

BEFORE THE ARIZONA BOARD
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Kristi L. Nicholls, LAC-14511,
Licensed Associate Counselor,
In the State of Arizona.

CASE NOS. 2016-0112 &
2016-0114

CONSENT AGREEMENT

RESPONDENT

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), Kristi L. Nicholls ("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 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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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
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-14511 for the practice of
4 counseling in Arizona.

5 2. Around 09/15, Respondent represents that she hired a catering company to
6 provide food services at her upcoming wedding.

7 3. In 11/15, Respondent began providing behavioral health services to an adult
8 female client ("Client").

9 4. Respondent represents that around the 2nd or 3rd counseling session, she
10 learned that Client was the owner of the catering company that Respondent previously hired.

11 5. Still, with that knowledge, Respondent did not document this information or notify
12 any of her superiors of the dual relationship.

13 6. Respondent represents the following regarding this issue:

14 a. Respondent informed Client that because she hired the catering business and
15 not Client specifically, it didn't technically count as a dual relationship.

16 b. Respondent allowed Client to clarify wedding plans with her following the
17 counseling sessions if necessary, but it never exceeded 5 minutes.

18 c. Client was informed that Respondent's fellow staff members would be invited
19 to the wedding, and that Client's participation was to occur prior to them
20 arriving.

21 d. Client was not present for the wedding reception, which was preplanned in
22 order to reduce inappropriate contact.

23 7. It is concerning that, only when another client informed Respondent's employer
24 that Respondent was involved in a dual relationship, did Respondent share the information with
25 her superiors.

1 8. Although Respondent represents that she did not recognize the dual relationship,
 2 Respondent's representation appears problematic when considering that Respondent
 3 coordinated with Client to ensure that she would not be present at the wedding when other staff
 4 members were present.

5 **CONCLUSIONS OF LAW**

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

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

12 3. The conduct and circumstances described in the Findings of Fact constitute a
 13 violation of A.R.S. § 32-3251(16)(y), engaging in a dual relationship with a client that could
 14 impair the licensee's objectivity or professional judgement or create a risk of harm to the client.

15 **ORDER**

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

18 1. Respondent's license, LAC-14511, will be placed on probation, effective from the
 19 date of entry as signed below.

20 2. Respondent shall not practice under their license, LAC-14511, unless they are
 21 fully 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, they
 23 shall immediately notify the Board in writing and shall not practice under their license until they
 24 submit a written request to the Board to re-commence compliance with this Consent
 25 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

5 **Continuing Education**

6 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
7 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
8 three semester credit hour graduate level behavioral health ethics course from an accredited
9 college or university, pre-approved by the Board Chair or designee. Upon completion,
10 Respondent shall submit to the Board an official transcript establishing completion of the
11 required course.

12 **Clinical Supervision**

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

22 **Focus and Frequency of Clinical Supervision**

23 6. The focus of the supervision shall relate to ethics, boundaries and consultation.
24 Respondent shall meet individually in person with the supervisor for a minimum of twice monthly
25

1 for the first 12 months of probations and the second 12 months of probation will be at the
2 recommendation of the supervisor.

3 Reports

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

8 a. Dates of each clinical supervision session.

9 b. A comprehensive description of issues discussed during supervision
10 sessions.

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

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

18 Change of Clinical Supervisor During Probation

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

1 Early Release

2 11. After completion of the stipulations set forth in this consent agreement, and upon
3 the supervisor's recommendation, Respondent may request early release from the consent
4 agreement after 12 months.

5 GENERAL PROVISIONS

6 Provision of Clinical Supervision

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

9 Civil Penalty

10 13. Subject to the provisions set forth in paragraph 14, the Board imposes a civil
11 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

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

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

24 19. If, during the period of Respondent's probation, Respondent changes
25 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on

1 extended leave of absence for whatever reason that may impact their ability to timely comply
2 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
3 the Board of their change of employment status. After the change and within 10 days of
4 accepting employment in a position where Respondent provides any type of behavioral health
5 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 a written
7 statement providing the contact information of their new employer(s) and a signed statement
8 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
9 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
10 the Board within 10 days, as required, Respondent's failure to provide the required statement to
11 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
12 Respondent's employer(s) with a copy of the Consent Agreement.

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

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

1 met, the Board may conduct such further proceedings as it determines are appropriate to
2 address those matters.

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

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

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

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

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

13 *K. Nicholls*
14 KRISTI L. NICHOLLS

09-13-2016
Date

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

16 Dated this *19th* day of *September*, 2016.

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

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21 **ORIGINAL** of the foregoing filed
22 This *19th* day of *September*, 2016 with:

23 Arizona Board of Behavioral Health Examiners
24 3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

25 **COPY** of the foregoing mailed via Interagency Mail
This *19th* day of *September*, 2016, to:

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

COPY of the foregoing mailed via
Certified mail no. 70142870000189872456
This 19th day of September, 2016, to:

Kristi L. Nicholls
Address of Record
Respondent

COPY of the foregoing mailed via Mail
This 19th day of September, 2016 to: