

1 BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS

2 In the Matter of:

3 Aaron D. Foster, LAC-16667,
4 Licensed Associate Counselor,
In the State of Arizona.

5 RESPONDENT

CASE NO. 2017-0101

6
7 RELEASE FROM
8 CONSENT AGREEMENT AND ORDER

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

13 ORDER

14 GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:

15 Respondent is hereby released from all terms and conditions of the Consent Agreement
16 and Order dated May 8, 2017.

17 Dated this 8th day of August, 2018.

18 By:

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

19 ORIGINAL of the foregoing filed

20 This 8th day of August, 2018, with:

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

23 COPY of the foregoing mailed via

24 Certified mail no. 948900900276000230407
This 8th day of August, 2018, to:

25 Aaron D. Foster
Address of Record
Respondent

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

3 **In the Matter of:**

4 **Aaron D. Foster, Applicant for Associate**
5 **Counselor Licensure,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2017-0101

CONSENT AGREEMENT
FOR ISSUANCE OF LICENSE

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

14 **RECITALS**

15 Respondent understands and agrees that:

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

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

24 3. Respondent has the right to consult with an attorney prior to entering into this
25 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 associate counselor licensure in Arizona.

3 2. Between 1993 and 2011, Respondent was arrested on three separate occasions
4 for DUI.

5 3. Between 2002 and 2012, Respondent has intermittently received outpatient
6 behavioral health services from various providers regarding alcohol dependency and other
7 behavioral health issues.

8 CONCLUSIONS OF LAW

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

12 2. The conduct and circumstances described in the Findings of Fact caused the
13 Board to restrict Respondent's professional practice pursuant to A.R.S. § 32-3275(A)(5) as
14 ordered below.

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 application to be a licensed associate counselor is approved.

19 Stayed Suspension

20 2. As of the effective date of this Consent Agreement, the license issued to
21 Respondent pursuant to paragraph 1 shall be **SUSPENDED** for 24 months. However, the
22 suspension shall be stayed and Respondent's license shall be placed on probation.

23 3. During the stayed suspension portion of the Order, if Respondent is
24 noncompliant with the terms of the Order in any way, the stay of the suspension shall be lifted
25 and Respondent's license shall be automatically suspended as set forth above.

1 4. If Respondent contests the lifting of the stay as it relates to this paragraph,
2 Respondent shall request in writing, within 10 days of being notified of the automatic
3 suspension of licensure, that the matter be placed on the Board agenda for the Board to review
4 and determine if the automatic suspension of Respondent's license was supported by clear and
5 convincing evidence.

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

9 6. Pending the Board's review, Respondent's license shall be reported as
10 suspended - under review. Respondent may not work in any capacity as a licensed behavioral
11 health professional pending the Board's review. The Board's decision and Order shall not be
12 subject to further review.

13 **Probation**

14 7. The license issued to Respondent pursuant to paragraph 1 will be immediately
15 placed on probation for 24 months.

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

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

Therapy

10. During the period of probation, Respondent shall attend therapy with a Licensed Independent Substance Abuse Counselor who also holds an additional independent level license by the Board. Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of their therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee. Also within 30 days of the date of this Consent Agreement, the therapist shall submit a letter addressing why they should be approved, acknowledging that they have reviewed the Consent Agreement and include the results of an initial assessment and a treatment plan regarding the proposed treatment of Respondent.

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

Focus and Frequency of Therapy

12. The focus of the therapy shall relate to items noted in the addictionologist's evaluation. Respondent shall meet in person with the therapist twice monthly for six months and after that, at the recommendation of the therapist.

Reports

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

1 **Change of Therapist**

2 14. In the event that, during the period of Respondent's probation, Respondent's
3 Board-approved therapist discontinues treatment, Respondent shall submit the name of a new
4 therapist and the therapist's curriculum vitae for pre-approval by the Board Chair or designee
5 within 30 days of the discontinued treatment. Also within 30 days of the date of the discontinued
6 treatment, the proposed therapist shall submit a letter addressing why they should be approved,
7 acknowledging that they have reviewed the Consent Agreement, and include the results of an
8 initial assessment and a treatment plan regarding the proposed treatment of Respondent.

9 **Recovery Program**

10 15. While on probation, Respondent shall attend recovery support meetings at a
11 minimum of 1 time per week. Respondent shall obtain a sponsor, mentor, or group leader and
12 that individual shall provide quarterly reports to the Board Chair or designee attesting to
13 Respondent's attendance and participation.

14 **Biological Fluid Testing**

15 16. Within 10 days of the effective date of this Order, Respondent shall enroll in a
16 program that meets Board criteria for observed random biological fluid testing. The chemicals
17 tested shall be determined by the Board Chair or designee. Random testing shall be done at a
18 minimum of twice monthly for 12 months, then once monthly until Respondent is released from
19 this Order, and may be required more frequently as requested by the Board or its designee.
20 Respondent shall direct the Board-approved testing laboratory to provide a copy of each test
21 result to the Board. Respondent shall direct the Board-approved testing laboratory to advise the
22 Board or its designee within 7 days regarding any issue of noncompliance by Respondent.
23 Respondent shall notify the biological fluid testing laboratory and the Board, in writing, of
24 unavailability to test prior to an anticipated absence or if unable to provide a sample due to
25 illness. Respondent must submit in writing within 7 days of the missed specimen,

1 documentation from a treating physician who has personally evaluated Respondent on the day
2 of the requested screen that Respondent was not physically able to report to the laboratory for
3 biological fluid testing.

4 ***Failure to show for a random biological fluid test or failure to provide a random***
5 ***biological fluid sample on a day when a sample is requested by the Board, its designee***
6 ***or the laboratory will be considered an admission of a positive urine screening.*** The
7 following situations will also constitute ***an admission of a positive urine screen***: submission of
8 a specimen where the integrity has been compromised as indicated by the presence of
9 adulterants, with determination made by laboratory personnel; submission of a sample that is
10 below acceptable volume or temperature to be tested; failure to provide written advance notice
11 of anticipated absence; and failure to provide written verification of illness from a physician
12 within 7 days of the missed specimen.

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

23 17. Respondent shall abstain completely from the personal use of the following
24 substances: opiates, foodstuffs containing poppy seeds, foodstuffs containing hemp products,
25

1 and herbal or health preparations containing derivatives of controlled substances. Respondent
2 is fully responsible for any and all ingested materials and their contents.

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

8 19. Orders prohibiting Respondent from personal use or possession of controlled
9 substances, dangerous drugs, narcotics, or medications do not apply to medications lawfully
10 prescribed to Respondent for a bona fide illness or condition by a medical care provider. During
11 the duration of this Consent Agreement, Respondent shall select one (1) medical care provider
12 to coordinate their health care needs and to be aware of all prescriptions utilized by
13 Respondent. Respondent shall immediately submit to that provider a copy of this Consent
14 Agreement and shall execute all release of information forms as required by the Board or its
15 designee. The medical care provider shall, within 14 days of the effective date of this Consent
16 Agreement, inform the Board, in writing, of knowledge of Respondent's Consent Agreement and
17 provide a list of medications prescribed for Respondent. During the duration of this Consent
18 Agreement, Respondent shall cause all providers to notify the Board of any additional
19 medications ordered by the provider. The notification shall be made in writing within 7 days of
20 the provider's issuance of the prescription.

21 20. If Respondent has a lawful prescription for a narcotic or mood-altering drug,
22 Respondent shall cause their prescribing provider to submit monthly reports to the Board by the
23 30th day of each month regarding the continued need for the prescribed narcotic or mood-
24 altering medications. The Board or its designee may, at any time, request the provider to
25 document the continued need for prescribed medications. Respondent shall keep a written

1 record of medications taken, including over the counter drugs, and produce such record upon
2 request by the Board or its designee.

3 **Early Release**

4 21. After 12 months and upon the therapist's recommendation, Respondent may
5 request early release from the Consent Agreement if all other terms of the Consent Agreement
6 have been met.

7 **GENERAL PROVISIONS**

8 **Provision of Clinical Supervision**

9 22. Respondent shall not provide clinical supervision while subject to this Consent
10 Agreement.

11 **Civil Penalty**

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

14 24. Respondent's payment of the civil penalty shall be stayed so long as Respondent
15 remains compliant with the terms of this Consent Agreement. If Board staff determines that
16 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
17 exception of the tolling provision under paragraph 9, the stay of the civil penalty payment shall
18 be automatically lifted and payment of the civil penalty shall be made by certified check or
19 money order payable to the Board within 30 days after being notified in writing of the lifting of
20 the stay.

21 25. Within 10 days of being notified of the lifting of the stay, Respondent may request
22 that the matter be reviewed by the Board for the limited purpose of determining whether the
23 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
24 receives the written request within 10 days or less of the next regularly scheduled Board
25 meeting, the request will not be heard at that meeting, but will be heard at the next regularly

1 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
2 review.

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

8 27. If Respondent currently sees clients in their own private practice, and obtains any
9 other type of behavioral health position, either as an employee or independent contractor, where
10 they provide behavioral health services to clients of another individual or agency, they shall
11 comply with requirements set forth in paragraphs 28 through 30 below.

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

20 29. If Respondent is not employed as of the effective date of this Order, within 10
21 days of accepting employment in a position where Respondent provides any type of behavioral
22 health related services or in a setting where any type of behavioral health, health care, or social
23 services are provided, Respondent shall provide the Board Chair or designee with a written
24 statement providing the contact information of their new employer and a signed statement from
25 Respondent's new employer confirming Respondent provided the employer with a copy of this

1 Consent Agreement. If Respondent does not provide the employer's statement to the Board
2 within 10 days, as required, Respondent's failure to provide the required statement to the Board
3 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
4 employer(s) with a copy of the Consent Agreement.

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

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

22 32. Prior to the release of Respondent from probation, Respondent must submit a
23 written request to the Board for release from the terms of this Consent Agreement at least 30
24 days prior to the date they would like to have this matter appear before the Board. Respondent
25 may appear before the Board, either in person or telephonically. Respondent must provide

1 evidence that they have successfully satisfied all terms and conditions in this Consent
2 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
3 this Consent Agreement have been met and whether Respondent has adequately demonstrated
4 that they have addressed the issues contained in this Consent Agreement. In the event that the
5 Board determines that any or all terms and conditions of this Consent Agreement have not been
6 met, the Board may conduct such further proceedings as it determines are appropriate to
7 address those matters.

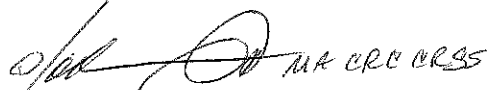
8 33. Respondent shall bear all costs relating to probation terms required in this
9 Consent Agreement.

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

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

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


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

17 
18 Aaron D. Foster

17 4-14-17
18 Date

19
20 **BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

21 Dated this 14th day of May, 2017.

22
23 By: 
24 TOBÍ ZAVALA, Executive Director
25 Arizona Board of Behavioral Health Examiners

1 ORIGINAL of the foregoing filed
This 8th day of May, 2017 with:

2 Arizona Board of Behavioral Health Examiners
3 3443 N. Central Ave., Suite 1700
4 Phoenix, AZ 85012

5 COPY of the foregoing mailed via Interagency Mail
This 8th day of May, 2017, to:

6 Marc Harris
7 Assistant Attorney General
8 1275 West Washington
9 Phoenix, Arizona 85007

10 COPY of the foregoing mailed via
11 Certified mail no. 7016214000001804094
This 8th day of May, 2017, to:

12 Aaron D. Foster
13 Address of Record
14 Respondent
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