

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

2 **In the Matter of:**
3 **Shirley J. Vives, LPC-13209,**
4 **Licensed Professional Counselor,**
5 **In the State of Arizona.**

CASE NO. 2017-0103

**RELEASE FROM
CONSENT AGREEMENT AND ORDER**

RESPONDENT

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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 21, 2017. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated March 21, 2017.

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 21, 2017.

15 Dated this 7th day of May, 2018.

16 By: M. Zavala

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

18 **ORIGINAL** of the foregoing filed
19 This 7th day of May, 2018, with:

20 Arizona Board of Behavioral Health Examiners
21 1740 W. Adams St., Suite 3600
22 Phoenix, AZ 85007

23 **COPY** of the foregoing mailed via
24 Certified mail no. 948900900027000044584
25 This 7th day of May, 2018, to:

Shirley J. Vives
Address of Record
Respondent

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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Shirley J. Vives, LPC-13209,
Licensed Professional Counselor,
In the State of Arizona.

RESPONDENT

CASE NO. 2017-0103
CONSENT AGREEMENT

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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), Shirley J. Vives ("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.

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RECITALS

Respondent understands and agrees that:

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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.

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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.

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

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1 **FINDINGS OF FACT**

2 1. Respondent is the holder of License No. LPC-13209 for the practice of
3 counseling in Arizona.

4 2. On 06/11/16, Respondent was arrested for driving under the influence.

5 3. Respondent's blood alcohol content was measured at .178% and .175% at
6 approximately forty nine minutes and fifty six minutes respectively, after being transported to the
7 city jail.

8 4. Respondent acknowledges having alcohol prior to driving.

9 **CONCLUSIONS OF LAW**

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

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

16 **ORDER**

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

19 1. Respondent's license, LPC-13209, will be placed on probation, effective from the
20 date of entry as signed below.

21 2. Respondent shall not practice under their license, LPC-13209, unless they are
22 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
23 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
24 shall immediately notify the Board in writing and shall not practice under their license until the
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1 submit a written request to the Board to re-commence compliance with this Consent Agreement.

2 All such requests shall be pre-approved by the Board Chair or designee.

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

7 **Continuing Education**

8 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
9 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
10 three semester credit hour graduate level course in substance use disorders from a regionally
11 accredited college or university, pre-approved by the Board Chair or designee. Upon
12 completion, Respondent shall submit to the Board an official transcript establishing completion
13 of the required course.

14 **Recovery Program**

15 5. While on probation, Respondent shall attend a minimum of 6 Mothers Against
16 Drunk Driving ("M.A.D.D.") meetings in person or an equivalent program. Respondent shall
17 provide a report to the Board Chair or designee substantiating his/her attendance at M.A.D.D.
18 meetings or equivalent program.

19 **Early Release**

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

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GENERAL PROVISIONS

Provision of Clinical Supervision

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

Civil Penalty

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

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

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

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



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

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

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

23 15. If, during the period of Respondent's probation, Respondent changes
24 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
25 extended leave of absence for whatever reason that may impact their ability to timely comply

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

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

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

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

3 19. Respondent shall be responsible for ensuring that all documentation required in
4 this Consent Agreement is provided to the Board in a timely manner.

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

6 21. This Consent Agreement is conclusive evidence of the matters described herein
7 and may be considered by the Board in determining appropriate sanctions in the event a
8 subsequent violation occurs.

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

11 *Shirley Jives*
12 Shirley J. Jives

2/10/17
Date

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

15 Dated this *21st* day of *March*, 2017.

16 By: *Tobi Zavala*
17 TOBI ZAVALA, Executive Director
18 Arizona Board of Behavioral Health Examiners

19 **ORIGINAL** of the foregoing filed
This *21st* day of *March*, 2017 with:

20 Arizona Board of Behavioral Health Examiners
21 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

22 **COPY** of the foregoing mailed via Interagency Mail
23 This *21st* day of *March*, 2017, to:

24 Marc Harris
Assistant Attorney General
1275 West Washington
25 Phoenix, Arizona 85007

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COPY of the foregoing mailed via
Certified mail no. 701167140000018037A2
This 21st day of March, 2017, to:

Shirley J. Vives
Address of Record
Respondent