

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

2
3 **In the Matter of:**

CASE NO. 2015-0011

4 **CYNTHIA M. POTTER, LASAC-13184,**
5 **Licensed Associate Substance Abuse**
6 **Counselor**
7 **In the State of Arizona**

ORDER DENYING RESPONDENT'S
REQUEST FOR REVIEW

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Respondent

On December 23, 2015, the Arizona Board of Behavioral Health Examiners ("Board") notified Cynthia Potter ("Respondent"), in writing, that it had lifted the stay of suspension of her license based on her failure to comply with the terms of her November 13, 2014, Consent Agreement ("CA").

On January 6, 2016, the Board received Respondent's request for review of the lifting of the stay. This matter came before the Board on February 4, 2016, for review of whether the lifting of the stay was supported by substantial evidence. Respondent was present and addressed the Board. After having considered all the evidence, the Board voted to affirm the lifting of the stay of suspension of Respondent's license based on Respondent's failure to timely comply with the continuing education and clinical supervision requirements of the CA.

ORDER

Respondent's request for review is DENIED and the automatic lifting of the stay of the suspension of Respondent's license is AFFIRMED.

Done this 11th of February, 2016



Tobi Zavala, Executive Director
Arizona Board of Behavioral Health Examiners

1 ORIGINAL of the foregoing filed
2 This 11th day of February, 2016, with:

3 Arizona Board of Behavioral Health Examiners
4 3443 North Central Avenue, Suite 1700
5 Phoenix, AZ 85012

6 COPY of the foregoing mailed via Interagency Mail
7 This 11th day of February, 2016, to:

8 Marc Harris
9 Assistant Attorney General
10 1275 West Washington
11 Phoenix, Arizona 85007

12 COPY of the foregoing mailed via
13 Certified mail no. 70142870000189575266
14 This 11th day of February, 2016, to:

15 Cynthia M. Potter
16 Address of Record
17 Respondent
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1 3. Respondent has the right to consult with an attorney prior to entering into this
2 Consent Agreement.

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

7 5. The findings contained in the Findings of Fact portion of this Consent Agreement
8 are conclusive evidence of the facts stated herein and may be used for purposes of determining
9 sanctions in any future disciplinary matter.

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

17 7. Respondent understands that once the Board approves and signs this Consent
18 Agreement, it is a public record that may be publicly disseminated as a formal action of the
19 Board, and that it shall be reported as required by law to the National Practitioner Data Bank
20 and the Healthcare Integrity and Protection Data Bank.

21 8. Respondent further understands that any violation of this Consent Agreement
22 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(15)(n) and may result in
23 disciplinary action pursuant to A.R.S. § 32-3281.

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1 fact by an applicant or licensee in any statements provided during an investigation or
2 disciplinary proceeding by the Board.

3 4. The conduct and circumstances described in the Findings of Fact constitute a
4 violation of the following A.R.S. §32-3251(15)(l), any conduct, practice or condition that impairs
5 the ability of the licensee to safely and competently practice the Licensee's profession.

6 5. The conduct and circumstances described in the Findings of Fact constitute a
7 violation of the following A.R.S. §32-3251(15)(k), any conduct or practice that is contrary to
8 recognized standards of ethics in the behavioral health profession, as it relates to the NAADAC

9 Code of Ethics:

10 a. IV Professional Responsibility, Standard 1, #4: The addiction professional
11 practices honesty and congruency in all aspects of practice including accurate
12 billing for services, accurate accounting of expenses, faithful and accurate
13 reporting of interactions with clients and accurate reporting of professional
14 activities.

15 b. IV Professional Responsibility, Standard 2, #1: Addiction professionals will
16 honestly represent their professional qualifications, affiliations, credentials and
17 experience.

18 c. VIII Resolving Ethical Issues, #4: Addiction professionals will cooperate with
19 investigations, proceedings and requirements of ethics committees.

20 **ORDER**

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

23 1. Respondent shall not practice under her license, LASAC-13184, unless she is
24 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
25 Respondent is unable to comply with the terms and conditions of this Consent Agreement, she

1 shall immediately notify the Board in writing and shall not practice under her license until she
2 submits a written request to the Board to re-commence compliance with this Consent
3 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

4 2. In the event that Respondent is unable to comply with the terms and conditions
5 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until
6 such time as she is granted approval to re-commence compliance with the Consent
7 Agreement.

8 Stayed Suspension

9 3. As of the effective date of this Consent Agreement, Respondent's license,
10 LASAC-13184, shall be **SUSPENDED** for 24 months. However, the suspension shall be stayed
11 and Respondent's license shall be placed on probation.

12 4. During the stayed suspension portion of the Order, if Respondent is
13 noncompliant with the terms of the Order in any way, the stay of the suspension shall be lifted
14 and Respondent's license shall be automatically suspended as set forth above.

15 5. If Respondent contests the lifting of the stay as it relates to this paragraph,
16 Respondent shall request in writing, within 10 days of being notified of the automatic
17 suspension of licensure, that the matter be placed on the Board agenda for the Board to review
18 and determine if the automatic suspension of Respondent's license was supported by
19 substantial evidence.

20 6. If the written request is received within 10 days of a 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.

23 7. Pending the Board's review, Respondent's license shall be reported as
24 suspended - under review. Respondent may not work in any capacity as a licensed behavioral
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1 health professional pending the Board's review. The Board's decision and Order shall not be
2 subject to further review.

3 **Continuing Education**

4 9. 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 take and pass a
6 three semester credit hour graduate level course in behavioral health ethics from an accredited
7 college or university, pre-approved by the Board Chair or designee. Upon completion,
8 Respondent shall submit to the Board an official transcript establishing completion of the
9 required course.

10 10. In addition to the continuing education requirements of A.R.S. § 32-3273, within
11 12 months of the effective date of this Consent Agreement, Respondent shall take and pass 6
12 clock hours of the NASW Staying Out of Trouble continuing education course.

13 11. All required continuing education shall be pre-approved by the Board Chair or
14 designee. Upon completion, Respondent shall submit a certificate of completion of the required
15 continuing education.

16 **Clinical Supervision**

17 12. While on probation, Respondent shall submit to clinical supervision from a pre-
18 approved masters or higher level Licensed Independent Substance Abuse Counselor. Within 30
19 days of the date of this Consent Agreement, Respondent shall submit the name of a clinical
20 supervisor for pre-approval by the Board Chair or designee. Also within 30 days of the date of
21 this Consent Agreement, the clinical supervisor shall submit a letter disclosing his/her prior
22 relationship to Respondent. In that letter, the clinical supervisor must address why he/she
23 should be approved, acknowledge that he/she has reviewed the Consent Agreement and
24 include the results of an initial assessment and a supervision plan regarding the proposed
25 supervision of Respondent. The letter from the supervisor shall be submitted to the Board.

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Focus and Frequency of Clinical Supervision

13. The focus of the supervision shall relate to ethics, documentation and Board rules and laws. Respondent shall meet individually in person with the supervisor for a minimum of one hour twice monthly for the first 2 months and then monthly for the remainder of the time.

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Reports

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

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

15. All quarterly supervision reports shall include a copy of clinical supervision documentation maintained for that quarter. All clinical supervision documentation maintained by the supervisor shall comply with requirements set forth in A.A.C. R4-6-212(F)(4).

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

Change of Clinical Supervisor During Probation

17. If, during the period of Respondent's probation, the clinical supervisor determines that he/she cannot continue as the clinical supervisor, he/she shall notify the Board within 10 days of the end of supervision and provide the Board with an interim final report. Respondent shall advise the Board Chair or designee within 30 days of cessation of clinical supervision by the approved clinical supervisor and provide the name of a new proposed clinical supervisor.

1 The proposed clinical supervisor shall provide the same documentation to the Board as was
2 required of the initial clinical supervisor.

3 **Early Release**

4 18. After completion of the stipulations set forth in this Consent Agreement, and upon
5 the supervisor's recommendation, Respondent may request early release from the Consent
6 Agreement after 12 months.

7 **GENERAL PROVISIONS**

8 **Provision of Clinical Supervision**

9 19. Respondent shall not provide clinical supervision while subject to this Consent
10 Agreement.

11 **Civil Penalty**

12 20. Subject to the provisions set forth in paragraph 21, the Board imposes a civil
13 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

8 24. 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 25. 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 her 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(15)(n) and the Board will provide Respondent's
25 employer(s) with a copy of the Consent Agreement.

1 26. 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 her ability to timely comply with
4 the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform the
5 Board of her change of employment status. After the change and within 10 days of accepting
6 employment in a position where Respondent provides any type of behavioral health related
7 services or in a setting where any type of behavioral health, health care, or social services are
8 provided, Respondent shall provide the Board Chair or designee a written statement providing
9 the contact information of her new employer(s) and a signed statement from Respondent's new
10 employer(s) confirming Respondent provided the employer(s) with a copy of this Consent
11 Agreement. If Respondent does not provide the employer's statement to the Board within 10
12 days, as required, Respondent's failure to provide the required statement to the Board shall be
13 deemed a violation of A.R.S. § 32-3251(15)(n) and the Board will provide Respondent's
14 employer(s) with a copy of the Consent Agreement.

15 27. Respondent shall practice substance abuse counseling using the name under
16 which she is licensed. If Respondent changes her name, she shall advise the Board of the
17 name change as prescribed under the Board's regulations and rules.

18 28. 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 she 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 she has successfully satisfied all terms and conditions in this Consent Agreement.
23 The Board has the sole discretion to determine whether all terms and conditions of this Consent
24 Agreement have been met and whether Respondent has adequately demonstrated that she has
25 ...

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

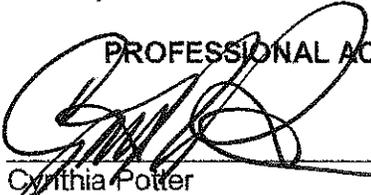
5 29. Respondent shall bear all costs relating to probation terms required in this
6 Consent Agreement.

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

9 31. This Consent Agreement shall be effective on the date of entry below.

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

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

14 
Cynthia Potter

14 11.05.14
Date

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

16 Dated this 13th day of November, 2014.

17 By:

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

20 **ORIGINAL** of the foregoing filed
21 This 13th day of November, 2014 with:

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

24 **COPY** of the foregoing mailed via Interagency Mail
This 13th day of November, 2014, to:

25 ...

1 Marc Harris
Assistant Attorney General
1275 West Washington
2 Phoenix, Arizona 85007

3 COPY of the foregoing mailed via
Certified mail no. 70141200000066331794
4 This 13th day of November, 2014, to:

5 Cynthia Potter
Address of Record
6 Respondent

7 COPY of the foregoing mailed via Mail
8 This 13th day of November, 2014 to:

9 Hardy Smith
262 N. Main Avenue
Tucson, AZ 85701
10 Attorney for Respondent

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12 _____
Donna Dalton, Assistant Director
13 602-542-1811
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