the State of Arizona.

22                  3.       The Board has personal and subject matter jurisdiction over Respondent pursuant  
23                  to A.R.S. § 32-2061, *et seq.*, and the rules of A.A.C. R4-26-101, *et seq.*

24                                   **RECITALS**

25                                   Respondent understands and agrees that:

26                  4.       The Board and Respondent enter into this Consent Agreement to promptly and  
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1 judiciously resolve this matter, consistent with the public interest and the statutory requirements  
2 of the Board.

3 5. Respondent has the right to consult with an attorney prior to entering into this  
4 Consent Agreement.

5 6. Respondent has a right to a public hearing concerning this case. He further  
6 acknowledges that at such formal hearing he could present evidence and cross-examine witnesses.  
7 Respondent irrevocably waives his right to such a hearing.

8 7. Respondent irrevocably waives any right to rehearing or review or to any judicial  
9 review or any other appeal to this matter.

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

17 9. The Consent Agreement, once approved by the Board and signed by the  
18 Respondent and the Executive Director, shall constitute a public record, which may be  
19 disseminated as a formal action of the Board and shall be reported to the National Practitioner Data  
20 Bank.  
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22 10. Although Respondent does not agree that all the Findings of Fact set forth in this  
23 Consent Agreement are supported by the evidence, Respondent acknowledges that it is the Board's  
24 position that, if this matter proceeded to formal hearing, the Board could establish sufficient  
25 evidence to support a conclusion that certain of Respondent's conduct constituted unprofessional  
26 conduct.

27 11. Respondent voluntarily enters into this Consent Agreement for the purpose of  
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1 avoiding the expense, uncertainty, and prolonged time involved in further administrative  
2 proceedings. The issues contained herein are resolved by settlement and not actually litigated.  
3 Any allegations and findings herein may not be used *for res judicata* or collateral estoppel effect in  
4 any subsequent civil proceedings for any claims of professional liability or negligence by or on  
5 behalf of Complainant(s).

## 6 **FINDINGS OF FACT**

### 7 **Complaint No. 18-08**

8 1. In October 2017, Complainant was ordered by the Maricopa County Superior Court  
9 to undergo a psychological evaluation.

10 2. Complainant contacted Respondent soon thereafter to discuss engaging him to  
11 conduct the evaluation. Initially, Respondent agreed to conduct the evaluation for a fee of \$2,500,  
12 after application of what Respondent asserts is his 50% discount for Complainant's status as a  
13 veteran.

14 3. On January 10, 2018, the Maricopa County Superior Court appointed Respondent  
15 to conduct a psychological evaluation of the Complainant.

16 4. Subsequently, after receiving the court order appointing him, Respondent felt that  
17 the nature and scope of the evaluation was more extensive than he initially believed. As a result,  
18 he informed the Complainant that he would have to raise his fee from \$2,500 to \$5,000, which  
19 again constituted a veteran discount fee according to Respondent.

20 5. Respondent informed Complainant that he could not move forward without a  
21 retainer.

22 6. Over the ensuing weeks, Respondent called and texted Complainant multiple times  
23 a day to schedule the evaluation and to make arrangements for payment of the retainer.  
24 Complainant's VA therapist has confirmed that Respondent called Complainant four times during  
25 a thirty-minute session.

26 7. Respondent explains that he was making multiple contacts as he had been told by  
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1 Complainant that she did not always have her phone with her at work and, at other times did not  
2 receive calls or texts therefore, Complainant asked him to call or text until they connected.

3 8. On January 8, 2018, Complainant received a text from Respondent seeking a loan  
4 of \$50,000.00 for a friend of Respondent.

5 9. Respondent has admitted to sending that text, but claims it was a mistake and that  
6 Complainant had accidentally been included as a recipient on the text intended for his personal, non-  
7 client acquaintances.

8 10. On March 27, 2019, Respondent entered into a Consent Agreement and Order for  
9 Probation, Practice Monitor and Continuing Education for Complaint No. 18-08.

10 11. Pursuant to the terms of the Consent Agreement and Order in Case No. 18-08,  
11 Respondent was to meet with the Practice Monitor twice per month during the twelve (12) month  
12 probationary period. On January 9, 2019, the Practice Monitor notified the Board that Respondent  
13 had not met with him since September 26 2019 and the Practice Monitor's attempts to reach  
14 Respondent were unsuccessful.

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16 **Complaint No. 18-33**

17 12. On May 26, 2017, the Maricopa County Superior Court appointed Respondent to  
18 provide intensive psychotherapy to Complainant #2.

19 13. The allegations in Complaint No. 18-33 raise issues concerning Respondent's  
20 treatment of Complainant #2, who Respondent provided psychotherapy to from 2017 – 2018.

21 14. On February 20, 2019, the Board's Complaint Screening Committee  
22 ("Committee") reviewed Complaint no. 18-33 and voted to refer the matter to the Board for further  
23 review.

24 15. The Committee expressed concern with Respondent's lack of appropriate  
25 recordkeeping, failure to provide copies of records in a timely manner, and not meeting the current  
26 standards of practice.

27 16. On June 7, 2019, the Board conducted an Informal Interview for Complaint No. 18-  
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1 33. The Board expressed concern regarding Respondent's treatment of Complainant #2,  
2 Respondent's failure to be aware of and comply with the court's requirements, lack of clarity  
3 regarding his role and failure to communicate with court to clarify his questions, failure to follow  
4 up on the client's attempts to contact him, poor record keeping, inconsistent responses to the Board,  
5 and failure to comply with the terms of his current Consent Agreement and Order for Complaint  
6 No. 18-03. After deliberation, the Board moved to offer Respondent an Interim Consent Agreement,  
7 which would require him to undergo a fitness for duty evaluation within 35 days of the effective  
8 date of the Interim Consent Agreement.

9 17. On October 4, 2019, the Board reviewed the results of Respondent's evaluation  
10 and moved to consolidate Complaint no. 18-33 with 18-08 and require that Respondent continue  
11 with the terms of the Consent Agreement and Order.

#### 12 CONCLUSIONS OF LAW

13 1. The conduct and circumstances described above constitute unprofessional conduct  
14 pursuant to:

15 a. A.R.S. § 32-2061(16)(h), failing or refusing to maintain and retain adequate  
16 business, financial or professional records pertaining to the psychological services provided to a  
17 client or patient.

18 b. A.R.S. § 32-2061(16)(o), engaging in activities as a psychologist that are  
19 unprofessional by current standards of practice.

20 c. A.R.S. §32-2061 (16)(cc), failing to make available to a client or patient or to the  
21 client's or patient's designated representative, on written request, a copy of the client's or patient's  
22 record, including raw test data, psychometric testing materials and other information as provided  
23 by law.

24 d. A.R.S. § 32-2061(16)(aa), violating a formal board order, consent agreement, term  
25 of probation or stipulated agreement issued under this chapter.

26 e. A.R.S. § 32-2061(16)(dd), violating an ethical standard adopted by the Board as it  
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1 pertains to the American Psychological Association Ethical Principles of Psychologist and Code  
2 of Conduct, 5.06 In-Person Solicitation and 6.04 Fees and Financial Arrangements.

3 **ORDER**

4 Pursuant to A.R.S. §32-2081(S) the Board has determined that the Respondent's conduct in  
5 Complaint Nos. 18-08 and 18-33 warrants disciplinary action. Based upon the foregoing Findings  
6 of Fact and Conclusions of Law, the parties agree to the provisions and penalties imposed as  
7 follows:

8 1. Upon the effective date of this Consent Agreement, Respondent's license number  
9 PSY-004010 for the practice of psychology in the State of Arizona shall be surrendered. Once the  
10 surrender is effectuated, **Respondent shall not practice psychology in the State of Arizona or**  
11 **hold himself out as a licensed psychologist in the State of Arizona.** The effective date of this  
12 Consent Agreement is the date the Consent Agreement is accepted by the Board as evidenced by  
13 the signature of the Board's Executive Director.

14 2. Respondent has read and understands this Consent Agreement as set forth herein,  
15 and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the  
16 opportunity to discuss this Consent Agreement for the purpose of avoiding the expense and  
17 uncertainty of an administrative hearing.

18 4. Respondent understands that he has the right to a public administrative hearing  
19 concerning each and every allegation set forth in the above-captioned matter, at which  
20 administrative hearing he could present evidence and cross-examine witnesses. By entering into  
21 this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such  
22 administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial  
23 review or any other administrative and/or judicial action, concerning the matters set forth herein.  
24 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

25 5. Respondent understands that this Consent Agreement, or any part thereof, may be  
26 considered in any future disciplinary action against her or in any future decision regarding re-  
27 licensure.  
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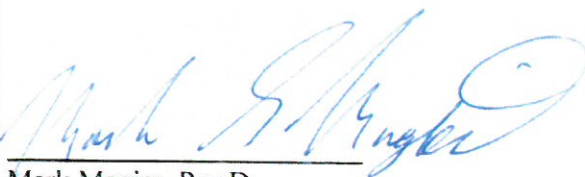


1           6.       The parties agree that this Consent Agreement does not constitute a dismissal or  
2 resolution of other matters currently pending before the Board, if any, and does not constitute any  
3 waiver, expressed or implied, of the Board's statutory authority or jurisdiction regarding any other  
4 pending or future investigation, action or proceeding. Respondent also understands that acceptance  
5 of the Consent Agreement does not preclude any other agency, subdivision or officer of this state  
6 from instituting other civil or criminal proceedings with respect to the conduct that is subject of this  
7 Consent Agreement. The parties agree that this Consent Agreement is a final adjudication of cases  
8 18-08 and 18-33.

9           7.       Respondent understands that the foregoing Consent Agreement shall not become  
10 effective unless and until adopted by the Board and executed on behalf of the Board. Any  
11 modification to this original document is ineffective and void unless mutually approved by both  
12 parties in writing.

13           8.       Respondent understands that this Consent Agreement is a public record and may be  
14 publicly disseminated as a formal action of the Board and shall be reported to the National  
15 Practitioner Data Bank.

17           DATED this 13th day of February, 2020.

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22 Mark Magier, Psy.D.  
23 Respondent

Arizona Board of  
Psychologist Examiners

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25 Heidi Herbst Paakkonen  
26 Executive Director

27 ORIGINAL of the foregoing filed  
28 This \_\_\_ day of \_\_\_, 2020 with:

29 The Arizona State Board of Psychologist Examiners  
30 1740 West Adams Street, Suite 3403  
31 Phoenix, Arizona 85007

1 COPY mailed by US Regular & Certified Mail, No. 9489009000276155081105

2 This 13 day of February, 2020 to:

3 Mark Magier, Psy.D.

4 Address on Record

5 COPY of the foregoing emailed

6 This 13 day of February, 2020, to:

7 Jeanne M. Galvin

8 Assistant Attorney General

9 Office of the Attorney General

10 2005 North Central Ave., SGD/LES

11 Phoenix, AZ 85004

12 Attorney for the Board

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By Jennifer Michaelis