

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

2 **In the Matter of:**

CASE NO. 2012-0096

3 **Kathleen A. Hernandez, LMSW-11377**
4 **Licensed Master Social Worker**
5 **In the State of Arizona.**

RELEASE FROM
CONSENT AGREEMENT AND ORDER

6 **RESPONDENT**

7 The Board received a request from Respondent to release him from the terms and
8 conditions of the Consent Agreement and Order dated September 4, 2014. After consideration,
9 the Board voted to release Respondent from the terms and conditions of the Consent
10 Agreement and Order dated September 4, 2014.

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 September 4, 2014.

15 Dated this 19th day of January, 2016.

16
17 By: 

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

20 **ORIGINAL** of the foregoing filed
21 This 19th day of January, 2016, with:

22 Arizona Board of Behavioral Health Examiners
23 3443 N. Central Ave., Suite 1700
24 Phoenix, AZ 85012

25 **COPY** of the foregoing mailed via
26 Certified mail no. 70142870000189572647
27 This 19th day of January, 2016, to:

28 Kathleen A. Hernandez
29 Address of Record
30 Respondent

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 her
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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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 and the Healthcare Integrity and Protection Data Bank.

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

22 9. The Board therefore retains jurisdiction over Respondent and may initiate
23 disciplinary action against Respondent if it determines that she has failed to comply with the
24 terms of this Consent Agreement or of the practice act.

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

FINDINGS OF FACT

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1. Respondent experienced substance abuse issues for a number of years.
2. In 2006, Respondent entered treatment to address these issues.
3. Following that treatment, Respondent was arrest for Extreme DUI with a

BAC of .232%.

4. Respondent completed a treatment program to address these issues in 2007.

5. On 04/06/07, the Board accepted an Interim Consent Agreement (ICA 1) prohibiting Respondent from practicing under her license.

6. On 01/31/08, the Board released Respondent from ICA 1 and accepted a Consent Agreement allowing Respondent to practice under her license subject to the terms and conditions set forth in the Consent Agreement.

7. On 05/05/09, the Board released Respondent from the 2008 Consent Agreement.

8. In 11/12, Respondent was again charged with DUI.

9. In 01/12, Respondent enrolled in another treatment program to address her continuing substance abuse issues.

10. On 02/07/12, the Board accepted a second Interim Consent Agreement (ICA 2) prohibiting Respondent from practicing under her license.

11. In 08/12, Respondent submitted a request for release from ICA 2.

12. Respondent reports that she has maintained sobriety for 19 months.

13. Respondent also reports that she currently engages in a number of activities to maintain her sobriety, including the following:

- a. AA attendance 3-4 times weekly
- b. Weekly contact with her AA sponsor

1 c. Participation in AA service commitments

2 **CONCLUSIONS OF LAW**

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

6 ...

7 2. The conduct and circumstances described in the Findings of Fact constitute a
8 violation of A.R.S. § 32-3251(12)(l) any conduct, practice or condition that impairs the
9 ability of the licensee to safely and competently practice the licensee's profession.

10 **ORDER**

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

13 1. Respondent's license, LMSW-11377, will be placed on probation, effective from
14 the date of entry as signed below.

15 2. The license issued to Respondent pursuant to paragraph 1 will be immediately
16 placed on probation for 24 months.

17 3. Respondent shall not practice under her license, LMSW-11377, unless she is
18 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
19 Respondent is unable to comply with the terms and conditions of this Consent Agreement, she
20 shall immediately notify the Board in writing and shall not practice under her license until she
21 submits a written request to the Board to re-commence compliance with this Consent
22 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

23 4. In the event that Respondent is unable to comply with the terms and conditions
24 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until

25 ...

1 Such time as she is granted approval to re-commence compliance with the Consent
2 Agreement.

3 Therapy

4 5. During the period of probation, Respondent shall attend therapy for 24 months.
5 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of her
6 therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee.
7 Also within 30 days of the date of this Consent Agreement, the therapist shall submit a letter
8 addressing why he/she should be approved, acknowledging that he/she has reviewed the
9 Consent Agreement and include the results of an initial assessment and a treatment plan
10 regarding the proposed treatment of Respondent. The proposed treatment plan shall address
11 the frequency of therapy required.

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

15 Focus and Frequency of Therapy

16 7. The focus of the therapy shall relate to substance abuse issues. Respondent
17 shall meet in person with the therapist at least monthly, or more frequently based on the
18 therapist'.

19 Reports

20 8. Once approved, the therapist shall submit quarterly reports and a final summary
21 report to the Board for review and approval. The quarterly reports shall include issues presented
22 in this consent agreement that need to be reported and the therapist shall notify the Board if
23 more frequent therapy is needed. The reports shall address Respondent's current mental health
24 status, medications prescribed, if any, treatment recommendation, and shall report if, in his/her
25 professional opinion, Respondent becomes unable to practice psychotherapy safely and

1 competently. The final report shall also contain a recommendation as to whether the
2 Respondent should be released from this Consent Agreement.

3 Change of Therapist

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

13 Recovery Program

14 10. While on probation, Respondent shall attend Alcoholics Anonymous in person at
15 a minimum of 3 times per week. Respondent shall obtain a sponsor and the sponsor shall
16 provide quarterly reports to the Board Chair or designee attesting to Respondent's attendance
17 and participation.

18 Early Release

19 11. After 12 months and upon the therapist's recommendation, Respondent may
20 request early release from the Consent Agreement if all other terms of the Consent Agreement
21 have been met.

22 GENERAL PROVISIONS

23 Provision of Clinical Supervision

24 12. Respondent shall not provide clinical supervision while subject to this Consent
25 Agreement.

1 Civil Penalty

2 13. Subject to the provisions set forth in paragraph 14, the Board imposes a civil
3 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

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

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

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

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

1 days, as required, Respondent's failure to provide the required statement to the Board shall be
2 deemed a violation of A.R.S. § 32-3251(12)(n) and the Board will provide Respondent's
3 employer(s) with a copy of the Consent Agreement.

4 20. Respondent shall practice Social Work using the name under which she is
5 licensed. If Respondent changes her name, she shall advise the Board of the name change as
6 prescribed under the Board's regulations and rules.

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

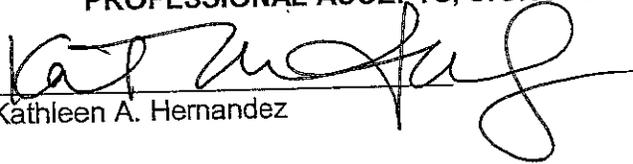
18 22. Respondent shall bear all costs relating to probation terms required in this
19 Consent Agreement.

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

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

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

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

2 
3 Kathleen A. Hernandez

8/26/14
Date

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

5 Dated this 2nd day of September, 2014.

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

9 **ORIGINAL** of the foregoing filed
10 This 2nd day of September, 2014 with:

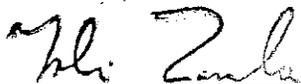
11 Arizona Board of Behavioral Health Examiners
12 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

13 **COPY** of the foregoing mailed via Interagency Mail
This 2nd day of September, 2014, to:

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

17 **COPY** of the foregoing mailed via
Certified mail no. 7012292000017946333
18 This 2nd day of September, 2014, to:

19 Kathleen Hernandez
Respondent
Address of Record

20 
21 Tobi Zavala, Executive Director
22 602-542-1617

1 rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative
2 and/or judicial action, concerning the matters as set forth herein.

3 4. Respondent understands that this Interim Consent Agreement does not constitute a
4 dismissal or resolution of any matters that may be currently pending before the Board and does
5 not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction
6 regarding any other pending or future investigations, actions, or proceedings. Respondent also
7 understands that acceptance of this Interim Consent Agreement does not preclude any other
8 agency, subdivision, or officer of this State from instituting civil or criminal proceedings with
9 respect to the conduct that is the subject of this Interim Consent Agreement. Respondent does
10 not intend her acceptance of this Interim Consent Agreement to constitute an admission of any
11 fact or facts and she enters into this agreement as an interim compromise of a pending matter.

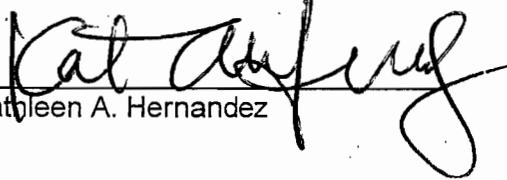
12 5. Respondent acknowledges and agrees that upon signing this Interim Consent
13 Agreement and returning it to the Board's Executive Director, Respondent may not revoke her
14 acceptance of this Interim Consent Agreement or make any modifications to it. Any modification
15 of this original document is ineffective and void unless mutually approved by the parties in
16 writing.

17 6. Respondent understands that this Interim Consent Agreement shall not become
18 effective unless and until it is adopted by the Board and signed by its Executive Director.

19 7. Respondent understands and agrees that if the Board does not adopt this Interim
20 Consent Agreement, she will not assert in any future proceedings that the Board's consideration
21 of this Interim Consent Agreement constitutes bias, prejudice, prejudgment, or other similar
22 defense.

23 8. Respondent understands that this Interim Consent Agreement is a public record that
24 may be publicly disseminated as a formal action of the Board, and that it shall be reported as
25 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
Protection Data Bank.

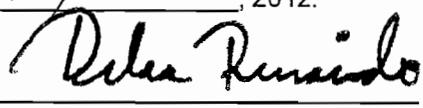
1 PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

2 
3 Kathleen A. Hernandez

Date 1/27/12

4 BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

5 Dated this 7th day of February, 2012.

6
7 By: 
8 DEBRA RINAUDO, Executive Director
Arizona Board of Behavioral Health Examiners

9 ORIGINAL of the foregoing filed
10 This 7th day of February, 2012, with:

11 Arizona Board of Behavioral Health Examiners
12 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

13 COPY of the foregoing mailed via
14 Certified mail no. 7011 2970 0003 3737 6578
This 7th day of February, 2012, to:

15 Kathleen Hernandez
16 Address of Record
Respondent

17 
18 Tobi Zavala, Compliance Officer
19 602-542-1617