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BEFORE THE ARIZONA BOARD

OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Melissa M. Mitscher, LMSW 12818, Licensed Masters Social Work, In the State of Arizona.

RESPONDENT

CASE NO. 2015-0030
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(H) and 41-1092.07(F)(5), Melissa M. Mitscher ("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:

- 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 her right to such formal hearing concerning these allegations and irrevocably waives her right to any rehearing or judicial review relating to the allegations contained in this Consent Agreement.
- Respondent has the right to consult with an attorney prior to entering into this
 Consent Agreement.

- 4. Respondent acknowledges and agrees that upon signing this Consent Agreement and returning it to the Board's Executive Director, Respondent may not revoke her acceptance of this Consent Agreement or make any modifications to it. Any modification of this original document is ineffective and void unless mutually approved by the parties in writing.
- 5. The findings contained in the Findings of Fact portion of this Consent Agreement are conclusive evidence of the facts stated herein and may be used for purposes of determining sanctions in any future disciplinary matter.
- 6. This Consent Agreement is subject to the Board's approval, and will be effective only when the Board accepts it. In the event the Board in its discretion does not approve this Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value, nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except that Respondent agrees that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or of any records relating thereto.
- 7. Respondent understands that once the Board approves and signs this Consent Agreement, it is a public record that may be publicly disseminated as a formal action of the Board, and that it shall be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.
- 8. Respondent further understands that any violation of this Consent Agreement constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(n) and may result in disciplinary action pursuant to A.R.S. § 32-3281.
- 9. The Board therefore retains jurisdiction over Respondent and may initiate disciplinary action against Respondent if it determines that she has failed to comply with the terms of this Consent Agreement or of the practice act.

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

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FINDINGS OF FACT

- Respondent is the holder of License No. LMSW-12818 for the practice of Social Work in Arizona.
 - 2. On 05/18/13, Respondent was charged with:
 - a. Possession of Marijuana/Attempt
 - b. Possession of Drug Paraphernalia/Attempt
 - 3. The police report regarding that incident indicated the following:
 - a. Respondent told the officer that she had marijuana in the vehicle.
 - b. The officer's trained canine alerted to a suitcase in the trunk, which contained7.6 grams of marijuana and a glass pipe with marijuana residue.
 - c. Respondent acknowledged that she:
 - Knew the contraband was in the suitcase.
 - Purchased the marijuana in Phoenix for \$60.
 - 4. In 10/13:
 - Respondent pled guilty to Possession of Drug Paraphernalia/Attempt.
 - b. The court dismissed the charge of Possession of Marijuana/Attempt.
 - 5. During her 07/14 investigative interview, Respondent indicated the following:
 - a. In 2003, she called the police on her ex-boyfriend ("Ex-Boyfriend") due to a domestic dispute.
 - b. When the police arrived, they noticed a marijuana pipe in the house.
 - c. Although the pipe did not belong to her, Respondent acknowledged that it was hers because she was only concerned about her safety from Ex-Boyfriend.
 - d. Respondent was aware that Ex-Boyfriend possessed and smoked marijuana.
 - e. During this period of time, Respondent never smoked marijuana.

- f. In 01/13, Respondent's friend recommended that she try marijuana for her chronic pain.
- g. Between 01/13 05/13, Respondent purchased illegal marijuana approximately 2-3 times.
- h. During that time, she smoked marijuana approximately 2-3 times weekly.
- 6. With regard to her 2003 charge, it is difficult to reconcile why Respondent would have intentionally misinformed the police that the marijuana pipe belonged to her, when presumably knowing that she could face potential criminal charges.
- 7. It is also difficult to reconcile Respondent's representation that, between the dates of 01/13 05/13, she purchased illegal marijuana only 2-3 times, yet she smoked marijuana 2-3 times weekly.
- 8. During her 08/14 investigative interview, Respondent deviated from her previous representations and indicated the following:
 - a. In her previous interview with Board staff, Respondent misrepresented that she was not smoking marijuana in 2003.
 - b. "I didn't mean I wasn't smoking it entirely, but I wasn't smoking marijuana
 regularly. I just engaged in it periodically."
 - c. When asked about her marijuana use from 01/13 05/13, Respondent indicated the following:
 - Respondent purchased marijuana illegally 3-4 times.
 - She smoked marijuana approximately 2-3 times a week.
 - She can see how this seems inconsistent, but she did not typically have to buy a lot.
 - About a quarter ounce is the most she ever bought.

9. Despite the discrepancies in Respondent's representations to Board staff, Respondent's acknowledgment to knowingly purchase and use illegal marijuana appears problematic.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-3251 et seq. and the rules promulgated by the Board relating to Respondent's professional practice as a licensed behavioral health professional.
- 2. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(12)(I), any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice.
- 3. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(12)(ii), violating any federal or state law, rule or regulation applicable to the practice of behavioral health, as it relates to:

A.R.S. § 32-3208, a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.

ORDER of CENSURE

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

- Respondent is hereby censured, which is an official action against her license, for her conduct as set forth in the Findings of Fact.
 - 2. This Consent Agreement shall be effective on the date of entry below.

1	 This Consent Agreement is conclusive evidence of the matters described here!
2	and may be considered by the Board in determining appropriate sanctions in the event
3	subsequent violation occurs.
4	PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT
5	10 26 20 14 Date
6	Melissa Mitscher Date
7	BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT
8	Dated this 3/8+ day of Dot 11 . 2014.
9	Dated this 3/84 day of October , 2014.
0	By: TOBI ZAVALA, Executive Director
11	Arizona Board of Behavioral Health Examiners
12 13	ORIGINAL of the foregoing filed This day of Letous, 2014 with:
14 ⁻ 15	Arizona Board of Behavioral Health Examiners 3443 N. Central Ave., Suite 1700 ——————————————————————————————————
16	COPY of the foregoing mailed via Interagency Mail This day of Columnia, 2014, to:
17	Marc Harris Assistant Attorney General
18	1275 West Washington Phoenix, Arizona 85007
19	COPY of the foregoing mailed via
20	Certified mail no. 1014/2000000 (0/033 1176 This 4/04 day of 200000000000000000000000000000000000
21	1110 4
22	Melissa Mitscher Address of Record
23	Respondent
24	Tobi Zavala, Executive Director
25	1001 Zavaia, Executive Director