

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

2  
3 **In the Matter of:**  
4 **CALVIN J. NEZ, LISAC-11030,**  
5 **Licensed Independent Substance Abuse**  
6 **Counselor,**  
7 **In the State of Arizona,**  
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**Respondent**

**CASE NO. 2012-0151**  
**ORDER OF REVOCATION**

On July 2, 2014, the Arizona Board of Behavioral Health Examiners ("Board") accepted a Consent Agreement placing Calvin J. Nez ("Respondent") on probation subject to terms and conditions set forth in the Consent Agreement. The Consent Agreement included the following provisions:


1. Respondent's license, LISAC-11030, was revoked.
2. The revocation was stayed and Respondent's license was placed on probation.
3. If Respondent was noncompliant with the terms of the Consent Agreement in any way, the stay of the revocation would be lifted and Respondent's license would be automatically revoked.
4. Respondent had the right to contest the lifting of the stay by requesting in writing, within 10 days of being notified of the automatic revocation of licensure, that the matter be placed on a Board agenda for the Board to review and determine if the automatic revocation of Respondent's license was supported by substantial evidence.

On December 4, 2015, the Board mailed Respondent written notice that, because he failed to comply with the terms of the Consent Agreement, the stay of the revocation of his license was lifted and his license was revoked. Respondent was further advised that he had the right to contest the lifting of the stay by submitting a written request for Board review within 10 days of the date of the letter. Respondent did not submit such a request.

1 **ORDER**

2 Therefore, IT IS ORDERED that License No. LISAC-11030 issued to Calvin J. Nez is  
3 hereby **REVOKED**.

4 Dated this 18<sup>th</sup> day of December, 2015

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6 \_\_\_\_\_  
7 Tobi Zavala, Executive Director  
8 Arizona Board of Behavioral Health Examiners

8 **ORIGINAL** of the foregoing filed

9 The 18<sup>th</sup> day of December, 2015, with:

10 Arizona Board of Behavioral Health Examiners  
11 3443 North Central Avenue, Suite 1700  
12 Phoenix, AZ 85012

12 **COPY** of the foregoing mailed via Interagency Mail

13 This 18<sup>th</sup> day of December, 2015, to:

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

16 **COPY** of the foregoing mailed via

17 Certified mail no. 701412000006633 K656  
18 This 18<sup>th</sup> day of December, 2015, to:

19 Calvin J. Nez  
20 Address of Record  
21 Respondent  
22  
23  
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1 **BEFORE THE ARIZONA BOARD**  
2 **OF BEHAVIORAL HEALTH EXAMINERS**

3 **In the Matter of:**

4 **CALVIN J. NEZ, LISAC-11030,**  
5 **Licensed Independent Substance Abuse**  
6 **Counselor,**  
7 **In the State of Arizona.**

8 **RESPONDENT**

**CASE NO. 2012-0151**

**CONSENT AGREEMENT**

9 In the interest of a prompt and speedy settlement of the above captioned matter,  
10 consistent with the public interest, statutory requirements and responsibilities of the Arizona  
11 State Board of Behavioral Health Examiners ("Board"), and pursuant to A.R.S. §§ 32-3281(H)  
12 and 41-1092.07(F)(5), Calvin J. Nez ("Respondent") and the Board enter into this Consent  
13 Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final  
14 disposition of this matter.

15 **RECITALS**

16 Respondent understands and agrees that:

17 1. Any record prepared in this matter, all investigative materials prepared or  
18 received by the Board concerning the allegations, and all related materials and exhibits may be  
19 retained in the Board's file pertaining to this matter.

20 2. Respondent has the right to a formal administrative hearing at which Respondent  
21 can present evidence and cross examine the State's witnesses. Respondent hereby irrevocably  
22 waives his right to such formal hearing concerning these allegations and irrevocably waives his  
23 right to any rehearing or judicial review relating to the allegations contained in this Consent  
24 Agreement

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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 his  
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(n) and may result in  
23 disciplinary action pursuant to A.R.S. § 32-3281.

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

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

5 **FINDINGS OF FACT**

6 1. Respondent is the holder of License No. LISAC-11030 for the practice of  
7 Substance Abuse Counseling in Arizona.

8 2. On his 03/04 certification application, Respondent attested to the following:

9 a. *I certify under penalty of perjury that the information given in this*  
10 *application and all supporting documents is true, correct and complete*  
11 *to the best of my knowledge. I make this certification with full*  
12 *knowledge that all statements made in this application may be ground*  
13 *for denial of my application or subsequent disciplinary action.*

14 3 On his 03/04 certification application, Respondent answered "no" to the following  
15 background questions:

- 16 a. "Have you ever been charged with, convicted of or pled nolo contendere to a  
17 criminal offense, other than a minor traffic violation...?"  
18 b. "Have you ever entered into any type of pretrial diversion agreement...?"

19 4. Respondent continued to answer "no" to those questions on all of his subsequent  
20 renewal applications from 2006 to the present.

21 5. During the investigation of Complaint No. 2012-0151, the Board obtained records  
22 indicating the following:

- 23 a. In 1990, Respondent was convicted of a DUI.  
24 b. In 2000, Respondent was convicted of issuing a bad check.

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1           6.       Respondent's failure to truthfully respond to the application criminal history  
2 background question is particularly problematic where:

- 3           a.       The application background questions are intended to elicit information that  
4                may affect an applicant's ability to practice safely and competently.
- 5           b.       In most circumstances, the Board has no way to obtain information regarding  
6                an applicant's criminal history problems or substance abuse problems unless  
7                the applicant provides truthful information in response to the background  
8                questions.
- 9           c.       Applicants are required to attest under penalty of perjury that the information  
10               provided on an application is true and correct to the best of their knowledge  
11               and belief in order to ensure that applicants respond truthfully to the  
12               background questions.
- 13           d.       Because Respondent answered "No" to background questions regarding prior  
14               arrests, the Board had no reason to ask for additional information that could  
15               affect his ability to safely and competently practice.
- 16           e.       The Board only learned of Respondent's prior criminal history as a result of  
17               staff researching the alleged criminal conduct in the pending complaint.

18           7.       Respondent's failure to truthfully disclose his prior criminal history on his 2004  
19 certification application and on subsequent renewal applications was inappropriate.

20           8.       During a Board investigative interview, Respondent initially indicated that he did  
21 not recall being charged with DUI in 1990.

22           9.       During a later interview, Respondent acknowledged:

- 23           a.       His DUI conviction occurred when he was abusing substances over 20 years  
24                ago.

25       ...

1 b. He intentionally misrepresented that he did not recall being arrested for DUI  
2 in 1990 because he does not think his past issues are related to the current  
3 complaint allegations.

4 10. Respondent's intentional misrepresentation during a Board investigation  
5 regarding his criminal history was inappropriate.

6 **CONCLUSIONS OF LAW**

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

10 2. The conduct and circumstances described in the Findings of Fact constitute a  
11 violation of A.R.S. § 32-3251(12)(c)(i), any oral or written misrepresentation of a fact by an  
12 applicant or licensee to secure or attempt to secure the issuance or renewal of a license.

13 3. The conduct and circumstances described in the Findings of Fact constitute a  
14 violation of A.R.S. § 32-3251(12)(c)(ii), any oral or written misrepresentation of a fact by an  
15 applicant or licensee in any statements provided during an investigation or disciplinary  
16 proceeding by the board.

17 **ORDER**

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

20 1. Respondent shall not practice under his license, LISAC-11030, unless he is fully  
21 compliant with all terms and conditions in this Consent Agreement. If, for any reason,  
22 Respondent is unable to comply with the terms and conditions of this Consent Agreement, he  
23 shall immediately notify the Board in writing and shall not practice under his license until he  
24 submits a written request to the Board to re-commence compliance with this Consent

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1 Agreement. All such requests shall be pre-approved by the Substance Abuse Credentialing  
2 Committee Chair or designee.

3 2. 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 he is granted approval to re-commence compliance with the Consent Agreement.

6 **Stayed Revocation**

7 3. As of the effective date of this Consent Agreement, Respondent's license,  
8 LISAC-11030, shall be revoked. However, the revocation shall be stayed and Respondent's  
9 license shall be placed on probation for 12 months.

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

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

18 6. If the written request is received within 10 days of a regularly scheduled Board  
19 meeting, the request will not be heard at that meeting, but will be heard at the next regularly  
20 scheduled Board meeting.

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

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1 Probation

2 8. Respondent's license, LISAC-11030, will be placed on probation, effective from  
3 the date of entry as signed below.

4 Practice Restriction

5 9. While on probation, if Respondent changes employment, he shall only provide  
6 behavioral health services at an agency licensed as an outpatient clinic by the Department of  
7 Health Services, Office of Behavioral Health Licensing ("OBHL").

8 Continuing Education

9 10. In addition to the continuing education requirements of A.R.S. § 32-3273, within  
10 12 months of the effective date of this Consent Agreement, Respondent shall complete 6-clock  
11 hours of continuing education, including the NASW Staying Out of Trouble continuing education  
12 course or an equivalent course addressing current behavioral health documentation standards  
13 in Arizona. All required continuing education shall be pre-approved by the Substance Abuse  
14 Credentialing Committee Chair or designee. Upon completion, Respondent shall submit a  
15 certificate of completion of the required continuing education.

16 11. In addition to the continuing education requirements of A.R.S. § 32-3273, within  
17 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a  
18 2-4 semester credit hour undergraduate level behavioral health ethics course from an  
19 accredited college or university, pre-approved by the Substance Abuse Credentialing  
20 Committee Chair or designee. Upon completion, Respondent shall submit to the Board an  
21 official transcript establishing completion of the required course.

22 GENERAL PROVISIONS

23 Provision of Clinical Supervision

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

Civil Penalty

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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 2, 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 Substance Abuse Credentialing Committee Chair or designee

1 with a signed statement from Respondent's employer(s) confirming Respondent provided the  
2 employer(s) with a copy of this Consent Agreement. If Respondent does not provide the  
3 employer's statement to the Board within 10 days of the effective date, the Board will provide  
4 Respondent's employer(s) with a 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 Substance Abuse Credentialing Committee  
9 Chair or designee with a written statement providing the contact information of his new  
10 employer and a signed statement from Respondent's new employer confirming Respondent  
11 provided the employer with a copy of this Consent Agreement. If Respondent does not provide  
12 the employer's statement to the Board within 10 days, as required, Respondent's failure to  
13 provide the required statement to the Board shall be deemed a violation of A.R.S. § 32-  
14 3251(12)(n) and the Board will provide Respondent's employer(s) with a copy of the Consent  
15 Agreement.

16 19. If, during the period of Respondent's probation, Respondent changes  
17 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on  
18 extended leave of absence for whatever reason that may impact his ability to timely comply with  
19 the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform the  
20 Board of his change of employment status. After the change and within 10 days of accepting  
21 employment in a position where Respondent provides any type of behavioral health related  
22 services or in a setting where any type of behavioral health, health care, or social services are  
23 provided, Respondent shall provide the Substance Abuse Credentialing Committee Chair or  
24 designee a written statement providing the contact information of his new employer(s) and a  
25 signed statement from Respondent's new employer(s) confirming Respondent provided the

1 employer(s) with a copy of this Consent Agreement. If Respondent does not provide the  
2 employer's statement to the Board within 10 days, as required, Respondent's failure to provide  
3 the required statement to the Board shall be deemed a violation of A.R.S. § 32-3251(12)(n) and  
4 the Board will provide Respondent's employer(s) with a copy of the Consent Agreement.

5 20. Respondent shall practice substance abuse counseling using the name under  
6 which he is licensed. If Respondent changes his name, he shall advise the Board of the name  
7 change as prescribed under the Board's regulations and rules.

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

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

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

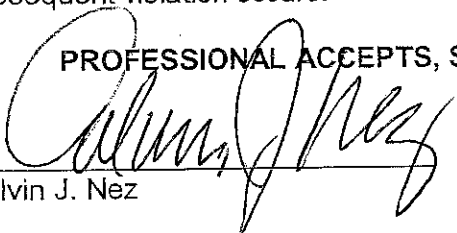
23 24. This Consent Agreement shall be effective on the date of entry below.

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

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


5   
6 Calvin J. Nez

5/13/14  
Date

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

8 Dated this 2nd day of July, 2014

9 By:

10   
11 ~~DEBRA RINAUDO, Executive Director~~  
Arizona Board of Behavioral Health Examiners

Tobi Zavala, Interim Executive Director

12 **ORIGINAL** of the foregoing filed

13 This 2nd day of July, 2014 with:

14 Arizona Board of Behavioral Health Examiners  
15 3443 N. Central Ave., Suite 1700  
Phoenix, AZ 85012

16 **COPY** of the foregoing mailed via Interagency Mail

17 This 2nd day of July, 2014, to:

18 Marc H. Harris  
19 Assistant Attorney General  
1275 West Washington  
Phoenix, Arizona 85007

20 **COPY** of the foregoing mailed via

21 Certified mail no. 7014 0510 0001 3723 8370.

This 2nd day of July, 2014, to:

22 Calvin J. Nez  
23 Address of Record  
24 Respondent

25 Tobi Zavala, Assistant Director