

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 Brian M. Theer, LAC-16545,  
4 Licensed Associate Counselor,  
In the State of Arizona.

CASE NO. 2017-0087

RELEASE FROM  
CONSENT AGREEMENT AND ORDER

5 RESPONDENT

6  
7 The Board received a request from Respondent to release them from the terms and  
8 conditions of the Consent Agreement and Order dated February 7, 2017. After consideration,  
9 the Board voted to release Respondent from the terms and conditions of the Consent  
10 Agreement and Order dated February 7, 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 February 7, 2017.

15 Dated this 10<sup>th</sup> day of October, 2018.

16  
17 By:

M. Zavala  
18 TOBI ZAVALA, Executive Director  
Arizona Board of Behavioral Health Examiners

19 ORIGINAL of the foregoing filed  
20 This 10<sup>th</sup> day of October, 2018, with:

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

23 COPY of the foregoing mailed via  
Certified mail no. 9489 0090 0027 1606 0239530  
24 This 10<sup>th</sup> day of October, 2018, to:

25 Brian M. Theer  
Address of Record  
Respondent

BEFORE THE ARIZONA BOARD  
OF BEHAVIORAL HEALTH EXAMINERS

In the Matter of:

Brian M. Theer, Applicant for  
Licensed Associate Counselor,  
In the State of Arizona.

RESPONDENT

CASE NO. 2017-0087

CONSENT AGREEMENT FOR ISSUANCE  
OF A LICENSE

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), Brian M. Theer ("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           The Board issues the following Findings of Fact, Conclusions of Law and Order:  
25

1 **FINDINGS OF FACT**

- 2 1. Respondent is an applicant for licensure for the practice of counseling in Arizona.  
3 2. On 02/14/15, Respondent was arrested for driving under the influence.  
4 3. Respondent's blood alcohol content was measured at .196 % approximately forty  
5 minutes after he was arrested.  
6 4. Respondent acknowledges consuming alcohol prior to driving.

7 **CONCLUSIONS OF LAW**

- 8 1. The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-3251 *et seq.*  
9 and the rules promulgated by the Board relating to Respondent's professional practice as a  
10 licensed behavioral health professional.  
11 2. The conduct and circumstances described in the Findings of Fact constitute a  
12 violation of A.R.S. § 32-3251(15)(l), any conduct, practice or condition that impairs the ability of  
13 the licensee to safely and competently practice the licensee's profession.

14 **ORDER**

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

- 17 1. Respondent's application to be a licensed associate counselor is approved.  
18 2. The license issued to Respondent pursuant to paragraph 1 will be immediately  
19 placed on probation for 12 months.  
20 3. Respondent shall not practice under their license, unless they are fully compliant  
21 with all terms and conditions in this Consent Agreement. If, for any reason, Respondent is  
22 unable to comply with the terms and conditions of this Consent Agreement, they shall  
23 immediately notify the Board in writing and shall not practice under their license until they submit  
24 a written request to the Board to re-commence compliance with this Consent Agreement. All  
25 such requests shall be pre-approved by the Board Chair or designee.

1 4. 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 5. 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 course in substance use disorders 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 **Recovery Program**

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

17 **Early Release**

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

21 **GENERAL PROVISIONS**

22 **Provision of Clinical Supervision**

23 8. Respondent shall not provide clinical supervision while subject to this Consent  
24 Agreement.

1 Civil Penalty

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

4 10. 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 3, 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 11. 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 12. 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 13. If Respondent currently sees clients in their own private practice, and obtains any  
23 other type of behavioral health position, either as an employee or independent contractor, where  
24 they provide behavioral health services to clients of another individual or agency, they shall  
25 comply with requirements set forth in paragraphs 13 through 15 below.

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

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

19           16.    If, during the period of Respondent's probation, Respondent changes  
20 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on  
21 extended leave of absence for whatever reason that may impact their ability to timely comply  
22 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform  
23 the Board of their change of employment status. After the change and within 10 days of  
24 accepting employment in a position where Respondent provides any type of behavioral health  
25 related services or in a setting where any type of behavioral health, health care, or social

1 services are provided, Respondent shall provide the Board Chair or designee a written  
2 statement providing the contact information of their new employer(s) and a signed statement  
3 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a  
4 copy of this Consent Agreement. If Respondent does not provide the employer's statement to  
5 the Board within 10 days, as required, Respondent's failure to provide the required statement to  
6 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide  
7 Respondent's employer(s) with a copy of the Consent Agreement.

8 17. Respondent shall practice behavioral health using the name under which they  
9 are licensed. If Respondent changes their name, they shall advise the Board of the name  
10 change as prescribed under the Board's regulations and rules.

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

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

24 20. Respondent shall be responsible for ensuring that all documentation required in  
25 this Consent Agreement is provided to the Board in a timely manner.




1 21. This Consent Agreement shall be effective on the date of entry below.  
2 22. This Consent Agreement is conclusive evidence of the matters described herein  
3 and may be considered by the Board in determining appropriate sanctions in the event a  
4 subsequent violation occurs.

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

7   
8 Brian M. Theer 11/15/16  
9 Date

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

11 Dated this 7th day of February, 2016.

12 By:   
13 TOBI ZAVALA, Executive Director  
14 Arizona Board of Behavioral Health Examiners

15 **ORIGINAL** of the foregoing filed  
16 This 7th day of February, 2016 with:

17 Arizona Board of Behavioral Health Examiners  
18 3443 N. Central Ave., Suite 1700  
19 Phoenix, AZ 85012

20 **COPY** of the foregoing mailed via Interagency Mail  
21 This 7th day of February, 2016, to:

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

26 **COPY** of the foregoing mailed via  
27 Certified mail no. 70147200006339424  
28 This 7th day of February, 2016, to:

29 Brian M. Theer  
30 Address of Record  
31 Respondent