

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10 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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. LMSW-16014 for the practice of social
4 work in Arizona.

5 2. On 08/06/16, Respondent was arrested for possession of methamphetamine,
6 which he did not immediately report to the Board as required.

7 3. Respondent subsequently pled guilty to possession of methamphetamine in the
8 amount of 1 gram or more but less than 4 grams, a 3rd degree felony.

9 4. Approximately 6 months following his arrest, Respondent self-reported his arrest
10 to the Board.

11 5. Furthermore, it wasn't until 9 months following his arrest, that Respondent
12 reported his arrest to his employer, a behavioral health entity.

13 6. In review of Respondent's treatment records, he appears to have demonstrated
14 various periods of sobriety followed by relapse, from 01/16 – 08/16.

15 7. In an interview with Board staff, Respondent's employer indicated that
16 Respondent has entered into an agreement requiring him to participate in 12-step meetings,
17 engage in counseling services, attend clinical supervision, and submit to random drug
18 screenings.

19 8. Respondent's employer indicated that Respondent has remained in compliance
20 with his agreement.

21 9. Respondent represents that his sobriety date is 08/25/16.

22 **CONCLUSIONS OF LAW**

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

1 2. The conduct and circumstances described in the Findings of Fact constitute a
2 violation of A.R.S. § 32-3251(16)(k), any conduct or practice that is contrary to recognized
3 standards of ethics in the behavioral health profession, as it relates to the 2008 NASW Code of
4 Ethics:

5 **4.05 Impairment:**

6 (a) Social workers should not allow their own personal problems, psychosocial
7 distress, legal problems, substance abuse, or mental health difficulties to
8 interfere with their professional judgment and performance or to jeopardize the
9 best interests of people for whom they have a professional responsibility.

10 3. The conduct and circumstances described in the Findings of Fact constitute a
11 violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation
12 applicable to the practice of behavioral health as it relates to A.R.S. § 32-3208: Mandatory
13 Reporting Requirements.

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 **Stayed Suspension**

18 1. As of the effective date of this Consent Agreement, Respondent's license,
19 LMSW-16014, shall be **SUSPENDED** for 24 months. However, the suspension shall be stayed
20 and Respondent's license shall be placed on probation.

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

24 3. If Respondent contests the lifting of the stay as it relates to this paragraph,
25 Respondent shall request in writing, within 10 days of being notified of the automatic

1 suspension of licensure, that the matter be placed on the Board agenda for the Board to review
2 and determine if the automatic suspension of Respondent's license was supported by clear and
3 convincing evidence.

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

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

11 Probation

12 6. Respondent's license, LMSW-16014, will be placed on probation for 24 months,
13 effective from the date of entry as signed below.

14 7. Respondent shall not practice under their license, LMSW-16014, unless they are
15 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
16 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
17 shall immediately notify the Board in writing and shall not practice under their license until they
18 submit a written request to the Board to re-commence compliance with this Consent
19 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

24 Continuing Education

25 9. In addition to the continuing education requirements of A.R.S. § 32-3273, within

1 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
2 three semester credit hour graduate level course in co-occurring disorders from a regionally
3 accredited college or university, pre-approved by the Board Chair or designee. Upon
4 completion, Respondent shall submit to the Board an official transcript establishing completion
5 of the required course.

6 Therapy

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

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

18 Focus and Frequency of Therapy

19 12. The focus of the therapy shall relate to substance use cravings, triggers, and
20 relapse prevention. Respondent shall meet in person with the therapist twice monthly for the
21 first 6 months of probation. After the first 6 months of probation, the frequency of therapy shall
22 be at the recommendation of the therapist.

23 Reports

24 13. Once approved, the therapist shall submit quarterly reports and a final summary
25 report to the Board for review and approval. The quarterly reports shall include issues presented

1 in this Consent Agreement that need to be reported and the therapist shall notify the Board if
2 more frequent therapy is needed. The reports shall address Respondent's current mental health
3 status, medications prescribed, if any, treatment recommendation, and shall report if, in their
4 professional opinion, Respondent becomes unable to practice psychotherapy safely and
5 competently. The final report shall also contain a recommendation as to whether the
6 Respondent should be released from this Consent Agreement.

7 Change of Therapist

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

15 Recovery Program

16 15. While on probation, Respondent shall attend recovery support meetings at a
17 minimum of 2 times per week. Respondent shall obtain a sponsor, mentor, or group leader and
18 that individual shall provide quarterly reports to the Board Chair or designee attesting to
19 Respondent's attendance and participation.

20 Biological Fluid Testing

21 16. Within 10 days of the effective date of this Order, Respondent shall enroll in a
22 program that meets Board criteria for observed random biological fluid testing. The chemicals
23 tested shall be determined by the Board Chair or designee. Random testing shall be done at a
24 minimum of twice monthly and may be required more frequently as requested by the Board or
25 its designee. Respondent shall direct the Board-approved testing laboratory to provide a copy of

1 each test result to the Board. Respondent shall direct the Board-approved testing laboratory to
2 advise the Board or its designee within 7 days regarding any issue of noncompliance by
3 Respondent. Respondent shall notify the biological fluid testing laboratory and the Board, in
4 writing, of unavailability to test prior to an anticipated absence or if unable to provide a sample
5 due to illness. Respondent must submit in writing within 7 days of the missed specimen,
6 documentation from a treating physician who has personally evaluated Respondent on the day
7 of the requested screen that Respondent was not physically able to report to the laboratory for
8 biological fluid testing.

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

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

1 ***biological fluid test, failing to provide a random biological fluid sample or for having***
2 ***tested positive for any drug other than an authorized medication.***

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

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

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

25 20. If Respondent has a lawful prescription for a narcotic or mood-altering drug,

1 Respondent shall cause their prescribing provider to submit monthly reports to the Board by the
2 30th day of each month regarding the continued need for the prescribed narcotic or mood-
3 altering medications. The Board or its designee may, at any time, request the provider to
4 document the continued need for prescribed medications. Respondent shall keep a written
5 record of medications taken, including over the counter drugs, and produce such record upon
6 request by the Board or its designee.

7 Early Release

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

11 GENERAL PROVISIONS

12 Provision of Clinical Supervision

13 22. Respondent shall not provide clinical supervision while subject to this Consent
14 Agreement.

15 Civil Penalty

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

18 24. Respondent's payment of the civil penalty shall be stayed so long as Respondent
19 remains compliant with the terms of this Consent Agreement. If Board staff determines that
20 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
21 exception of the tolling provision under paragraph 8, the stay of the civil penalty payment shall
22 be automatically lifted and payment of the civil penalty shall be made by certified check or
23 money order payable to the Board within 30 days after being notified in writing of the lifting of
24 the stay.

25 25. Within 10 days of being notified of the lifting of the stay, Respondent may request

1 that the matter be reviewed by the Board for the limited purpose of determining whether the
2 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
3 receives the written request within 10 days or less of the next regularly scheduled Board
4 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
5 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
6 review.

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

12 27. 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 28. 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 29. 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 30. 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 31. 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 32. Respondent shall bear all costs relating to probation terms required in this
 9 Consent Agreement.

10 33. 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 34. This Consent Agreement shall be effective on the date of entry below.

13 35. 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.

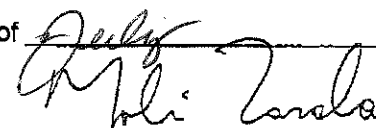
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 17 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

18 
 19 _____
 David A. Brinkman

7/7/17
 Date _____

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

21 Dated this 10th day of July, 2017.

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

1 ORIGINAL of the foregoing filed
This 10th day of July, 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 10th day of July, 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. 70162140 0000 18047062
12 This 10th day of July, 2017, to:

13 David A. Brinkman
14 Address of Record
15 Respondent
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