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BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Erik M. Ish, LAC-16889,
Licensed Associate Counselor,
In the State of Arizona.

RESPONDENT

CASE NO. 2019-0083

CONSENT AGREEMENT

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), Erik M. Ish ("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.

RECITALS

Respondent understands and agrees that:

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.
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.
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 between only Respondent and the Board for
7 the final disposition of this matter and may be used for purposes of determining sanctions in any
8 future disciplinary matter.

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11 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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

16 7. Respondent understands that once the Board approves and signs this Consent
17 Agreement, it is a public record that may be publicly disseminated as a formal action of the
18 Board, and that it shall be reported as required by law to the National Practitioner 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(16)(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 they have failed to comply with the
24 terms of this Consent Agreement or of the practice act.

25 ...

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

2 **FINDINGS OF FACT**

3 1. Respondent is the holder of License No. LAC-16889 for the practice of
4 counseling in Arizona.

5 2. From 02/18 – 01/19, Respondent worked at a residential drug and alcohol
6 treatment facility ("Agency"), where he provided behavioral health services to an adult male
7 client ("Client").

8 3. According to Respondent's progress notes for Client, Respondent was fully
9 aware that Client was at high risk for relapse.

10 4. With full knowledge of Client's high risk for relapse and vulnerabilities,
11 Respondent escorted Client in his personal vehicle to lunch, while in possession of prescribed
12 medical marijuana.

13 5. Respondent represents that it was a common practice for employees at Agency
14 to transport clients in their private vehicle.

15 6. Respondent's decision to be in possession of marijuana while working with
16 clients was further problematic given Agency's policies, which provide:

17 a. Use of substances, whether on or off the job, can adversely affect an
18 employee's performance, efficiency, safety and health.

19 b. Possession, use, or being under the influence of an illegal or controlled
20 substance while on the job is prohibited.

21 7. According to Respondent:

22 a. He denies being under the influence of an illegal or controlled substance
23 while on the job.

24 b. On 01/09/19, Respondent knew Client was going to be leaving Agency soon
25 and that this would be their last individual session together.

- 1 c. Respondent asked Client if he would like to get some pizza for lunch, and
2 Client replied yes.
- 3 d. The only time that Client would have been alone in Respondent's car is when
4 he was at the gas station and went inside.
- 5 e. Respondent had a prescribed medical marijuana cigarette in the center
6 console between the two front seats.
- 7 f. The cigarette was stored loosely in the console.
- 8 g. When asked why Respondent would have marijuana in the center console
9 without it being wrapped or stored in a container, Respondent indicated "I
10 don't have a good answer for that."

11 8. Although Respondent was aware that Client took his marijuana, Respondent
12 failed to inform Agency of the matter.

13 9. Agency became aware when Client's subsequent treatment provider contacted
14 Agency and shared that Client admitted to using marijuana after finding it in Respondent's
15 vehicle.

16 10. Respondent was immediately terminated from Agency.

17 11. Following Respondent's termination, Respondent's caseload was distributed to
18 other Agency providers.

19 12. One of those clients ("Client 2") reported that he only had 2 sessions with
20 Respondent.

21 13. In review of Client 2's clinical record, it was discovered that Respondent
22 documented 6 individual sessions with Client 2.

23 14. When questioned about this matter by Board staff, Respondent acknowledged
24 falsifying several sessions with Client 2.

25 15. During the investigation, Respondent stated that Agency counselors would

1 sometimes write a session note based on multiple interactions with a client during the course of
2 a week in lieu of holding a separate session and writing a note for that session.

3 16. Respondent acknowledges that Agency billed Client 2's insurance based on
4 session notes that Respondent entered.

5 17. In defense of his Board complaint, Respondent solicited the participation of
6 several former clients by requesting that they write letters for the benefit of Respondent's
7 defense.

8 18. Respondent failed to notify the Board of his employment with Agency as
9 required.

10 **CONCLUSIONS OF LAW**

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

14 2. The conduct and circumstances described in the Findings of Fact constitute a
15 violation of A.R.S. § 32-3251(16)(l), engaging in any conduct, practice or condition that impairs
16 the ability of the licensee to safely and competently practice the licensee's profession.

17 3. The conduct and circumstances described in the Findings of Fact constitute a
18 violation of A.R.S. § 32-3251(16)(b), using fraud or deceit in connection with rendering services
19 as a licensee or in establishing qualifications pursuant to this chapter.

20 4. The conduct and circumstances described in the Findings of Fact constitute a
21 violation of A.R.S. § 32-3251(16)(x), exploiting a client, former client or supervisee. For the
22 purposes of this subdivision, "exploiting" means taking advantage of a professional relationship
23 with a client, former client or supervisee for the benefit or profit of the licensee.

24 5. The conduct and circumstances described in the Findings of Fact constitute a
25 violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation

1 applicable to the practice of behavioral health, as it relates to A.A.C. R4-6-205 Change of
2 Contact Information.

3 **ORDER**

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

6 1. Respondent's license, LAC-16889, will be placed on probation for 24 months,
7 effective from the date of entry as signed below.

8 2. Respondent shall not practice under their license, LAC-16889, unless they are
9 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
10 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
11 shall immediately notify the Board in writing and shall not practice under their license until they
12 submit a written request to the Board to re-commence compliance with this Consent
13 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

18 **Practice Restriction**

19 4. While on probation, if Respondent engages in the practice of behavioral health,
20 Respondent shall do so only while working at a behavioral health agency licensed by the state
21 of Arizona.

22 **Continuing Education**

23 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
24 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
25 three semester credit hour graduate level behavioral health ethics course from a regionally

1 accredited college or university, pre-approved by the Board Chair or designee. Upon
2 completion, Respondent shall submit to the Board an official transcript establishing completion
3 of the required course.

4 Clinical Supervision

5 6. While on probation, Respondent shall submit to clinical supervision for 24 months
6 by a masters or higher level behavioral health professional licensed at the independent level.
7 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of a
8 clinical supervisor for pre-approval by the Board Chair or designee. Also within 30 days of the
9 date of this Consent Agreement, the clinical supervisor shall submit a letter disclosing their prior
10 relationship to Respondent. In that letter, the clinical supervisor must address why they should
11 be approved, acknowledge that they have reviewed the Consent Agreement and include the
12 results of an initial assessment and a supervision plan regarding the proposed supervision of
13 Respondent. The letter from the supervisor shall be submitted to the Board.

14 Focus and Frequency of Clinical Supervision

15 7. The focus of the supervision shall relate to boundaries, ethics, and clinical
16 documentation. Respondent shall meet individually in person with the supervisor once weekly
17 for the first 12 months of probation. Following the initially 12 months of probation, the frequency
18 may be at the recommendation of the supervisor, but not less than once monthly.

19 Reports

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

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

1 sessions.

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

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

9 **Change of Clinical Supervisor During Probation**

10 11. If, during the period of Respondent's probation, the clinical supervisor determines
11 that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of
12 the end of supervision and provide the Board with an interim final report. Respondent shall
13 advise the Board Chair or designee within 30 days of cessation of clinical supervision by the
14 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
15 proposed clinical supervisor shall provide the same documentation to the Board as was required
16 of the initial clinical supervisor.

17 **Therapy**

18 12. During the period of probation, Respondent shall attend therapy for 24 months
19 with a masters or higher level behavioral health professional licensed at the independent level.
20 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of
21 their therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or
22 designee. Also within 30 days of the date of this Consent Agreement, the therapist shall submit
23 a letter addressing why they should be approved, acknowledging that they have reviewed the
24 Consent Agreement and include the results of an initial assessment and a treatment plan
25 regarding the proposed treatment of Respondent.

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

4 **Focus and Frequency of Therapy**

5 14. The focus of the therapy shall relate to concerns identified in the investigative
6 report. Respondent shall meet in person with the therapist twice monthly for the first 12 months
7 of probation. Following the initial 12 months of probation, the frequency may be at the
8 recommendation of the therapist, but not less than once monthly.

9 **Reports**

10 15. Once approved, the therapist shall submit quarterly reports and a final summary
11 report to the Board for review and approval. The quarterly reports shall include issues presented
12 in this Consent Agreement that need to be reported and the therapist shall notify the Board if
13 more frequent therapy is needed. The reports shall address Respondent's current mental health
14 status, medications prescribed, if any, treatment recommendation, and shall report if, in their
15 professional opinion, Respondent becomes unable to practice psychotherapy safely and
16 competently. The final report shall also contain a recommendation as to whether the
17 Respondent should be released from this Consent Agreement.

18 **Change of Therapist**

19 16. In the event that, during the period of Respondent's probation, Respondent's
20 Board-approved therapist discontinues treatment, Respondent shall submit the name of a new
21 therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee
22 within 30 days of the discontinued treatment. Also within 30 days of the date of the discontinued
23 treatment, the proposed therapist shall submit a letter addressing why they should be approved,
24 acknowledging that they have reviewed the Consent Agreement, and include the results of an
25 initial assessment and a treatment plan regarding the proposed treatment of Respondent.

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Recovery Program

17. While on probation, Respondent shall attend recovery support meetings at a minimum of 3 times per week. Respondent shall obtain a sponsor, mentor, or group leader and that individual shall provide quarterly reports to the Board Chair or designee attesting to Respondent's attendance and participation.

Biological Fluid Testing

18. Within 10 days of the effective date of this Order, Respondent shall enroll in a program that meets Board criteria for observed random biological fluid testing. The chemicals tested shall be determined by the Board Chair or designee. Random testing shall be done twice monthly for the first 12 months of probation and once monthly following the initial 12 months of probation. Testing may be required more frequently as requested by the Board or its designee. Respondent shall direct the Board-approved testing laboratory to provide a copy of each test result to the Board. Respondent shall direct the Board-approved testing laboratory to advise the Board or its designee within 7 days regarding any issue of noncompliance by Respondent. Respondent shall notify the biological fluid testing laboratory and the Board, in writing, of unavailability to test prior to an anticipated absence or if unable to provide a sample due to illness. Respondent must submit in writing within 7 days of the missed specimen, documentation from a treating physician who has personally evaluated Respondent on the day of the requested screen that Respondent was not physically able to report to the laboratory for biological fluid testing.

Failure to show for a random biological fluid test or failure to provide a random biological fluid sample on a day when a sample is requested by the Board, its designee or the laboratory will be considered an admission of a positive urine screening. The following situations will also constitute ***an admission of a positive urine screen***: submission of a specimen where the integrity has been compromised as indicated by the presence of

1 adulterants, with determination made by laboratory personnel; submission of a sample that is
2 below acceptable volume or temperature to be tested; failure to provide written advance notice
3 of anticipated absence; and failure to provide written verification of illness from a physician
4 within 7 days of the missed specimen.

5 ***Failure to show for the random biological fluid test, failure to provide a random***
6 ***biological fluid sample or a positive drug screen showing evidence of any drug other than an***
7 ***authorized medication will constitute a violation of this Order. A violation of this Order for***
8 ***those reasons will be deemed to be a threat to the public's health, safety and welfare.***
9 ***The Board may then summarily suspend Respondent's license and may impose***
10 ***disciplinary action including but not limited to suspension or revocation of Respondent's***
11 ***license, after notice and opportunity for a hearing. The issue at such hearing will be***
12 ***limited to whether Respondent violated this Order by failing to show for a random***
13 ***biological fluid test, failing to provide a random biological fluid sample or for having***
14 ***tested positive for any drug other than an authorized medication.***

15 19. Respondent shall abstain completely from the personal use of the following
16 substances: opiates, foodstuffs containing poppy seeds, foodstuffs containing hemp products,
17 and herbal or health preparations containing derivatives of controlled substances. Respondent
18 is fully responsible for any and all ingested materials and their contents.

19 20. Respondent shall abstain completely from the personal use of alcohol or
20 controlled substances or possession of controlled substances, as defined in the State Controlled
21 Substances Act and Dangerous Drugs and Narcotics as defined by law or any drugs requiring a
22 prescription. Respondent shall abstain from the use of alcohol and all over-the-counter
23 medications except plain aspirin, acetaminophen, or ibuprofen.

24 21. Orders prohibiting Respondent from personal use or possession of controlled
25 substances, dangerous drugs, narcotics, or medications do not apply to medications lawfully

1 prescribed to Respondent for a bona fide illness or condition by a medical care provider. During
2 the duration of this Consent Agreement, Respondent shall select one (1) medical care provider
3 to coordinate their health care needs and to be aware of all prescriptions utilized by
4 Respondent. Respondent shall immediately submit to that provider a copy of this Consent
5 Agreement and shall execute all release of information forms as required by the Board or its
6 designee. The medical care provider shall, within 14 days of the effective date of this Consent
7 Agreement, inform the Board, in writing, of knowledge of Respondent's Consent Agreement and
8 provide a list of medications prescribed for Respondent. During the duration of this Consent
9 Agreement, Respondent shall cause all providers to notify the Board of any additional
10 medications ordered by the provider. The notification shall be made in writing within 7 days of
11 the provider's issuance of the prescription.

12 22. If Respondent has a lawful prescription for a narcotic or mood-altering drug,
13 Respondent shall cause their prescribing provider to submit monthly reports to the Board by the
14 30th day of each month regarding the continued need for the prescribed narcotic or mood-
15 altering medications. The Board or its designee may, at any time, request the provider to
16 document the continued need for prescribed medications. Respondent shall keep a written
17 record of medications taken, including over the counter drugs, and produce such record upon
18 request by the Board or its designee.

19 GENERAL PROVISIONS

20 Provision of Clinical Supervision

21 23. Respondent shall not provide clinical supervision while subject to this Consent
22 Agreement.

23 Civil Penalty

24 24. Subject to the provisions set forth in paragraph 25, the Board imposes a civil
25 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

20 28. Within 10 days of the effective date of this Order, if Respondent is working in a
21 position where Respondent provides any type of behavioral health related services or works in a
22 setting where any type of behavioral health, health care, or social services are provided,
23 Respondent shall provide the Board Chair or designee with a signed statement from
24 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
25 Consent Agreement. If Respondent does not provide the employer's statement to the Board

1 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
2 copy of the Consent Agreement.

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

13 30. If, during the period of Respondent's probation, Respondent changes
14 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
15 extended leave of absence for whatever reason that may impact their ability to timely comply
16 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
17 the Board of their change of employment status. After the change and within 10 days of
18 accepting employment in a position where Respondent provides any type of behavioral health
19 related services or in a setting where any type of behavioral health, health care, or social
20 services are provided, Respondent shall provide the Board Chair or designee a written
21 statement providing the contact information of their new employer(s) and a signed statement
22 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
23 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
24 the Board within 10 days, as required, Respondent's failure to provide the required statement to
25 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide

1 Respondent's employer(s) with a copy of the Consent Agreement.

2 31. Respondent shall practice behavioral health using the name under which they
3 are licensed. If Respondent changes their name, they shall advise the Board of the name
4 change as prescribed under the Board's regulations and rules.

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

16 33. Respondent shall bear all costs relating to probation terms required in this
17 Consent Agreement.

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

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

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

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PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Erik M. Ish
Erik M. Ish

4/30/19
Date

BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT

Dated this 02 day of May, 2019.

By: Tobi Zavala
TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

ORIGINAL of the foregoing filed
This 02 day of May, 2019 with:

Arizona Board of Behavioral Health Examiners
1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

COPY of the foregoing mailed via Interagency Mail
This 02 day of May, 2019, to:

Marc Harris
Assistant Attorney General
2005 North Central Avenue
Phoenix, AZ 85004

COPY of the foregoing mailed via
Certified mail no. 9489009000276046995672

This 02 day of May, 2019, to:

Erik M. Ish
Address of Record
Respondent

COPY of the foregoing mailed via Mail
This 02 day of May, 2019 to:

Larry J. Cohen
The Cohen Law Firm
P.O. Box 10056
Phoenix, AZ 85064-0056
Attorney for Respondent